
Victoria Sutton

I. Introduction

The United States is a nation that prides itself on its civil liberties and freedoms, yet it is also evident that responsibilities must play an important role in this balance. The threat of attack by terrorists through the use of weapons of mass destruction has called the nation’s attention to the legal framework in which we might operate to protect our homeland, while preventing intrusions on our interests in privacy and liberty. It is during this time that a nation founded on these liberties and freedoms must alleviate impediments to the protection of our health and safety as individuals, communities, and as a nation. One such impediment is the threat of tort litigation for those who seek only to rescue others in need or for public servants who are seeking to protect the public’s health and safety. A survey of our fifty states reveals a patchwork of many different impediments to a seamless society of Good Samaritans who might otherwise assist those in need, rather than avoid the possibility of expensive and often financially devastating lawsuits.

This analysis seeks to review the theories in law and ethics, the societal need for intervention in normative tort traditions, and the existing legal constructs, which have become arcane for the determinant needs of a society that has chosen to prepare itself against public health emergencies and disasters. While responding to the threat of harm

* Victoria Sutton, M.P.A., Ph.D, JD., Paul Whitfield Horn Professor and Director of the Center for Biodefense, Law and Public Policy at Texas Tech University School of Law. The author would like to thank Bryan Eisenhise and Eric Maddock for their research work in assisting and compiling the Good Samaritan laws in fifty states and making initial comparative assessments.
in public health emergencies and other acts of terrorism has been made a national priority since the events of 9/11, we have overlooked the most essential stage of response by the people who are present at the moment a disaster strikes. The need to re-examine our Good Samaritan laws, which vary to such a great degree from state to state that it threatens to prevent rescues that they were intended to encourage, is imperative. This uncertainty of the law, coupled with the seventy percent rise in tort cases filed between 1975 and 1990\(^1\) that may have inhibitory effects on the decision to rescue, threaten the societal need to rescue injured victims by those who are in a position to be the first to respond. The wisdom in developing a model Good Samaritan law for adoption from state to state, or a federal law to preempt state law in a declared emergency to address these uncertainties, is considered in this analysis as a necessary reform for a United States national public health security strategy.

II. Theories of Good Samaritan Law

A. Distributive Justice

Examining underlying theories of law and ethics help in understanding the void these statutes seek to fill, in a civilized society, in areas of environment, public health, and common property ownership, where these associated values are shared by all of society.

In public health, the concept of distributive justice allows the burdens and risks to be shared by all members of society.\(^2\) Distributive justice is concerned with

---

1 See CONGRESSIONAL BUDGET OFFICE, “The Economics of U.S. Tort Liability: A Primer,” Oct. 2003, available at http://www.cbo.gov/ftpdocs/46xx/doc4641/10-22-TortReform-Study.pdf. The National Center for State Courts collected data from sixteen different states that showed that the number of tort cases filed each year increased by 70% between 1975 and 1990 and then decreased by 19% by 2000. Id.

2 See JOHN E. ROEMER, THEORIES OF DISTRIBUTIVE JUSTICE 1 (Harvard University Press 1996). The distributive justice theory generally examines how a society or group should allocate its scarce resources among individuals with competing needs. Id. Various approaches to distributive justice can be used to analyze any situation where there is a scarcity of a resource or supply, including health care. See BARRY R. FURROW ET AL., THE LAW OF HEALTH CARE ORGANIZATION AND FINANCE 72 (West Group, 6th ed. 2008). A libertarian approach would support letting the natural distribution of resources apply rather than encouraging redistribution of any sort, with the exception of willing trade in a market. Id. An egalitarian approach, in contrast to the libertarian approach, suggests that redistribution may be necessary because justice requires equality. See id. Distributive justice can be applied to a myriad of public health issues, including organ allocation for donation and vaccine and quarantine policy. See id. at 75-83 (discussing whether various factors such as geography and financial status of recipient should be
minimizing the maximum individual risk and generalizing the harm to the group.³ The egalitarian principle of distributive justice requires that the burden is evenly distributed. This considers the moral claims of the persons who bear these burdens and finds it fairer to allocate the burden more evenly among the entire community.⁴ For example, the risk of vaccination against childhood diseases for children is balanced against the need for public health of society as a whole. Each child bears some of the risk in order to provide public health protection to the community’s children.

To further explore the meaning of distributive justice, one can look to the rationale of the Fifth Amendment Takings clause, where one individual land owner cannot carry the burden of providing public lands for all of society; rather, society must provide a fair and just compensation for the value of the land when it is necessary to use the land for the public good.⁵

The prioritarian ideal suggests that distributive principles should ordinarily look at the risks to the outcomes, and it is not important that these outcomes materialize. T.M. Scanlon has proposed that it is not important who bears the risks, rather who is harmed.⁶

Emergency responses and rescues may be understood by prioritarian explanations. Risks taken at the first instance must be done generally with insufficient knowledge of the outcome. Perry, a prioritarian, finds that the risk of loss is the lack of

³ See Jeffrey M. Gaba, Taking “Justice and Fairness” Seriously: Distributive Justice and the Takings Clause, 40 CREIGHTON L. REV. 569, 577 (2007). There are different theories of distributive justice; the differences stem from what the “material principle of justice” is measured as, such as need or merit. Id. Where the material principle is measured as merit, people who work harder and produce more are entitled to more share of the resource. Id. If the material principle is measured as need, the people who need more are entitled to more share of the resource. Id.

⁴ See FURROW ET AL., supra note 2, at 72.

⁵ See U.S. CONST. amend. V; see also Armstrong v. United States, 364 U.S. 40, 49 (1960) (asserting the purpose of the Takings Clause is to “bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole”); Gaba, supra note 3, at 569-71 (suggesting that viewing the Takings Clause through lens of distributive justice shifts the theoretical basis of the clause from that of protecting personal liberty towards one of government authority to appropriate title through eminent domain).

⁶ See Markovits, supra note 2, at 332 (summarizing Scanlon’s work); see generally T.M. SCANLON, WHAT WE OWE TO EACH OTHER 233 (Harvard University Press 1998).
information limiting one’s knowledge of the perceived harms, not the harm, itself.  

Markovits writes,

Prioritarian distributive fairness belongs to a broad constellation of ideas that emphasize individuality and dignity of persons, and other ideas in this constellation may require persons to take ownership of unresolved risks (even for distributive purposes) rather than await their eventual resolution.

Dworkin believes that distributive justice declines to look through risks that can be protected against. 

Good Samaritan laws should fill the void for these risks, encouraging the citizen to move forward without demanding that a personal assessment of his own risks and protection against those personal risks be made, before assuming the risks inherent in a particular rescue, for example, liability. Good Samaritan laws that fail in principle to address this aspect of distributive fairness or justice in providing the protection against those risks may misrepresent to the regulated citizenry that they are protected. Thus, the rescuer may be led into a rescue relying on a false assumption that because it is the “right thing to do,” the rescuer will be protected by the Good Samaritan laws.

**B. Legal Positivism**

Foundations in tort law from Oliver Wendell Holmes explain why Good Samaritan laws are necessary for the occasions of bad fortune when harm results from the otherwise well-intentioned rescuer. He writes that “the conduct which a man pursues [is done] at his [own] peril . . . [and] if he escapes liability, it is simply because by good fortune no harm comes of his conduct in the particular event.”

The theory of legal positivism, associated with Jules Coleman, among others, discusses the “separability concept” in legal positivism as the denial of a necessary

---

8 See Markovits, supra note 2, at 334 n.54.
10 See, e.g., James 4:17 (New American Standard). "[T]o the one who knows the right thing to do and does not do it, to him it is sin." Id.
connection between the concepts of law and morality. Stephen Austin further sees this separability concept to emanate from the idea that this is acceptable regardless of the law’s separation from morality, value, or worth because it has been issued by a sovereign or supreme authority. The separability concept would then explain why otherwise moral and caring people are reluctant to help and indeed reject opportunities to rescue victims, out of a sense of the power of the sovereign to enforce judgments against the rescuers. This separates the morality of the rescue from the demand of payment for the harm. Judge Posner, however, more correctly asserts that the harms are not individual as much as they are generalized public harms.

III. The Foundation of the Good Samaritan Laws

A. Original Wisdom

Suppose a cardiologist in General Hospital encounters a torn major artery in the course of a routine angioplasty and immediately sounds the alert for an emergency open-heart surgery procedure. A board certified thoracic surgeon has just finished a major open chest operation and runs to save the patient who has a matter of minutes to survive before the closing of the torn artery wall. If things go wrong, is the intervening “Good Samaritan” physician protected under the law of his state? Unfortunately, it is unlikely; at best, he will be held to a standard that will be determined by non-medical personnel to be the standard of care under similar circumstances for a similar physician. The physician is also likely to be held to a standard of care of ordinary negligence. Do we, as a society, want the thoracic surgeon to pause and consider his potential enormous liability for taking a case without reviewing the case file, not obtaining informed consents from the patient’s family, or not having time to consult with other specialists,

---

13 See generally JOHN AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED (Hackett Publishing Co. 1998) (1832). The purpose of Austin’s book is to distinguish positive laws from other laws. Id. at viii. Austin states that positive laws are the only appropriate laws for jurisprudence. Id.
15 See generally Richard A. Posner, A Theory of Negligence, 1 J. LEGAL STUD. 29 (1972). Posner discusses morality as one of the reasons for the orthodox fault system. Id. at 31. Posner concludes that the real reason for the fault system is to generate rules that result in the efficient level of precautions, accidents, and safety. Id. at 33.
consider the patient’s special conditions, and contemplate the patient’s recent surgeries? The author suggests the answer is that we would not. In the context of a national public health emergency, the same question would have to be addressed.

The concept of the Good Samaritan is from the biblical story of the benevolent acts, along the road from Jerusalem to Jericho, by a Good Samaritan who helped a man who had been attacked by a gang of robbers. What may be forgotten is that there were others who passed by the man without stopping. A priest, “when he saw the man . . . went by on the other side [of the road].” In the same way, a temple official came along. When he saw the man, he also went by on the other side. However, it was the “foreigner from Samaria” who was “filled with compassion and went to help.”

But do our Good Samaritan laws make it possible for the “foreigner” to help someone in a medical or public health emergency? The basis of the Good Samaritan law is found in the common law meaning of the Good Samaritan rule, and it is explained in the Restatement of Torts (Second):

One who undertakes gratuitously or for consideration to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other’s reliance upon the undertaking.

Only where a response has started does an obligation attach to anyone who begins a rescue in forty-eight states. Seven states require a physician to be licensed in that state, without any other generalized statute for immunity; while two states require

---

20 Restatement (Second) of Torts § 323 (1965).
a physician to be licensed by that state only when that physician is the team athletic physician at an athletic event.\textsuperscript{22} Louisiana provides a unique exception for physicians who are not licensed in the state and who assist others, such that they would not be charged for practicing without a license in that state or for other similar acts.\textsuperscript{23}

Individuals with no medical training are in a more uncertain position than physicians. The Good Samaritan laws are intended to encourage people to help others in emergency situations; however, these statutes vary from state to state in such substantial ways that it would be foolhardy to rescue someone or give assistance or emergency care to someone if in a state in which one has no familiarity with the law. In contrast, there are two states that make it a crime to \textit{fail} to assist someone who is in an emergency situation, if it can be done without one’s own harm or in breach of one’s responsibility to another.\textsuperscript{24} Accordingly, the priest and the temple official of the above parable could be criminally liable in at least three states: Vermont, Wisconsin, and Minnesota.\textsuperscript{25}

\begin{footnotesize}
\begin{itemize}
\item[(22)] See Ark. Code Ann. § 17-95-101 (2010) (providing that “health care professional” means a licensed physician or other licensed health care professional, and if a health care professional lends emergency assistance at an accident he will not be liable for civil damages); Or. Rev. Stat. § 30.800 (2010) (defining “Emergency Medical Care” as meaning medical care provided by a “physician licensed by the Oregon Medical Board in the physician’s professional capacity as a team physician” or “as a volunteer physician at other athletic events”).
\item[(24)] See Vt. Stat. Ann. tit. 12, § 519(c) (2010) (providing that any person who knows that another is at risk of physical harm and does not act can be fined up to one hundred dollars); Wis. Stat. Ann. § 604A.01 (2010) (providing that a person is guilty of a petty misdemeanor if he knows another is suffering physical harm and fails to provide reasonable assistance). For instance, in the final episode of the American sitcom, Seinfeld, Jerry and his friends are arrested in Vermont for failing to assist a victim. \textit{Seinfeld: The Finale} (NBC television broadcast May 14, 1998).
\end{itemize}
\end{footnotesize}
B. The Community Caretaking Doctrine

Constitutional protections through the Fourth Amendment search and seizure requirements to obtain a warrant to enter areas where there is an expectation of privacy may present a problem in responding to a public health emergency or individual emergency. The community caretaking doctrine provides a narrow exception to the warrant requirement of the Constitution where there is a threat of physical harm to an individual or to the community. This doctrine is typically analyzed where there is a defense of a warrantless search; whereas here, the doctrine is analyzed as guidance for public servants who are utilized in the war on terror and to respond to threats of bioterrorism. For example, if there was a concern that individuals coming into an area might be infected with a biological agent or disease agent, and a test was available for taking saliva samples and determining whether the person was exposed or infected, then the expectation of privacy would be balanced against the need for an emergency search and seizure.

In exigent circumstances or emergencies, police officers and fire fighters may engage in community caretaking actions, which are instigated to aid individuals who are in danger of physical harm or to prevent opportunities for the commission of crimes—all out of a concern for the safety of the general public. These actions may be independent of any investigation or search for evidence.

As in exigent circumstances, there are situations in which there is no time to obtain a warrant, and a warrantless entry and search of a private residence may nonetheless be justified and constitutional. In Cady v. Dombrowski, the United States Supreme Court recognized the need to protect or preserve life or avoid serious injury as

26 See U.S. CONST. amend. IV; Cady v. Dombrowski, 413 U.S. 433 (1973) (setting forth community caretaking exception for law enforcement officials as exception to Fourth Amendment of U.S. Constitution); see also South Dakota v. Opperman, 428 U.S. 364 (1976) (elaborating on community caretaking exception).
28 See Schwartz, supra note 27.
29 See Schwartz, supra note 27.
30 See Schwartz, supra note 27; see also Cady, 413 U.S. at 447-4833 (holding warrantless search did not violate Fourth Amendment).
justification for what would be otherwise illegal absent an exigency or emergency. The Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within an area with an expectation of privacy is in need of immediate aid; this is known as the emergency doctrine.

The Circuits are divided on their application of the community caretaking doctrine. The more limited view applies the community caretaking doctrine only to those situations involving automobiles. The Seventh, Ninth, and Tenth Circuits limit the doctrine by narrowly construing the United States Supreme Court determination in Cady v. Dombrowski. The First, Fourth, Fifth, and Eighth Circuits have extended the doctrine beyond the intrusion into automobiles, based on the need for the action by the police officer, rather than the area in which he is intruding.

---

32 Id. at 447. In this case, the U.S. Supreme Court decided that a warrantless search of a vehicle of a man who had been driving drunk was constitutional because police had a reasonable belief that defendant’s car contained a revolver, and if not removed, the revolver could pose a serious risk to public safety if it were to fall in the hands of an intruder. Id. “[T]he revolver search was standard police procedure to protect the public from a weapon possibly falling into improper hands.” Id. at 433.

33 Brigham City, Utah v. Stewart, 547 U.S. 398, 398 (2006) (holding that police may enter a home without a warrant when they have a reasonable belief that someone in the home is in imminent danger of serious injury or death). The Supreme Court has long recognized the Fourth Amendment exception to warrantless searches. See Mincey v. Arizona, 437 U.S. 385, 389-90 (1978) (stating that police officers may initiate warrantless searches if they reasonably believe a person is in imminent danger). But see id. at 386 (clarifying that the situation must be one “threatening life or limb,” and once that threat is over, the search is unconstitutional). The Mincey Court refused to accept the Arizona Supreme Court’s classification of the “murder scene exception” because although there had been serious danger during the murder, when police officers entered the home the imminent threat had ceased. Id. at 385.

34 Mary Elisabeth Naumann, The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception, 26 AM. J. CRIM. L. 325, 348 (1999). “Three circuits take a restrictive view of the doctrine, four use an expansive application of it, and two circuits fall in the middle of these extremes.” Id.

35 See Naumann, supra note 34, at 348. These circuits are only willing to recognize the community caretaker doctrine for circumstances that exactly parallel the facts of Cady. Id. This application in effect reduces the scope of the community caretaker doctrine in those circuits to automobiles only. See U.S. v. Bute, 43 F.3d 531, 535 (10th Cir. 1994). These courts’ interpretation of the doctrine is that the Supreme Court never intended to extend the doctrine to all situations that are merely investigative; rather, the purpose must be to serve the “caretaking” function. Id. at 535; see Naumann, supra note 34.

36 See Naumann, supra note 34, at 350 (stating that these circuits have extended the doctrine to cover encounters with pedestrians and homes). In these jurisdictions, the only requirement for the doctrine is that “objective facts present a need for caretaker action.” Id.; see U.S. v. Rideau, 969 F.2d 1572, 1574 (5th Cir. 1992) (declaring that a police officer walking on the street need
C. The Emergency Aid Doctrine

In *Mincey v. Arizona*, the United States Supreme Court recognized a doctrine of emergency aid, defined as part of the community caretaking doctrine. The exigent circumstances exception to the Fourth Amendment search and seizure requirement is very similar to the doctrine of emergency aid, except the first is related to a crime-fighting function and the latter is strictly related to a response to the threat of physical harm.

In the context of responding to bioterrorism, a public health emergency, or the threat of bioterrorism in an undeclared emergency, the Virginia court’s interpretation of the doctrine, which allowed a police officer to stop a pedestrian who appeared to need aid because of illness, would be most applicable to that of a victim of a bioterrorism attack or event where that victim appears to be in need of aid. The utilization of the doctrine in Virginia was upheld as a proper application of the emergency aid doctrine. In this case, the Virginia Court of Appeals upheld the action of a police officer in

only a “reasonable suspicion” to briefly detain an individual on the street, and this requirement translates into a “minimal level of objective justification”); *see also* U.S. v. Sokolow, 490 U.S. 1 (1989); Terry v. Ohio, 392 U.S. 1 (1968).


38 *See Mincey, 437 U.S. 385, 392-93 (1978).*

39 *See State v. Blades, 626 A.2d 273, 278-79 (Conn. 1993).* The court noted that, “the emergency doctrine is rooted in the community caretaking function of the police rather than its criminal investigatory function.” *Id.* at 278. It must be noted, however, “that the emergency doctrine serves an exceedingly useful purpose. Without it, the police would be helpless to save life and property . . . .” *Id.* at 278-79 (quoting E. Mascolo, *The Emergency Doctrine Exception to the Warrant Requirement Under the Fourth Amendment*, 22 BUFF. L. REV. 419, 428 (1973). *See also* State v. Sanders, 506 P.2d 892, 895 (Wash. Ct. App. 1973) (adopting and defining the emergency rule as police officers being authorized to enter a dwelling without a warrant to render emergency assistance and aid to whom is believed to be in distress and in need of assistance).

40 *See Commonwealth v. Waters, 456 S.E.2d 527, 530 (Va. Ct. App. 1995).* (holding that the emergency exception was satisfied because the officer was reasonable in believing the defendant needed assistance). The *Waters* court cited *Barrett v. Commonwealth* in asserting that “[o]ther jurisdictions have acknowledged that the duty of the police extends beyond the detection and prevention of crime, to embrace also an obligation to maintain order and to render needed assistance,” a duty that extends the community caretaker doctrine to situations other than automobile stops. *Id.* at 530 (citing 447 S.E.2d 243, 245 (Va. Ct. App. 1994)). The *Waters* court concluded that if a police-citizen encounter is based upon an objectively reasonable belief that aid or assistance is warranted, any contraband or other evidence of a crime discovered incident to the police officer’s lawful duties, need not be ignored by the officer. *Id.*

41 *See id.* at 530-31.
stopping a pedestrian who appeared to be intoxicated or ill. However, the court has rejected the application of the doctrine if the facts include any criminal investigatory purpose of the entry in a home.

D. The Public Servant Doctrine

The public servant doctrine does not require the urgency or immediate threat of physical harm that is called for under the emergency aid doctrine. The public servant doctrine may include a police officer assisting in changing a tire for a stranded motorist; whereas, the emergency aid doctrine would involve a police officer assisting an unconscious motorist at the scene of a car accident. The court has determined that for an intrusion to be legal under this doctrine, it must be because the officer believed aid was needed. Other intrusions, such as stopping at the scene of an accident when the occupants did not appear to need aid, were held to be unwarranted.

In the case of a biological attack, unless the officer believes there is a need for aid, for example if a group of individuals are engaged in putting on respiratory facemasks in a public setting, without further evidence of a need for aid, this would be an unwarranted stop under the public servant doctrine.

42 See id. at 530-31.
43 See Wood v. Commonwealth, 484 S.E.2d 627, 630 (Va. Ct. App. 1997), rev’d en banc, 497 S.E.2d 484, 487 (Va. Ct. App. 1998). The Court of Appeals noted that the “community caretaker doctrine” is inappropriate when an officer uses that function as a pretext for investigating criminal conduct. See id. In applying the facts, the court held that the officers did have a reasonable basis to enter under their community caretaker function. See id. at 631. When hearing the case en banc, however, the court reversed, holding that the use of the community caretaker function was a pretext for an investigatory search. See id. at 488; see also Cady v. Dombrowski, 413 U.S. 433, 439 (1973) (“[t]he ultimate standard set forth in the Fourth Amendment is reasonableness”).
44 See Blades, 626 A.2d at 278-79 (concluding reasonable to believe missing person was in need of aid without direct evidence of physical harm at time of entry).
45 See Naumann, supra note 34, at 333-34.
47 See Wixom, 947 P.2d at 1002.
IV. Who Has Immunity?

A. Is Training Required?

The Good Samaritan statutes vary so much in their requirements for training for individuals who render aid that it is nearly impossible to understand the kind of training, if any, that is required to meet the standards for a liability defense. Private individuals, with none of the statutorily required health care training or certification required in eight states, will have no protection from liability for being a Good Samaritan in a public health emergency, even if their actions are conducted in good faith. These eight states provide no immunity to private individuals who do not meet certain qualifications of training or certification: California, Connecticut, Illinois, Indiana, Kansas, Louisiana, Missouri, and Oregon.

Four states provide specific immunity to health care-related graduate students. Alabama requires the person to be an intern or resident in an American Medical

48 See CAL. HEALTH & SAFETY CODE § 1799.108 (West 2010). A person who has a certificate to provide “pre-hospital emergency field care treatment at the scene of emergency” is immune from liability. Id.

49 CONN. GEN. STAT. § 52-557b (2010). Teachers and other school personnel are immune on school grounds, in the school building, or at a school event if they have completed a course in first aid. Id. § 52-557b(b). Employees of railroad companies are immune if they have completed a course in first aid. Id. § 52-557b(c).

50 745 ILL. COMP. STAT. 49/2 (2010) (outlining legislative purpose). The legislature desired the statute to be liberally construed “to encourage persons to volunteer their time and talents.” Id. The only instance in which it appears a private citizen may be protected from liability involves aiding a choking victim at a food-service establishment. Id. 49/65.

51 IND. CODE 16-31-6-1 to 16-31-6-4 (2010) (describing individuals protected from liability as members of the medical profession).

52 KAN. STAT. ANN. § 65-2891 (2009) (describing individuals protected from liability as “health care providers”). See also James v. Rowe, 674 F. Supp. 332, 333 (D. Kan. 1987) (interpreting legislative intent). The bill was designed to encourage health care professionals, and those with medical training, to help those involved in a medical emergency. Id.


54 MO. REV. STAT. § 537.037 (2010) (describing proper training required for individual to qualify for protection from liability).

55 OR. REV. STAT. § 30.792(1) (2003) (excluding private citizens from civil immunity and protecting only health care providers). The statute defines “health care provider” as an individual licensed, registered, and certified “in this state as a practitioner of one or more healing arts” as outlined in previous sections of the statute. Id.

56 ALA. CODE § 6-5-332(a) (2006) (including residents in approved medical programs within the class immunized from civil liability when providing first aid).
Association approved program; whereas, Kansas57 includes all post-graduate students in any program that is state approved in the “healing arts.” Louisiana58 provides immunity to an “intern or resident” in a public or private hospital or medical health care facility licensed by the state. Michigan59 provides immunity to any student of an approved educational institution, who is working in a clinical setting. The remaining forty-six states may or may not provide some immunity under generalized provisions.

However, two states caution that this section does not require someone to accept medical treatment if they object on religious grounds. In fact, Delaware60 and Maine61 caution that the statute should not be construed to give treatment to those who object on religious grounds.

Twenty-four states specifically provide immunity for physicians rendering emergency care in a hospital. Those states are: Alaska,62 Arkansas,63 California,65 Colorado,66 and Florida,67 (for those licensed to

57 See KAN. STAT. ANN. § 65-2891(a), (e) (shielding “health care providers” from liability, and broadly defining the term). Under the Kansas statute, “healing arts” is defined as follows: The healing arts include any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic.

58 See L.A. REV. STAT. ANN. § 37:1731(1), (2)(a) (immunizing medical residents and interns from liability arising out of emergency situations occurring at hospitals but not at the scene of an emergency).

59 See MICH. COMP. LAWS § 333.20965(1)(k) (2001). The Michigan statute states that a student of a department-approved education program is immune from liability unless an act is a result of gross negligence or willful misconduct. Id.

60 See DEL. CODE ANN. tit. 16, § 6801(a) (1999) (setting forth that the administration of first aid is not required if an individual objects on religious grounds).

61 See ME. REV. STAT. tit. 14, § 164 (2003) (stipulating that immunity from civil liability does not require a person who objects on religious grounds to undergo medical treatment).

62 See ALASKA STAT. § 09.65.090 (2003). The Alaska statute sets forth that a “person at a hospital” is immune from civil damages if emergency aid is rendered to avoid serious harm or death. Id.

63 See ARIZ. REV. STAT. ANN. § 32-1471 (2010).


65 CAL. BUS. & PROF. CODE § 2395 (West 2010).


67 FLA. STAT. § 768.13 (2004) (setting forth the Florida “Good Samaritan Act,” which provides
practice medicine); Georgia,68 Hawaii,69 Illinois,70 (for licensed persons); Indiana,71 (only if the physician is a hospital employee); Kansas,72 (for any health care provider); Louisiana,73 Maryland,74 Massachusetts,75 and Michigan,76 (physician, if an employee of a hospital); Missouri,77 Montana,78 Nebraska,79 Oklahoma,80 Virginia,81 Washington,82 and

immunity from civil liability for all individuals who provide emergency medical services, including licensed physicians).

68 GA. CODE ANN. § 51-1-29 (2010) (providing immunity from liability for persons rendering care to another at the scene of “an accident or emergency”). See also GA. CODE ANN. § 31-11-8 (2010) (noting immunity from civil liability for individuals providing emergency care with an emphasis placed upon ambulance services).

69 HAW. REV. STAT. § 663-1.5 (2010) (“[a]ny person who in good faith renders emergency care, without remuneration or expectation of remuneration, at the scene of an accident or emergency to a victim of the accident or emergency shall not be liable for any civil damages resulting from the person’s acts or omissions”). See also HAW. REV. STAT. § 321-23.3 (2010) (estimating immunity from civil liability for volunteer emergency medical disaster response personnel).

70 745 ILL. COMP. STAT. 49/25 (2010) (providing immunity for “[p]hysicians . . . who, in good faith, provide[] emergency care without fee to a person”).

71 IND. CODE § 16-31-6-1 (2010) (“[a]ny certified emergency medical technician or a certified emergency medical technician-basic advanced who provides emergency medical services to an emergency patient is not liable for an act or omission in providing those services unless the act or omission constitutes negligence or willful misconduct”).

72 KAN. STAT. ANN. § 65-2891(c) (2009) (establishing immunity from civil liability for emergency care rendered by a health care provider during the course of an emergency or accident).


74 MD. CODE ANN., CTS. & JUD. PROC. § 5-603 (West 2008) (providing immunity for an individual who is licensed by the state to provide medical care and does so at the site of an emergency without fee or other compensation).


76 MICH. COMP. LAWS § 691.1502 (2000) (exempting from liability a physician who in good faith responds to an emergency in a hospital setting).

77 MO. REV. STAT. § 537.037 (2010) (denying liability for a physician who renders care at scene of emergency or accident).

78 MONT. CODE ANN. § 27-1-714 (2009). This law protects any person, including volunteer firefighters and licensed physicians and surgeons, who renders good faith emergency medical care without compensation from liability. Id. § 27-1-714(1).

79 NEB. REV. STAT. § 38-1232 (2009). The law grants immunity to out-of-hospital medical personnel, including emergency care providers, physician assistants, registered nurses, and licensed practical nurses, who provide “public emergency care.” Id. § 38-1232(1). This protection extends to doctors giving orders for emergency care and emergency care providers following those orders. Id. § 38-1232(2).

80 OKLA. STAT. ANN. tit. 76, § 5(a)(1) (West 2010). Oklahoma’s statute protects “any person licensed to practice any method of treatment of human ailments” from liability for damages caused by free emergency care provided in emergency situations when treatment is the only
Wisconsin. To enjoy this immunity, the physician must be without expectation of remuneration. The standard is the standard of care expected of similar physicians under similar circumstances. Physicians can also be covered through the broad private individual category, with the same standard of care, in other states.

Only two states, Florida and Louisiana, provide immunity for veterinarians acting as Good Samaritans in emergencies involving rescue animals. Louisiana requires that such individuals be licensed to practice medicine in Louisiana, while Florida requires only that such individuals be licensed veterinarians.

alternative to probable death or serious bodily injury. Id.

83 VA. CODE ANN. § 8.01-225(A)(1) (2010). The law extends immunity to any person who provides free emergency care to any ill or injured person at the scene of the accident, on the way to receiving treatment at a medical facility, or at a location for screening for or stabilization of an emergency condition. Id.

82 WASH. REV. CODE ANN. § 4.24.300(1) (West 2010). The law protects any person, including a volunteer medical or emergency care provider, who, without compensation or the expectation thereof, renders emergency treatment or transportation to receive emergency treatment to an injured person from liability for damages caused by their services. Id.

81 WIS. STAT. ANN. § 895.48(1) (West 2010). This statute does not explicitly state, but by omission, covers physicians rendering emergency care at hospitals provided they administer their services without the expectation of compensation. See id.

85 See FLA. STAT. § 768.13(3) (2010). The statute, in relevant part, states as follows:

Any person, including those licensed to practice veterinary medicine, who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

Id.; LA. REV. STAT. ANN. § 37:1731(C) (2010). The statute reads as follows:

No [licensed] veterinarian . . . who in good faith gratuitously renders emergency care or services or assistance at the scene of an emergency to an animal or animals in need thereof, shall be liable for any civil damages as a result of any act or omission by such person in rendering the care or services or assistance, or as a result of any act or failure to act to provide or arrange for further veterinary medical treatment or care for the animal involved in the said emergency.

LA. REV. STAT. ANN. § 37:1731(C).
Lifeguards are specifically granted immunity only in Connecticut.86 A lifeguard who has various levels of training in CPR or as an EMT may be protected under those categories, in some states, however.

Hawaii provides immunity to those who publish general first aid information.87

Idaho does not require “Good Samaritans” to be licensed physicians, and its applicable statute is broad enough to cover any person who stops at the scene of an accident and renders emergency medical care to another.88

B. Is the Physician in a Hospital Immune under the Good Samaritan Laws in an Emergency?

For a physician in a hospital responding to the opening scenario, whether he is included in the scope of immunity under these statutes varies from state to state. Physicians working in the context of a public health emergency should not be found liable in one state and not in another for administering the same recommended prophylactic, for example. Hospitals are specifically enumerated as “immune” locations in the Good Samaritan statutes of Alaska, Colorado, and Oklahoma;89 whereas, hospitals are not excluded in Alabama, Connecticut (unless in the ordinary course of such person’s employment), Delaware, Georgia, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.90 Hospitals are

86 CONN. GEN. STAT. § 52-557b(b) (2010) (providing immunity to a lifeguard or any other “emergency medical service personnel who has completed a [nationally-recognized] course in first aid”).
87 HAW. REV. STAT. § 663-1.5(d) (2010) (providing immunity for persons or entities “publishing written general first aid information” as a public service) (emphasis added).
88 IDAHO CODE ANN. § 5-330 (2010) (providing immunity to any person offering emergency medical care or first aid to another at the scene of an accident).
89 ALASKA STAT. § 09.65.090(a) (2010) (providing immunity to any person “who renders emergency care to an injured, ill, or emotionally distraught person” in the confines of a “hospital or any other location”); COLO. REV. STAT. § 13-21-108(1) (2010) (providing immunity to any person or licensed physician rendering emergency medical attention to an individual at a “health care institution”); OKLA. STAT. ANN. tit. 76, § 5 (West 2010) (providing immunity to individuals rendering emergency medical care to another “wherever required”). The language of the Oklahoma “Good Samaritan Act” implicitly also includes hospitals as a locale where such immunity is provided. See OKLA. STAT. ANN. tit. 76, § 5.
90 See supra section IV(A) and accompanying notes (listing the applicable case law and statutes
specifically excluded by case law in Arizona.\textsuperscript{91} State statutes specifically exclude hospitals only in Florida, Idaho, Kentucky, Michigan, Mississippi, and Oregon, leaving no question that hospitals are not places of immunity in Good Samaritan acts.\textsuperscript{92}

Hospitals are specifically excluded from a list of included places in Arkansas (for physicians) and Iowa, suggesting that they are not included under the immunity provisions.\textsuperscript{93} In only the limited circumstance where there is a state declared “medical disaster” in California, immunity is available for licensees under the Good Samaritan statute.\textsuperscript{94}

C. Immunity is Relevant to the Gratuitous Nature of the Action

In those states that provide for immunity, some require that the actions of the rescuer be gratuitous and without expectation of compensation. While other states leave “gratuitous” to be determined by the judiciary, Iowa has statutorily defined gratuitous to include the receipt of nominal compensation to characterize this as no compensation.\textsuperscript{95} Texas provides that even though the provider may be legally entitled to remuneration referenced).

\textsuperscript{91} Guerrero v. Copper Queen Hosp., 537 P.2d 1329, 1331 (Ariz. 1975) (“[the Arizona Good Samaritan statute] is not applicable to emergency medical treatment in a hospital”).

\textsuperscript{92} FLA. STAT. § 768.13(2)(a)-(b)(1) (2010) (extending immunity to emergency care rendered outside of a hospital and to obligatory emergency care rendered by hospitals); IDAHO CODE ANN. § 5-330 (terminating immunity when the injured person is delivered to hospital); KY. REV. STAT. ANN. § 411.148(1) (West 2010) (limiting immunity to care rendered outside of a hospital); MICH. COMP. LAWS § 691.1502(4) (2010) (reinforcing hospital responsibility to provide reasonable and adequate care); MISS. CODE ANN. § 73-25-37(1) (2010) (extending immunity to care rendered “at the scene of the emergency, or in transporting the injured person”); OR. REV. STAT. § 30.800(1)(a) (2009) (excluding care rendered at hospitals from immunity).

\textsuperscript{93} ARK. CODE ANN. § 17-95-101(a) (2010) (exempting health care providers from civil liability when care is provided “at the place of an emergency or accident”); IOWA CODE § 147A.10(3) (2009) (only exempting physicians, physician’s designees, advanced registered nurse practitioners, physician assistances, registered nurses, licensed practical nurses, or emergency medical care providers from liability in certain circumstances).

\textsuperscript{94} CAL. BUS. & PROF. CODE § 2395 (West 2008). Licensees are exempt from civil liability when rendering “emergency care at the scene of an emergency,” and “the scene of the emergency” includes, but is not limited to, “the emergency rooms of hospitals in the event of a medical disaster.” Id. Physicians who treat patients in hospitals in emergency situations are immune from civil liability. Breazeal v. Henry Mayo Newhall Mem’l Hosp., 286 Cal. Rptr. 207, 215 (Cal. App. 2d Dist. 1991); McKenna v. Cedars of Lebanon Hosp., 155 Cal. Rptr. 631, 634 (Cal. App. 2d Dist. 1979).

\textsuperscript{95} IOWA CODE § 613.17 (2009) (deeming volunteers who receive “nominal compensation not based upon the value of the services performed” as receiving no compensation).
that “shall not determine whether or not the care was administered for or in anticipation of remuneration.”

In at least one part of their respective statutes, these states do not require that the actions be gratuitous: Alaska, California, Idaho, Illinois, Indiana, Michigan, Mississippi, North Dakota, Ohio, South Dakota, Tennessee, and New Jersey.

Some states tried to address providing immunity to professionals who rescue as part of their livelihood. Connecticut (provides immunity for various municipal employees and teachers, although they are paid); Virginia (except EMTs administering CPR or defibrillators); Hawaii (owners or operators of hospitals, or physicians on rescue teams); Montana (ambulance drivers or attendants may be paid); and Kansas.

96 TEX. CIV. PRAC. & REM. CODE ANN. § 74.151(b)(1) (Vernon 2007) (legal entitlement to compensation “shall not determine whether or not the care was administered for or in anticipation of remuneration”).
98 CONN. GEN. STAT. § 52-557b(b) (2009) (extending immunity to certain paid individuals).
99 See VA. CODE ANN. § 8.01-225 (Supp. 2010). While section 225 immunizes Good Samaritans in various contexts, it specifically directs that those who administer CPR or cardiac defibrillators are only immunized if they act without compensation. Id. § 8.01-225.A.6. Section 225 further directs, however, that compensation is not to be construed as including “the salaries of police, fire or other public officials or personnel who render such emergency assistance.” Id. § 8.01-225.F.
100 HAW. REV. STAT. § 663-1.5 (2010). The Hawaiian law first sets forth the general standard of immunity, shielding those acting in good faith without compensation at the scene of an emergency. Id. § 663-1.5(a). Section 663 then broadens the scope of that immunity by shielding “any rescue team or physician working . . . with a rescue team operating in conjunction with a hospital or an authorized emergency vehicle of the hospital.” See id. § 663-1.5(b).
101 MONT. CODE ANN. § 27-1-714 (2009). The Montana statute allows ambulance drivers, as well as others providing emergency medical services on a voluntary basis, to be compensated, but it directs that the allowable compensation may not exceed “25% of the person’s gross annual
(immunity for a health care provider in any emergency situation other than providing emergency care to a minor engaged in competitive sports); while Louisiana\textsuperscript{103} allows for physicians to be paid, but not veterinarians, in order to enjoy immunity.

In some unusual categories of compensation, Georgia allows physicians to be paid for installing or providing defibrillators, while enjoying immunity under their statute.\textsuperscript{104}

Some states generally allow compensation to be received by any category protected under the statute except the private individual who otherwise does not fit into other professional categories of the statute. Nebraska, New York, Oklahoma, and Washington require only that private individuals’ actions be gratuitous, while all other categories in their respective statutes may receive compensation.\textsuperscript{105} New Hampshire...
requires only that no compensation be received from the person being assisted.\textsuperscript{106} Oregon has a lower standard, in that it only requires that there be an expectation of no compensation.\textsuperscript{107}

Two states that allow the rescuing organization to recover expenses are: Wisconsin, which allows for out of pocket expenses, and Colorado, which allows actual costs of the organization.\textsuperscript{108} One state considers nominal compensation to qualify as gratuitous. In Iowa, “nominal compensation” is defined as “no compensation.”\textsuperscript{109}

\textsuperscript{106} N.H. REV. STAT. ANN. § 508:12 (2010). The statute states in pertinent parts:

If any person in good faith renders emergency care at the place of the happening of an emergency or to a victim of a crime or delinquent act or while in transit in an ambulance or rescue vehicle, to a person who is in urgent need of care as a result of the emergency or crime or a delinquent act, and if the acts of care are made in good faith and without willful or wanton negligence, the person who renders the care is not liable in civil damages for his acts or omissions in rendering the care, as long as he receives no direct compensation for the care from or on behalf of the person cared for.

\textit{Id.}

\textsuperscript{107} OR. REV. STAT. § 30.800(1)(b) (2010) (defining the term “emergency medical assistance” as “medical care provided voluntarily in good faith and without expectation of compensation by a physician licensed by the Oregon Medical Board in the physician's professional capacity as a team physician at a public or private school or college athletic event or as a volunteer physician at other athletic events”).

\textsuperscript{108} WIS. STAT. ANN. § 895.4802(3)(d) (West 2010) (any person who aids public agencies in predicting the spread or impact of a hazardous discharge may be immune from civil liability if he is not compensated beyond reimbursements for out-of-pocket expenses); COLO. REV. STAT. § 13-21-108(2) (2010). The Colorado statute states:

Any person while acting as a volunteer member of a rescue unit notwithstanding the fact that such organization may recover actual costs incurred in the rendering of emergency care or assistance to a person, who in good faith renders emergency care or assistance without compensation at the place of an emergency or accident shall not be liable for any civil damages for acts or omissions in good faith.

\textbf{COLO. REV. STAT. § 13-21-108(2).}

\textsuperscript{109} IOWA CODE ANN. § 613.17(1)(a) (2010). The statute states:

If a volunteer fire fighter, a volunteer operator or attendant of an ambulance or rescue squad service, a volunteer paramedic, a volunteer emergency medical technician, or a volunteer registered member of the national ski patrol system receives nominal compensation not based upon the value of the services performed, that person shall be considered to be receiving no compensation.
V. Standard of Care is Key to the Efficacy of the Good Samaritan Laws

In assessing the effectiveness of the Good Samaritan laws, the below categories of states were ranked according to the incentives for Good Samaritans to assist those in need without fear of liability concerns. The standard of care found in Good Samaritan laws has been interpreted in some case law in a few states, while some states provide statutory definitions. These definitions have been gleaned from various states’ statutes to define those standards for purposes of the states’ Good Samaritan laws comparison below.

Good faith includes, but is not limited to, “a reasonable opinion that the immediacy of the situation is such that the rendering of care should not be postponed.”

Gross negligence is defined in Maryland to exist only when one inflicts intentional injury, or is “so utterly indifferent to the rights” of others that he acts as if such rights did not exist. Only extraordinary or outrageous conduct by a person giving assistance or medical care in an emergency or by a member of a fire company or rescue company can be termed gross negligence, where “mere recklessness is not enough, but must be reckless disregard for human life.”

Michigan defines gross negligence as “conduct so reckless as to demonstrate substantial lack of concern for whether injury results.” North Dakota defines gross negligence to mean “acts or omissions falling short of intentional misconduct which nevertheless show a failure to exercise even slight care or any conscious interest in the predictable consequences of the acts or omissions.” Additionally, North Dakota’s definition includes:

[T]he failure of an aider to relinquish direction of the care of an injured or ill person when an appropriate person licensed or certified by this state or by any state or province to provide medical care or assistance

Id.

110 See infra notes 112-117 and accompanying text.
111 See infra notes 112-117 and accompanying text.
112 HAW. REV. STAT. § 663-1.5(h) (2010).
113 See Romanesk v. Rose, 237 A.2d 12, 14 (Md. 1968) (quoting 4 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 2771 (1946 ed.)).
assumes or attempts to assume responsibility for the care of the injured or ill person.116

Willful and wanton misconduct in Illinois is “intentional or if it is committed under circumstances exhibiting a reckless disregard for the safety of others.”117

VI. Comparative State Ranking based upon Standard of Care Required of Private Individuals

From this review of the states emerges five levels of conditions for avoiding liability, and accordingly, “one” provides the best conditions for avoiding liability and encouraging rescue, and “five” is the least conducive to encouraging rescue by private individuals. Many states have different standards of care dependant upon the training of the rescuer.

A. Level One

In level one, seventeen states were found to provide the greatest incentive to the Good Samaritan.

Assisting under the right conditions with the right qualifications is not enough to avoid liability if one fails to meet the standard of care established by the state in which the emergency occurs. Good faith is the lowest, or easiest, standard to meet with no other qualifications. This would do the most to encourage emergency responses. There are nine states that have this level of performance in an emergency to avoid liability for injuries or deaths. These states are Alabama, Massachusetts, New Jersey, Oklahoma, Virginia, Wisconsin, West Virginia, and Wyoming.118

Maryland also has a low standard to meet to avoid liability in an emergency, although slightly more difficult to meet than good faith. That is, the action must be done “in a reasonably prudent manner.”119 Similarly, Arkansas provides for immunity

116 N.D. CENT. CODE § 32-03.1-01 (2010) (defining terms as to their meaning within the Good Samaritan Act).
119 MD. CODE. ANN., CTS. & JUD. PROC. § 5-603 (West 2010). Section (c)(1) notes that
only to a Good Samaritan who is a reasonable and prudent person acting in good faith.\textsuperscript{120} Florida requires that the rescuer should be “acting as an ordinary, reasonable, prudent person under the same or similar circumstances,” as the only standard for the actions taken.\textsuperscript{121}

The next standard of care, arguably just as low as these affirmative standards, is that the act should be immune from liability as long as the actions were not “willful and wanton,” which is required in two states: Kentucky and Ohio.\textsuperscript{122} Minnesota adds “reckless” to the list, making the standard that much lower.\textsuperscript{123}

Very close to “willful and wanton” behavior is the requirement that the behavior be “intentionally” harmful. North Carolina has the lowest among these in level one for the Good Samaritan to meet, requiring that the actions constitute not only gross negligence but also “wanton conduct or intentional wrongdoing.”\textsuperscript{124} Pennsylvania requires that the actions be “gross negligence” and “intentionally designed to cause harm,” and North Dakota requires that the actions be done with either “gross negligence or intentional misconduct.”\textsuperscript{125}

B. Level Two

Level two is comprised of a group of ten states and represents “good faith” standard states, with some qualifier. That is, unless there is gross negligence or worse, willful or wanton behavior, and there is an affirmative demonstration of proof that the actions were taken in “good faith,” immunity will be available. However, the standard also includes the possibility of a finding of any level of negligence. Texas requires a “good faith” demonstration unless the acts are “willful and wanton,” while New Hampshire requires a “good faith” demonstration unless the acts are “willful and wanton negligence.”\textsuperscript{126} Significantly, New Hampshire is one of only two states that requires the private individual to stop and assist someone in an emergency, at a level of performance that does not rise to “willful and wanton negligence.” This places a

\begin{itemize}
\item individuals who fail to provide aid or assistance in a reasonably prudent manner are immune from liability. \textit{Id.}
\item \textsuperscript{120} \textsc{Ark. Code Ann.} § 17-95-101 (2010).
\item \textsuperscript{121} \textsc{Fla. Stat.} § 768.13 (2010).
\item \textsuperscript{122} \textsc{Ky. Rev. Stat. Ann.} § 411.148 (West 2010); \textsc{Ohio Rev. Code Ann.} § 2305.23 (West 2010).
\item \textsuperscript{123} \textsc{Minn. Stat.} § 604A.01 (2010).
\item \textsuperscript{124} \textsc{N.C. Gen. Stat.} § 20-166 (2010).
\item \textsuperscript{125} \textsc{42 Pa. Cons. Stat.} § 8331(a) (2010); \textsc{N.D. Cent. Code} § 32-03.1-02 (2010).
\end{itemize}
significant burden on the rescuer, who has a duty to rescue and no choice but to perform in a statutorily acceptable manner in carrying out this duty.\textsuperscript{127}

Iowa requires a “good faith” demonstration for immunity unless the acts are “reckless;” and South Dakota requires almost the same standard, except in addition to these standards, the conduct must be “willful and wanton.”\textsuperscript{128} Similarly, seven states require “good faith” unless there are “gross negligence and willful and wanton” acts: Colorado, Georgia, Mississippi, Nevada, New Mexico, South Carolina, and Utah.\textsuperscript{129} The more stringent law in this level of states is New Mexico’s statute, which requires “good faith” unless the acts rise to the level of “gross negligence.”\textsuperscript{130}

C. Level Three

The third level consists of those states that are “negligence” states, with no affirmative defense of “good faith.” These seven states have no “good faith” requirement or mitigating behavior on the part of the Good Samaritan. The only standard is whether the acts constituted some level of negligence, regardless of the Good Samaritan’s motivation. Topping the list in this category, with the lowest standard for actions taken by the Good Samaritan to still receive protection from liability, are

\textsuperscript{127} N.H. REV. STAT. ANN. § 508:12 (I).
\textsuperscript{128} IOWA CODE § 613.17(1) (1998); S.D. CODIFIED LAWS § 20-9-4.1 (2010). Iowa and South Dakota state that acts or omissions are immune if the statutory standards are met. See IOWA CODE § 613.17(1); S.D. CODIFIED LAWS § 20-9-4.1. Iowa creates immunity for a person acting in good faith, without compensation, unless the acts of omissions constitute recklessness. § 613.17(1). The South Dakota statute creates immunity for individuals acting in good faith and during an emergency, except if the person is “willful, wanton or reckless.” § 20-9-4.1.
\textsuperscript{129} COLO. REV. STAT. § 13-21-108(1)(4)(a) (2005); GA. CODE ANN. § 31-11-8(a) (2010); MISS. CODE. ANN. § 73-25-37(1) (2010); NEV. REV. STAT. § 41.500(1) (2010); N.M. STAT. § 12-12-28 (2010); S.C. CODE ANN. § 15-1-310 (2009); UTAH CODE ANN. § 78B-4-501 (West 2010). Colorado provides immunity for any person in good faith and without compensation who renders emergency care, unless “the acts or omissions were grossly negligent or willful and wanton.” § 13-21-108(1)(b)(a). Georgia provides that a person licensed to perform ambulance services, and in good faith gives emergency care, without remuneration, shall not be liable. § 31-11-8(a). The Georgia statute also states that physicians shall not be liable for helping an ambulance service if the physician’s conduct is not willful or wanton. Id. Mississippi’s statute creates immunity for a person acting in good faith as long as the acts or omissions are not gross negligence or willful and wanton misconduct. § 73-25-37(1). The Nevada statute provides immunity if in good faith and without gross negligence. § 41.500(1).
\textsuperscript{130} N.M. STAT. § 12-12-28. The New Mexico statute states that no person attempting to mitigate the effect “of an actual or threatened release of hazardous materials . . . shall be subject to civil liabilities or penalties of any type . . . [except for] the liability of any person for damages resulting from that person’s gross negligence or reckless, wanton or intentional misconduct.” Id.
Delaware, Michigan, Montana, Nebraska, and Washington, which require the acts to be conducted with “gross negligence and willful and wanton;” Delaware adds “reckless” to this list.\textsuperscript{131}

Alaska and Maine require the acts to be done with “gross negligence” and to be “reckless.”\textsuperscript{132} For purposes of this discussion, “reckless” is considered to be a lower standard to meet than “willful and wanton” conduct, although it is interpreted on a state by state basis by the respective state’s court.

D. Level Four

The four and fifth groups are those states where being a Good Samaritan becomes risky in terms of immunity protection, whether during a bioterrorism act, public health emergency, or otherwise.

The level four states are particularly risky for the Good Samaritan. These states use the standard of merely “gross negligence” to deny immunity to the rescuer, with no consideration of “good faith.” These states are Arizona, Hawaii, Idaho, New York, Tennessee, and Vermont.\textsuperscript{133}

\textsuperscript{131} \textsc{Del. Code Ann. tit. 16, § 6801(a) (2010); Mich. Comp. Laws § 333.20965 (2001); Mont. Code Ann. § 27-1-714 (2010); Neb. Rev. Stat. § 38-1232(1) (2010); Wash. Rev. Code Ann. § 4.24.300(1) (West 2010).} The Delaware statute provides that any person who voluntarily and without compensation provides medical assistance shall not be liable “unless it is established that such injuries or such death were caused willfully, wantonly or recklessly or by gross negligence on the part of such person.” Tit. 16, § 6801(a). The Michigan except clause includes gross negligence or willful misconduct. § 333.20965. The Montana, Nebraska, and Washington statutes also provide immunity except for gross negligence or willful or wanton acts of omissions. Mont. Code Ann. § 27-1-714; Neb. Rev. Stat. § 38-1232(1); Wash. Rev. Code Ann. § 4.24.300(1).

\textsuperscript{132} \textsc{Alaska Stat. § 09.65.090 (2010); Me. Rev. Stat. tit. 14, § 164 (2010).} Alaska provides: this “section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.” § 09.65.090. The Maine statute provides immunity, “unless it is established that such injuries were or such death was caused willfully, wantonly or by gross negligence on the part of such person.” Tit. 14, § 164.

Rhode Island sets a standard barely above “negligence” to nullify the immunity of any Good Samaritan. Rhode Island requires that acts rise to “gross negligence and willful and wanton behavior” but not “ordinary negligence,” barely making this a Good Samaritan statute at all.  

E.  Level Five

Finally, the fifth level appears to provide no additional immunity than what is available at common law. These twelve states, at the bottom of the list, are those that merely provide for immunity if the acts of the rescuer are not “negligent.” This changes nothing from common law tort liability and appears to make these statutes of no value for the rescuer at all. The fifth group of states maintains their position at the bottom of the list because they provide no immunity to private individuals, but these states limit the persons provided with immunity to various licensees or categories of workers. These states are California, Connecticut, Illinois, Indiana, Kansas, Louisiana, Missouri, and Oregon. For example, Indiana provides immunity for only a short list of professionals who successfully completed appropriate training.”  

134 R.I. GEN. LAWS § 9-1-27.1 (2010). The Rhode Island statute states: no person “shall be liable for civil damages which result from acts or omissions by such persons rendering the emergency care, which may constitute ordinary negligence. This immunity does not apply to acts or omissions constituting gross negligence or willful or wanton conduct.” Id.

135 See CAL. BUS. & PROF. CODE § 2395 (West 2010) (stating no licensee rendering emergency care in good faith will be liable for civil damages); CONN. GEN. STAT. § 52-557b (2010) (listing various individuals immune from ordinary negligence liability when rendering emergency care, including individuals licensed to practice medicine, surgery, nursing, as well as those that successfully completed appropriate training); 210 ILL. COMP. STAT. 50/3.150 (2010) (listing individuals licensed in certain practices not liable for ordinary negligence when rendering emergency care); IND. CODE § 16-31-6-1 (2010) (“[a] certified emergency medical technician-basic advanced who provides emergency medical services to an emergency patient is not liable for an act or omission in providing those services . . . .”); KAN. STAT. ANN. § 65-2891 (2009) (awarding civil liability immunity to “health care providers” rendering emergency medical care). The scope of the term “health care provider” is found under the Kansas statute. KAN. STAT. ANN. § 65-2891(e); LA. REV. STAT. ANN. § 37:1731 (2010) (limiting liability exclusions from emergency medical care to physicians, surgeons, physician assistants, or nurses licensed under the laws of any state in the United States, dentists, veterinarians, and emergency medical technicians); MO. REV. STAT. § 537.037 (2010) (naming individuals immune from emergency care civil liability as any physician, surgeon, registered professional nurse, or licensed practical nurse licensed to practice their profession in any state). The statute allows for additional professionals to render emergency care in specific situations. MO. REV. STAT. § 537.037; OR. REV. STAT. § 30.800 (2010) (limiting emergency care liability exclusion to physicians, dentists, or physicians licensed by the Oregon Medical Board acting as team physician at a collegiate sporting event or voluntary physician at other sporting events).
licensees, with a standard of care of “negligence or willful misconduct.” The “or” makes either standard an impediment to immunity, leaving “negligence,” the lower standard, as the threshold to deny immunity to the rescuer.

Some strange results arise where statutes provide more immunity to out-of-state health care providers than their own in-state health care providers. In these states, health care providers licensed in state X, who go to state Y where the emergency occurs, are held to a much lower standard of “good faith” for immunity; whereas, licensed health care providers in state Y are held to a stricter standard where “good faith” is not enough, unless gross negligence or wanton or willful acts cause injury. The consequence is out-of-state licensed health care providers are subjected to the private individual category, which is a much lower standard of “good faith.” But this individual category would include physicians who are licensed in other states, resulting in higher standards being placed on home-state Good Samaritans and lower standards being allowed for out-of-state Good Samaritans. This is probably not a result that will encourage local physicians to help in emergencies. This is the case in Oklahoma. Similarly, in Oregon, only team physicians licensed by the state of Oregon enjoy immunity for giving “emergency medical assistance,” at athletic events. Accordingly, out-of-state teams with physicians not licensed in Oregon would not have civil liability immunity should they need to administer emergency medical treatment while their team was in Oregon.

Some statutes provide specific protections or exclusions to ambulance drivers or drivers of other motor vehicles involved in Good Samaritan actions. For example, South Dakota specifically includes anyone operating a motor vehicle in an emergency response within the immunity protections of the statute; whereas, in Pennsylvania, ambulance drivers are specifically excluded from immunity.

136 IND. CODE § 16-31-6-1 (limiting scope of the provision to certified emergency medical technicians or certified emergency medical technicians-basic advanced who provide emergency medical services).
137 OKLA. STAT. ANN. tit. 76, § 5 (West 2010) (stating licensed physicians held to gross negligence or willful or wanton wrongs standard while private citizens not liable for any civil damages as a result of any acts or omissions).
138 OR. REV. STAT. § 30.800. The relevant provision, subsection 1(b), states “[m]edical care provided voluntarily in good faith and without expectation of compensation by a physician licensed by the Oregon Medical Board in the physician’s professional capacity as a team physician at a public or private school or college athletic event or as a volunteer physician at other athletic events.” Id.
139 S.D. CODIFIED LAWS § 20-9-4.1 (2010) (stating emergency care liability immunity coverage extends “to the operation of any motor vehicle in connection with any such care or services”); 42 PA. CONS. STAT. § 8332(b)(1) (2010). Section (b)(1) of the Pennsylvania statute states: “[t]his section shall not relieve a driver of an ambulance or other emergency or rescue vehicle from
The state with the most difficult statute to interpret among all of the states is the Texas Good Samaritan law. The state still relies upon common law for interpreting Good Samaritan defenses, but Texas utilizes statutory definitions to find liability. The court interprets this statute as offering protection to individuals who voluntarily administer emergency care. Moreover, the statute lowers the standard of care to encourage both certain medically-trained persons and lay persons to render aid in emergency situations.

VII. States with Affirmative Duties to Rescue or Assist

Only two states have affirmative duties to assist someone in an emergency. Minnesota requires an individual to provide aid without penalty, and Vermont requires an individual to offer assistance but includes a fine for failing to assist. Both states have similarly worded laws. Minnesota’s statute, which has a duty to assist, states: “a person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall . . . give reasonable assistance to the exposed person.” Vermont provides that the individual “give reasonable assistance,” and they are provided immunity unless the acts constitute “gross negligence” or the individual

liability arising from operation or use of such vehicle.” 42 PA. CONS. STAT. § 8332(b)(1).

140 TEX. CIV. PRAC. & REM. § 74.001(a) (Vernon 2009) (listing definitions applied to Good Samaritan cases). Emergency medical care is defined as:

Bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the patient’s health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. The term does not include medical care or treatment that occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient or that is unrelated to the original medical emergency.

Id.

141 See McIntyre v. Ramirez, 109 S.W.3d 741, 744 (Tex. 2003) (holding that under the Texas Good Samaritan law a person who responds to a medical emergency is exempt from liability for ordinary negligence if care is administered in good faith unless act is willfully or wantonly negligent).

142 MINN. STAT. § 604A.01 (2010). See also Swenson v. Waseca Mut. Ins. Co., 653 N.W.2d 794, 797 (Minn. Ct. App. 2002) (stating purpose of the Good Samaritan law is to encourage lay persons to help those in need by providing immunity from liability claims arising out of an attempt to assist a person in peril).
receives or expects remuneration. However, New Hampshire’s statute has a different affirmative duty: “[a]ny person rendering emergency care shall have the duty to place the injured person under the care of a physician, nurse, or other person qualified to care for such person as soon as possible and to obey the instructions of such qualified person.”

VIII. Good Samaritan Laws and Bioterrorism and Terrorism

Only a few states have provided for immunity in the context of weapons of mass destruction events or public health emergencies, although many states have amended or reviewed their existing public health emergency powers since 9/11.

Utah is the only state that explicitly provides for immunity for responding to a bioterrorism event. The text of the statute specifies that individuals responding to epidemics and communicable diseases, defined as bioterrorism events, can be immune from liability. The statute states no liability if assisting government agencies in good faith by:

(2)(a) implementing measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health, or necessary to protect the public health . . . [and for]

(2)(b) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chap. 23b, Detection of Public Health Emergencies Act; and

(2)(c) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

143 VT. STAT. ANN. tit. 12, § 519 (2010). See also Hardingham v. United Counseling Service of Bennington County, Inc. 672 A.2d 480, 482 (Vt. 1995) (stating purpose of Duty to Aid the Endangered Act is to encourage rescuers to assist others in danger by penalizing them for not acting while at the same time shielding them from civil liability for acts of ordinary negligence committed during rescue).

144 N.H. REV. STAT. ANN. § 508:12 (2010). A good faith rescuer that does not receive compensation is not liable in civil damages for his acts or omissions. Id. A good faith rescuer that undertakes rescuing has the duty to place the injured person in the care of a trained professional as soon as possible. Id.

145 UTAH CODE ANN. § 78B-4-501(2) (West 2010) (formerly cited as UTAH CODE ANN. § 78-11-
Virginia provides immunity for health care workers who are involved in the smallpox vaccination program, but this law has been expired as of July 1, 2008. In a detailed statute, the state provides immunity where there is an absence of gross negligence or willful misconduct for health care providers and workers, for the administration of the vaccinia (smallpox) vaccine or other smallpox countermeasure, or any injuries sustained as a result of such other person coming into contact with the health care worker, either directly or indirectly. Immunity applies as long as the recommendations of the Centers for Disease Control and Prevention (“CDC”) were being utilized in the administration and monitoring of the actions.

A. Hazardous Materials Threatened or Actual Releases

Wisconsin provides immunity to hazardous waste predictors who give advice and assistance in the event of a threatened or actual release of a hazardous substance. Wyoming provides immunity to people who assist or advise concerning actual or threatened releases of hazardous materials.

Few states identified circumstances of illness in which immunity would be provided. The North Dakota statute provides immunity where people are “injured or are ill as the result of an accident or illness, or any mechanical, external or organic trauma,” and Virginia provides immunity for an “ill person.”

---

146 VA. CODE ANN. § 8.01-225(E) (expired July 1, 2008). Absent willful misconduct or gross negligence, a health care provider was not liable in any civil action so long as the administering worker complied with certain regulations. Id.

147 WIS. STAT. ANN. § 895.4802 (West 2010). The statute creates an exemption from civil liability for certain actions taken by a person who provides assistance or advice regarding an emergency involving the discharge of a hazardous substance. Id.

148 WYO. STAT. ANN. § 1-1-120 (2010). The Wyoming statute provides for those giving advice or assistance on a volunteer basis, specified as without compensation. Id. Immunity only applies to good faith assistance or advice and not acts or omissions, which constitute gross negligence or willful or wanton misconduct. Id.

149 N.D. CENT. CODE § 32-03.1-02 (2010). This code applies to persons and their employers. Id. This immunity does not apply to acts or omissions of intentional misconduct or gross negligence. Id.

150 VA. CODE ANN. § 8.01-225 (2010). This liability is extended to scenes of accidents, fires, or emergencies or en route to any hospital medical clinic or doctor’s office. Id. The statute also provides immunity to emergency medical technicians or care attendants with valid licenses from the state acting in good faith during such situations, including acts or omissions which violate State Department of Health regulations or other state regulations. Id. Immunity is also applicable to volunteers certified by the National Ski Patrol System, Inc. Id.
B. Change of Rules in an Emergency

Indiana has provided for changing the rules in the event of a “disaster emergency” declared by the governor, while also creating one of the weakest Good Samaritan statutes in the fifty states, by denying immunity for ordinary negligence. Section 16-31-6-4(b)(1) of the Indiana Code, applies to a disaster emergency declared by the governor “in response to an act that the governor in good faith believes to be an act of terrorism.” Further, section 16-31-6-4(b)(2) incorporates any rules adopted by the state emergency services commission or in a disaster emergency declaration of the governor. The governor could include in his declaration the immunity provision at any standard during this disaster.

Virginia provided immunity for health care workers who are involved in the smallpox vaccination program, but this law expired on July 1, 2008.

Massachusetts is the only state to provide for immunity from liability for a physician or nurse who administers a vaccination or immunization as part of a public health program, which could be critical in the event of a mass vaccination program in response to a threatened bioterrorism attack.

Maryland has the best, and most reasonable, approach to providing immunity to out-of-state physicians, or physicians from other countries, by requiring only that they provide assistance in a “reasonably prudent manner” and that they relinquish care when

151 IND. CODE § 16-31-6-4 (2010) (addressing from the outset that the section does not apply to acts or omissions resulting from gross negligence or willful or intentional misconduct). Additionally, the Indiana statute defines “terrorism” to mean “the unlawful use of force or violence or the unlawful threat of force or violence to intimidate or coerce a government or all or part of the civilian population.” See IND. CODE § 35-41-1-26.5 (2010).

152 IND. CODE § 16-31-6-4 (b)(2) (noting these rules apply when an emergency is declared by the Governor or in accordance with the rules adopted by the Indiana emergency medical services commission).

153 IND. CODE § 16-31-6-4. Immunity is provided in connection with a disaster emergency declared by the governor. Id.

154 2005 VA. ACTS 426 (amending VA. CODE ANN. 8.01-225 (2003)). The statute provides health care workers immunity from civil actions, except in the case of gross negligence or willful misconduct, resulting from any direct or indirect harm sustained by a person from the administration of a smallpox vaccine or other countermeasure, with the recommendations from the Center for Disease Control during the time that there is a smallpox vaccine or countermeasure administration. Id.

155 MASS. GEN. LAWS ch. 112, § 12C (2003). This statute provides protection for physicians and nurses working in government-funded programs from liability in civil suits. Id.
someone who is licensed in the state becomes available to take responsibility.\textsuperscript{156}

**IX. Analysis and Characterizations of the Good Samaritan Laws**

There are several categories of statutes that characterize the states’ Good Samaritan laws. In a national public health disaster, a national strategy would arguably encourage rescues by first responders unless there was risk to the rescuer, thereby compounding the governmental response to protect its citizens. The development of a model Good Samaritan law would thus ensure that in the event of a national disaster, public health disaster, or a more typical emergency situation, fear of liability because of weak, confusing, widely disparate, or patchwork-type statutory immunities would not be an impediment to the would-be rescuer.\textsuperscript{157} A television episode of Dr. Kildare in the 1960s told the story of the “Good Samaritan” doctor, who stopped by the roadside to deliver a baby but was then sued for malpractice when the baby died. While the hospital paid $50,000, Dr. Kildare had to pay $5,000. This created such angst with the American Bar Association for the poor portrayal of tort lawyers that they purportedly threatened the producer, Norman Felton, with a lawsuit if they ever showed the episode again. Although the producer had planned to show the episode two more times, he decided against it due to the threat of litigation.\textsuperscript{158} And indeed, concerns for liability are making caution and avoidance the rule, rather than the exception.

However, even if a physician has not been negligent, a plaintiff’s lawyer can still bring a suit against the physician, requiring the physician to expend costs of defense and possibly litigation. While malpractice insurance may pay legal fees, it is limited, and it also does not account for the personal stress of enduring a malpractice suit to the individual, the individual’s family, and the individual’s practice, only to be found not negligent at the end of the trial, at best. This was surely a factor in the consideration of responses in a 1963 survey by American Medical Association of physician-members when they found that in all states, 48.5% of physicians would refuse to help a stranger, and in those states with Good Samaritan laws, 50.5% were unwilling to help strangers, indicating that these statutes were not encouraging rescues at all.\textsuperscript{159} Rescuers need to be

\textsuperscript{156} MD. CODE ANN. CTS. & JUD. PROC. § 5-603 (1)-(3) (West 2008).
\textsuperscript{157} Rick Blizzard, Politics Shape Views on Malpractice Issues, GALLOP.COM (Feb. 11, 2003), http://www.gallup.com/poll/7762/Politics-Shape-Views-Malpractice-Issue.aspx (last visited Nov. 27, 2010) (in a Gallop poll from 2003, the majority of respondents felt that people file too many malpractice liability suits against physicians).
\textsuperscript{159} Id. at 190-92, nn.406.
protected against litigation altogether.

Providing a model act would enable the physician or individual to respond to an emergency, without concern about checking the laws of the state in which the emergency is occurring before subjecting his entire financial future, and that of his family, to potential devastation. Providing a statute that is triggered by the declaration of a state or national public health emergency, for example, and would prevent litigation against licensed health care workers but would provide for a compensation act to help those who were injured without a determination of fault, much like the Childhood Vaccine Injury Compensation Act, would address the fear of defending against frivolous tort liability cases by physicians. Individuals would still be subject to liability, but it should be predictable liability based on a uniform Good Samaritan Act.

In considering a model law, other countries’ laws could inform further improvements. For example, further protection of the rescuer could be made by including the kind of provision introduced by a Canadian representative in the federal Parliament in 2003, Bill C-217 (formerly Bill C-244), a private members bill, which would authorize court-ordered testing of a source person where there are reasonable grounds to believe that a “Good Samaritan” or other health care provider may have been infected with HIV/AIDS when they provided aid to a victim.160

The Twenty-First Century Good Samaritan has taken on a new meaning with cell phone communication. Each day, ninety-eight-thousand cell phone calls are made for emergencies, and in recognition of this phenomena, the Cellular Telecommunications Industry Association and carriers across the nation have sponsored a Wireless Safety Week, a program to recognize wireless phone “Good Samaritan” acts when someone is in need.161

In a proposal to create a legal duty to rescue, in 1999, Nevada legislators introduced a bill that would allow private individuals to sue another individual who had failed to be a “Good Samaritan.” This bill was inspired by a man who stood by while a child was being murdered in a hotel, when he was in a position to make a telephone call

161 Larry White, Good Samaritans and Everyday Heroes, LAS VEGAS REV. J., June 14, 1999, at 9B. Cell phones have changed the way we communicate and in the process have changed the application of technology in history. Id. Along with the technological advancements cell phones have given us, they also bring “important responsibilities—driving safely and using them courteously in restaurants, movie theaters, and other public places.” Id.
and prevent the murder. Because his mere presence at the scene of a crime did not make him a part of the crime, the man was not found guilty of any wrongdoing. Furthermore, the bill did not succeed.\textsuperscript{162}

The only federal movement in the area of limiting liability for the Good Samaritan has been limited to protection of food banks. In part, the regulation of food safety has been within the powers of the federal government, based on Congress’ authority through the Commerce Clause.\textsuperscript{163} The federal Good Samaritan law was created for the protection of food bank donors, in 1996, when Congress passed a federal Good Samaritan Act to protect food banks and their donors.\textsuperscript{164} Interestingly, in a memorandum from the U.S. Department of Agriculture’s General Counsel Office, the statute has been determined to preempt state statutes that are not as protective of civil or criminal liability, concluding that “[t]he Bill Emerson Good Samaritan Food Donation Act (“Act”) preempts state ‘Good Samaritan’ statutes that provide less protection than the Act from civil and criminal liability arising from food donated in good faith for distribution to the needy.”\textsuperscript{165} This Congressional express preemption of

\textsuperscript{162} Ed Vogel, \textit{Good Samaritan Measure Attacked}, \textit{Las Vegas Rev. J.}, Mar. 18, 1999, at 1A. If enacted, the bill would have “required most adults to report to police when they reasonably suspect someone of committing a violent or sexual act against a person younger than 18.” \textit{Id}. Those in favor of the bill argued that it is possible to legislate accountability, and that the bill would protect children. \textit{See id}. Those in opposition to the bill argued that the bill is an “unconstitutional attempt to legislate morality,” and it would only “create a duty to stick your nose in other people’s business.” \textit{Id}.

\textsuperscript{163} See U.S. CONST. art. I, § 8, cl. 3 (the Commerce Clause).

\textsuperscript{164} See Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. § 1791 (1996). The Bill Emerson Good Samaritan Food Donation Act (“Food Donation Act”) was named for Rep. Bill Emerson, R-Missouri, who fought for the proposal but died of cancer before it was passed. \textit{See id}. The Bill Emerson Good Samaritan Food Donation Act mandates that a person who donates in good faith to a nonprofit organization, shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food. \textit{Id}. The Food Donation Act also adds that “a nonprofit organization shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food . . . received as a donation in good faith from a person . . . for ultimate distribution to needy individuals.” \textit{Id}. A person or nonprofit organization is not protected from civil or criminal liability when an injury of an ultimate user or recipient of the food or grocery results from an act or omission constituting gross negligence or intentional misconduct. \textit{Id}.

\textsuperscript{165} MEMORANDUM FROM DAWN E. JOHNSEN, ACTING ASSISTANT ATTORNEY GENERAL TO JAMES S. GILLILAND, GENERAL COUNSEL, DEPARTMENT OF AGRICULTURE (Mar. 10, 1997), available at http://www.justice.gov/olc/bressman.htm (last visited Nov. 27, 2010). The memorandum explains that the purpose of Bill Emerson Good Samaritan Food Donation Act is to “encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals.” \textit{Id}. Thus, the purpose of the Food Donation Act is to supersede state statutes to the extent that they provide less liability protection than federal law.
state law suggests that other areas of state tort law may also be preempted. The statute does not make express findings that food banks have a “substantial effect on interstate commerce.” At least some Circuits have held that without a specific finding of an effect on interstate commerce in the statute, each action must be determined to have had an effect on interstate commerce, as in United States v. Slaughter, where a terrorism criminal statute was found not to apply where the specific facts of the case did not have a substantial effect on interstate commerce. Since the federal Good Samaritan statute does not include express findings that these activities have an effect on interstate commerce, the court will have to make a case by case finding because each specific action which raises this statute as a defense has had an effect on interstate commerce in order to find the statute constitutional and maintain the action in court. Such a federal statute to address other aspects of the state Good Samaritan laws would also require this finding of an effect on interstate commerce and include express preemption, such as this federal food bank statute, in order to be constitutional and effective.

This is a departure point for the consideration of a model state Good Samaritan law, which incorporates some of these features, as well as the necessary interests in the protection from liability for would-be rescuers and health care providers in public health emergencies.

The analysis of the fifty states’ Good Samaritan laws, an analysis of their component parts, and an analysis of their comparative liability features have been discussed supra. The following summary categorizes the states’ statutes into six major “types” of Good Samaritan laws, with a seventh category for states with unique statutes that do not fit within any common type.

A. Type One

Type One involves three major elements:

166 See United States v. Lopez, 514 U.S. 549 (1995) (describing the test for application of the Commerce Clause). The Lopez Court concluded that the proper test for whether Congress has the power to regulate under the Commerce Clause is whether the activity “substantially affects” interstate commerce. See id. at 559. The Court came to this conclusion after weighing the relevant case law and comparing the consequences of using a lower standard, requiring only that the activity “affects” interstate commerce for Congress to have the power to regulate an activity.

(1) any person licensed as a physician and surgeon under the laws of the state of ___ , any volunteer firefighter or officer of any nonprofit volunteer fire company, or any other person; and

(2) who in good faith renders emergency care or assistance without compensation at the scene of an emergency or accident is not liable for any civil damages;

(3) with the standard of gross negligence or willful or wanton acts or omissions.

Montana has a statute\textsuperscript{168} which is an example of Type One.

B. Type Two

Type Two, in addition to the elements of Type One, includes two elements that focus on the place of the emergency, and specifically exclude hospitals or medical offices for purposes of liability protection. The exclusion applies “outside a hospital, doctor’s office or any other place having proper and necessary medical equipment.” The language also includes a description of the subject of the rescue: “to a person who is unconscious, ill, or injured.” The standard is typically one of “gross negligence” or “unless gross negligence” to trigger the loss of liability protections of the statute.

Oregon\textsuperscript{169} and New York\textsuperscript{170} have statutory sections that are good examples of this type.

\textsuperscript{168} MONT. CODE ANN. § 21-1-714 (2009). The Montana statute, on emergency care administered at the scene of an accident, provides that any person licensed as a physician and surgeon, any volunteer firefighter, or any other person who in good faith renders assistance at the scene of the emergency without compensation, is not liable for any civil damages, unless those damages were caused by gross negligence or by willful or wanton acts or omissions. \textit{Id.} The Montana statute continues by clarifying that a person properly trained, who operates an ambulance to and from an emergency or renders emergency medical treatment on a volunteer basis is also not liable for civil damages, provided that the “total reimbursement received for the volunteer services does not exceed 25\% of the person’s gross annual income or $3,000 a calendar year, whichever is greater.” \textit{Id.}

\textsuperscript{169} OR. REV. STAT. § 30.800 (2003) (“[m]edical or dental care not provided in a place where emergency medical or dental care is regularly available, including but not limited to a hospital, industrial first-aid station or a physician’s or dentist’s office . . . .”).

\textsuperscript{170} N.Y. PUB. HEALTH LAW § 3000-a(1) (McKinney 2007). The “unconscious, ill, or injured” subject cannot hold the caregiver liable for injuries unless the subject can establish that the injuries were “caused by [the] gross negligence” of the caregiver. \textit{Id.}
C. Type Three

Type Three includes the elements of Types One and/or Two, but Type Three specifically focuses on making physicians liable, even in Good Samaritan cases. The language in the New York statute typifies this category of exclusions: “[n]othing in this section shall be deemed to relieve a licensed [health care provider] from liability for damages for injuries or death caused by an act or omission on the part of such person while rendering professional services in the normal and ordinary course of his or her practice.” ¹⁷¹

D. Type Four

Type Four is a group typified by its low standard of care, requiring that the rescuer acts in “good faith, [and] gratuitously renders emergency care,” “except for gross negligence or willful and wanton conduct.” This lower standard of care typically specifies the place of the rescue “at the scene of an emergency or accident.”

The states of South Carolina and Wyoming have such a statute type. ¹⁷²

E. Type Five

Type Five allows the broadest freedom of liability to assist those in need of emergency care or assistance, requiring only “good faith” for private individuals.

West Virginia has a statute that typifies this group and requires only “good faith.” ¹⁷³

¹⁷¹ N.Y. PUB. HEALTH LAW § 3000-a(1).
¹⁷² WYO. STAT. ANN. § 1-1-120 (2010) (“[p]erson who in good faith renders emergency care or assistance without compensation at the place of an emergency or accident, is not liable for any civil damages for acts or omissions . . . .”); S.C. CODE ANN. §15-1-310 (2009) (“[a]ny person, who in good faith gratuitously renders emergency care at the scene of an accident or emergency to the victim thereof, shall not be liable for any civil damages . . . except acts or omissions amounting to gross negligence or willful or wanton misconduct”).
¹⁷³ W.VA. CODE § 55-7-15 (2008). See e.g., Hovermale v. Berkeley Springs Mosse Lodge No. 1483, 271 S.E.2d 335 (W. Va. 1980) (the “Good Samaritan” law is meant to encourage individuals to help in emergency situations by shielding them from liability if they help in such emergency situations, even if they have no duty).
F. Type Six

Type Six is the category of statutes that include a “duty to rescue.” The elements of such a statute-type usually include (1) a person who knows that another is exposed to grave physical harm; (2) the person SHALL give reasonable assistance to the exposed person; (3) unless that care is being provided by others; and (4) the same can be rendered without danger or peril to himself or without interference with important duties owed to others.

Only the two states of Minnesota and Vermont have this type of statute.

G. No Usual Type of Statute:

Several states have variations that create a unique type of statute that does not fit any of the previous categories. New Hampshire has a statute that creates a “duty to place the injured person under the care of a physician” but only after the decision to rescue has been made, unlike Type Six in Minnesota and Vermont. Texas has a “duty to stop and render aid,” characterized by the duty to stop for railroad companies who are involved in a collision.


175 See id. at 426-27; see, e.g., MINN. STAT. § 604A.01 (2010); VT. STAT. ANN. tit. 12, § 519 (2009).

176 MINN. STAT. § 604A.01; VT. STAT. ANN. tit. 12, § 519. See Swenson v. Waseca Mut. Ins. Co., 653 N.W.2d 794 (Minn. Ct. App. 2002) (the statutes vary slightly in that Minnesota specifically imposes the duty on people who are “at the scene of an emergency,” but the Vermont statute requires anyone who “knows” of another in danger to try to help). Also, only Vermont explicitly suspends the duty when third parties are already providing aid. See Silver, supra note 174, at 427; see also Swenson, 653 N.W.2d at 797 (the purpose of the Good Samaritan law is to encourage people to help others in need, so when an underinsured truck driver got in an accident while driving an injured snowmobiler to the hospital, he is protected from liability).

177 N.H. REV. STAT. ANN. § 508:12 (2010). Under the New Hampshire statute, the person has no initial duty to render emergency care. Id. If he chooses to render such care, he is not liable for damages as long as he practiced good faith and did not act with “wanton negligence;” however, once he does offer emergency care, he also has the duty to place the injured person under the care of a qualified person. Id.

178 TEX. REV. CIV. STAT. ANN. ART. 6419b (Vernon 2010) (imposing a duty to stop and render aid). The statute provides that a person driving a locomotive shall, in the event that there is an accident involving a person or another vehicle and the train, stop the train at the scene of the accident and render reasonable assistance to the victim. Id. It defines this reasonable assistance as including the carrying or transporting of the victim to a physician, surgeon, or hospital if it is either clear that treatment is necessary or if the victim requests such transportation. Id.
North Carolina has liability protection for volunteers who work in free clinics or public health departments. All individuals under North Carolina law also have the statutory “duty to stop” for a motor vehicle that has been in a collision and the other person is injured.

X. Conclusion and Recommendation

Good Samaritan laws in the United States vary in such significant ways that even the most strident of the would-be rescuers is likely to pause before undertaking a rescue of anyone in need. While reluctance to rescue is a disturbing trend as a society, it becomes increasingly disturbing as we face a war against bioterrorism, chemical warfare, and radiological threats within our territorial borders. The possibility of inhibiting a national response to an act of bioterrorism, for example, is great due to the fear of risks of liability. The application of a federal statute to relieve licensed health care givers, officially appointed public health workers, or other licensed individuals from liability, which would preempt state laws in federally-declared emergencies and suspend causes of action, as well as replace recovery with a compensation act for injuries without the need to prove fault, could address these eclectic impediments to a national bio-defense program. Other individuals who may be first responders and first on the scene should be held to a “willful or wanton negligence” standard and nothing lower, in order to encourage immediate rescue attempts at the scene of a disaster. If the reform is to come from the states, the consideration of a model Good Samaritan act by the Governor's Association, the Department of Homeland Security, and the Department of Health and Human Services, as a joint effort to address this troubling impediment to our national health and defense, is strongly recommended. However, if the National Public Health Security Strategy is to be truly responsive to national public health emergencies, a

179 N.C. GEN. STAT. §§ 1-539.10, 1-539.11 (2009) (immunity from civil liability for volunteers); N.C. GEN. STAT. § 90-21.16 (liability limitation for volunteer health care professionals). A volunteer working for a charitable organization unrelated to health care services and any volunteer health care professional working at a nonprofit health center both qualify for immunity under these North Carolina statutes. See §§ 1-539.10, 1-539.11, 90-21.16.

180 N.C. GEN. STAT. § 20-166 (2009). Under this statute, a driver of a vehicle who knows or reasonably should know that his vehicle was involved in a crash and that the crash resulted in serious injury or death, must stop his car and remain at the scene of the accident until a law enforcement officer completes an investigation of the accident. Additionally, the law provides that any person who renders assistance at the scene of the accident shall not be liable unless the aid is characterized by “wanton conduct or intentional wrongdoing.” Id.

181 PRESS RELEASE, DHHS, HHS DELIVERS THE NATION'S FIRST HEALTH SECURITY STRATEGY, http://www.hhs.gov/news/press/2010pres/01/20100107a.html (Jan. 7, 2010). The Strategy was developed in order to protect and prepare the United States for health threats or incidents with drastic health consequences. Id. Some of the initial actions of the strategy include developing
federal statute as described herein, should be drafted, which should be triggered by the declaration of a national public health emergency.

responses to threats such as medicine, vaccines, supplies, and equipment, identifying and prioritizing necessary research and investments, and assessing the value of these investments. Id.