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Pennsylvania's Good Samaritan Statute - An Answer to the Medical Profession's Dilemma

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legislation. And the first principle of that legislation has consistently been that one man, acting alone, may accomplish what two or more cannot: that, as in the law of conspiracy generally, the combination of forces, the pooling of ideas produces a power which one man cannot muster alone; a power which, though not inherently evil, bears close scrutiny.

Beyond this, *Colgate* offers little help. Beyond this the individual acts of an individual trader must be judged according to their purpose, their procurement and their product. Stated another way, absent illegal purpose, independent exercises of discretion will not be proscribed if lawful aims, lawful results are obtained by means which are not condemned by statute, judicial fiat, or administrative ruling.

Our three branches of government are vested with the protection of our rights and the greater coincidence of those rights will determine the paramount interest, condemning all infringements thereof. And it is for all individuals to limit their actions to that purpose. Those who do not abide by the markers laid down for us — those who do not believe in free enterprise; in prices set by competitive forces; in the right of individuals to adjudicate their differences freely in the courts; in un-coerced, unrestrained competition; and in the reasonable expectation of bargain — those men will truly be found adrift, out of the mainstream of our economy and cast up on the shoals of our courts. But those who do believe, those who abide will be free; "freely to exercise [their] own independent discretion" as to the dictates of sound business judgment.

Robert O. Mickler

PENNSYLVANIA'S GOOD SAMARITAN STATUTE — AN ANSWER TO THE MEDICAL PROFESSION'S DILEMMA

Every motorist in this day of frequent automobile collisions is likely to happen upon an accident scene at which there may be victims who require prompt medical aid. The chance of being at the scene of an emergency is of greater concern to members of the medical profession than laymen since medical doctors, faced with such a situation, are caught in a dilemma. They must balance the absolute directive of the Hippocratic oath to assist those in need against the possibility of a malpractice suit brought on by the hasty treatment of an accident victim under less than ideal situations. While the relative importance of this problem has been discounted by some commentators,[1] it can at least be said that the absence of a legal duty to assist[2] and the lack of remuneration encourage few

1. 41 NEB. L. REV. 609, 610 (1962); 43 B.U.L. REV. 140, 141 (1963).

2. Hurley v. Eddingfield, 156 Ind. 416, 59 N.E. 1058 (1901), is often cited in reference to this point. There the Supreme Court of Indiana held that a physician was not liable for arbitrarily refusing to respond to a call of one of his patients even

doctors to render aid on these occasions where their skills are most needed.[3] There is much testimony to this effect surrounding the passage of "Good Samaritan" statutes in the various states. The following story is told concerning the Nebraska enactment. Doctor Louis J. Gogela, a neurosurgeon in Lincoln, at an informal dinner attended by a state Senator, mentioned the need for such legislation. The Senator refused to believe that a physician would not stop at the scene of an accident. Doctor Gogela and the Senator asked the first physician at hand, a urologist, whether he would render aid at the scene of an accident. "Hell, no!" he answered. "I'm no fool." They then asked an obstetrician. "I'll stop," he said, "but I won't let on I'm a doctor." Doctor Gogela then told the Senator that he himself always looked the other way when passing an accident. All this convinced the Senator and soon he sponsored a "Good Samaritan" bill. It became law in 1961.[4] Many state legislatures, in an effort to increase the chances that medical passers-by will stop and render assistance, have also enacted "Good Samaritan" statutes which provide that those practitioners who stop and administer emergency treatment are immune from civil liability should their ministrations have adverse consequences.[5]

In keeping with this trend, the Pennsylvania legislature enacted a "Good Samaritan" statute. Generally the statute provides that physicians or other practitioners, licensed in any state, who are called to, or are present at the scene of an emergency, and who in good faith render aid, shall not be liable for civil damages except for those acts or omissions intentionally designed to harm or any grossly negligent acts or omissions resulting in harm to the person being treated.[6]

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though he was the only doctor available and his failure to render aid resulted in the patient's death.

The common law does not impose a duty upon individuals to render aid in an emergency situation, but should a person attempt to assist another in distress, the actor is bound to exercise due care and shall be liable for any injury resulting from his failure to do so. A general statement of the law may be found in PROSSER, TORTS § 38 (2d ed. 1955).

3. A recent poll conducted by the Medical Tribune revealed that a large percentage of the physicians interviewed would be reluctant to render emergency care because of their fear that a malpractice suit might later arise. Averbach, *Good Samaritan Laws,* 69 CASE & COMMENT 13, 18 (March-April, 1964).

4. Jeffers, *Those Good Samaritan Laws: Are They Really Necessary,* 41 MED. ECON., No. 15, July 27, 1964, pp. 106, 110.

5. In Averbach, *supra* note 3, at 14, the following compilation appears. As of 1963, twenty-eight states have adopted statutes of this type. They are: Alaska, Arkansas, California, Connecticut, Georgia, Indiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.

Other states which have considered but have failed to enact such legislation are: Alabama, Colorado, Florida, Idaho, Minnesota, New York, North Carolina, Oregon, Rhode Island, Washington, and West Virginia.

6. PA. STAT. ANN. tit. 12, §§ 1641–42 (1963).

Section 1. Any physician or any other practitioner of the healing arts, licensed by any one of the United States, who happens by chance upon the scene of an emergency or who arrives on the scene of an emergency by reason of serving on an emergency call panel or similar committee of a county medical society or who is called to the scene of an emergency by the police or other duly constituted officers of the State or a political subdivision or who is present when an emergency occurs and who, in good faith, renders emergency care at the scene of an emergency,

Any attempt to study the effect of this statute must be prefaced by at least a summary statement of the Pennsylvania case law concerning medical malpractice. The four basic ingredients of any action based upon ordinary negligence are: the presence of a legal duty requiring the actor to conform to a certain standard of conduct for the protection of others from unreasonable risks; a failure on the actor's part to conform to such a standard; a reasonably close causal connection between the act and the resulting injury; and lastly, the existence of actual loss or injury to the plaintiff's interests.[7]

While the demonstration of the above named elements is difficult in any tort action, it is submitted that the task has been practically Herculean in a medical malpractice action. The first of the necessary ingredients mentioned, the presence of a duty, is not a problem since the liability of surgeons and certain others was one of the first areas in which negligence developed at common law. A surgeon was regarded as holding himself out to the public as one in whom confidence might be reposed. He assumed an obligation to give proper service and could be held liable for the breach of such service by any negligent act.[8] Over and above this duty requirement, the common law, while holding that no one is obligated to lend assistance in an emergency, also demands that once an individual attempts to aid another in distress, he becomes duty-bound to exercise due care.[9]

The first serious obstacle a plaintiff must negotiate in bringing an action based upon a malpractice claim is that of demonstrating that the physician's act or his failure to act was unreasonable, and that he failed to exercise the proper degree of care and skill in treating the claimant. Ordinarily a physician or surgeon is only required to possess and exercise that reasonable degree of care and skill possessed and exercised by other members of his profession in good standing who are engaged in the same type of practice in the same locality.[10] Negligence on the part of a physician will not be presumed[11] and must be affirmatively proven. In Pennsylvania

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shall not be liable for any civil damages as a result of any acts or omissions by such physician or practitioner in rendering the emergency care, except any acts or omissions intentionally designed to harm, or any grossly negligent acts or omissions which result in harm, to the person receiving emergency care.

Section 2. "Good faith" shall include, 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 until the patient is hospitalized.

In addition the Pennsylvania legislature and those of other states have enacted statutes requiring persons who are involved in automobile accidents to stop and render aid. GA. CODE ANN. §§ 68-1620 (1933); ILL. ANN. STAT. ch. 95½, § 135 (1958); KY. REV. STAT. ANN. ch. 189, § 580 (1958); LA. REV. STAT. tit. 32, § 414(B)(4) (1950); MD. CODE ANN. 66½, §§ 199-201 (1957); MICH. LAWS ANN. §§ 9.2317, 9.2319 (1960); MISS. CODE ANN. §§ 8161, 8163 (1942); PA. STAT. ANN. tit. 75, § 1027 (1960); VA. CODE ANN. § 46.1-176 (1958); WIS. STAT. tit. 44, § 346.67 (1958); WYO. STAT. ANN. §§ 31-218, 31-220 (1959).

7. PROSSER, TORTS § 35 (2d ed. 1955).

8. *Id.* § 28.

9. *Id.* § 38. See also 2 RESTATEMENT, TORTS §§ 323-24 (1934).

10. McHugh v. Audet, 72 F. Supp. 394 (M.D. Pa. 1947); Donaldson v. Maffucci, 397 Pa. 548, 553, 156 A.2d 835, 838 (1960); Moscicki v. Shor, 107 Pa. Super. 192, 198, 163 Atl. 341, 342 (1933).

11. DeRose v. Hirst, 282 Pa. 292, 127 Atl. 776 (1925).

a plaintiff is further limited in that he is not able to make use of the doctrines of Res Ipsa Loquitur or exclusive control.[12]

For all practical purposes the only method by which a plaintiff can show a departure from the accepted standard is by the use of a qualified expert witness.[13] The problem of showing a physician's failure to comply with the accepted standard becomes even more insolvable if there in fact exists a "conspiracy of silence" amongst members of the medical profession whereby doctors are reluctant to testify against each other.[14]

Another element which often acts as a stumbling stone in a malpractice action is that of showing a close causal connection between the alleged negligent act and the resultant injury. The mere showing that poor results were obtained from the treatment is not sufficient,[15] and where two reasonable courses of action are open to a physician, he will not be held liable if he chooses the wrong one.[16]

The plaintiff's dilemma becomes more pronounced when the alleged tortious injury arises out of a factual situation which can be considered as an emergency, since courts do consider urgency as a factor in determining the reasonableness of a person's actions.[17] The marked absence of any cases involving malpractice claims arising out of treatment rendered in an emergency is further evidence of the fact that courts are reluctant to impose liability upon doctors who voluntarily attempt to lend assistance in an emergency.[18]

While the preceding discussion is at best rudimentary, it does serve to indicate the existing obstructions in the path of those seeking to institute a tort action founded upon a medical malpractice claim. The foregoing discussion also lends weight to the argument advanced by those who object to "Good Samaritan" legislation as being unnecessary. They contend that the body of law which has developed in this area is already so favorable to physicians that further immunity is just so much icing on the cake.[19]

12. The following cases contain statements that the doctrines of Res Ipsa Loquitur or exclusive control are not available to plaintiffs where the poor results could have occurred despite the exercise of proper care and skill or where the common knowledge of laymen is not sufficient to warrant their passing of judgment; Smith v. Yohe, 412 Pa. 94, 194 A.2d 167 (1963); Demchuk v. Bralow, 404 Pa. 100, 102, 170 A.2d 868, 870 (1961); Donaldson v. Maffucci, 397 Pa. 548, 553, 156 A.2d 835, 838 (1960); Robinson v. Wirts, 387 Pa. 291, 294–95, 127 A.2d 706, 708–09 (1956).

Also see Belli, *An Ancient Therapy Still Applied: The Silent Medical Treatment,* 1 VILL. L. REV. 250, 262 (1956); Note, 62 DICK. L. REV. 335, 338 (1958).

13. Donaldson v. Maffucci, 397 Pa. 548, 553, 156 A.2d 835, 838 (1960); Powell v. Risser, 375 Pa. 60, 65, 99 A.2d 454, 456 (1953); Scacchi v. Montgomery, 365 Pa. 377, 379, 75 A.2d 535, 536 (1950); Saltzer v. Reckford, 319 Pa. 208, 211–12, 179 Atl. 449, 450 (1935).

14. Belli, *An Ancient Therapy Still Applied: The Silent Medical Treatment,* 1 VILL. L. REV. 250 (1956).

15. Robinson v. Wirts, *supra* note 12. The view expressed in this case has been stated in a number of later malpractice trials. Powell v. Risser, 375 Pa. 60, 66, 99 A.2d 454, 456 (1953); Scacchi v. Montgomery, 365 Pa. 377, 380, 75 A.2d 535, 536 (1950); Bierstein v. Whitman, 360 Pa. 537, 541, 62 A.2d 843, 845 (1949).

16. McHugh v. Audet, *supra* note 10, at 400.

17. A general discussion of the law with regard to acts done in an emergency or in sudden peril may be found in 38 AM. JUR. NEGLIGENCE § 41 (1941).

18. Averbach, *supra* note 3, at 16; 51 CAL. L. REV. 816, 817 nn.7–9–11 (1963).

19. 1964 WIS. L. REV. 494, 498 (1964).

There is no doubt that an examination of the arguments both for and against such legislation would prove interesting, but since the statute has already been enacted, such a discussion now is at best academic. Attention must instead be focused upon the scope of the immunity which has been granted, an interpretation of the statutory language and the constitutionality of its provisions. The first and second areas can be treated together since they are interrelated, but before doing so, perhaps mention should be made of the rules concerning the interpretation of statutes in derogation of the common law. Generally such statutes are to be strictly construed,[20] but a Pennsylvania statute provides that in the absence of express limitations legislation of this type is to be broadly construed so as to put into effect the legislative will.[21] Legislative intent, then, controls the meaning and effect to be given statutory language.

The "Good Samaritan" statute grants immunity to physicians[22] and "practitioners" licensed in any state but fails to include any definition of the latter term. The word "practitioner" has been held to include osteopaths[23] and dentists.[24] It has even been said that a homopath, a chiropractor, a magnetic healer and a naturopath are practitioners in the field of medicine, although this very broad definition was given in a case which attempted to define the term as it appeared in an insurance policy.[25] In one of the earlier drafts of the statute both chiropractors and nurses were explicitly granted the immunity, and the term "practitioners" was deleted. In the final draft, however, this listing of protected individuals was stricken and the seemingly all inclusive term "practitioners" was reinserted. The aforementioned steps taken by the legislature would seem to indicate that the word was chosen so as to extend the scope of the immunity to its fullest measure,[26] but there are two restrictions upon any application of this statutory immunity, the first of which pertains to the licensing require-

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20. Isbrandten Co. v. Johnson, 343 U.S. 779 (1951).

21. PA. STAT. ANN. tit. 46, § 551 (1951), provides:

> The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the Legislature. Every law shall be construed, if possible, to give effect to all its provisions. . . .
>
> When the words of a law are not explicit, the intention of the Legislature may be ascertained by considering among other matters — (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretation of such law.

22. The term "physician" has been given a statutory definition. PA. STAT. ANN. tit. 46, § 601(87) (Supp. 1963).

23. Mutual Life Ins. Co. v. Geleynse, 241 Mich. 659, 217 N.W. 790 (1928); Bragg v. State, 134 Ala. 165, 32 So. 767 (1902).

24. Flickinger v. Fisher, 119 Mo. 344, 21 S.W. 446 (Mo. 1893).

25. Williams v. Capital Life and Health Ins. Co., 209 S.C. 512, 41 S.E.2d 208 (1947). This case has been cited only to show the broad meaning which has been given the term "practitioner."

26. Further evidence of the Legislature's intention to include other medical personnel is its use of the term "healing arts" which has been defined as a generic expression which ordinarily embraces the whole art of healing and its many theories and practices. Steinbach v. Hetzger, 63 F.2d 74, 76 (3d Cir. 1933).

ments stated in the statute.[27] To be protected, "Good Samaritans" must be licensed in this or any other state. It is submitted that the legislature's imposition of this requirement evidenced its desire that only those actions which medical personnel are licensed to perform shall be protected. As a result not all their ministrations are necessarily immune, and practitioners shall stand liable for any harm resulting from acts which are beyond the limits of the area in which they are deemed competent to practice by the various licensing statutes.

A practical illustration of this would be a case in which a chiropractor is confronted by an emergency situation. The actor, after examining the victim, decides that he has neither a broken back nor any other internal injury, and he orders that the victim be moved. The victim's neck is in fact broken and the injury is aggravated as a result of his being moved, causing partial paralysis which would not otherwise have occurred. If the licensing restriction were applied here the actions of the chiropractor would clearly not be made immune by the statute, since he was neither licensed nor competent to diagnose such an injury. In this situation the chiropractor should be treated as if he were a layman and the ordinary rules of negligence would be applicable.

Another method by which the legislature limited the availability of the immunity was its including a definition of "good faith." The second section of the statute states: " 'Good faith' shall include . . . a reasonable opinion that the immediacy of the situation is such that the rendering of care should not be postponed. . . ."[28] The inclusion of reasonableness in this definition indicates that, unlike common law, the subjective intent of the actor alone is not sufficient to immunize his actions, rather his decision must have been reasonable. Probably any would-be actor must make three decisions which will be examined in the light of an objective standard: (1) that an emergency situation does in fact exist, (2) that immediate emergency care is necessary, and (3) that he is competent to provide the type of assistance which the victim's condition demands.

The terms "emergency" and "emergency care" should not prove to be troublesome since the provisions of the statute limit its application to occurrences such as automobile or other types of accidents.[29] There is no

27. The statutes applying to each of these professions are: dentistry, PA. STAT. ANN. tit. 63, § 122 (1959); osteopathy, PA. STAT. ANN. tit. 63, § 261 (1959); optometry, PA. STAT. ANN. tit. 63, § 234 (1959); chiropody, PA. STAT. ANN. tit. 63, § 42.9 (1959); nursing, PA. STAT. ANN. tit. 63, §§ 198, 215 (1959); chiropractic, PA. STAT. ANN. tit. 63, § 605 (1959). The Medical Practice Act also contains provisions concerning the practice of neuropathy, naturopathy, and hydropathy. PA. STAT. ANN. tit. 63, § 408 (1959).

28. PA. STAT. ANN. tit. 12, § 1642 (1963). The case of Jankowski v. Welch, 135 N.J.L. 437, 440, 52 A.2d 771, 773 (1947), concerned the scope of the immunity granted by a state civil defense statute which required that the actor had to be acting in "good faith" for the immunity to apply. The court stated that the statute was not meant as a carte blanche for recklessness or for wholly unnecessary disregard for life, limb, and property.

29. The statute provides immunity for a physician or practitioner who renders ". . . emergency care at the scene of an emergency. . . ." There is no mention of acts done after the initial crisis has passed.

indication that the statute could be applied where an emergency arises in the course of established treatment, nor does the statute cover any treatment except that given at the accident scene. It would also seem, that should there be a question of whether or not an emergency situation existed, the actor's decision would have to be examined by a jury unless the facts are so clear that the court could resolve the issue.[30]

The question of competency would be examined in the light of the particular licensing statute applicable to the actor, and the reasonableness of his actions would be gauged by the established standards of practice in his particular branch of medicine. No doubt expert testimony would be required in the latter determination.

Having examined the practical application of the statute, a brief investigation of the effects the statute will have upon the rights and remedies of plaintiffs would now be proper. Earlier it was mentioned that the statute modified the situation as it existed at common law since malpractice claims arising out of emergency treatment and based upon ordinary negligence are no longer actionable. This change, however, is little more than a superficial modification, since the practical side of a plaintiff's case has at best been only slightly affected. The imposing barriers to a malpractice action, coupled with the court's reluctance to impose liability upon a "Good Samaritan", effectively prevented the recovery of an award in a suit of this nature.

Despite this relatively minor modification, critics have lamented the removal of the slight chance of success which existed prior to the statute. The ground upon which they have based their attack is constitutional and is founded upon the premise that the granting of an immunity to a prescribed class results in the removal of a remedy previously enjoyed by the person who suffers an injury at the hands of a member of that class.[31] The Pennsylvania constitution provides that ". . . every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law. . . ."[32] This constitutional guarantee is binding upon the state legislature,[33] and enactments violating it are invalid.[34] The first question to be answered then is whether the statute, by modifying a former right, can survive a challenge on constitutional grounds. Individual rights may be limited and restricted under the police powers of the state so as to promote the general welfare,[35] but any statute denying a right must find its justification in a direct benefit to the public interest. The test of validity ultimately becomes a balance between the beneficial effect of the statute upon the public interest and the detrimental effect upon individual rights.[36]

30. 1 STEVENSON, NEGLIGENCE IN THE ATLANTIC STATES, § 25, p. 40 (1954).
31. 43 B.U.L. REV. 140 (1963).
32. PA. CONST. art. 1, § 11.
33. Menges v. Dentler, 33 Pa. 495 (1859).
34. Thirteenth and Fifteenth Sts. Passenger Ry. v. Boudrou, 92 Pa. 475 (1880).
35. Farmers-Kissinger Market House Co. v. City of Reading, 310 Pa. 493, 165 Atl. 398 (1933).
36. 43 B.U.L. REV. 140, 142 (1963).

If the balance favors the public interest, then the legislation is valid notwithstanding the denial of the individual's right. As previously stated, the purpose of the measure is to increase the chances that emergency victims will receive prompt medical care. It seems beyond question that such a benefit does outweigh any detrimental effect the statute has upon personal rights, if the means taken are effective to attain the benefit sought. It is submitted that the argument that this act infringes upon the victim's constitutional rights is faulty since the right to redress has not been removed but only the degree of actionable negligence has been altered. This does no more than codify the onerous burden which was in fact imposed upon plaintiffs prior to the enactment of the statute.

Up until this time no mention has been made of the statutes enacted by other states. Possibly a comparison of their respective provisions will aid in any evaluation of the Pennsylvania law. The Pennsylvania enactment provides that any physician or other "practitioner" licensed in any state shall be clothed with immunity from his negligent acts or omissions. Nine other states have extended similar immunity to non-resident medical personnel,[37] but the majority of the states have been more restrictive and have only provided immunity to those licensed to practice within their respective states.[38] The least common type of statute is that in which *any* person is immune from civil suit should he stop to render assistance.[39] It has been argued, perhaps correctly so, that while the restrictive statutes are seemingly out of step with the legislative purpose, they do not unduly limit the immunity granted since out-of-state personnel would more likely continue about their business rather than stop and render aid in a foreign jurisdiction.[40]

The Pennsylvania statute has one unique feature when compared to those passed by other states; namely, the aforementioned definition of "good faith."[41] As mentioned earlier the attempted definition imposes a stricter standard upon the actor in that his subjective intent is no longer the proper criterion. Unlike the statutes of other states which merely mention the term, the definition given by Pennsylvania leaves no doubt that an objective standard will be applied. By the imposition of this standard the courts have been provided with a concrete guide in determining whether or not the immunity should be granted to an individual who has rendered emergency assistance.

The final area in which the provisions of the various statutes might be compared is that concerning the type of actions which are protected.

37. Other states which have extended immunity to non-resident medical personnel are: Alaska, Connecticut, Michigan, Mississippi, New Hampshire, New Jersey, North Dakota, Ohio and South Dakota.

38. States which have enacted statutes of this type are: California, Georgia, Indiana, Maine, Maryland, Massachusetts, Nebraska, Nevada, Utah, Virginia and Wisconsin.

39. Only seven states have such a broad statute: Arkansas, Montana, New Mexico, Oklahoma, Tennessee, Texas and Wyoming.

40. 1964 WIS. L. REV. 494, 499 (1964).

41. Twenty-three states make use of the term in their statutes but only Pennsylvania has attempted to define it.

The Pennsylvania law and those of certain other states will not protect acts or omissions of gross negligence[42] or wilful and wanton acts or omissions.[43] Whereas it is beneficial to society that such acts are not granted immunity, this lapse in the scope of the immunity does open the door to the type of malpractice actions such statutes were designed to prevent. William J. Curran, director of the Law-Medicine Research Institute at Boston University, points out that if these statutes cover only ordinary negligence very little actual protection from suit is accorded to the doctor. The plaintiff's lawyer merely has to add the adjective "gross" to his complaint, and he can sue, get into court and force the physician and his insurance carrier to litigate. In fact, lawyers may be encouraged to plead and prove gross negligence. With the "He's insured, let the insurance company pay" attitude of today's juries, such a situation presents a dim view of "Good Samaritan" statutes to physicians.[44]

The Pennsylvania legislature further restricted the exemption to only those acts rendered at the scene of the accident or emergency. Some states, however, have extended this immunity so that it also includes acts rendered in the course of treatment or in providing transportation to a point for further medical treatment.[45] It is felt that the restriction imposed by the Pennsylvania statute is an unneeded and an undue limitation. Once a doctor or other practitioner has assumed the burden of aiding an emergency victim, there is no reason why the immunity granted should not be continued until the victim is transported to a hospital and competent medical treatment is available. Restricting the protection to the geographical limits of the scene provides no benefit. Situations might arise where the practitioner is more qualified than the persons who are sent to the scene, and in such cases it would seem that the practitioner should be encouraged to continue whatever treatment he had started to administer with the same protection he enjoyed prior to their arrival. The same reasoning would apply in cases where the "Good Samaritan" wants to continue treating the victim, and the actor is as qualified as those who are sent to relieve him.

CONCLUSION

While critics may attack this law as being just another piece of statutory protection which the medical profession was able to lobby through the state legislature, it is submitted that the purpose for which it was enacted at least justifies its passage. There is convincing proof that doctors are reluctant to render emergency assistance because of their fear of subsequent civil liability.[46] It is unlikely that the presentation of facts proving that their fears are unfounded will serve to spur them to voluntarily aid

42. BURNS IND. STAT. § 63-1361 (Supp. 1964); MD. CODE ANN. art. 43, § 149A (Supp. 1964); TENN. CODE ANN. § 63-622 (Supp. 1963).
43. MONT. REV. CODE § 17-410 (Supp. 1963); OHIO REV. CODE § 2305.23 (Supp. 1963); BURNS IND. STAT. § 63-1361 (Supp. 1963).
44. As quoted in Jeffers, *supra* note 4.
45. MISS. CODE ANN. tit. 32, § 8893.5 (Supp. 1962).
46. *Supra* note 3.

emergency victims in the future, nor would a change in the canons of medical ethics. Thus the only means by which their reluctance can be overcome is to enact a statute of this type.

Over the years a number of writers have criticized the "Rugged Individualism" approach of the common law as being out of step with our present highly interrelated society.[47] They advocate the adoption of laws which recognize the existence of a moral duty, and in support of their views, they point to the laws enacted by most of the countries of Western Europe.[48] This writer sympathizes with their views as to the failings of present tort law in this area, but at the same time, rebels at the thought of the imposition of a legal duty on each citizen to aid in an emergency. The only practical means short of creating such an affirmative duty would be to do as state legislatures have done; that is, lessen the risk for the professional "Good Samaritan."

In conclusion it is submitted that the Pennsylvania "Good Samaritan" statute will overcome any challenge to its validity in the future and that the beneficial results obtained will far outweigh any hardships caused by its provisions so long as the courts use both prudence and caution in its application.

Joseph F. Busacca

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47. McNiece and Thornton, *Affirmative Duties In Tort*, 58 YALE L.J. 1273, 1287–88 (1948–49).

48. Dawson, *Negotiorum Gestio, The Altruistic Intermeddler*, 74 HARV. L. REV. 1073, 1105 (1961).