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The Amendment to the Good Samaritan Act

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The 1998 Amendment to the Good Samaritan Act Broadened the Available Immunity, and Since Then the Courts Have Applied This Statutory Immunity Correctly Within and Outside Hospital Settings

Prior to 1998, doctors seeking immunity from an alleged medical negligence suit available under Illinois' Good Samaritan Act, 745 ILCS 49/25, needed to pass a three-part test, namely: (1) they must not have had any prior notice of the illness or injury treated; (2) the care provided must be emergency care; and (3) they must not have charged a fee. *Blanchard v. Murray*, 331 Ill. App. 3d 961, 967, 771 N.E.2d 1122, 265 Ill. Dec. 163 (1st Dist. 2002). If doctors were able to show all three elements existed at the time of the specific treatment at issue, they could defeat a case of alleged medical negligence from the outset. However, prior to 1998, the first part of this three-part test gave rise to some decisions unfair to the healthcare professional. The position of hospital staff physician or "on-call" physician at a hospital often resulted in a denial of the available statutory immunity for emergency care because of the "prior notice of the illness or injury" element in the *Blanchard* case. *See e.g., Johnson v. Matviuw*, 176 Ill. App. 3d 907, 531 N.E.2d 970, 126 Ill. Dec. 343 (1st Dist. 1988). If a physician was on call at home and summoned to the hospital for the sole purpose of rendering emergency care, such as delivering a baby for another practitioner, the physician was held to possess "prior notice" and denied any immunity.

These inequities were addressed in 1998 when the legislature removed the first "prior notice" requirement from the Good Samaritan Act and broadened the available statutory immunity. In cases decided since the 1998 amendment, the courts have enforced the statute as written, and have refused efforts to place further limitations on immunity.

In *Neal v. Yang*, 352 Ill. App. 3d 820, 816 N.E.2d 853, 287 Ill. Dec. 886 (2d Dist. 2004), the defendant was the on-call anesthesiologist present in the hospital who was paged as part of the neonatal team trying to resuscitate an unresponsive newborn. When the anesthesiologist arrived, the resuscitation effort was already in progress. She participated until cardiac activity was achieved, which allowed the infant to be airlifted to a major neonatal intensive care unit. However, the child was neurologically impaired and died at age four. The anesthesiologist did not charge a fee for her services. Once suit was brought, the anesthesiologist sought immunity under the Good Samaritan Act , and the plaintiff opposed dismissal by claiming her on-call status established a pre-existing duty that prevented application of the Act. The court rejected this attempt to limit immunity and held that the Act did not specifically state that a defendant's pre-existing duty to respond to an emergency would be

an element that could disallow the available protection of the Act. The court ruled that it "must apply the Act as it is written, and any change must be done by the legislature." 352 Ill. App. 3d at 830. The suit was dismissed as to that anesthesiologist.

In *Estate of Heanue ex rel. Heanue v. Edgcomb*, 355 Ill. App. 3d 645, 823 N.E.2d 1123, 291 Ill. Dec. 537 (2d Dist. 2005), the courts continued to interpret the available immunity under the act liberally, but also noted one element included in the Act that had been overlooked in most prior decisions – namely the element of "good faith." In *Heanue*, the defendant was a member of a medical group and a partner of the patient's treating physician. This patient was in the hospital after a catheter insertion procedure and under the care of the defendant's partner. A nurse observed some medication problems and called the medical group's office and told them to send a doctor over immediately. Shortly thereafter, the defendant arrived and took over treatment of the patient, who later died. The defendant moved to dismiss, asserting the decedent was not his patient and that he did not charge a fee for the care he provided. The estate opposed dismissal, claiming the defendant was acting as a compensated agent of the medical group and that he had an independent duty to provide care to a patient of his group practice. The court ruled that although the defendant may have received some economic benefit from his medical group for their care to this patient, this particular defendant-physician did not charge a fee for his specific services rendered to this patient that were the subject of the suit. The legislature specifically chose the term "fee" as opposed to "obtaining any economic benefit" and thus, the court rejected this argument to limit immunity, and the defendant was dismissed.

The *Heanue* court also rejected another attempted limitation of the Act, namely that this defendant had a pre-existing, independent duty to care for this patient, even though he had never personally rendered any care for her. In this situation, the court noted that the Good Samaritan Act draws no distinction between physicians who are just passing by and render emergency aid to patients with whom they have no relationship and physicians who have an existing treating relationship with the patients. The court then framed the real issue in these cases—namely, can the care deemed "in good faith" be emergency care, *and* was the decision not to send a bill to the patients "in good faith"? The court noted that the Act specifically requires "good faith" in *both* of the two elements necessary to invoke immunity, and as the trial court made no finding on this issue, the case was remanded for that sole issue to be addressed.

After *Heanue*, the courts will specifically address the "good faith" basis for the claim of immunity under the Good Samaritan Act, but that effort is merely a necessary measure required by the statute itself to insure that physicians providing emergency care are not attempting to avoid liability simply by omitting from an itemized bill any specific charge for the services that may be the subject of a suit. While there is no case that holds it is bad faith for doctors not to bill for services that they normally would have, there will need to be some evidence that the doctors decided not to charge a fee for reasons other than simply avoiding liability. With this requirement in mind, physicians should be reassured that the primary goal of the legislature in broadening the immunity available in the Good Samaritan Act is being advanced and enforced by the judiciary in Illinois.

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