Illinois Association of Defense Trial Counsel
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IDC Quarterly | Volume 24, Number 3 (24.3.26)

Health Law Update

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Illinois Supreme Court Rules Against Emergency Room Physicians in Resolving Split Among Appellate Districts Regarding Interpretation of Good Samaritan Act

IDC Quarterly previously reported on *Home Star Bank and Financial Services v. Emergency Care and Health Organization, Ltd.*, 2012 IL App (1st) 112321, which created a split among the districts of Illinois' Appellate Court regarding the interpretation of the Good Samaritan Act (the Act and the immunity it affords to physicians). This column predicted that the split would ultimately be resolved by the Illinois Supreme Court, which proved to be true when the court released its decision in *Home Star Bank and Financial Services v. Emergency Care and Health Organization, Ltd.*, 2014 IL 115526 (2014). In its decision, the Illinois Supreme Court significantly narrowed the scope of immunity afforded to physicians under the Act. Additionally, the court's decision is likely to impact emergency medicine physician contracts and hospital policies, and lead to future litigation regarding those entitled to immunity under the Act.

Factual Background

The defendant was an emergency room physician employed by another defendant, Emergency Care and Health Organization, Ltd. (ECHO), which had an exclusive emergency room services agreement with the hospital. *Home Star Bank* 2014 IL 115526, ¶ 1, 5. ECHO paid the physician hourly for his work in the ER. *Id*. ¶ 7. The physician's employment contract required that he abide by hospital policies, one of which required an ER physician to respond to code blue alerts in the hospital and direct the code blue team. *Id*. ¶¶ 6-8.

During his shift, the physician responded to a code blue for the plaintiff, an inpatient on another floor that the physician had never met or treated. The physician attempted to intubate the plaintiff, but the plaintiff ultimately suffered permanent brain damage, resulting in a negligence action being filed against the physician and ECHO. *Id*. ¶ 3.

The patient was not billed for the physician's services for responding to the code blue. Neither the physician, ECHO, nor the hospital billed for the physician's services. *Id*. ¶ 4. Therefore, based upon prior interpretations of the Good Samaritan Act, the defendant physician and ECHO moved for summary judgment because no bill was generated for the physician services. *Id*. ¶ 4. The circuit court granted summary judgment, finding no evidence the plaintiff was billed for the physician services. *Id*. ¶ 18.

The Good Samaritan Act

Immunity under the Act was originally limited to physicians providing emergency care without fee "at the scene of a motor vehicle accident or in case of nuclear attack." Ill. Rev. Stat. ch. 91, § 2a (West 1965). The legislature, however, amended the original Act multiple times, and it currently reads:

> Physicians; exemption from civil liability for emergency care. Any person licensed under the Medical Practice Act of 1987 or any person licensed to practice the treatment of human ailments in any other state or territory of the United States who, in good faith, provides emergency care without fee to a person, shall not, as a result of his or her acts or omissions, except willful or wanton misconduct on the part of the person, in providing the care, be liable for civil damages.

745 ILCS 49/25. In *Home Star Bank*, the court set out to resolve whether the term "without fee" is ambiguous, and if so, how that term should be interpreted.

A Split Among the Appellate Districts Interpreting "Without Fee"

Before 2012, the Illinois Appellate Court consistently ruled that care was rendered "without fee" when the physician did not bill for the services at issue. *Estate of Heanue v. Edgcomb*, 355 Ill. App. 3d 645 (2d Dist. 2005); *Neal v. Yang*, 352 Ill. App. 3d 820 (2d Dist. 2004); *Blanchard v. Murray*, 331 Ill. App. 3d 961 (1st Dist. 2002); *Rivera v. Arana*, 322 Ill. App. 3d 641 (1st Dist. 2001); *Villamil v. Benages*, 257 Ill. App. 3d 81, 92 (1st Dist. 1993); *Roberts v. Myers*, 210 Ill. App. 3d 408 (1st Dist. 1991); *Johnson v. Matviuw*, 176 Ill. App. 3d 907 (1st Dist. 1988). The appellate court gave the term "without fee" its ordinary meaning, and simply looked to whether a bill was sent. *Villamil*, 257 Ill. App. 3d at 92. Further, the appellate court held that whether the physician received an economic benefit as a result of the services was irrelevant, and the physician was entitled to immunity unless the physician charged "a fee specifically for the services at issue." *Estate of Heanue*, 355 Ill. App. 3d at 649-50.

Then in 2012, the Illinois Appellate Court, First District, broke with precedent in *Home Star Bank*, 2012 IL App (1st) 112321. Rather than following prior appellate court decisions, the First District followed a federal district court opinion finding the phrase "without fee" ambiguous. *Henslee v. Provena Hosps.*, 373 F. Supp. 2d 802 (N.D. Ill. 2005). The First District held that a fee existed if either the patient was billed or the physician was paid, *i.e.*, the physician was paid hourly or salary for the time treating the patient. *Home Star Bank*, 2012 IL App (1st) 112321, at ¶ 39. This decision created a division concerning the phrase to render care "without fee." *Home Star Bank*, 2014 IL 115526, ¶ 25.

"Without Fee" Determined to be Ambiguous

The supreme court noted that, prior to 2012, the appellate court believed the term "without fee" was unambiguous, and therefore, interpreted it narrowly. *Home Star Bank*, 2014 IL 115526, ¶ 39. However, the supreme court found the term "without fee" is "clearly capable of being understood by reasonable persons in more than one way." *Id.* The supreme court relied upon various dictionary definitions of "fee," pointing out that some of those definitions included not only a charge, but also compensation or payment being received. *Id.* Therefore, the court found the term "fee" broad enough to include a patient being billed or a physician being compensated. *Id.*

Illinois Supreme Court Defines "Without Fee" More Broadly,
Attempting to Align the Definition with the Legislature's Intent

Because the Illinois Supreme Court determined that "without fee" was ambiguous, it set out to define the term in a manner consistent with legislative intent. *Id.* ¶ 40. In doing so, the court relied upon several aids to statutory construction. First, the court pointed to dictionaries defining "Good Samaritan" and "good-samaritan law" to include those who voluntarily or gratuitously provide help or aid. *Id.* (citing The Random House Dictionary of the English Language 609 (1983) & Black's Law Dictionary 715 (8th ed. 2004)). Second, the court cited the Act's statement of legislative purpose, which twice refers to those who "volunteer" their time. *Id.* ¶ 41 (citing 745 ILCS 49/2 (West 2010)). Third, the court referred to legislative history, which purported to show that those voting for the Act intended immunity to extend to physicians voluntarily rendering care outside of an office or hospital setting, and not those receiving compensation. *Id.* ¶¶ 42-44 (citing 78th Ill. Gen. Assem., Senate Proceedings, May 22, 1973, at 49-50 (statements of Senator Schaffer); 89th Gen. Assem., House Proceedings, Mar. 25, 1996, at 100-01 (statements of Representatives Lang and Winters)). Fourth, the court was persuaded by a decision from the California Court of Appeals, which found the purpose of a Good Samaritan law is to encourage physicians to act when they have no duty to do so, and to protect those providing services outside their typical area of expertise or working environment. *Id.* ¶¶ 45-46 (citing *Colby v. Schwartz*, 78 Cal. App. 3d 885, 892, 144 Cal. Rptr. 624 (2d Dist. 1978)). Finally, the court found that "the narrow definition previously adopted by the appellate court thwarts legislative intent," and one of the presumptions of statutory construction is that the legislature does not intend absurd, unjust or inconvenient results. *Id.* ¶ 47. The court determined that the narrow definition could unjustly oppress the poor, because "[i]f the . . . doctor provided negligent emergency care to an indigent uninsured patient and the hospital did not bill the patient because it would not be able to collect payment, the doctor would be immune under the Act." *Id.* ¶ 48 (citing Ben Bridges, Comments, *Curb Your Immunity: The Improper Expansion of Good Samaritan Protection in Illinois*, 34 S. Ill. U. L.J. 373, 391 (2010)). However, this concern ignores the reality that in almost all situations, a bill will be generated, if for no other reason than to support a tax write off.

For these reasons, the court held that a "fee" exists when the patient is billed for services or the physician is compensated. *Id.* ¶ 50. Specifically, the court found that "giving [the term 'fee'] a construction that includes a doctor's compensation will ensure that the legislature's intent is effectuated rather than thwarted." *Id.*

In addition to the fact that the physician was compensated for the time spent rendering the treatment at issue, the court noted that he was required by contract and hospital policy to respond to code blue alerts as part of his ordinary duties. *Id.* ¶ 50. The court's focus on the requirement of employment to respond to code blue alerts may be essential to preserving the defense for a traditional Good Samaritan, who happens to be unlucky enough to be receiving compensation at the time of rendering care. For instance, a physician associated with a metropolitan medical group or hospital may have an agreement to travel to a rural location one day per week to see patients, and receive compensation for travel time. If that physician comes upon a car accident while traveling to or from the rural location, surely the physician is entitled to immunity for any care he provides. Similarly, if a salaried physician employed by a hospital provides emergency care while walking across the street to pick up lunch or while on the sidewalk smoking, that physician too should be entitled to immunity under the Act. Innumerable situations similar to these will likely arise in the future, and the courts will be required to clarify *Home Star Bank's* somewhat loose language.

Conclusion

The Illinois Supreme Court's opinion in *Home Star Bank* significantly limits the scope of immunity afforded under the Good Samaritan Act. The decision is likely to impact emergency room physician contracts

and hospital code blue policies. Emergency room physicians, their employers, and insurers, will undoubtedly have serious concerns about responding to code blue alerts, most often for patients the physician has never seen. Hospitals, on the other hand, may need experienced emergency medicine physicians responding to code blue alerts in certain situations, but hospitals may be forced to abandon that practice in light of the Illinois Supreme Court's decision. Furthermore, future clarification of the decision is likely inevitable, because physicians will be called upon to act as true Good Samaritans in situations where they are coincidentally being compensated. This decision should not preclude immunity in those situations, but a strict reading of the opinion may lead some courts to rule in such a manner.

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IDC Quarterly, Volume 24, Number 3.

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