



Guest Services

by Michael Gentile, J.D.

Good Samaritan Statutes protect hoteliers who assist guests in dire need

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In most states there is no general legal duty to assist or rescue persons who are injured or in distress, even if they are guests on your premises. Vermont has a requirement to give reasonable assistance to persons in grave physical harm and some states have requirements to assist persons if one is the driver of a motor vehicle involved in an accident. But to say that someone is required by law to, for example, administer the Heimlich Maneuver to someone who is choking would be inaccurate.

Having said that, public policy would dictate that we encourage persons to assist those who may be in distress and allow them to act without fear of repercussion if their actions should cause some kind of injury. Enter the Good Samaritan Statute.

Every state has some form of a Good Samaritan Statute intended to provide immunity from liability for individuals who voluntarily and gratuitously come to the assistance of injured persons. These laws were developed to encourage people to come to the aid of others in emergency situations. Listed below are elements common to most Good Samaritan Statutes. But like anything else in the law, the elements and requirements differ from state to state. Therefore, it is important to be aware of the statute in your jurisdiction. Most Good Samaritan laws will somehow address some or all of these elements.

Who is covered by the statute?

Most statutes protect any person who comes to the aid of another in an emergency situation. Others restrict protection to only healthcare workers or those with first aid training, and yet other states exclude healthcare professionals; so it is important to know your state's status.

To be protected by the statute, one must act in good faith in an effort to assist the person in danger. The person who comes to the aid of another must do so gratuitously, that is without expectation of remuneration. There must be no quid pro quo.

Almost all states require that the action in question occur in an emergency situation and away from a medical facility. To this extent there are specific kinds of statutes that cover emergency situations in most states relating to incidents like choking on food in restaurants or the use of automated external defibrillators (AEDs). The statutes usually require that the care must be administered at the scene of the incident while some states will extend the protection during transportation to the hospital.

Finally, all states protect these "Good Samaritans" from liability for injury that results from acts or omissions that can be deemed *ordinary negligence*. The person who renders the aid must have acted reasonably under the circumstances to be afforded the protection of the statute. These statutes will protect persons who may have been negligent but not those who were grossly negligent, reckless, or willful and wanton. The standard of care in these situations is reasonableness of the action, and as in any scenario where negligence is alleged and must be proven, it is a question of fact for a court to decide.



What response is required?

Given the elements of Good Samaritan Statutes, let's look at a particular scenario where it may apply and how it can be analyzed: the case of a choking customer in a restaurant. When a person is choking because food is lodged in an airway, serious injury or death can occur in a very short period of time, so immediate action is critical.

A common intervention in such situations is the Heimlich Maneuver where the blockage is dislodged by force applied under the ribcage. However, there are also many instances of injuries such as cracked ribs and bruising associated with the administration of the Heimlich Maneuver. Please see the accompanying article by Jesse Denton on how to apply this technique.

So, what is the legal responsibility of restaurant or hotel personnel in an environment where food is served if a patron is choking? The only activity required by law is to call 911. When Management calls 911 for emergency assistance within a reasonable period of time, their duty under the law is discharged. But given the potential severity of the injury, how can the law not require more? The answer can be found in a court decision from Wyoming approximately 20 years ago describing the burden of a foodservice provider who would have to do more.

In the case of *Drew v. Lejay's Sportsmen's Café, Inc.* the court said that a specific first aid requirement mandated by the state would put an undue burden on food servers of every size. The time and money for certification and recertification of staff, especially given the high turnover rate in foodservice operations, would be an unreasonable requirement emplaced upon the restaurant. The court went on to say the only party expected to perform such rescue techniques are professional medical responders called for that purpose, and therefore, the only requirement on the food server is to place a timely call for that professional assistance.

State encouragement to assist?

Notwithstanding the legal decisions in this area, state legislatures around the country have enacted statutes to encourage food-service providers to render care in these situations due to the devastating consequences that can result. A typical statute will require a poster be displayed showing the proper first aid procedure in the event someone is choking (see insert). Generally, the statutes do not require personnel to act, but the poster ensures that instructions are readily available. If, however, someone does volunteer to assist and that person follows the instructions pursuant to the poster, they will not be liable for injuries that result, unless it was as a result of some gross negligence. If they deviate from the instructions on the poster, liability may attach.

Interestingly, even though statutes require that a poster be displayed, the statutes also provide that the foodservice provider cannot be held liable for injury or death to a choking victim if the poster is not displayed. It appears that these posters are merely intended to show proper technique to those "Good Samaritans" who decide to render aid.

Conclusion

In summary, a typical Good Samaritan Statute will state that any person who, in good faith, gratuitously renders emergency care at the scene of an incident cannot be held liable for injuries resulting from acts and omissions unless the conduct is grossly negligent or willful and wanton in nature. Good Samaritan Statutes allow people to render emergency care free from liability while not specifying an unreasonable state-created burden to do so.

A statute such as this gives Management, employees and patrons of hotels and restaurants the freedom to volunteer as best they can under any circumstance to render emergency aid to someone in distress. The only legal question that will ultimately be addressed, as in any negligence case, is the reasonableness of the response under those circumstances. ✧

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