

# Model Principles on Good Samaritan Liability Protections for Physicians

## COL Report to the Board – Attachment

### Origin of Good Samaritan Laws

All 50 states and the District of Columbia have a Good Samaritan law, in addition to federal laws for specific circumstances.<sup>1</sup> However, the protection that Good Samaritan laws provide is not unlimited and varies from state to state,<sup>2</sup> including who is protected from liability (e.g., physicians, emergency medical technicians, and other first responders) and under what circumstances (e.g., rendering voluntary care). In general, these laws do not protect medical personnel from liability if acting in the course of their usual profession.<sup>3</sup>

Good Samaritan laws provide liability protection against claims of “ordinary negligence.” Ordinary negligence is the failure to act as a reasonably prudent person; that is, the failure to exercise such care as a reasonably acting person would ordinarily apply under the same or similar circumstances.<sup>4</sup> These laws typically do not protect against “gross negligence” or willful actions. Gross negligence is a conscious and voluntary disregard of the need to use reasonable care that is likely to cause foreseeable grave injury or harm to persons, property, or both.<sup>5</sup>

### General Applicability of Good Samaritan Laws to Physicians

Good Samaritan laws should apply to physicians (and other health care professionals) only when certain conditions are met:

1. There must exist no duty to treat (for this reason, Good Samaritan protection does not typically apply to on-call physicians). Any physician with a pre-existing relationship with the patient will generally not be considered a Good Samaritan.
2. The physician or other health care professional providing aid cannot receive compensation for their care.<sup>6</sup>

### Good Samaritan Laws: Guidelines and Recommendations for Physicians

1. Good Samaritan protections should cover all cases where a physician provides emergency assistance or emergency care to a person without the expectation of remuneration during the period of emergency. “Emergency assistance or emergency care” includes the administration of Narcan, Naloxone, or any other measures used to address drug overdose emergencies. The physician should not be liable for civil damages or disciplinary action for any injury or death resulting from any acts or omissions on the part of the physician related to such assistance. Protections should not apply in cases of gross negligence or intent to harm.

<sup>1</sup> [Good Samaritan Laws](#), B. West and M. Varacallo National Institutes of Health National Library of Medicine, National Center for Biotechnology Information, September 2022.

<sup>2</sup> [Good Samaritan Law States \[Updated March 2023\]](#), WorldPopulationReview.com; See also, [What does the law say to Good Samaritans?: A review of Good Samaritan statutes in 50 states and on US airlines](#), Stewart PH, W.S. Agin WS and S.P. Douglas, 2013: cited in VeryWellHealth, R. Brouhard, September 2020, <https://www.verywellhealth.com/do-all-states-have-good-samaritan-laws-1298836#citation-2>.

<sup>3</sup> See footnote 1, *supra*.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

2. Generally, Good Samaritan protections should apply when emergency assistance or care is provided outside of the health care system. However, Good Samaritan laws should be considered to provide protections for physicians rendering emergency assistance and care in health care institutions. For example, the Colorado law protects a physician who renders emergency care or emergency assistance at the place of an emergency or accident, including a health care institution, (unless the physician is obligated to provide such emergency care or emergency assistance).
3. Good Samaritan laws should protect any licensed physician in the applicable state and any person licensed to practice medicine in any other state or territory of the United States.
4. For Good Samaritan protections that apply during an emergency, statutes should broadly define the term “emergency” clearly to minimize confusion regarding when such Good Samaritan protections apply and when they do not.
5. Any current or future federal Good Samaritan protection law should not preempt stronger state Good Samaritan protection laws. Stronger state protections should not be preempted by a federal standard.

### **Principles for Qualified Immunity During a Public Health Emergency (PHE)**

1. Immunity from liability should be available to physicians licensed by the applicable state for acts or omissions, health care decisions, or arranging for health care services related to a PHE in the absence of gross negligence or an intent to harm. Statutory protections should extend to physicians who are retired, who have an inactive license, or who are licensed in another state while performing as a volunteer during a declared public health emergency.
2. Liability protections should ensure that physicians will not be subject to professional disciplinary action, administrative fines or penalties, or civil damages or penalties.
3. It should be presumed that a physician did not act with gross negligence or an intent to harm if the physician took reasonable measures consistent with or substantially complied with any guidance related to the PHE that was applicable at the time. “Guidance” should include instructions, recommendations, guidelines, information, etc., issued by the following, which is not exhaustive:
  - a. The Department of Health and Human Services, Centers for Disease Control and Prevention, Centers for Medicare and Medicaid Services, the Occupational Safety and Health Administration, or other federal agency of jurisdiction;
  - b. The respective state governor;
  - c. A state agency;
  - d. A local government, local government health department, local government board of health, a board of county commissioners, the governing body of a city, or a local health officer; or
  - e. A clinical professional organization, or another authoritative source of clinical guidance.
4. Protection from liability should apply in cases where the physician delayed or cancelled nonurgent or elective procedures or altered the diagnosis or treatment of an individual in response to any guidance. In addition to all other defenses, a physician should be permitted to assert as an affirmative defense that the physician took reasonable measures consistent with, or substantially complied with, guidance and, if verified, such defense should constitute a complete bar to any action relating to the PHE. Non-compliance with guidance or guidelines should not impose liability on the physician.
5. Liability protections should also cover the following:
  - a. If applicable, the actual, alleged, or possible exposure to, transmission of, or contraction of an infectious disease that is the subject of the PHE;
  - b. Diagnosing or treating patients outside the normal scope of the physician’s or health care professional’s license, certification, or practice;
  - c. Using medical devices, equipment, or supplies outside of their normal use for the provision of health care, including using or modifying medical devices, equipment, or supplies for an unapproved use;
  - d. Conducting tests or providing treatment to any individual outside the premises of an entity licensed or certified to provide health care services;
  - e. Acts or omissions undertaken by a physician or health care professional because of a lack of staffing, facilities, medical devices, equipment, supplies, or other resources attributable to the PHE

that renders the physician or health care professional unable to provide the level or manner of care to any person that otherwise would have been required in the absence of the PHE;

- f. Prescribing, administering, or dispensing a pharmaceutical for off-label use to treat a patient in relation to the PHE;
  - g. Acts or omissions relating to the use or nonuse of personal protective equipment; and
  - h. Acts or omissions relating to the administration, delivery, distribution, allocation, prioritization, or dispensing of scarce resources among individuals such as medical devices, treatment, and equipment.
6. Liability protections should continue to apply after a PHE has ended, e.g., one (1) year, as physicians may continue to treat patients that were impacted by the circumstance giving rise to the PHE long after the PHE has ended.

### **Physician Hotline**

1. Each state and the federal government should maintain a free hotline for physicians and other health care professionals to call for answers to questions regarding the rendering of care during an emergent situation or PHE.

### **Resources Should Be Made Available to Physicians**

1. Physicians should have ready access to information concerning liability protections that are available to them under federal and state law.

### **Scenarios in Which Good Samaritan Principles Should Apply**

1. Emergent Situations
2. Public Health Emergencies