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THE GOOD SAMARITAN ACT:

OKLA. STAT. tit. 76, § 5 (1971).

On May 19, 1971, the Thirty-third Legislature of Oklahoma passed an emergency amendment to the Good Samaritan Statute.¹ This statute as amended provides:

§ 5. Responsibility for negligence—"Good Samaritan Act"

(a) Everyone is responsible, not only for the result of his wilful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, wilfully or by want of ordinary care, brought the injury upon himself, and except as hereinafter provided.

(1) Where no prior contractual relationship exists, any person licensed to practice any method of treatment of human ailments, disease, pain, injury, deformity, mental or physical condition, or licensed to render services ancillary thereto, including licensed registered and practical nurses, who, under emergency circumstances that suggest the giving of aid is the only alternative to probable death or serious bodily injury, in good faith, voluntarily and without compensation, renders or attempts to render emergency care to an injured person or any person who is in need of immediate medical aid, wherever required, shall not be liable for damages as a result of any acts or omissions except for committing gross negligence or wilful or wanton wrongs in rendering the emergency care.

(2) Where no prior contractual relationship exists, any person who in good faith renders or attempts to render emergency care consisting of artificial respiration, or preventing or retarding the loss of blood, or aiding or restoring heart action or circulation of blood to the victim or victims of an accident or emergency, wherever required, shall not be liable for any

¹ OKLA. STAT. tit. 76, § 5 (1971).

civil damages as a result of any acts or omissions by such person in rendering the emergency care.

(3) Where no prior contractual relationship exists, any person licensed to perform surgery or dentistry in this state who in good faith renders emergency care requiring the performance of an operation or other form of surgery upon any individual who was the victim of an accidental act shall not be liable for any civil damages or subject to criminal prosecution as the result of nonconsent whereby such person renders or attempts to render the emergency surgery or operation voluntarily and without compensation, wherever required, except for gross negligence or wilful or wanton wrongs committed in rendering the care; provided, however, that the exemption granted by this subsection shall not attach if the victim is an adult who is conscious and capable of giving or refusing his consent; or if the victim's spouse, or parent, or guardian in the case of a minor or an incompetent person, can be reached in a reasonable time considering the condition of the victim and consistent with good medical practice, and unless concurrence is obtained for such emergency surgery or operation from one other person licensed to perform surgery in this state.

(b) This act shall be known and may be cited as the "Good Samaritan Act."

The emergency amendment was enacted to more clearly define the persons protected from liability. Anticipating possible questions concerning the "good faith" of the rescuer, the legislature determined that the act of giving aid, when performed by licensed medical personnel, must be done "where no prior contractual relationship exists"² and "voluntarily and without compensation."³ These phrases prevent any interpretation which might grant protection to one who had received remuneration for his services.

² OKLA. STAT. tit. 76, § 5(a) (1)-(3) (1971).

³ OKLA. STAT. tit. 76, § 5(a) (1), (3) (1971).

Subsection 1 of the statute clarifies the situation in which a licensed person may safely give aid. Prior to the amendment, aid could be given only at the scene of the accident without possible complications arising as to the effectiveness of the statutory immunity.⁴ The amendment provides that emergency care may be conferred under "emergency circumstances that suggest the giving of aid is the only alternative to probable death or serious bodily injury . . . wherever required."⁵ This implies that a licensed person rendering emergency care is protected without necessarily limiting his immunity to aid given at the scene of the accident. However, there are no cases construing this provision.

The licensed rescuer has been afforded protection under this statute up to the point of "gross negligence or wilful or wanton wrongs in rendering the emergency care."⁶ In this respect, the legislature has offered the greatest protection that can be allowed consistent with basic tort law and the policies to be promoted by Good Samaritan statutes.

The layman, however, still does not receive adequate protection. Subsection 2 of the statute implies that if a prior contractual relationship exists, the rescuer will be liable for his acts. Absent a prior contractual relationship, laymen may give artificial respiration, prevent or retard the loss of blood, aid or restore heart action or circulation of the blood. This care may be given to the "victim or victims of an accident or emergency, wherever required."⁷ "Wherever required" raises the same question here as it does with respect to licensed medical personnel. Another important question raised is what liability the layman assumes if emergency treatment other than that protected by the Act is necessary.

⁴ Ch. 158, § 1, Okla. Sess. Laws 1969, at 204.

⁵ OKLA. STAT. tit. 76, § 5(a) (1) (1971).

⁶ OKLA. STAT. tit. 76, § 5(a) (3) (1971).

⁷ OKLA. STAT. tit. 76, § 5(a) (2) (1971).

Subsection 3 of the Act includes, among persons authorized to treat the injured, licensed dentists and surgeons performing emergency surgery without the consent of the victim under certain circumstances. Again, this subsection includes the direction that the treatment must be done voluntarily, without compensation and without gross negligence or wilful and wanton wrong.⁸

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⁸ OKLA. STAT. tit. 76, § 5(a) (3) (1971).