

# Good Samaritans

SARA BIRD

Do doctors have an obligation to assist in an emergency situation when they are off duty?

A 2014 Western Australian Court of Appeal decision examined a doctor's duty to provide Good Samaritan assistance where no prior doctor–patient relationship exists.<sup>1</sup>

The case involved a radiologist whom a tribunal initially found guilty of 'improper conduct in a professional respect' for failing to render medical assistance to people in another car following her involvement in a motor vehicle accident. She instead drove to a police station to report the accident.

The Court of Appeal eventually set aside the tribunal's decision, determining there is no specific professional duty for a doctor to render assistance when:

- a motor vehicle accident had occurred in their vicinity
- they were aware a person involved in the accident may have suffered an injury
- they were physically able to assist.

## Legal obligations

Under common law there is no legal duty on any individual, regardless of whether they are a doctor, to 'rescue' another person where there is no prior relationship. There are, however, some exceptions.

Northern Territory legislation requires any person to provide assistance to another in need of urgent treatment and whose life may be endangered if it is not provided.<sup>2</sup>

In 1996, a NSW court found a GP had breached his duty of care and was liable in negligence for failing to provide assistance to a 10-year-old boy suffering from status epilepticus, despite the fact the boy was not a patient of the GP.<sup>3</sup> This decision was partly based on NSW legislation at that time, which stated a doctor was guilty of 'professional misconduct' if he or she refused, without reasonable excuse, to attend a person who was in need of urgent medical attention.<sup>4</sup>

The conduct of Australian doctors is now regulated by the Health Practitioner Regulation National Law Act 2009 (the National Law). The National Law's definitions of 'unprofessional conduct' and 'professional misconduct' do not include a reference to failure to render professional assistance to a person in need of urgent medical attention.

However, for doctors in NSW, 'unsatisfactory professional conduct' includes:

*Refusing or failing, without reasonable cause, to attend (within a reasonable time after being requested to do so) on a person for the purpose of rendering professional services in the capacity of a medical practitioner if the practitioner has reasonable cause to believe the person is in need of urgent attention by a medical practitioner, unless the practitioner has taken all reasonable steps to ensure that another medical practitioner attends instead within a reasonable time.*

## Legal protection

Every state and territory has legislation that protects Good Samaritans from liability. The Good Samaritan must act 'in good faith', 'honestly', 'without recklessness' and/or 'with reasonable care and skill' to be protected.

The protection from liability does not generally apply if a Good Samaritan is under the influence of alcohol or drugs, except in Queensland and Victoria, where the legislation does not exclude a person who is intoxicated from protection. Under the National Law, an intoxicated doctor may also be at risk of a mandatory notification to the Australian Health Practitioner Regulation Agency.

## Professional obligations

A complaint about a doctor will be assessed in accordance with the Medical Board of Australia's *Good medical practice: A code of conduct for doctors in Australia*, which states:

*Treating patients in emergencies requires doctors to consider a range of issues, in addition to the patient's best care. Good medical practice involves offering assistance in an emergency that takes account of your own safety, your skills, the availability of other options and the impact on any other patients under your care; and continuing to provide that assistance until your services are no longer required.*

Doctors may therefore be subject to disciplinary action in some circumstances for failing to respond to requests for Good Samaritan assistance. ☞

Dr Sara Bird is the manager of MDA National's Medico-legal and Advisory Services. She is author of the *Medico-legal Handbook for General Practice*.

This article is provided by MDA National. They recommend that you contact your indemnity provider if you need specific advice in relation to your insurance policy.

## References

1. *Dekker v. Medical Board of Australia* [2014] WASCA 216.
2. Northern Territory Consolidated Acts. Criminal Code Act – Schedule 1, Section 155. Available at [www.austlii.edu.au/au/legis/nt/consol\\_act/cca115/sch1.html](http://www.austlii.edu.au/au/legis/nt/consol_act/cca115/sch1.html) [Accessed 17 December 2014].
3. *Lowns v Woods unreported* (BC9600091), NSW Court of Appeal, 5 February 1996.
4. Medical Practitioners Act 1938 (NSW) Section 27(2). Available at [www5.austlii.edu.au/au/legis/nsw/num\\_act/mpa1938n37242.pdf](http://www5.austlii.edu.au/au/legis/nsw/num_act/mpa1938n37242.pdf) [Accessed 17 December 2014].