

CHAPTER 25

THE GOOD SAMARITAN ACT AND VOLUNTEER IMMUNITY FOR HEALTH PROFESSIONALS

I. INTRODUCTION

Laws which provide immunity to individuals who voluntarily act to aid others are called Good Samaritan Laws. The purpose of such laws is to encourage individuals to promptly act in emergency situations to help others without fearing that they may later be sued if something goes wrong. Florida has several different laws which provide immunity to health professionals in different situations.

There are four major laws, three Florida statutes and one federal statute, which provide immunity to volunteers. They are as follow:

1. **Florida Good Samaritan Act, Section 768.13, Florida Statutes.** Section 768.13, Florida Statutes, titled the "Good Samaritan Act" was enacted to protect persons who assist people in emergency situations from liability for their actions.

2. **The Florida Volunteer Protection Act, Section 768.1355, Florida Statutes.** Section 768.1355, Florida Statutes, titled the Florida Volunteer Protection Act, provides volunteers of not-for-profit organizations, such as Missionaries of Hope, immunity from personal liability.

3. **The Federal Volunteer Protection Act, Title 42 U.S.C. 14503.** Title 42 U.S.C. 14503, titled the Federal Volunteer Protection Act, affords volunteers of not-for-profit organizations, such as Missionaries of Hope, immunity from personal liability.

4. **Florida's Non-For Profit Organization Immunity Statute, Section 617.0834, Florida Statutes.** Under Section 617.0834, Florida Statutes, the individual members of a board of directors (or board of trustees, board of governors, etc.) of a not-for-profit organization recognized under Section 501(c)(3), of the Internal Revenue Code, have personal immunity from liability for monetary damages.

These laws are further explained below.

II. FLORIDA GOOD SAMARITAN ACT

A. IN GENERAL

Section 768.13, Florida Statutes, titled the "Good Samaritan Act" was enacted to protect persons in Florida who assist others in emergency situations from liability for their actions. Although there is no general affirmative duty to assist victims of accidents under the common laws of the United States and Florida (as there is in many other countries), the Florida Good Samaritan law was enacted to protect those who may take an affirmative act to assist an accident victim.

The Good Samaritan Act (stated in its entirety in Appendix 34-1 to this chapter), generally states

that if a person acts reasonably in assisting an accident victim in a declared emergency situation, or in an emergency that occurs outside a facility with proper medical equipment, and the victim does not refuse treatment, the rescuer cannot be held liable for his or her actions.

B. EXCEPTIONS AND LIMITATIONS TO THE GENERAL RULE

The Affirmative Duty. There are some relationships that create an affirmative duty to act on behalf of another person in an emergency situation. In other words, if you have a special relationship to another person, as defined below, then there is an affirmative duty to act on behalf of that person.

The most common special relationships recognized are:

- a. Physician toward her patient;
- b. Shopkeeper toward his customer;
- c. Employer toward her employee;
- d. Parent toward her child.

C. APPLICATION OF THE ACT TO HOSPITAL AND HEALTHCARE PERSONNEL

The Act states that a hospital or healthcare provider employed by a hospital who renders medical care in an emergency situation to a patient who enters the hospital through its emergency room or trauma center, shall not be held liable for any civil damages as a result of such medical care or treatment unless such damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

"Reckless disregard" is defined as such conduct which a health care provider knew or should have known, at the time such services were rendered, would be likely to result in injury so as to affect the life or health of another, taking into account all extenuating circumstances. Reckless disregard is a higher standard of care than is the standard of the reasonably prudent person, the standard in other situations.

The immunity in the above paragraph does not apply to:

1. Damages that occur after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient; or
2. If the damage is unrelated to the original medical emergency.

The Act states that every emergency care facility granted immunity under the Act shall accept and treat all emergency care patients within the operational capacity of such facility without regard to ability to pay, including patients transferred from another emergency care facility or other health care provider pursuant to Pub. L. No. 99-272, s. 9121. If the facility fails to follow this section of the Act, then it is subject to discipline.

D. THE DEFINITION OF "EMERGENCY SITUATION"

1. Declared Emergency. A "Declared Emergency" is defined in Section 252.36, Florida Statutes. A "Declared Emergency" is also known as a "state of emergency." A state of emergency is usually only declared in a natural disaster or during war. Additionally, a state of emergency can only be declared by an executive order by the President of the United States or by proclamation of the Governor. Therefore, this type of immunity is rare.

2. Medical Emergency Outside of a Medical Facility. If an emergency situation occurs outside of a medical facility equipped with proper medical equipment and the injured victim does not object to assistance, then the rescuer cannot be held liable for civil damages if the rescuer acts as a reasonable person.

3. Emergency Room and Trauma Centers. If a patient enters a hospital emergency room or trauma center, and the patient requires immediate medical attention, the hospital or any healthcare employee of the hospital who renders medical care in good faith cannot be held liable for civil damages unless the healthcare employee acts with reckless disregard.

E. SUMMARY OF THE STANDARDS APPLICABLE IN GOOD SAMARITAN ACT CASES

1. Declared Emergency. Ordinary reasonably prudent person standard.

2. Emergency Outside of a Medical Facility. Ordinary reasonably prudent person standard.

3. Emergency Room and Trauma Centers. Reckless disregard standard of care.

4. Immunity. Is not provided once patient is stabilized or to acts or omissions unrelated to the original emergency.

F. SUMMARY CONDITIONS OF CLAIMING GOOD SAMARITAN ACT IMMUNITY

1. Declared Emergency. The victim must not object to care.

2. Emergency Outside of a Medical Facility. The victim must not object to care.

3. Emergency Room and Trauma Centers. Must provide emergency treatment to all patients within the operational capacity of the facility without regard to the ability of patients to pay.

4. Immunity. Does not apply if patient is stabilized or to acts or omissions unrelated to the original emergency.

III. THE FEDERAL VOLUNTEER PROTECTION ACT

Title 42 U.S.C. 14503, titled the Federal Volunteer Protection Act (VPA), affords volunteers of not-for-profit organizations, such as religious hospitals, public hospitals, charitable nursing homes, and nonprofit hospices, immunity from personal liability. Title 42 U.S.C., Section 14503(a) states:

Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if--

- (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
- (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;
- (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and
- (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to--
 - (A) posses an operator's license; or
 - (B) maintain insurance.

In the case of Armendarez v. Glendale Youth Ctr. et al. 265 F. Supp. 2d 1136 (D. Ariz. 2003), the Plaintiff [Armendarez] brought forth a claim against Glendale Youth Center, Inc. ("GYCI") and its individual board members for unpaid wages under the Fair Labor Standards Act. The board members asserted protection from suit under the Federal Volunteer Protection Act ("FVA"). "The VPA protects volunteers of non-profit organizations from both federal and state claims."*Id.* at 1139. (Emphasis added.)

In dismissing the claims against the board members of GYCI, the District Court held that immunity protections of the Federal Volunteer Protection Act applies to each volunteer member of the GYCI board. Armendarez at 1141. Therefore, as long as the individual board member was acting in good faith and within the course and scope of his duties as a member of the board, he will be immune from personal; liability from any act of negligence regarding the not-for-profit organization, pursuant to 42 U.S.C.

14503(a) and the holding in Armendarez.

IV. THE FLORIDA VOLUNTEER PROTECTION ACT

Similar to the federal act, Section 768.1355, Florida Statutes, entitled the "Florida Volunteer Protection Act," provides volunteers of not-for-profit organizations, such as religious hospitals, public hospitals, charitable nursing homes, and nonprofit hospices, immunity from personal liability. Section 768.1355(1), Florida Statutes, states:

Any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services. Such person shall incur no civil liability for any act or omission by such person which results in personal injury or property damage if:

- (a) Such person was acting in good faith within the scope of any official duties performed under such volunteer service and such person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- (b) The injury or damage was not caused by any wanton or willful misconduct on the part of such person in the performance of such duties.
 - 1. For purposes of this act, the term "nonprofit organization" means any organization which is exempt from taxation pursuant to 26 U.S.C., s. 501, or any federal, state, or local governmental entity.
 - 2. For purposes of this act, the term "compensation" does not include a stipend as provided by the Domestic Service Volunteer Act of 1973, as amended (Pub. L. No. 93-113), or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service.

See, Campbell v. Kessler, 848 So. 2d 369 (Fla. 4th DCA 2003). In the case of Campbell v. Kessler, the Florida Fourth District Court of Appeal held that a volunteer of a not-for-profit organization must meet both conditions of the Florida Volunteer Protection Act in order to be immune from civil liability.

V. FLORIDA'S NOT-FOR-PROFIT ORGANIZATION IMMUNITY STATUTE

Under Section 617.0834, Florida Statutes, board members of a not-for-profit organization recognized under Section 501(c)(3), of the Internal Revenue Code, are not personally liable for monetary damages to a person. Therefore, if the organization, such as a religious hospital, educational institution, public hospital, charitable nursing home, or nonprofit hospice, is a not-for-profit organization as defined in Section 501(c)(3), of the Internal Revenue Code, Section 617.0834, Florida Statutes, provides immunity for that individual.

Section 617.0834(1), Florida Statutes, states:

An officer or director of a nonprofit organization recognized under s. 501(c)(3) . . . of the Internal Revenue Code of 1986, as amended . . . is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless:

- (a) The officer or director breached or failed to perform his or her duties as an officer or director; and
- (b) The officer's or director's breach of, or failure to perform, his or her duties constitutes:
 - 1. A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her own conduct was unlawful
 - 2. A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
 - 3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton or willful disregard of human rights, safety or property.

VI. PROCEDURES FOR CLAIMING IMMUNITY

The Federal Volunteer Protection Act provides the strongest defenses since federal law preempts any conflicting state law. Therefore, it should be used (if applicable), cited first, and relied on most heavily. Any federal cases interpreting the Federal Volunteer Protection Act also apply in state court.

If sued, the individual's attorney should raise the Good Samaritan Act and the other statutes discussed above as defense in motions and pleadings filed in the case. Documents showing the not-for-

profit status of the organization, such as the certificate of incorporation from the Florida Department of State, the letter from the Internal Revenue Service granting 501(c)(3) status, or other similar documents should be obtained and attached to any motion or pleading filed. In addition, an affidavit from the president of the organization or the secretary of the organization stating the not-for-profit status of the organization, the voluntary status of the individual, the position of the individual (member of the board) and that the individual was acting within the course and scope of his duties at the time should also be obtained and attached.

The foregoing immunity should first be raised as grounds for dismissal in a motion to dismiss, with the documents described above attached to it. If this is not granted by the court, then the same should be claimed as an affirmative defense in any answer that is filed to the complaint (law suit). The defense should be raised again in a motion for summary judgment, that has the documents described above attached to it. Usually, the motion for summary judgment will be successful in obtaining a summary judgment in favor of the individual defendant.

A sample portion of the relevant parts of a motion to dismiss which raises the Good Samaritan Act, the Federal Volunteer Protection Act, and the other acts discussed above is attached as Appendix 34-2 to this chapter. A sample portion of the relevant parts of a supporting memorandum of law for the motion to dismiss which raises the Good Samaritan Act, the Federal Volunteer Protection Act, and the other acts discussed above is attached as Appendix 34-2 to this chapter. Like any other pleadings, they should only be used by an experienced, knowledgeable attorney and they must be tailored to the specific circumstances of the case.

VII. CONCLUSION

The Florida Good Samaritan Act, the Federal Volunteer Protection Act and other Florida laws provide volunteers a great deal of protection from liability for any negligent acts that occur during voluntary activities, especially those for charity organizations and not-for-profits. Make sure that you know whether or not they apply to you. If you do get sued, make sure that you advise your defense attorney of the possible application of these acts as many attorneys are unaware of them.

K:\Fla Nursing Law Manual\Ch-25 Good Samaritan Act.rtf

APPENDIX 34-1

FLORIDA GOOD SAMARITAN ACT, SECTION 768.13, FLORIDA STATUTES

SECTION 768.13 Good Samaritan Act; immunity from civil liability.--

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

(2)(a) Any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, a state of emergency which has been declared pursuant to s. 252.36 or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

(b)1. Any health care provider, including a hospital licensed under chapter 395, providing emergency services pursuant to obligations imposed by 42 U.S.C. s. 1395dd, s. 395.1041, s. 395.401, or s. 401.45 shall not be held liable for any civil damages as a result of such medical care or treatment unless such damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

2. The immunity provided by this paragraph applies to damages as a result of any act or omission of providing medical care or treatment, including diagnosis:

a. Which occurs prior to the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the immunity provided by this paragraph applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery.

b. Which is related to the original medical emergency.

3. For purposes of this paragraph, "reckless disregard" as it applies to a given health care provider rendering emergency medical services shall be such conduct that a health care provider knew or should have known, at the time such services were rendered, created an unreasonable risk of injury so as to affect the life or health of another, and such risk was substantially greater than that which is necessary to make the conduct negligent.

4. Every emergency care facility granted immunity under this paragraph shall accept and treat all

emergency care patients within the operational capacity of such facility without regard to ability to pay, including patients transferred from another emergency care facility or other health care provider pursuant to Pub. L. No. 99-272, s. 9121. The failure of an emergency care facility to comply with this subparagraph constitutes grounds for the department to initiate disciplinary action against the facility pursuant to chapter 395.

(c)1. Any health care practitioner as defined in s. 456.001(4) who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, shall not be held liable for any civil damages as a result of any act or omission relative to that care or treatment, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another.

2. The immunity provided by this paragraph does not apply to damages as a result of any act or omission of providing medical care or treatment unrelated to the original situation that demanded immediate medical attention.

3. For purposes of this paragraph, the Legislature's intent is to encourage health care practitioners to provide necessary emergency care to all persons without fear of litigation as described in this paragraph.

(d) Any person whose acts or omissions are not otherwise covered by this section and who participates in emergency response activities under the direction of or in connection with a community emergency response team, local emergency management agencies, the Division of Emergency Management of the Department of Community Affairs, or the Federal Emergency Management Agency is not liable for any civil damages as a result of care, treatment, or services provided gratuitously in such capacity and resulting from any act or failure to act in such capacity in providing or arranging further care, treatment, or services, if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.

(3) Any person, including those licensed to practice veterinary medicine, who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

History.--ss. 1, 2, ch. 65-313; s. 1, ch. 78-334; s. 62, ch. 86-160; s. 46, ch. 88-1; s. 4, ch. 88-173; s. 42, ch. 88-277; s. 1, ch. 89-71; s. 37, ch. 91-110; s. 33, ch. 93-211; s. 3, ch. 97-34; s. 1164, ch. 97-102; s. 2, ch. 2001-76; s. 3, ch. 2002-269; s. 65, ch. 2003-416; s. 1, ch. 2004-45.

APPENDIX 34-2

**SAMPLE MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT
BASED ON GOOD SAMARITAN ACT AND VOLUNTEER IMMUNITY**

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ABC COUNTY, FLORIDA

JOHN SMITH, as natural parent and
guardian of MARY SMITH, a minor,

Plaintiff,

CASE NO.: 2008-CA-1982

vs.

DIV. NO.:

MARK ANDERSON, HOPEFUL
HOSPITAL. etc., et al.,

Defendants.

/

**DEFENDANT MARK ANDERSON'S MOTION TO DISMISS
AND
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Mark Anderson. . . .

BACKGROUND AND FACTS

1. Background and facts about the case and providing the basis for the this motion should be stated here. Include the status of the individual as a volunteer, a board member, etc. Establish the organization as a charitable Florida not-for-profit corporation, recognized as a charity by the United States Internal Revenue Service (IRS) pursuant to Section 501c(3) of the Internal Revenue Code, or other organization for which the relevant acts apply.

GROUND FOR DISMISSAL

15. Mark Anderson moves to dismiss the Complaint, incorporating the foregoing paragraphs, and stating as follows:

* * *

Mark Anderson, as a Voluntary Director of a Charitable Not-For-Profit Corporation, Has Immunity

31. Mark Anderson serves as a member of the board of directors of Hopeful Hospital, without compensation.

32. At all relevant times hereto, Mark Anderson as served and acted in good faith within the course and scope of his duties as a member of the Board of Directors of Hopeful.

33. At all relevant times hereto, Mark Anderson has acted as a reasonable and prudent person would act under similar circumstances in serving as a member of the Board of Directors of Hopeful.

34. At all relevant times hereto, Mark Anderson has neither breached any duty of or failed to perform any act required as a member of the Board of Directors of Hopeful.

35. The injuries or damages alleged were not caused by any wanton or willful misconduct in serving as a member of the Board of Directors of Hopeful.

36. Hopeful is a not-for-profit corporation as defined in Section 501c(3), of the Internal Revenue Code of the United States.

37. Mark Anderson is personally immune from liability for civil damages in this matter pursuant to 42 U.S.C. Section 14503(a) ("The Federal Volunteer Protection Act"), Section 617.0834, Florida Statutes, and Section 768.1355, Florida Statutes ("The Florida Volunteer Protection Act").

* * *

65. Accordingly, the Third-Party Complaint against Mark Anderson should be dismissed.

WHEREFORE, for the reasons stated herein Mark Anderson respectfully requests that this Court enter an Order dismissing the Complaint.

Sections 57.105 and 766.104(1), Florida Statutes, and the inherent authority of the Court.

* * *

MOTION FOR SUMMARY JUDGMENT

75. Mark Anderson moves the Court to enter a summary judgment in his favor and against the Plaintiff, herein, pursuant to Rules 1.510 and 1.150(a), Florida Rules of Civil Procedure, and incorporates by reference paragraphs 1-XX above.

76. In support of this motion for summary judgment, Mark Anderson refers to the affidavits and verified motions of Jefferson Jones, M.D., Mary Francis, M.D., and Hopeful Hospital filed in the Court's file. A copy of the Affidavit of Jefferson Jones, M.D., President of Hopeful Hospital, Inc., is attached to this Motion as Exhibit "A" and is incorporated herein by reference.

WHEREFORE, for the reasons stated herein Mark Anderson respectfully requests that this Court enter a Judgment in his favor and against Plaintiff.

CERTIFICATE OF SERVICE

[DELETED]

THE HEALTH LAW FIRM
1101 Douglas Avenue
Altamonte Springs, Florida 32714
Telephone: (407) 331-6620
Telefax: (407) 331-3030
ATTORNEY FOR DEFENDANT
MARK ANDERSON

Attachments:

Exhibit "A" - Copy of Affidavit of Jefferson Jones, M.D., President, Hopeful Hospital
Exhibit "B" - Certificate of Incorporation from Florida Department of State
Exhibit "C" - IRS Letter dated January 30, 1983, granting Hopeful Hospital 501(c)(3) status

APPENDIX 34-3

**SAMPLE MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT
BASED ON GOOD SAMARITAN ACT AND VOLUNTEER IMMUNITY**

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
ABC COUNTY, FLORIDA

JOHN SMITH, as natural parent and
guardian of MARY SMITH, a minor,

Plaintiff,

CASE NO.: 2008-CA-1982

vs.

DIV. NO.:

MARK ANDERSON, HOPEFUL
HOSPITAL. etc., et al.,

Defendants.

DEFENDANT MARK ANDERSON'S

**MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO DISMISS AND
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant Mark Anderson. . . .

I. BACKGROUND AND FACTS

1. [State any additional facts required.]

II. LEGAL ANALYSIS

* * *

**C. Mark Anderson, as a Voluntary Director of a Charitable Not-For-Profit
Corporation, Has Immunity**

1. The Federal Volunteer Protection Act

Title 42 U.S.C. 14503, titled the Federal Volunteer Protection Act, affords volunteers of not-for-profit organizations, such as Hopeful Hospital, immunity from personal liability. Title 42 U.S.C., Section 14503(a) states:

Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if--

- (1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;
- (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;
- (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and
- (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to--
 - (A) possess an operator's license; or
 - (B) maintain insurance.

In the case of Armendarez v. Glendale Youth Ctr. et al. 265 F. Supp. 2d 1136 (D. Ariz.

2003), the Plaintiff [Armendarez] brought forth a claim against Glendale Youth Center, Inc. ("GYCI") and its individual board members for unpaid wages under the Fair Labor Standards Act. The board members asserted protection from suit under the Federal Volunteer Protection Act ("FVA"). "The VPA protects volunteers of non-profit organizations from both federal and state claims." Id. at 1139. (Emphasis added.)

In dismissing the claims against the board members of GYCI, the District Court held that immunity protections of the Federal Volunteer Protection Act applies to each volunteer member of the GYCI board. Armendarez at 1141. At all relevant times hereto, Mark Anderson has served and acted in good faith within the course and scope of his duties as a volunteer member of the Board of Directors of Hopeful Hospital, a not-for-profit organization.

Pursuant to 42 U.S. C. 14503(a) and the holding in Armendarez, Mark Anderson is immune from liability for civil damages in this matter.

2. The Florida Volunteer Protection Act

Section 768.1355, Florida Statutes, titled the Florida Volunteer Protection Act, provides volunteers of not-for-profit organizations, such as Hopeful Hospital, immunity from personal liability. Section 768.1355(1), Florida Statutes states:

Any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services. Such person shall incur no civil liability for any

act or omission by such person which results in personal injury or property damage if:

- (a) Such person was acting in good faith within the scope of any official duties performed under such volunteer service and such person was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- (b) The injury or damage was not caused by any wanton or willful misconduct on the party of such person in the performance of such duties.
 - 1. For purposes of this act, the term "nonprofit organization" means any organization which is exempt from taxation pursuant to 26 U.S.C., s. 501, or any federal, state, or local governmental entity.
 - 2. For purposes of this act, the term "compensation" does not include a stipend as provided by the Domestic Service Volunteer Act of 1973, as amended (Pub. L. No. 93-113), or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service.

Mark Anderson serves as a director of Hopeful Hospital, without compensation. At all relevant times hereto, Mark Anderson has acted as a reasonable and prudent persona would act under similar circumstances in serving as a member of the Board of Directors of Hopeful Hospital. Furthermore, the injuries or damages alleged by Plaintiff were not caused by any wanton or willful misconduct by Mark Anderson serving as a member of the Board of Directors of Hopeful Hospital. Consequently, Mark Anderson is immune from civil damages in this matter under

Section 768.1355, Florida Statutes (The Florida Volunteer Protection Act). See, Campbell v. Kessler, 848 So. 2d 369 (Fla. 4th DCA 2003)¹.

3. Non-For Profit Organization Immunity Statute

Under Section 617.0834, Florida Statutes, Board Members of a not-for-profit organization recognized under Section 501(c)(3), of the Internal Revenue Code, are not personally liable for monetary damages to a person. As previously discussed, Hopeful Hospital, of which Mark Anderson is a board member of, is a not-for-profit organization as defined in Section 501(c)(3), of the Internal Revenue Code. Section 617.0834(1), Florida Statutes, states:

An officer or director of a nonprofit organization recognized under s. 501(c)(3) . . . of the Internal Revenue Code of 1986, as amended . . . is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless:

- (a) The officer or director breached or failed to perform his or her duties as an officer or director; and
- (b) The officer's or director's breach of, or failure to perform, his or her duties constitutes:
 - 1. A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her own conduct was unlawful

. . . .

¹ In the case of Campbell v. Kessler, the Fourth District Court of Appeal held that a volunteer of a not-for-profit organization must meet both condition of the Florida Volunteer Protection Act in order to be immune from civil liability.

2. A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
3. Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton or willful disregard of human rights, safety or property.

The injuries or damages complained of in Plaintiff's Complaint were as a result of his own negligence, and were unrelated to the actions of Mark Anderson. Mark Anderson is personally immune from liability for civil damages in this matter pursuant to Section 617.0834(1), Florida Statutes.

* * *

N. Mark Anderson is Entitled to Summary Judgment Under Sections 1.150(a) and 1.510(c), Fla. R.Civ.P.

Rule 1.510(c), Florida Rules of Civil Procedure, provides for the granting of summary judgment in favor of a defendant when:

The pleadings, depositions, answers to interrogatories, and admissions of file together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Where a movant for summary judgment offers sufficient evidence to support its claim of non-existence of material fact, the opposing party must demonstrate the existence of disputed issues of fact either by presenting evidence of counter-veiling facts or justifiable inferences from the facts presented. Woodruff v. Gov't Employees Ins. Co., 669 So.2d 1114, 1116 (Fla. 1st DCA

1996). If the opposing party fails to present such evidence, summary judgment may be entered in favor of the moving party. Woodruff. at 1116.

Where the record demonstrates that a plaintiff cannot prove one or more elements of the cause of action, summary judgment in favor of the defendant is proper. Rodgers v. Bestoff, 640 So.2d 1236 (Fla. 1st DCA 1994). Mark Anderson refers to the affidavits and verified motions of XXX, M.D., YYY, M.D. and Hopeful Hospital and ZZZ filed in the Court's file.

Section 1.150(a), Rules of Civil Procedure also provides for the granting of summary judgment against a party who has filed a sham pleading. Section 1.150(a), Florida Rules of Civil Procedure, states, in part:

Default and summary judgment on the merits may be entered in the discretion of the court or the court may permit additional pleadings to be filed for good cause shown.

Defendant Sutton is not able to show any duty that Mark Anderson owed to her. Defendant Sutton is not able to show that there was a breach of any duty by Mark Anderson. Moreover, Defendant Sutton is unable to show that there is any causation between any act or failure to act by Mark Anderson on December 17, 2002, that caused or contributed to her alleged injury.

In the absence of merely one (1) element of medical negligence, a summary judgment must be entered in favor of Mark Anderson. In this instance, we have shown an absence of three (3) of the required elements. Accordingly summary judgment final judgment in favor of Mark Anderson, is warranted. Pursuant to Rules 1.510(c) and 1.150(a), Florida Rules of Civil Procedure, Mark Anderson is entitled to a summary judgment in his favor and against the Plaintiff.

WHEREFORE, for the reasons for the reasons stated herein and for the reasons set out in his Amended and Supplemental Motions to Dismiss and Motion for Summary Judgment, Mark Anderson respectfully requests that this Court enter an Order dismissing Plaintiff's Complaint with prejudice as to him.

CERTIFICATE OF SERVICE

[DELETED]

GEORGE F. INDEST III, ESQUIRE

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