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## CHAPTER 7

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# THE GOOD SAMARITAN ACT AND PROTECTION FROM LIABILITY

by  
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### SCOPE

This chapter discusses the Florida Good Samaritan Law and other laws which protect physicians and health care providers rendering emergency or voluntary services. The Good Samaritan Law may be used as an affirmative defense to civil liability in a law suit for malpractice or injury. Other laws that provide protection from liability for health care providers, including the Federal Volunteers Protection Act of 1997 are discussed, as well.

### SYNOPSIS

- §7.01 Good Samaritan Laws in General**
- §7.02 The Florida Good Samaritan Act, Section 768.13, Florida Statutes**
  - [1] Exceptions and Limitations to the General Rule
  - [2] Application of the Act to Hospital Personnel
  - [3] The Definition of an “Emergency Situation”
  - [4] Summary of Standards of Care for Good Samaritans
  - [5] Summary of the Conditions for Claiming Immunity
  - [6] Definition of “Volunteer”
- §7.03 Florida Volunteer Protection Act, Section 768.1355, Florida Statutes**
- §7.04 Federal Volunteer Protection Act of 1997**

### §7.01 Good Samaritan Laws in General

Laws known generally as “Good Samaritan Laws” were enacted to protect persons who voluntarily assist others in emergency situations from liability for their actions. In Florida, there are actually several different statutes that may insulate the acts of a physician providing voluntary services. Additionally, there is a little known federal law which protects individuals providing voluntary services in federal hospitals, clinics and certain other types of organizations.

### §7.02 The 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 voluntarily assist others in emergency situations from liability for their actions.

This law can provide a good defense to physicians in many different circumstances. Although there is no general affirmative duty to assist victims of accidents in the United States (as there is in many other countries), the Good Samaritan laws have been enacted to protect those who may take an affirmative act to assist an accident victim.

The Good Samaritan Act (included in its entirety in the appendix), 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.

The actual text of the act states:

(1) Any person who gratuitously and in good faith renders emergency care or treatment 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.

(2) Any hospital licensed under chapter 395, any employee of such hospital working in a clinical area within the facility and providing patient care, and any person licensed to practice medicine who in good faith renders medical care or treatment necessitated by a sudden, unexpected situation or occurrence resulting in a serious medical condition demanding immediate medical attention, for which the patient 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.

(3) Any person who is licensed to practice medicine, while acting as a staff member or with professional clinical privileges at a nonprofit medical facility, other than a hospital licensed under chapter 395, or while performing health screening services, shall not be held liable for any civil damages as a result of care or treatment provided gratuitously in such capacity as a result of any act or failure to act in such capacity in providing or arranging further medical treatment, if such person acts as a reasonably prudent person licensed to practice medicine would have acted under the same or similar circumstances.

[1] **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.

[2] **Application of the Act to Hospital 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:

- a. Damages that occur after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient; or
- b. 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.

[3] **The Definition of an “Emergency Situation”**

- [a] **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.
- [b] **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.
- [c] **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.

[4] **Summary of Standards of Care for Good Samaritans**

- [a] **Declared Emergency** — Ordinary reasonably prudent person standard;
- [b] **Emergency Outside of a Medical Facility** — Ordinary reasonably prudent person standard;
- [c] **Emergency Room and Trauma Centers** — Reckless disregard standard of care;
- [d] **Immunity** — Is not provided once patient is stabilized or to acts or omissions unrelated to the original emergency.

[5] **Summary of the Conditions for Claiming Immunity**

- [a] **Declared Emergency** — The victim must not object to care;
- [b] **Emergency Outside of a Medical Facility** — The victim must not object to care;
- [c] **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.
- [d] **Immunity** — Does not apply if patient is stabilized or to acts or omissions unrelated to the original emergency.

[6] **Definition of “Volunteer”**

Under this particular section of Florida Statutes, “volunteer” means any person who provides goods or services to any state or nonprofit organization, with no monetary or material compensation. In addition to the above, volunteers shall be covered by state liability protection. In accordance with the definition of a volunteer and the provisions of section 768.28, Florida Statutes. Volunteers are required to be covered by workers’ compensation in accordance with chapter 440, Florida Statutes, the same as if they were paid employees. Volunteers shall be covered by section 768.1355, Florida Statutes, the Florida Volunteer Protection Act (see also Part IV, Chapter 110, Florida Statutes).

**§7.03 Florida Volunteer Protection Act, Section 768.1355, Florida Statutes**

According to Florida’s Volunteer Protection Act, Section 768.1355, Florida Statutes, any person who volunteers to perform any service for any nonprofit organization, without compensation, when acting within the scope of any official duties 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 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.

For purposes of this act, the term “nonprofit organization” means any organization which is exempt from taxation pursuant to 26 U.S.C. section 501, or any federal, state, or local governmental entity. 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. Members of elected or appointed boards, councils and commissions of the state, counties, municipalities, authorities, and special districts shall incur no civil liability and shall have immunity from suit as provided in section 768.28, Florida Statutes, for acts or omissions by members relating to members’ conduct of their official duties.

**§7.04 Federal Volunteer Protection Act of 1997**

Congress enacted a federal law which went into effect in 1997 which was intended to protect certain volunteers from certain liabilities. This law is known as the Federal Volunteer Protection Act of 1997, 42 U.S.C. 14501. In passing this act, Congress made findings to support its need, stating the following:

- (1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;
- (2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service

agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;

(5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;

(6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and

(7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because —

(A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

(B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D) (i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and

(ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

**Purpose:**

The purpose of this chapter is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

The law provides that 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:

- (a) 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;
- (b) 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;
- (c) 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
- (d) 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
  - (1) possess an operators license; or
  - (2) maintain insurance.

The limitations on the liability of a volunteer under this federal law do not apply to any misconduct that:

- (a) constitutes a crime of violence (as that term is defined in 18 U.S.C. 16) or act of international terrorism (as that term is defined in 18 U.S.C. 2331) for which the defendant has been convicted in any court;
- (b) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act, 28 U.S.C. 534 note);
- (c) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;
- (d) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

- (e) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

Additionally, the federal law provides liability under certain circumstances, but restricts and places caps on the amount of damages that can be awarded. For a more detailed explanation of these, please see the text of this act contained in the appendix or which can be found at the following website: [www.myfa.org/DutyofCareact1997.html](http://www.myfa.org/DutyofCareact1997.html).



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