The nurse as "Good Samaritan"

By L.E. and F.A. Rozovsky

Nurses are sometimes warned:
"Do not stop at the scene of an accident! You can only get into legal trouble." Is this really true, or is it yet another one of those medico-legal myths that continue to influence health professionals, much to the frustration of lawyers who act on their behalf?

Basic principles

The traditional law of the "Good Samaritan" is no different from the law governing the conduct of the nurse and other health professionals in any other situation. It consists of two basic principles.

The first is that no one has any duty to go to the aid of any other person regardless of need - except when they are obliged by law to do so. It is quite permissible to stand on the beach and watch someone drown. There has been no traditional legal duty under English Common Law to make any attempt to save the victim.

This principle applies not only to the average lay person, but to those who are trained to be of assistance, such as a nurse.

This principle may fly in the face of ethical and religious obligations, and even professional obligations. The law is not saying that the passer-by must not be a "Good Samaritan." It is saying that the passer-by need not be a "Good Samaritan."

Not all communities accept this principle. Quebec, for example, requires people to be a Good Samaritan, as do most European countries. In many countries, it is a serious criminal offence not to be a "Good Samaritan."

The duty of the "Good Samaritan"

Once a nurse, or anyone else, becomes a "Good Samaritan" and goes to the assistance of someone in need, the legal duty which is imposed is no different than the duty imposed on the nurse who is rendering assistance in the course of employment.

The principle is that every person who provides a service to any other person must act in an average, reasonable and prudent manner in order to avoid reasonably foreseeable injury.

In the case of a nurse, this duty is higher. The duty of a nurse towards anyone who is receiving those nursing services is to act as would the average, reasonable and prudent nurse in the circumstances. What is average, reasonable and prudent depends on the circumstances.

The fear of many is that it is not possible for the nurse to meet these standards at the scene of an emergency or accident. This is a misconception. The required standards in an emergency are not the same as in a well-controlled hospital setting. They must be appropriate to the circumstances of the emergency.

The myth

It is believed by many that a nurse responding voluntarily to an emergency situation will not be able to meet average, reasonable, and prudent standards and will be held responsible for any injury that results. This is not true.

What is true is that the nurse will be held responsible for any injury resulting from the failure to meet the standards of an average, reasonable and prudent nurse in a similar situation. The law does not require the nurse to meet the standards which a nurse would meet in the emergency department of a well-equipped hospital, or even an emergency in a hospital in which support staff and equipment are available. The issue is what is reasonable at an accident scene on the highway, or on a sidewalk, perhaps in the rain, or in a tangled automobile. Therefore, the fear that a successful lawsuit can result from failing to meet the usual standards is totally unrealistic.

A further problem is that the patient who wishes to be a plaintiff and sue the nurse would have to prove that the injury resulted, not from the accident or other emegency, but from the nurse's failure to meet these appropriate emergency standards. This would be extremely difficult.

The nurse "out of practice"

A real dilemma faces the nurse who has not done any practical nursing in many years. This once-trained professional may now be an expert consultant, insurance claims assessor, or administrator.

Arriving on the scene of an accident, she carries the title "nurse." This assumes that she meets the standards of the average, reasonable and prudent nurse in an emergency situation. The key is what the law refers to as "holding out."

If a nurse holds herself/himself out as having a certain expertise and training, she is expected by law to meet the standards of an average, reasonable and prudent nurse having that expertise and training. The "holding out" often comes about not by what the nurse says, but by what the nurse does.

If a nurse undertakes a particular task or procedure, she/he is in effect "holding herself/himself out" as being capable of carrying out that task in an average, reasonable and prudent manner. The lesson, therefore, is that the nurse who is not capable of carrying out certain tasks should not carry them out.

Frequently at the scene of an accident, someone other than the nurse is present. This may be a physician, a first-aider or a police officer. The issue then arises whether the nurse should replace whoever is providing care, such as CPR, or turn the care over to the newcomer.

The answer is not found in the title "nurse." The fact that the other person is a physician may not mean that the patient will receive better care. A psychiatrist would not provide the proper standard of care, despite the fact he/she is a physician. Similarly, a first-aider may, in some circumstances, be more proficient than a nurse who ordinarily does not work in emergency situations.

The other precaution that should be taken is to record briefly what happened in a personal diary. This should be done immediately after the event.

The state steps in

Despite the fact that in Canada there has never been a "Good Samaritan" lawsuit, health professions are still motivated by the fear of a malpractice suit.

To encourage people to be "Good Samaritans," many American state legislatures have enacted what are known as "Good Samaritan" laws. A number of Canadian provinces have followed suit.

There has been a great deal of difficulty in adopting the European compulsory approach now that Canada possesses the Canadian Charter of Rights and Freedoms. In fact, legislation might be regarded as contravening the person's constitutional right to security of the person.

The approach throughout North America has been to make it more difficult for a patient to sue a "Good Samaritan" in the hope that it will reduce the fear of a potential "Good Samaritan" and thus encourage him/her to render assistance. The way in which this is done is to prevent a "Good Samaritan" from being held responsible for any injury caused by negligence unless the negligence could be considered as "gross negligence."

The problem with these laws, which exist in most provinces and American states, is that there is no uniformity. In some legislation, the protection is only given to doctors. In others, it is given only to doctors who are licensed in that jurisdiction. In some it is extended to doctors and nurses, whereas in others it is given to all "Good Samaritans," regardless of their qualifications.

Reducing the fear

The lesson to be learned from all this is that if a nurse is to be sued for malpractice, it is highly unlikely to arise from a "Good Samaritan" situation. It is much more likely to arise from a normal institutional incident when full professional support and equipment are available.

Legislation has been passed solely to lessen the fears of health professionals from a totally unrealistic threat.

Conclusion

Nurses should not be afraid of a malpractice suit in a "Good Samaritan" situation as long as they abide by average, reasonable and prudent standards in the circumstances. If a nurse cannot meet those standards in an emergency situation, he/she should not be a "Good Samaritan."

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