

Medico-legal issues in cardiopulmonary resuscitation and defibrillation

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As a lawyer advising hospitals on medico-legal claims, from time to time my clients do consult me on cases relating to cardiopulmonary resuscitation (CPR), where a claimant may raise certain issues regarding how CPR was performed (or not performed), and/or the timing of such interventions. These are medico-legal issues that arise in a *clinical* setting, where there is no controversy that a duty of care to the patient already arises. The disputes relate mainly to how the duty of care was discharged, and whether the standard of care has been met.

However, in a *community* setting, a more fundamental question arises as to the extent to which a healthcare professional (or for that matter, any person who has undergone some basic training on CPR) may be obliged under the law to go to the aid of a stranger. Any reticence on the part of the healthcare professional may not be entirely due to matters of selfish interest—what’s in it for me?—but often also arises as a result of concern over the limitations of the resources available to them if and when they have to go to another person’s aid. Healthcare professionals set themselves high standards. When they operate in circumstances where they are afraid that those high standards cannot be met, it often affects their actions, or explains their inaction. The honest truth is that doctors are often afraid that they could be found liable if they offer their help and yet fail to do any good.

So is there a legal duty to go to someone’s aid? The law generally does not require a bystander to assist someone in danger, except where there is a special relationship between the would-be rescuer and the rescuee, or where the rescuer was the very person who had put the rescuee in danger. In the landmark case of *Horsley vs. MacLaren*, a decision of the Supreme Court of Canada, the Court held that there was no duty at common law to rescue or aid anyone in distress. In fact, the Court pointed out that a person “*who imperils himself by his carelessness may be as fully liable to a rescuer as a third person would be who imperils another*”.

But healthcare professionals cannot merely concern themselves with the law. There is also a matter of ethics to consider, and what the profession expects of its members. Some years back, there was a case of a doctor who was roundly criticised in media reports because he had refused to leave his clinic to go to the aid of someone who had

collapsed on the street outside, justifying his actions by pointing out that he had a greater duty to attend to the (paying) patients who were waiting in his clinic to see him. The doctor’s behaviour invited many disparaging comments from the public, and if my memory serves me correctly, the Singapore Medical Association subsequently clarified that in such situations where a doctor’s actions can save lives, the profession expects its doctors to go to the person’s aid, and this was because there is a higher ethical duty imposed on doctors.

So if there is a higher ethical duty that requires healthcare professionals to go to a stranger’s aid, why can’t there be a Good Samaritan law that helps to absolve the would-be rescuer from any liability if his attempts to help the stranger fail or actually makes things worse? Surely, if we had such a law, it would put a lot of minds at ease and more people who are in a position to help others in trouble would be encouraged to take action.

First of all, it must be said that a Good Samaritan refers to a rescuer who responds in an emergency when there is no legal obligation to do so. So Good Samaritan laws do not apply to a doctor or nurse when they care for patients in a clinical setting. The Good Samaritan law is therefore not a convenient defence for healthcare providers who have to discharge their duty to provide reasonable care to their patients.

At the same time, it must also be stressed that neither the law nor ethics should be seen as making unreasonable demands on a healthcare professional who is trying his level best to respond in an emergency situation. This is especially so when the emergency occurs in a community setting, where availability of equipment, drugs or assistance is limited or non-existent. The law is not going to hold you to the standards of care available in a hospital or even a clinic setting, when the circumstances are clearly different. Due consideration will be given to the conditions under which the emergency intervention is being provided. In a true emergency, I would venture to say that it is often going to be quite difficult to show that the person in distress would have been worse off with no treatment or attempted intervention at all.

How is this relevant? Well, a decision to enact Good Samaritan laws has to be made consciously, and the need for such laws has to be properly justified. If the medico-legal risk of being a Good Samaritan is low to begin with,

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the need for Good Samaritan laws would not be seen as a priority for lawmakers.

In reality, a Good Samaritan does assume risks, and enacting Good Samaritan laws does not automatically mean that those risks are removed. The law does not require a bystander to render assistance in an emergency situation, but if a Good Samaritan does choose to respond, he is actually under a duty of care to act reasonably. If the rescue actions are unreasonable or actually aggravate the plight of the victim, the rescuer can potentially become liable to the victim.

That actually makes good sense to a lot of people. We would not want the existence of Good Samaritan laws to encourage rash behaviour that could put the victim in greater danger, especially when the victim is at his most vulnerable and unable to resist the Good Samaritan's attempts at rescue, no matter how foolish and inappropriate.

Let's look at the case of *Van Horn vs. Torti*, a decision of the California Supreme Court. In that case, Lisa Torti and her co-worker Alexandra Van Horn had been involved in a car crash. Torti saw smoke and believed that the car was about to explode. She yanked her injured and helpless friend out of the wreck "*like a rag doll*", and it turned out that her action likely caused her friend to become a paraplegic. The car did not explode, and her friend subsequently sued her for negligence.

Now, California had enacted Good Samaritan laws. The California Health and Safety Code 1799.102 provided that "no person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission". So naturally, Torti raised this as her defence. However, in a 4-3 ruling, the Court held that the statute immunising rescuers from liability applied only if the individual was providing medical care in an emergency situation. Since Torti was acting only as a concerned friend, the majority held that she did not benefit from the protection under this law. The Court said: "*A person has no duty to come to the aid of another. If, however, a person elects to come to someone's aid, he or she has a duty to exercise due care. Thus, a 'Good Samaritan' who attempts to help someone might be liable if he or she does not exercise due care and ends up causing harm.*"

In the US, this decision attracted some criticism. Some pointed out that such a narrow interpretation of Good Samaritan laws had the effect of discouraging future Good Samaritans out of a fear of being sued. A Republican state senator who had been a highway patrol officer for many years pointed out that in his previous

work when he responded to an accident, he was often not the first on the scene and a bystander might have helped a victim out of a car and was in the process of administering CPR. He felt that the decision in *Van Horn vs. Torti* would thwart people's willingness to go to someone else's aid and that this could translate to loss of lives. Yet others, including legal scholars, pointed out that it made good sense that those who want to be rescuers must continue to be held to a standard of reasonable care. A noble intention to help others was no excuse for recklessness or negligence that could cause even more injury.

So what are the implications to healthcare professionals who recognise that their training puts them in a position to help others requiring emergency treatment, and who genuinely want to fulfill their moral and ethical duty to respond appropriately in such situations? Well, my advice is, don't wait for Good Samaritan laws to be enacted. Yes, the existence of Good Samaritan laws may provide doctors with more comfort and assurance when they have to go to someone's aid, but so long as you exercise good sense, it is going to be very hard for you to be blamed or successfully found to be liable when that person you are trying to rescue does not survive or suffers further injury. The claimant has to prove that the bad outcome was caused by your attempt, and not by the original acute condition or injury.

It is also important to remind doctors not to forget the training they have received in performing CPR and using defibrillators. Many doctors may have received training early in their careers, but have had very little occasion to use their skills in their current practice. Keeping updated and learning how to operate new equipment that could increasingly be found outside a hospital or clinic setting could make all the difference to whether your intervention saves a life. A doctor responding in an emergency would still be expected to assess appropriately and to make sensible and logical decisions on what to do. While he will be judged with full consideration of the limitations placed on him, extenuating circumstances alone will not excuse actions that recklessly endanger others.

So the key to managing medico-legal risks associated with performing CPR and using defibrillation lies not so much in providing special legal defences, but in the simple application of good sense and proper training, and the regular upgrading of one's knowledge and skills; all the things that medical professionals are supposed to be doing anyway. So when someone shouts, "Is there a doctor in the house?", let's hope that doctors will be able to respond confidently and without undue fear and trepidation.