

Small Business Concerns

Legal rights of veterinarians under veterinary Good Samaritan statutes and equine liability statutes

Terence J. Centner, JD, LL.M.

Every state legislature has provided encouragement to charitable or philanthropic activities through Good Samaritan statutes that provide immunity against legal actions based on negligence.¹ With this statutory immunity, whenever a qualifying person does a good deed but commits an act or omission causing an injury, the act or omission cannot serve as a basis for holding the Good Samaritan liable for damages.² The major purpose of Good Samaritan statutes is to shield a person from liability, but their immunity is limited through 1 or more qualifications. Moreover, as a legal defense, Good Samaritan statutes do not preclude lawsuits.

Although Good Samaritan statutes vary substantially, a Good Samaritan prototype consisting of 5 elements may be constructed to assist in comprehending their general meaning.¹ First, the prototype enumerates a protected class. The class initially was limited to physicians, but has subsequently been expanded by state legislatures to include police officers, fire fighters, emergency medical service personnel, health care providers, and veterinarians. Second, the prototype generally prescribes the zone of protection as an emergency or site of an accident. Next, the Good Samaritan prototype requires a gratuitous act so the actor may not collect a fee. Fourth, good faith is required under the prototype, either as a subjective state of the Samaritan's mind or an objective limitation on a Samaritan's qualification.³

The fifth element, perhaps the most important, is the standard of conduct that cannot be exceeded to qualify for the immunity of a Good Samaritan statute. The Good Samaritan prototype does not grant unqualified immunity; it generally limits immunity for acts or omissions that were negligent. Such immunity often is established by a statutory grant whereby the Samaritan has immunity except in a case of gross negligence. Immunity has been granted for gross conduct by a few Samaritan statutes, whereas Samaritan statutes almost never excuse willful and wanton disregard for the safety of another.

Because of the vagaries of political processes in the 50 states, many of the Good Samaritan statutes lack 1 or more of the enumerated elements, so that the Good Samaritan prototype may not constitute an accurate description of a specific statute. Therefore, a person who is a member of a protected class needs to

ascertain the particular qualifications and conditions that must be met to qualify under the applicable Good Samaritan statute.

The encouragement of good deeds embodied in the Good Samaritan statutes was expanded beyond immediate aid in emergency situations in the 1970s when state recreational use statutes were enacted to encourage property owners to make their land available for recreational uses.^{4,5} Another expansion of the prototype occurred through veterinary Good Samaritan statutes whereby veterinarians treating animals rather than humans may qualify for immunity (Appendix 1).^{2,6}

Within the past 6 years, more than 30 states have drawn on the Good Samaritan prototype to enact "equine liability statutes" for qualifying persons associated with equine activities (Appendix 2).⁷ Every equine liability statute, except Minnesota's,⁸ allows persons charging fees to qualify for the statutory protection. The statutes encourage equine activities by providing protection against liability, based on qualifying injuries to riders and others. Although equine statutes are primarily concerned with equine sponsors and professionals, some of them specifically address mishaps involving veterinarians and medical treatment of animals. The importance of this coverage is that the equine statutes may preclude veterinarians from recovering damages for some injuries involving medical treatment of equines. Moreover, this concept may be expanded to include other large animals, which would further eliminate some legal rights currently enjoyed by veterinarians.

Given the confusing array of various veterinary Good Samaritan and equine liability statutes affecting veterinarians, a description of the provisions and an explanation of their meaning may be helpful. This article delineates the veterinary Good Samaritan statutes and describes the equine liability statutes as they impact the legal rights of veterinarians. The derogation of veterinarians' rights in some states is noted, and provisions of the statutes are related to current policy issues.

Veterinary Good Samaritan Statutes

At least 18 states have adopted veterinary Good Samaritan statutes in which veterinarians treating animals are the protected class (Appendix 1). A few states also offer statutory immunity to registered veterinary technicians.² Moreover, additional statutory provisions may offer veterinarians protection against liability for

From the College of Agricultural and Environmental Sciences, University of Georgia, Athens, GA 30602.

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assisting human beings. Except for Virginia,⁹ the veterinary Good Samaritan statutes require that the veterinarian be treating an animal in an emergency before the statute's provisions apply. The statutes delineate various qualifications for an emergency, such as care at the scene of an accident or emergency, care adjacent to public highways, emergency treatment to sick and injured animals, or a combination of these qualifications.

Examining the third element of the Good Samaritan prototype, 8 of the statutes follow the requirement that there be no fee, whereas 10 do not specify this element (Appendix 1). Only 10 of the statutes prescribe good faith as a requirement for qualification, although Minnesota requires humane assistance that may be a comparable requirement (Appendix 1).¹⁰

Good Samaritan statutes prescribing good faith fail to succinctly disclose the meaning of this term, except for the Pennsylvania statute that relates the term to the immediacy of the situation.¹¹ Good faith is an abstract quality that encompasses the absence of malice or design to defraud.¹² It also involves being faithful to one's obligation.¹³ The unanswered question concerning the statutory good faith provision is that it does not reveal whether good faith refers to the subjective state of mind of the Samaritan or an objective limitation on the immunity.

Courts and legal writers have yet to provide a definitive answer to this issue.^{1,3,13-15} The meaning of negligent conduct under a Good Samaritan statute's good faith provision has been considered by 3 courts, with different admonitions. A California court noted that gross negligence may well constitute the lack of good faith in a proper case, as such are separate issues (a subjective standard).¹³ A different California court could not find any authority to support a notion that gross negligence constituted a lack of good faith.¹⁴ Agreement between the plaintiff and the defendant that the Samaritan acted in good faith was found by a Georgia court to mean that there could be no liability (an objective standard).¹⁵ Concurring and dissenting opinions in the Georgia case suggested a subjective standard should be used as the judges viewed good faith and negligence as separate issues.¹⁵

The absence of a definitive meaning for the good faith provision means it is not clear whether a Samaritan's negligent conduct would disqualify a defendant from the statutory immunity. Rather, there are 3 potential outcomes. Under a subjective standard, a court could conclude that although the veterinarian was negligent, the emergency treatment was in good faith. Under this analysis, the veterinarian would qualify for the statutory immunity. In the alternative, a court could find under a subjective standard that the veterinarian's negligence involved the lack of good faith. Under this finding, the veterinarian would not qualify for the statutory immunity. If a court evaluates good faith under an objective standard, a court would find that a veterinarian who renders emergency treatment in good faith qualifies for the statutory immunity regardless of the veterinarian's standard of conduct. By meeting the statutory good faith requirement, the veterinarian qualifies for the statutory immunity.

To ensure qualification for the statutory immunity,

veterinarians may want to assume that a subjective standard applies. Under this standard, if a veterinarian is simply negligent and not grossly negligent, the most likely outcome by a court should be a conclusion that the veterinarian acted in good faith and qualifies for immunity (Appendix 1). The Florida statute does not follow this rule because it also contains a requirement that the veterinarian act as a prudent person.¹⁴

On the other hand, if a veterinarian engages in grossly negligent conduct, it is more likely that this veterinarian fails to meet the statutory good faith requirement under a subjective standard. In such a case, the immunity of the veterinary Good Samaritan statute would not be available to shield the defendant from liability (Appendix 1). The Virginia statute is an exception because it provides, in addition to a good faith qualification, that the veterinarian is liable if there is gross negligence.⁹

Seven of the statutes specify that the statutory immunity is not available whenever the veterinarian's conduct is grossly negligent. This means that a veterinarian does not incur liability for ordinary negligence, but remains liable for gross negligence. Two states, Colorado and Rhode Island, contain provisions that provide additional protection for veterinarians. Colorado provides that the "immunity does not apply in the event of wanton or reckless disregard of the rights of the owner of [the] animal."¹⁵ Rhode Island provides that the veterinarian is not "liable for any actions taken by them in the treatment or care of [an] animal."¹⁶ Therefore, in Colorado and Rhode Island, an injured plaintiff suffering emotional distress or the loss of an animal from a veterinarian's gross negligence in medical treatment of the animal may not recover damages.

The standard of conduct delineating immunity for a veterinarian's acts or omissions in an emergency is similar in most states. Negligent conduct generally is pardoned, whereas gross negligence traditionally is not excused (Appendix 1). Yet the comparison of the Good Samaritan statutes does reveal lack of uniformity among the statutes concerning qualifications on fees. Veterinarians need to determine their rights under their state's laws to gauge their conduct with respect to the treatment of animals in emergency situations.

Equine Liability Statutes

State equine liability statutes change longstanding liability rules for select conduct concerning domestic equids by providing statutory immunity to equine owners and others. Because of the grant of immunity, these statutes may be said to embody the Good Samaritan prototype. Relief from liability for some equine accidents is expected to remove an economic impediment thereby encouraging the continuation of these activities. The dangerousness of activities involving domestic equids and the expansion of tort liability formed the basis for this new Good Samaritan prototype.⁷

If equine statutes only concerned equine sponsors, professionals, and activity participants, the veterinary community would have no need to be concerned; however, 21 state statutes include provisions covering veterinarians or medical treatment of animals, and some

of these statutes denigrate previously existing legal rights of veterinarians (Appendix 2). Professionals in other states might want to be on guard for similar legislation that could adversely affect their rights.

In treating animals, veterinarians are not only in a position to be injured, but also are in a position to cause injury to another person. Given these 2 positions, the equine statute may serve as a sword and a shield. As a sword, the equine statute may cut off the rights of a veterinarian to sue someone who negligently causes injury to the veterinarian. As a shield, a defendant veterinarian may qualify under the immunity provided by the equine statute and avoid liability for injuries to another person.

Cutting off rights—The general statutory directive of the equine statutes provides that qualifying persons “shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities. . . .” The statutes then enumerate exceptions whereby persons remain liable. Inherent risks are dangers or conditions that are an integral part of equine activities, including equine behavior, unpredictability of reactions, hazards such as surface and subsurface conditions, collisions with other equids and objects, and a participant’s negligence or failure to maintain control over an animal.

One of the exceptions enumerated by the equine statutes provides that anyone who commits an act or omission that constitutes willful or wanton disregard for the safety of a participant is not entitled to statutory immunity. Reading this exception with the grant of immunity, the equine statutes excuse negligence and gross negligence relating to injuries resulting from the inherent risks of equine activities. Thereby, the equine statutes provide immunity for very negligent conduct that would not qualify under the Good Samaritan prototype and most of the veterinary Good Samaritan statutes.

Seven state equine statutes define “engaging in an equine activity” to include providing or assisting in medical treatment of an animal (Appendix 2). Under these statutes, it may be presumed that a veterinarian treating an equid is engaging in an equine activity. The definition of “engaging in an equine activity” in 12 other statutes encompasses assisting in medical treatment. Because veterinarians provide medical treatment, it is not clear whether a veterinarian could be found to be assisting in medical treatment. However, if more than 1 veterinarian were treating an animal, veterinarians could be considered assisting the lead veterinarian.

The importance of being engaged in equine activities becomes apparent with the statutory definition of a “participant.” Eighteen statutes define participant to include any person who engages in an equine activity (Appendix 2). This means that in states where veterinarians are considered to be engaged in an equine activity, they also are considered to be equine participants. Thereby, for the purposes of some of the equine statutes, a veterinarian treating an equine is in the same category as a cowboy participating in a bareback bronc-riding competition.

Returning to the statutory grant of immunity, per-

sons are not liable for injuries of participants resulting from the inherent risks of equine activities. As participants engaging in equine activities under the statutory definitions of 18 states, veterinarians engaged in treating equids who are injured as a result of the negligence of another person may not be able to maintain a lawsuit against that negligent person. However, other statutory provisions embody further limitations that act to reduce the scope of the statutory immunity (Appendix 2). For example, the Florida statute provides that any act a reasonably prudent person would not have done is not covered by the statutory immunity.¹⁷ The Michigan statute provides an exception whereby any negligent act that constitutes a proximate cause of injury is not covered by the statutory immunity.¹⁸ These exceptions suggest that veterinarians in Florida and Michigan do not lose rights because of the equine statutes.

This analysis suggests that veterinarians in 11 states may lose rights under the equine liability statutes: Alabama, Colorado, Delaware, Georgia, Louisiana, Massachusetts, Mississippi, South Carolina, South Dakota, Tennessee, and Texas. Veterinarians in these states who are injured because of the gross negligence of another person while treating equids may not be able to maintain a lawsuit.

Avoiding liability to others—Veterinarians must use care to avoid injury to other persons. The most common situation may involve another person assisting a veterinarian with treatment of an animal where the animal causes injury to the assistant. Whether the assistant is a veterinary technician or the animal’s owner, there exists a potential that the veterinarian may be liable for the negligence that resulted in the animal causing injury to the assistant.

The immunity provided by some of the equine liability statutes means that veterinarians have a new defense against negligence lawsuits by persons assisting in the treatment of equids. Thus, veterinary technicians and owners assisting in medical treatment lose rights under the equine statutes. Statutes that provide the immunity to “any person” would grant veterinarians a shield against lawsuits by assistants. For South Dakota, veterinarians are specifically exempt from liability, as provided by the statute.¹⁹ Veterinarians may be able to avoid liability to assistants in the same 11 states that cut off rights of veterinarians to collect damages: Alabama, Colorado, Delaware, Georgia, Louisiana, Massachusetts, Mississippi, South Carolina, South Dakota, Tennessee, and Texas.

The rights of assistants and others vis-a-vis veterinarians do not seem to be affected by the other equine liability statutes. The most common reason is that the statutes only provide immunity for equine professionals and sponsors, and the definitions of these groups do not include veterinarians. Other statutes do not provide immunity because they simply change the burden of proof (Hawaii)²⁰ or still permit suits in negligence (Michigan).²⁰

Relating These Provisions to Policy Issues

What do these altered rights mean in actual practice? Veterinarians know that equids can be dangerous

and, thereby, take precautions to avoid being injured when treating an animal. Given the need to treat large animals at facilities maintained by others, veterinarians rely on equine owners and others to keep facilities in a safe condition. Although most equine facilities will be in a safe condition, exceptions arise and a veterinarian may find it difficult to discern or avoid an unsafe condition. Why should a veterinarian be precluded from suing a facility owner who was grossly negligent in not maintaining safe premises? Why should assistants be precluded from suing negligent veterinarians?

Perhaps the fundamental question is why did interest groups advancing the equine liability statutes include medical treatment as "engaging in an equine activity?" Reported court cases do not show veterinarians suing for injuries. Should veterinarians be grouped with rodeo and equestrian jumping competitors for coverage under the statutes? If neither medical treatment nor veterinarian was included in the definition of "engaging in an equine activity," the legal rights of veterinarians would remain unaffected by the statutory immunity. Persons providing medical treatment would not be participants engaging in an equine activity so that their rights would not be cut off.

The equine liability statutes were intended to respond to problems involving the unpredictability of animals and a legal system in which lawsuits of dubious merit are forcing defendants to expend funds to exonerate themselves. As a legislative response to these problems, it should be assumed that the equine statutes intended to provide immunity for a circumscribed set of conditions so as not to disturb established equitable principals assimilated into negligence law over hundreds of years. The derogation of rights of veterinarians and assistants provided by several state equine statutes does not seem to be related to the problems enumerated by legislatures.

The altered legal system provided by the equine statutes may not be important to veterinarians. As noted, veterinarians are not prolific litigators. Thus, the more important issue is whether the exceptions to the Good Samaritan prototype provided by the equine statutes will become the rule for additional statutory provisions governing negligence lawsuits.²¹ One state has introduced a bill that would extend similar immunity for injuries from cattle.²² Will dogs be next? Why should the veterinary Good Samaritan statutes be limited to emergency situations? If grossly negligent equine professionals charging fees have immunity for some acci-

dents, should physicians, medical personnel, and veterinarians be granted immunity from liability for simple negligence?

As a final note, an evaluation of statutory provisions relating to the waiver of immunity by governments suggests that the immunity proffered by the equine liability statutes is counter to the general trend of providing recompense to injured victims. Historically, sovereign and official immunity have precluded most lawsuits against qualifying governmental entities and employees. During the past few decades, however, new constitutional and statutory provisions make greater allowance for negligence lawsuits against governments and their employees.²³ Any additional enlargement of Good Samaritan immunity may need to be balanced against public sentiment to compensate injured victims.

References

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10. Minn Stat Ann 1990, § 346.37, subd 2.
11. Pa Cons Stat 1990 title 42, § 8331.1.
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13. *Lowry v Henry Mayo Newhall Memorial Hospital*. *Calif Appellate Rep* 1986;185:188-196.
14. Fla Stat Ann 1994, § 768.13(3).
15. Colo Rev Stat 1991, § 12-64-118.
16. RI Gen Laws 1987, § 4-15-5.
17. Fla Stat Ann 1994, § 773.03(d).
18. Mich Compiled Laws Ann 1996, § 691.1661-691.1667.
19. SD Codified Laws Ann 1995, § 42-11-2.
20. Hawaii Rev Stat 1995, § 663B-2(a).
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22. Ga House Bill No. 565, 1995.
23. *Gilbert v Richardson*, *Ga Rep* 1994;264:476-484.

Appendices appear on next page.

Appendix 1

State Good Samaritan statutes for veterinarians and their attributes*

State and codification	Requirement of no fee	Requirement of good faith	Liability for negligence	Liability for gross negligence
Ala Code § 34-29-90	yes	yes	unlikely	probably
Alaska Stat § 09.65.097	no	no	no	yes
Calif Bus & Prof Code § 4826.1	no	no	no	yes
Colo Rev Stat § 12-64-118	yes	yes	no	no
Fla Stat Ann § 768.13	yes	yes	yes, if not prudent	probably
Ill Comp Stat Ann ch 225, § 115/18	no	no	no	yes
Ind Stat Ann § 15-5-1.1-31	no	no	no	yes
* Kan Stat Ann § 47-841	yes	yes	unlikely	probably
La Rev Stat title 37, § 1731(C)	yes	yes	unlikely	probably
Md Agric Code Ann § 2-314	yes	no	no	yes
Mass Gen Laws ch 112, § 58A	yes	yes	unlikely	probably
Minn Stat Ann § 346.37, subd 2	no	comparable	yes, if not humane	humane
NJ Rev Stat § 45:16-9.11	no	yes	unlikely	probably
Okla Stat Ann title 59, § 698.17	no	yes	unlikely	probably
Pa Cons Stat title 42, § 8331.1	no	yes	no	yes
RI Gen Laws § 4-15-15	no	no	no	no
Tex Rev Civ Stat Ann title 132, art 8891	no	no	no	yes
Va Code Ann § 54.1-3811	yes	yes	unlikely	yes

*The statutes themselves and state common law should be examined to determine nuances in scope and operation.

Appendix 2

State equine liability statutes with provisions for veterinarians*

State and codification	Providing or assisting in medical treatment	Participants engage in equine activities	Veterinarians may lose rights to sue for gross negligence
Ala Code § 6-5-337	providing or assisting	yes	yes
Colo Rev Stat § 13-21-119	assisting	yes	yes
Del Code Ann title 10, § 8140	assisting	yes	yes
Fla Stat Ann § 773.01	assisting	yes	no-prudence exception
Ga Code Ann §§ 4-12-1 to 4-12-4	providing or assisting	yes	yes
Hawaii Rev Stat Ann §§ 663B-1 & 663B-2	assisting	yes	no-alters a presumption
Ill Comp Stat Ann ch 745, §§ 47/1 to 47/25	assisting	yes	no-a responsibility statute
Kan Stat Ann §§ 60-4001 to 60-4004	providing or assisting	yes	no-assumption of risk
La Rev Stat title 9, § 2795.1	providing or assisting	yes	yes
Mass Gen Laws ch 128, § 2D	assisting	yes	yes
Mich Comp Laws Ann §§ 691.1661 to 691.1667	providing or assisting	yes	no-negligence statute
Miss Code Ann §§ 95-11-1 to 95-11-7	providing or assisting	yes	yes
Mo Ann Stat § 537.325	assisting	yes	no-prudence exception
Mont Code Ann §§ 27-1-725 to 27-1-727	assisting	only if direct	probably not
Ore Rev Stat §§ 30.687 to 30.697	not present	only if direct	no
RI Gen Laws §§ 4-21-1 to 4-21-4	assisting	yes	no-due care exception
SC Code Ann §§ 47-9-710 to 47-9-730	providing or assisting	yes	yes
SD Codified Laws Ann §§ 44-11-1 to 42-11-5	assisting	yes	yes
Tenn Code Ann §§ 44-20-101 to 44-20-105	assisting	yes	yes
Tex Civ Prac & Rem Code Ann §§ 87.001 to 87.105	assisting	yes	yes
Utah Code Ann § 78-27b-102	not present	only if direct	no

*The statutes themselves and state common law should be examined to determine nuances in scope and operation. Other states with equine liability statutes include: Arizona, Arkansas, Connecticut, Idaho, Indiana, Maine, Minnesota, New Mexico, North Dakota, Virginia, Washington, West Virginia, Wyoming.