

Resolution 08-06-2009

Good Samaritan Immunity From Liability

RESOLVED that the Conference of the Delegates of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code section 1799.102 to read as follows:

1 § 1799.102

2 No person who in good faith, and not for compensation, renders emergency ~~care~~ aid,
3 whether medical or nonmedical, at the scene of an emergency shall be liable for any civil
4 damages resulting from any act or omission. The scene of an emergency shall not include
5 emergency departments and other places where medical care is usually offered.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS:

Existing Law: Health and Safety Code section 1799.102 codifies the common-law doctrine of immunity from liability for a “Good Samaritan” who renders aid at the scene of an accident or other emergency. The California Supreme Court, in *Van Horn v. Watson* (2008) 45 Cal.4th 322, interpreted this section to apply only to emergency “medical” care by a “Good Samaritan” at the scene of an emergency, thus still exposing a “Good Samaritan” to liability when rendering nonmedical care or aid.

This Resolution: This Resolution adds language to clarify that a “Good Samaritan” providing nonmedical aid is entitled to immunity from liability, in addition to those who provide medical care.

The Problem: Justice Baxter’s dissent in *Van Horn*, joined by two other Justices, accurately identifies the problem with the Majority’s holding: “The majority rewrites section 1799.102 to insert the word ‘medical’ at two crucial points *where it does not appear....*” (Emphasis in original.) The Legislature could have included the word “medical” in the statute if intended the statute’s reach to be so limited, and yet it did not. Further, extending the statute’s reach to provide immunity to those who render nonmedical aid “implements sound and logical public policy.” As Justice Baxter noted, “The statute protects from the threat of civil litigation a layperson who, acting as a Good Samaritan, reasonably perceived that another human being needed immediate emergency assistance and intervened, despite possible personal risk and danger, to provide it. The purpose, of course, is to encourage persons not to pass by those in need of emergency help, but to show compassion and render the necessary aid. There is no reason why one kind of lay volunteer aid should be immune, while another is not.” This amendment is

needed to implement that “sound public policy,” and to clarify that the statute’s immunity applies to those who provide either medical or nonmedical assistance.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Brian P. Worthington, Esq., Ryan Mercaldo & Worthington LLP, 3636 Nobel Drive, Suite 200, San Diego, CA 92122; Telephone: (858) 455-8700; e-mail: bworthington@rmwfirm.com

RESPONSIBLE FLOOR DELEGATE: Brian P. Worthington