

# Righting the Ship and Stating the Obvious: Good Samaritan Act Applies to Volunteers; No Immunity for Health Care Providers Even If Patient Is Not Billed for Services

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*Medical personnel providing emergency care, but not billing patient for such care, are not immune from liability under Illinois' Good Samaritan Act.*

A Code Blue was called for an intensive care unit patient who had labored breathing and swallowing pain. Hospital's emergency room physician responded to the Code Blue and attempted to intubate the patient. Patient suffered permanent brain injury and filed suit against the physician and hospital for negligence. Physician moved for summary judgment (a request that the court enter judgment on the case merits without trial because the facts are undisputed) on the basis that he was immune from liability under Illinois' Good Samaritan Act (745 ILCS 49/25),<sup>1</sup> which protects licensed medical persons from suit if they in good faith provide "emergency care without fee."

Physician contended the Act applied because he provided emergency care to patient and patient was not billed for that care. Though patient was billed for other physician emergency room services rendered days prior and for supplies used during the Code Blue, patient was not billed for the physician's services during the Code Blue. Patient argued the Act was inapplicable because physician was simply doing his job when he treated patient during the Code Blue. Just because no discrete bill was sent for the physician's Code Blue services, patient argued, did not mean physician's services were "without fee."

Under long-standing Illinois case law, the trial court granted the summary judgment motion in favor of physician because patient was not billed for physician's services. As such, physician was immune from liability under the Act. Many prior Illinois appellate cases applied the Act in similar situations where medical providers could claim immunity if they in good faith provided emergency treatment and did not bill for their services.

The Illinois Supreme Court ultimately found physician could not claim immunity under the Act because his Code Blue services were not “without fee” – he was compensated for his time that day and responded to the emergency as part of his job and not as a volunteer. The Court found the prior Illinois appellate decisions were a long line of wrongly decided cases, stating such statutory interpretation “thwarted unmistakably obvious legislative intent.”

The Court detailed a number of reasons supporting its decision but primarily reasoned the Act is intended to protect volunteers and promote volunteerism and not provide immunity for treaters who elect not to bill a patient. Though this interpretation of the Act and the Court’s decision might seem obvious to non-lawyers, *Home Star Bank & Fin. Servs. v. Emergency Care & Health Org., Ltd.*, 2014 IL 115526, 6 N.E.3d 128 (Ill. Mar. 20, 2014), is a significant change in Illinois law.

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<sup>1</sup> *Illinois’ Good Samaritan Statute (745 ILCS 49/25) provides: “Any person licensed under the Medical Practice Act of 1987 or any person licensed to practice the treatment of human ailments in any other state or territory of the United States who, in good faith, provides emergency care without fee to a person, shall not, as a result of his or her acts or omissions, except willful or wanton misconduct on the part of the person, in providing the care, be liable for civil damages.”*