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Don't Just Stand There, Help Me!: Broadening the Effect of Minnesota's Good Samaritan Immunity through Swenson v. Waseca Mutual Insurance Co

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NOTE: DON'T JUST STAND THERE, HELP ME!: BROADENING THE EFFECT OF MINNESOTA'S GOOD SAMARITAN IMMUNITY THROUGH SWENSON V. WASECA MUTUAL INSURANCE CO.

Carl V. Nowlin†

I. INTRODUCTION

The question has long been asked, “How far, if at all, is one man bound, being able to do so without serious inconvenience to himself, to go out of his way to care for those injured without any fault of his?” This problem of rescue is a central issue in the


1. Francis H. Bohlen, The Moral Duty to Aid Others as a Basis of Tort Liability.
controversy about the relationship between law and morality. As quoted nearly a century ago, “[f]eelings of kindness and sympathy may move the Good Samaritan to minister to the sick and wounded at the roadside, but the law imposes no such obligation; and suffering humanity has no legal complaint against those who pass by on the other side.”

A Good Samaritan generally acts out of the kindness of his heart, and historically the law hesitates to impose such an obligation on individuals. Minnesota, however, has gone against the grain and created a statutory duty to render assistance at the scene of an emergency. The immunity associated with that statutory duty was challenged in Swenson v. Waseca Mutual Insurance Co., in which the Minnesota Court of Appeals rightly granted immunity to a Good Samaritan providing transportation to an injured girl.

This note first explores the history highlighting the difference between misfeasance and nonfeasance. Next, it describes the historical lack of recognition of a duty to aid another and the liability of volunteers to those they help. Then the note observes the states’ recognition of the public policy issue of encouraging individuals to render assistance in emergencies, and the states’ adoption of Good Samaritan laws granting immunity to such volunteers. Next, it describes the elements that Minnesota’s case law has historically required before a duty to assist is recognized, followed by a description of the imposition of a statutory duty to assist. The Swenson case is described next. The note ends with

3. Depue v. Flateau, 100 Minn. 299, 303, 111 N.W. 1, 2 (1907) (quoting Union Pac. Ry. Co. v. Cappier, 72 P. 281 (Kan. 1903)).
4. See Luke 10:30-37. The parable tells the story of the Good Samaritan, who was the only one of three passers-by who came to the aid of a man who was beaten, robbed, and left by the side of the road. Id. The Good Samaritan took the downtrodden individual to an inn and paid for his stay there without expecting anything in return. Id.
6. MINN. STAT. § 604A.01, subd. 1 (2002).
8. See infra Part II.A.
9. See infra Part II.B.
10. See infra Part II.C.
11. See infra Part II.D.1.
12. See infra Part II.D.2.
II. HISTORY

A. Misfeasance and Nonfeasance

Early writers noted that “[t]here is no distinction more deeply rooted in the common law and more fundamental than that between misfeasance and non-feasance.” Misfeasance differs from nonfeasance in form of conduct: misfeasance is “active misconduct working positive injury to others” while nonfeasance is “a failure to take positive steps to benefit others.”

The victim is clearly worse off due to the wrongful act in cases of active misfeasance. "In cases of passive inaction [the] plaintiff is . . . no worse off at all . . . . [H]e is merely deprived of a protection which, had it been afforded him, would have benefited him." The defendant has left him just as he was, neither better off nor in no worse condition. It is a loss only in the sense that the plaintiff was not given something.

To help clarify the distinction between misfeasance and nonfeasance, the suggestion is to focus not on the moment the defendant failed to act to prevent harm to the plaintiff, but at the course of events prior to that moment. If there is no significant interaction between the plaintiff and the defendant prior to that moment, the defendant’s conduct can be considered to be nonfeasance. Participation by the defendant in the creation of

[13. See infra Part III.]
[14. See infra Part IV.]
[15. Bohlen, supra note 1, at 219. “This distinction is founded on that attitude of extreme individualism so typical of anglo-saxon legal thought.” Id. at 220. “The primary conception of the common law was that which regarded the individual as competent to protect himself if not interfered with from without.” Id. at 221.]
[16. Id. at 219.]
[17. Id. at 220.]
[18. Id.
19. Id.
20. See id. at 221. Other writers have elaborated on those earlier notions. See generally Weinrib, supra note 2, at 251-58 (elaborating on Professor Bohlen’s theories).]
22. Id. at 253-54. Professor Weinrib gives the example of two different scenarios: a car driver not pressing the brake and striking a pedestrian, and a pool]
the risk is thus the crucial factor in distinguishing misfeasance from nonfeasance.\(^{23}\)

B. The Duty to Protect or Aid Others

1. No Duty to Aid, No Liability for Harm

Generally, there is no duty to protect or come to the aid of another in peril.\(^{24}\) “The fact that the actor realizes or should realize that action on his part is necessary for another’s aid or protection does not of itself impose upon him to take such action.”\(^{25}\) No duty exists even if the danger to the other is great and the trouble of aiding him is minimal.\(^{26}\) “Those duties which are dictated merely by good morals or by humane considerations are not within the domain of the law.”\(^{27}\) The argument in favor of recognizing moral obligations as valid legal claims was rejected by courts on the grounds that such recognition would destabilize written law by replacing it with the varied morals of those sitting on the bench.\(^{28}\)

A duty to protect or aid another may exist if the parties

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\(^{23}\) Weinrib, supra note 2, at 256.

\(^{24}\) See RESTATEMENT (SECOND) OF TORTS § 314 (1965).

\(^{25}\) Id. Courts in the early 1900s recognized this rule and were hesitant to change moral obligations into legal duties. See Union Pac. Ry. Co. v. Cappier, 72 P. 281, 282 (Kan. 1903) (“For withholding relief from the suffering, for failure to respond to the calls of worthy charity, or for faltering in the bestowment of brotherly love on the unfortunate, penalties are found not in the laws of men, but in that higher law . . . .”).

\(^{26}\) See RESTATEMENT (SECOND) OF TORTS § 314 cmt. c (1965). The rule applies “irrespective of the gravity of the danger to which the other is subjected and the insignificance of the trouble, effort, or expense of giving him aid or protection.” Id. See also 57A AM. JUR. 2D NEGLIGENCE § 114 (2003) (explaining the rules of assisting others).

\(^{27}\) Depue v. Plateau, 100 Minn. 299, 303, 111 N.W. 1, 2 (1907) (citing Union Pac. Ry. Co. v. Cappier, 72 P. 281 (Kan. 1903)).

involved have a special relationship.\textsuperscript{29} Four primary special relationships are recognized: that between a common carrier and a passenger, between an innkeeper and a guest, between a landowner and those upon his land by his invitation, and between one who takes custody of another either voluntarily or as required by law.\textsuperscript{30} 

The duty to protect another in a special relationship arises only when the relationship exists and the harm develops in the course of that relationship.\textsuperscript{31} However, absent a special relationship or the termination of an existing special relationship, a party is under no duty to protect or aid the other.\textsuperscript{32} “Unless a relation exists between the sick . . . and those who witness their distress [requiring them to provide] the necessary relief, there is neither legal obligation to minister on the one hand, nor cause for legal complaint on the other.”\textsuperscript{33} 

2. Recognizing Liability for Harm

Liability for bodily harm to another will be recognized when, having no prior duty to do so, an actor takes charge of another who is helpless.\textsuperscript{34} The actor in such a situation will be subject to liability for injury to the other when the actor fails to exercise reasonable care to secure the safety of the imperiled person, or when the actor discontinues aid or protection and leaves the victim in a worse position.\textsuperscript{35} It would seem, then, that given such potential for liability if the rescue goes awry, a possible rescuer might rethink his intent to render assistance at the scene of an emergency.

Legal writers find decisions following the general rule of no duty to aid or protect revolting to moral sense.\textsuperscript{36} In fact, at least

\begin{itemize}
\item 29. RESTATEMENT (SECOND) OF TORTS § 314A (1965).
\item 30. Id.
\item 31. Id. cmt. c.
\item 32. Id. (“A carrier is under no duty to one who has left the vehicle and ceased to be a passenger, nor is an innkeeper under a duty to a guest who is injured or endangered while he is away from the premises.”).
\item 33. Depue v. Plateau, 100 Minn. 299, 303, 111 N.W. 1, 2 (1907) (citing Union Pac. Ry. Co. v. Cappier, 72 P. 281 (Kan. 1903)).
\item 34. RESTATEMENT (SECOND) OF TORTS § 324 (1965).
\item 35. Id.
\item 36. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 56 (5th ed. 1984); see also Yania v. Bigan, 155 A.2d 343, 346 (Pa. 1959) (holding that a moral, not a legal, duty to aid existed when defendant watched plaintiff drowning); James Barr Ames, Law and Morals, 22 HARV. L. REV. 97, 112-13 (1908) (“We should all be better satisfied if the man who refuses to throw a rope to a
one author believes the law should reflect general moral obligations.  Consequently, it has been written that eventually “such extreme cases of morally outrageous behavior and indefensible conduct will arise that there will be further inroads upon the older rule.”

C. The Good Samaritan Law

Little evidence exists that documents how frequently individuals assist at scenes of emergencies involving strangers. However, some authors give reasons to explain the perceived hesitancy of individuals to help in apparent emergencies. Consequently, Good Samaritan statutes were created for the purpose of encouraging prompt emergency care by granting statutory immunity from civil damages and removing the fear of liability.

The statutes are designed to protect individuals from civil liability for any negligent acts or omissions committed while providing emergency care. Such statutes attempt to eliminate the perceived inadequacies of the common-law rule under which a volunteer, assisting an injured person with no prior duty to do so, was liable for failing to exercise reasonable care in providing the drowning man or to save a helpless child on the railroad track could be punished and be made to compensate [those who are injured] . . . [I]t is hard to see why such a rule should not be declared by statute, if not by the courts.”); Charles O. Gregory, The Good Samaritan and the Bad: The Anglo-American Law, in THE GOOD SAMARITAN AND THE LAW, 23, 27 [James Ratcliffe ed., 1981] [hereinafter SAMARITAN] (characterizing a court decision holding motorists involved in a crash liable for not warning others of the blocked road as a “childishly simple” advance over the general common law duty); Weinrib, supra note 2, at 247.

37. See Antony M. Honoré, Law, Morals and Rescue, in SAMARITAN, supra note 36, at 225, 238-39 (recognizing the advantage to those who would benefit from such a rule, and stating that such a change would correct the layman’s feeling that the law is “like an overpermissive father . . . setting its standard too low”).

38. RESTATEMENT (SECOND) OF TORTS § 314 cmt. c (1965).

39. Lawrence Z. Freedman, No Response to the Cry for Help, in SAMARITAN, supra note 36, at 171; Joseph Gusfield, Social Sources of Levites and Samaritans, in SAMARITAN, supra note 36, at 183, 185.

40. See Herbert Fingarette, Some Moral Aspects of Good Samaritanship, in SAMARITAN, supra note 36, at 213, 213-14 (describing how people might not interfere in strangers’ affairs out of fear of being wrong in their assessment of the situation); Freedman, supra note 39, at 171, 176-181 (pointing to apprehension, acquiescence, and aggression as reasons that people do not get involved).


42. Id.
assistance. In fact, some state legislatures clearly state that the intent in creating such a statute is to encourage health care practitioners, who are not “on the job” at the time, to provide necessary emergency care to all persons without fear of litigation.

The first Good Samaritan statute was passed in 1959 in California. Since then, all states have enacted some form of Good Samaritan legislation. Many Good Samaritan statutes require that the volunteer act in good faith in order to be eligible for immunity; the rescuer must not have received anything for his efforts or participated with the expectation of receiving any benefit. This requirement is consistent with the definition of a “Good Samaritan.”

43. Id.; see supra Part II.B.2.
44. E.g., FLA. STAT. ANN. § 768.13(2)(c)(3) (West 2003).
45. Veilleux, supra note 41.
46. 1959 Cal. Stat. ch. 1507 (currently codified as amended at CAL. BUS. & PROF. CODE § 2395 (West 2003)).
49. RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY 822 (2d ed. 2001) (“[A] person who gratuitously gives help or sympathy to those in distress.”); see also supra note 4.
Not all Good Samaritan statutes are the same, though; some provide protection to a narrow class of individuals, while others protect a broader class of people.\(^{50}\) For example, some states have chosen to protect only individuals licensed or certified in the medical field.\(^{51}\) Other states apply the Good Samaritan immunity to a slightly larger group of individuals,\(^{52}\) still others protect "any person."\(^{53}\)

States also differ in the general language and terms used in their Good Samaritan statutes.\(^{54}\) While all states protect the volunteer’s act of rendering assistance, they differ in describing the scope of the protected conduct.\(^{55}\) While some Good Samaritan statutes protect individuals acting in or at the scene of an “emergency,” others protect actions at the scene of an “accident.”\(^{56}\) Some statutes include both terms.\(^{57}\) Legislatures have tried to reduce ambiguity through definition.\(^{58}\) Others use neither

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58. *See*, e.g., *Cal. Bus. & Prof. Code* § 2395 (West 2003) (defining the scene of an emergency as including, “but not limited to, the emergency rooms of hospitals in the event of a medical disaster”); *Minn. Stat.* § 604A.01, subd. 2(b) (2002) (defining the scene of emergency as “an area outside the confines of a hospital or other institution that has hospital facilities”); *Utah Code Ann.* § 78-11-22(1) (2003) (defining emergency as “an unexpected occurrence involving injury, threat of injury, or illness to a person or the public”).
“emergency” nor “accident,” opting rather to describe the characteristics of an imperiled person, thereby implying an emergency situation.\(^{59}\) A different approach is to specify locations where Good Samaritan immunity will not apply.\(^{59}\)

The statutes typically define the standard of care the volunteer must exercise to be eligible for immunity,\(^{61}\) although some simply protect volunteers from liability resulting from any acts or omissions when rendering assistance.\(^{62}\) One definition requires the individual to act as a reasonable and prudent person.\(^{63}\) Most statutes immunize volunteers against their ordinary negligence when assisting a victim, but do not protect against conduct that indicates gross negligence or willful and wanton misconduct.\(^{64}\)

The most noticeable difference between the general rule regarding coming to another’s aid and Good Samaritan statutes is that the general rule defines the liability of one who aids another

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59. See Del. Code Ann. tit. 16, § 6801(a) (2002) (protecting acts of assistance given “to a person who is unconscious, ill, injured or in need of rescue assistance, or any person in obvious physical distress or discomfort”).

60. See, e.g., Fla. Stat. Ann. § 768.13(2)(a) (West 2003) (specifying that the statutory immunity applies to assistance “at the scene of an emergency outside of a hospital, doctor’s office, or other place having proper medical equipment”); Me. Rev. Stat. Ann. tit. 14, § 164 (West 2003) (stating the immunity “shall not apply if such first aid or emergency treatment or assistance is rendered on the premises of a hospital or clinic”). Cf. Alaska Stat. § 09.65.090(a) (Michie 2002) (providing immunity to “a person at a hospital or any other location” who renders assistance).

61. See Veilleux, supra note 41.


63. See, e.g., Ark. Code Ann. § 17-95-101 (Michie 2002); Fla. Stat. Ann. § 768.13(2)(a) (West 2003); Md. Code Ann., Cts. & Jud. Proc. § 5-603(c)(1) (2005). It may seem peculiar that some states have decided to codify the common law rule. Further scrutiny of those statutes yields reasonable justifications for the legislative action. For example, the Florida statute lumps medical professionals together with all other citizens, so the reasonableness standard seems to operate primarily to shield medical professionals from liability, encouraging them to assist at the scene of an emergency. See Fla. Stat. Ann. § 768.13(2)(a) (West 2003). The Arkansas statute holds ordinary citizens to the reasonableness standard, but restricts their ability to act, most notably by allowing such individuals to provide only such assistance as is needed. See Ark. Code Ann. § 17-95-101(b)(3) (Michie 2002). The Maryland statute operates in much the same way. See Md. Code Ann., Cts. & Jud. Proc. § 5-603(c)(3) (2003). By granting immunity for the common law rule, most everyone could claim that immunity. It seems, therefore, that the states attempted to counteract that imbalance by restricting the types of conduct for which a person could claim the immunity.

64. See, e.g., Del. Code Ann. tit. 16, § 6801(a) (2002); Ind. Code Ann. § 34-30-12-1(b) (West 2003).
without a prior duty to do so, while Good Samaritan statutes protect rescuers from such liability. In addition, the standard of care imposed on an actor under the general rule is that of reasonable care, while Good Samaritan statutes generally protect even negligent actions. However, some Good Samaritan statutes diverge from the common law rule in another, more significant way: they create a statutory duty to render assistance to individuals in danger.

D. Minnesota and the Duty to Aid

1. Common Law History

Minnesota is one of only three states that have created a statutory duty to render assistance to others who are in peril. Minnesota first tackled the issue of whether one has a duty to render aid or protection in *Depue v. Flateau*. In *Depue* a cattle buyer stopped at a farmer’s house to purchase cattle. While on the premises, the buyer became quite ill and asked to spend the night, but was refused. After the buyer awakened from a fainting spell, the farmer escorted him to his cutter and sent him off the property. A passer-by found the buyer by the roadside early the next morning suffering from frostbite and other ailments; he had become sick on the ride and fallen from his vehicle during the night.

The supreme court reversed the lower court’s dismissal of the action, finding that the farmer may have owed a duty to the buyer. The court held:

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71. *Depue v. Flateau*, 100 Minn. 299, 111 N.W. 1 (1907).
72. *Id.* at 301, 111 N.W. at 1.
73. *Id.* at 301, 111 N.W. at 2.
74. A cutter is “a small, light sleigh, usually single seated and pulled by one horse.” *Random House Webster’s Unabridged Dictionary* 495 (2d ed. 2001).
75. *Depue*, 100 Minn. at 301-02, 111 N.W. at 2.
76. *Id.*
77. *Id.* at 305, 111 N.W. at 3.
Whenever a person is placed in such a position with regard to another that it is obvious that, if he does not use due care in his own conduct, he will cause injury to that person, the duty at once arises to exercise care commensurate with the situation in which he thus finds himself, and with which he is confronted, to avoid such danger; and a negligent failure to perform the duty renders him liable for the consequences of his neglect.  

The court further noted that the rule “applies with greater strictness to conduct towards persons under disability, and imposes the obligation as a matter of law, not mere sentiment, at least to refrain from any affirmative action that might result in injury to them.” The rule was focused on the parties having a special relationship. A crucial aspect of the rule is the actor’s knowledge and appreciation of the imperiled person’s condition. However, the court stressed the fact that the farmer had no absolute duty to entertain the buyer, only that the farmer could not make the buyer any worse off.

The Minnesota Supreme Court handled a related situation involving injury and emergency care in the same year as Depue. Shaw v. Chicago, M. & St. P. Ry. Co. was an action for negligence in which a conductor missed a train and required a brakeman to go on top of the train to stop it, which ultimately led to the brakeman’s death. However, the court briefly considered the test for negligence to be applied in a situation where one renders

78. Id. at 303, 111 N.W. at 2.
79. Id. at 304, 111 N.W. at 3 (emphasis added).
80. Id. at 303, 111 N.W. at 2 (stating the principle applies to situations arising from "noncontract relations," such as that between a landowner and a trespasser or invitee, and noting that the buyer was on the farm at the invitation of the farmer). The court also noted that "[t]hose entering the premises of another by invitation are entitled to a higher degree of care than those who are present by mere sufferance." Id. The special relationship in Depue has been construed as one where a party controls the circumstances or is in charge of another. See Tiedeman v. Morgan, 435 N.W.2d 86, 88 (Minn. Ct. App. 1989); Regan v. Stromberg, 285 N.W.2d 97, 100 (Minn. 1979).
81. Depue, 100 Minn. at 305, 111 N.W. at 3 ("If defendants knew and appreciated his condition, their act in sending him out... was wrongful and rendered them liable in damages.").
82. Id. at 304-05, 111 N.W. at 3. The court seemed to bridge law and morals by stating, “the law, as well as humanity, required that he be not exposed in his helpless condition to the merciless elements.” Id. at 304, 111 N.W. at 3.
84. Id. at 8-11, 114 N.W. at 85-86.
emergency care to another. The court held that, under the circumstances, the rescuer must show a purpose to help relieve the victim at the earliest moment.

2. Development of the Good Samaritan Law

Minnesota’s Good Samaritan law was introduced in 1971. The legislation created an immunity for a person “who in good faith and in the exercise of reasonable care renders emergency care at the scene of an emergency.” However, even after the Good Samaritan law providing immunity to volunteers was enacted, the Minnesota Supreme Court continued to recognize the necessity of a special relationship in order to give rise to a duty to protect. Therefore, although they would have immunity for their less-than-reckless acts when rendering aid to another in an emergency, individuals would not be required to act unless a special relationship existed to give rise to that duty.

The Good Samaritan statute was subsequently amended in 1983 to create a statutory duty to render reasonable assistance at the scene of an emergency. It would seem this amendment was passed in an effort to promote assistance at the scenes of emergencies. By creating a statutory duty to render assistance to another with no preexisting duty or special relationship, the legislature effectively countered the holding of Depue that had been judicially recognized for more than seventy years. This statutory duty, coupled with the statutory immunity for rendering aid at the

85. Id. at 12, 114 N.W. at 86.
86. Id. (“It must be remembered that the proper test is, not what occurs to a person subsequently, upon mature deliberation, but whether, under the circumstances, the conductor showed an evident purpose to do what he could, in good faith, to relieve the sufferer at the earliest moment.”) (emphasis added). Strikingly, the court used language in the rule that would later be used in the first version of Minnesota’s Good Samaritan statutes. See Good Samaritan Law, ch. 218, 1971 Minn. Laws 425 (1971) (noting the actor’s good faith intent).
87. MINN. STAT. § 604.05 (1971) (current version at MINN. STAT. § 604A.01 (2002)).
88. Id.
89. See Regan v. Stromberg, 285 N.W.2d 97, 100 (Minn. 1979) (holding as a correct summary of the law a jury instruction that states “where one . . . takes charge of another . . . then the person in charge must use reasonable care to prevent [harm]”).
90. MINN. STAT. § 604.05, subd. 1 (1983).
91. Compare § 604.05, subd. 1 with Depue v. Plateau, 100 Minn. 299, 111 N.W. 1 (1907) and Regan v. Stromberg, 285 N.W.2d 97 (Minn. 1979).
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scene of an emergency, is essentially how the statute stands today. The supreme court had the opportunity to analyze the Good Samaritan law in *Tiedeman v. Morgan*. The facts of *Tiedeman* are similar to those of *Depue*. Tiedeman, the boyfriend of the defendants’ daughter, was at the defendants’ house watching movies one evening. The defendants were aware that Tiedeman had heart ailments and that he had undergone heart surgery. While watching movies with the defendants’ daughter, Tiedeman became ill, prompting his girlfriend to call 911. Defendants cancelled that call for help, claiming Tiedeman said he was fine. Defendants alleged Tiedeman refused a second offer to go to the hospital. Twenty minutes later, Tiedeman’s girlfriend screamed for help because Tiedeman’s condition worsened. An ambulance was summoned, but Tiedeman had suffered severe and irreparable brain damage due to lack of oxygen. The injury could have been avoided with earlier treatment.

92. MINN. STAT. § 604A.01 (2002). The pertinent subdivisions now read:
Subdivision 1. Duty to assist. A person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. A person who violates this subdivision is guilty of a petty misdemeanor.
Subd. 2. General immunity from liability. (a) A person who, without compensation or the expectation of compensation, renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care, advice, or assistance, unless the person acts in a willful and wanton or reckless manner in providing the care, advice, or assistance. This subdivision does not apply to a person rendering emergency care, advice, or assistance during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering the care, advice, or assistance.

94. See id.
95. Id. at 87.
96. Id.
97. Id.
98. Id.
99. Id.
100. Id.
101. Id.
102. Id.
Tiedeman sued the defendants, claiming they negligently attended to him or interfered with efforts to assist him. The trial court granted summary judgment to the defendants, finding that “they were entitled to immunity under the Good Samaritan statute, and that the evidence did not support an exception to such immunity for wanton or reckless rendering of care.” The appellate court recognized the Good Samaritan law, but found it inapplicable in this case. The Tiedeman court relied on Depue in its analysis to establish that defendants had a preexisting legal duty to Tiedeman. The court continued by saying that, although it recognized the immunity provision of the Good Samaritan law, “[n]evertheless, it is evident that the rendering of care which is addressed by the statute is that course of conduct which has not historically involved a recognized legal duty.” Consequently, the lower court’s decision, which rested upon the immunity provided by the Good Samaritan statute, was reversed.

The Minnesota Court of Appeals further clarified the role of the Good Samaritan law in Johnson v. Thompson Motors of Wykoff, Inc. The plaintiff in Johnson alleged the defendant business was negligent in not protecting him from the violence of a recently fired employee. The district court relied on the Good Samaritan law to find the defendant guilty of not providing reasonable assistance at the scene of an emergency. The appellate court reversed the decision, noting that the plaintiff’s claim was not for failure to render reasonable assistance, but for failure to warn customers in advance. The court thereby focused the Good Samaritan law’s application to present or existing emergencies, not future emergencies.

103. Id.
104. Id.
105. Id. at 88.
106. Id. at 88-89.
107. Id. at 89.
108. Id.
110. Id. at *1. The plaintiff was a customer at defendant’s business.
111. Id. at *2. The former employee, Dan Copeman, returned to Thompson Motors with a gun, and shot and killed Van Johnson. Id. at *1.
112. Id. at *2.
113. See id. (“Thompson Motors had no statutory duty to render ‘assistance’ before Johnson was shot.”) (emphasis added).
III. CASE DESCRIPTION


A. Facts

Kelly Swenson, thirteen years old, injured her leg in a snowmobile accident near a highway. Lillian Tiegs drove by the scene, stopping her van when the group signaled her for help. Discovering Swenson’s injury, Tiegs tried to call 911 on her cell phone, but the phone was inoperable. Tiegs agreed to drive Swenson to the hospital. However, Tiegs decided to first drive back to her house, less than a quarter of a mile away from the accident, allowing the rest of Swenson’s group to park their snowmobiles on Tiegs’ property and accompany Swenson to the hospital.

Once Swenson was placed in Tiegs’ van, Tiegs attempted to make a U-turn from the westbound side of the highway to the eastbound side. During the maneuver a tractor-trailer exceeding the speed limit struck the passenger side of Tiegs’ van. Swenson died as a result of the injuries sustained in the crash.

B. The District Court’s Analysis

Swenson’s family brought a wrongful-death action against both the truck driver and Tiegs. The family settled with the truck driver and proceeded to bring an underinsured-motorist claim against Waseca Mutual, Tiegs’ insurer. The insurer moved for

115. Id.
116. Id.
117. Id. at 795-96.
118. Id. at 796.
119. Id.
120. Id.
121. Id.
122. Id.
123. Id.
124. Id.
125. Id. The purpose of underinsured motorist statutes is to “provide insurance protection to the insured against damages caused by a negligent motorist as if the motorist had another liability policy in the amount of the
summary judgment, claiming that Tiegs was immune from liability under Minnesota’s Good Samaritan law. The district court granted the motion for summary judgment, finding that the Good Samaritan law does not require the injured person to be in “grave physical harm.” The court also concluded that Tiegs had otherwise satisfied the statutory requirements and was entitled to immunity.

C. The Appellate Court’s Analysis

1. Is Driving an Injured Person from the Scene of an Accident to a Health-Care Facility Protected Under the Good Samaritan Statute?

The Minnesota Court of Appeals faced two issues of first impression. The court first had to determine whether the Good Samaritan law provides immunity from a negligence claim where a layperson attempts to transport an injured person from the scene of an accident to a health-care facility. Emphasis was placed upon construing the statute in the manner intended by the legislature and not creating a judicial construction.

underinsured policy." 7 AM. JUR. 2D Automobile Insurance § 37 (2003). It is in the public interest to give one injured in an auto accident access to insurance protection to compensate for damages that would have been recoverable if the underinsured motorist had maintained an adequate policy of liability insurance. Id. Once an insured sustains injuries in a motor vehicle accident with an underinsured motorist, the insured can recover damages from her own insurer. See id. § 311. Minnesota requires motor vehicle owners to maintain underinsured motorist coverage. MINN. STAT. § 65B.49, subd. 3a(2) (2002). Because Swenson was occupying Tiegs’ vehicle at the time of the accident, Swenson’s limit of liability was the limit specified for Tiegs’ vehicle. See § 65B.49, subd. 3a(5). See generally MICHAEL K. STEENSON, MINNESOTA NO-FAULT AUTOMOBILE INSURANCE § 15.09 (3d ed. 2002) (explaining how an injured person must proceed with a claim against an underinsured motorist).

126. Swenson, 653 N.W.2d at 796.
127. Id.
128. Id.
129. Id.
130. Id.
131. Id. at 796-97. See, e.g., MINN. STAT. § 645.16 (2002) (requiring courts to look to the language of the statute to determine its meaning and “ascertain and effectuate the intent of the legislature”); Occhino v. Grover, 640 N.W.2d 357, 360 (Minn. Ct. App. 2002) (explaining that substantive policy concerns and legislative intent must be examined in order to determine the meaning of a statute).
2004] DON’T JUST STAND THERE, HELP ME! 1017

Swenson’s family argued that the “during transit” portion of the Good Samaritan law protects only those who provide emergency care while the injured person is being transported to a health-care facility, not to those merely driving the vehicle that carries the person.\textsuperscript{133} The court recognized that the purpose of the statute is to encourage laypersons to help others in need even when no legal duty to do so exists.\textsuperscript{134} In addition to looking to other states’ analysis for guidance,\textsuperscript{135} the court reasoned that the proffered construction was too narrow and offered little protection to laypersons.\textsuperscript{136} Because the alternative contradicted the purpose of the statute, the court concluded that the “during transit” provision provides immunity to “laypersons whose only act of assistance is to drive a person from the scene of an emergency to a health-care facility.”\textsuperscript{137} Therefore, the court found Tiegs was protected by the Good Samaritan law.\textsuperscript{138}

2. \textit{Is It an “Emergency” If the Actor Providing Transportation to a Health-Care Facility Makes a Brief Stop on the Way?}

Swenson’s family also argued that Tiegs did not face an emergency as required by the Good Samaritan law because she did not plan to go directly from the scene of the accident to a hospital.\textsuperscript{139} The family also implied that because a life-threatening injury did not exist, there was no emergency.\textsuperscript{140} The court acknowledged that “emergency” had not been defined by statute or case law in the context of the Good Samaritan

\textsuperscript{133} Id.\textsuperscript{134} Id.\textsuperscript{135} Id.\textsuperscript{136} Id. at 798. The court observed the treatment of the Good Samaritan law under similar circumstances in Washington, see Youngblood v. Schireman, 765 P.2d 1312 (Wash. Ct. App. 1988); Massachusetts, see Campbell v. Schwartz, 712 N.E.2d 1196 (Mass. App. Ct. 1999); and New Mexico, see Dahl v. Turner, 458 P.2d 816 (N.M. Ct. App. 1969). Id.\textsuperscript{137} Swenson, 653 N.W.2d at 799. Because professional emergency technicians are not protected by the Good Samaritan law while on the job due to their preexisting duty to provide care, the argument provided by Swenson’s family would protect only laypersons providing emergency care in a vehicle in transit to a health care facility while a third person drives. Id. at 798-99.\textsuperscript{138} Id. at 799.\textsuperscript{139} Id. at 800.\textsuperscript{140} Id.
However, case law broadly defines an “emergency” as “any event or occasional combination of circumstances which calls for immediate action or remedy.” The court declared “coming upon a roadside personal-injury-accident scene is the epitome of an emergency.” The court thus followed the lead of other states that have defined an “emergency.” The court concluded that, because Swenson was in a great deal of pain and needed immediate medical assistance, Tiegs was at the scene of an emergency.

When deciding whether the victim must be suffering from grave or life-threatening injuries, the court looked to the language of the clause granting immunity. The statute does not require such injuries; it requires only that a person render assistance at the scene of an emergency. In addition, the argument posed by Swenson’s family would require laypersons to determine the severity of a victim’s injuries before offering assistance. Furthermore, the argument ignores the probability that less serious injuries, left untreated, may become more serious. The court then found that when Tiegs came upon the scene she had no way of knowing the extent of Swenson’s injuries, she could not contact help, and immediate action was necessary. Concluding that the slight delay from the planned indirect route to the hospital did not lessen the emergency, the court found Tiegs’ actions were protected by the Good Samaritan law.

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141. Id.
142. Id. (citing Gust v. Minn. Dep’t of Natural Res., 486 N.W.2d 7, 9 (Minn. Ct. App. 1992)).
143. Id.
144. Id. at 799-800. The court observed the definitions of “emergency” as laid out by cases in Utah, see Flynn v. United States, 902 F.2d 1524, 1530 (10th Cir. 1990); Washington, see Youngblood v. Schireman, 765 P.2d 1312, 1319 (Wash. Ct. App. 1988); and Illinois, see Rivera v. Arana, 749 N.E.2d 434, 442 (Ill. App. Ct. 2001). Id.
145. Swenson, 653 N.W.2d at 800.
146. Id.
147. Id.
148. Id.
149. Id. To further its rejection of the argument, the court noted that the likelihood of more serious injuries would increase under such an interpretation.
150. Id.
151. Id.
IV. ANALYSIS

A. Required Definitions

Before analyzing the Swenson court’s decision on Minnesota’s Good Samaritan law, it is necessary to have definitions of the important terms involved: namely, what is an “emergency” and what is a “Good Samaritan?” The term “emergency” may have three different meanings, depending on the source consulted. According to common usage, an emergency is “[a] sudden, urgent, usually unexpected occurrence or occasion requiring immediate action; a state, especially of need for help or relief, created by some unexpected event.” 152 A legal dictionary defines an emergency as “[c]onfrontation by sudden peril; ... a pressing necessity; an exigency; an event or occasional combination of circumstances calling for immediate action.” 153 Minnesota case law has recognized an emergency as “a situation which has suddenly and unexpectedly arisen and which requires speedy action.” 154 The element common to all three definitions is a suddenness or unexpectedness to the situation. The other required information is a definition of a Good Samaritan. A Good Samaritan is an individual who, out of the kindness in his heart, assists others who are downtrodden or injured. 155

Applying these basic definitions to Minnesota’s Good Samaritan law (which requires individuals to assist at the scene of an emergency), it seems counterintuitive to force someone, out of the goodness in his heart, to help another in danger. Perhaps that is why the overwhelming majority of the states has elected to forgo legislation requiring individuals to act at the scene of an emergency; 156 forced volunteerism is not logical, and it may not be in the public’s best interest.

B. Liberal vs. Narrow Interpretation of the Statute

The next step of the analysis is to look at how Minnesota courts

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152. RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY 636 (2d ed. 2001).
155. See supra notes 4, 49 and accompanying text.
156. See supra note 47 and accompanying text. Forty-seven states do not have a statutory clause creating a duty to assist. Id.
typically handle “duty” issues. *Funchess v. Cecil Newman Corp.* 157 is a good example of how the Minnesota Supreme Court handled a question of duty. *Funchess* involved a question of a landlord’s duty to protect an apartment tenant from a criminal attack by a third party. 158 Although *Funchess* is distinguishable from *Swenson* because *Funchess* involved parties to a more business-like transaction, the focus of the court’s analysis on the question of “duty” is on point. 159 After restating the general common law rule of no duty to aid or protect, and citing the exceptions of special relationships, the court ultimately concluded that “whether a special relationship and its concomitant duty exists is a question of policy.” 160 The court added, however, “[w]e are generally cautious and reluctant to impose a duty to protect between those conducting business with one another.” 161

Analyzing the *Swenson* decision through the lens of *Funchess* brings a question to mind: How should the court construe the Good Samaritan statute? By broadly construing the Good Samaritan immunity, the court may indirectly broaden the associated duty to render assistance. The court may find it easier to conclude that the duty to assist existed if the potential rescuer was largely protected. In other words, the court may reason that the more one is protected from liability for his acts, the more willing the court should be to make him act by imposing a duty.

It seems, therefore, the court can choose only one of two paths: follow the judicial trend and be “cautious and reluctant” 162 to impose a duty by narrowly construing the Good Samaritan immunity, or follow the apparent legislative purpose behind the statute 163 and construe the immunity broadly. The *Swenson* court seemingly followed the legislative purpose of the law’s enactment and broadly construed the immunity of Minnesota’s Good Samaritan statute. 164 The reason for this seems clear and

157. 692 N.W.2d 666 (Minn. 2001).
158. See id. at 671.
159. See id. at 673.
160. Id. (emphasis added). The court went on to state that “[f]urther, we must consider the relative costs and benefits of imposing a duty.” Id. at n.4.
161. Id. at 674.
162. Id.
164. *Swenson*, 653 N.W.2d at 799-800 (holding that emergency care rendered “during transit” includes the mere act of driving an injured person to a medical location, and that since the statute does not require a certain severity of injury,
appropriate. *Funchess* involved a situation between parties unaffected by statute, requiring only judicial interpretation of any special relationship involved, while *Swenson* involved a situation potentially falling within the bounds of a statute. The *Swenson* court noted that, once a case falls within a statute, “[t]he canons of construction also demand that substantive policy concerns and legislative intent be examined in order to determine the meaning of the statute.”

Consequently, the court was not at liberty to construe the Good Samaritan statute in a way preferred by the court, but was required to construe it in the manner that would give it the effect intended by the legislature.

C. An Easier Method of Resolving the Dispute

The appellate court made resolution of the dispute in *Swenson* more difficult than necessary. The court seemed to be sidetracked by Swenson’s argument that the “during transit” provision of the Good Samaritan statute applies only to care rendered beyond the mere act of driving, thereby implying that the care rendered must be medical in nature.

The court then focused on the “during transit” provision of the statute, comparing the relative duties of medical technicians and non-emergency personnel, as well as restating the policy behind the statute.

The dispute could have been resolved in Tiegs’ favor with far more ease simply by analyzing the elements required for Good Samaritan immunity, defining a required term, and comparing that information to the facts of the case. To begin, in addition to receiving no compensation and not acting in a reckless manner, an actor at the scene of an emergency is granted immunity for “render[ing] emergency care, advice, or assistance.”

The most basic of the three elements is “assistance.” “Assistance” is defined as “help; aid; support.” If this most basic element is met, along with the other statutory requirements for immunity, the analysis need not go any further.

Therefore, under this analysis, the court could have simply

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165. *Id.* at 797 (emphasis added) (citing Occhino v. Grover, 640 N.W.2d 357, 360 (Minn. Ct. App. 2002)).
166. *See id.* at 798.
167. *Id.* at 798-99.
169. RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY 126 (2d ed. 2001).
asked: did Tiegs render emergency assistance? The answer must be yes. Once she saw the girls signaling her for help for the injured Swenson, Tiegs had come upon an unexpected situation that required her speedy or immediate action. She provided emergency assistance by helping Swenson get to a medical facility. Whether Tiegs gave Swenson medical assistance is irrelevant; the statute only requires that an actor who seeks to be protected render emergency assistance.

D. Interpretation of the Good Samaritan Law in Other States

Because Swenson brought to light two issues of first impression for the Minnesota Court of Appeals, it is helpful to observe the treatment of the Good Samaritan law in other states. However, it is critical to note that the treatment of the statute regarding a case in one state will not be the “holy grail” for another state with a factually similar case. The difficulty with comparing such cases among states arises because of differences in the states’ Good Samaritan statutes. It has been noted that decisions in Good Samaritan cases turn upon the wording of the statute. Consequently, other states’ decisions provide only guidance, not answers.

1. Decisions Favoring Good Samaritan Immunity

Other states’ courts have reached decisions that speak to the

170. Swenson, 653 N.W.2d at 795.
171. See supra notes 152-53 and accompanying text.
172. See MINN. STAT. § 604A.01, subd. 2 (2002). This implication is clear because the statute later refers to a “location where professional medical care can be rendered.” § 604A.01, subd. 2. (emphasis added). Had the legislature intended to require that the only protected Good Samaritan acts would be medical care, the same terminology would be used throughout the statute. The distinction justifies the inference that protected Good Samaritan acts need not be medical in nature. An example distinguishing emergency assistance from medical assistance might start with a person in a burning car. One who pulls the victim from the car would be rendering emergency assistance, while one who tends to the victim’s wounds would be rendering medical assistance. Either form of assistance would justify granting immunity under the Good Samaritan statute assuming all other requirements are satisfied.
173. See supra Part II.C. For example, the different language used in various Good Samaritan statutes gives rise to different areas in which the statute applies and different classes of individuals protected by immunity. See generally Veilleux, supra note 41.
174. See McDowell v. Gillie, 626 N.W.2d 666, 672 (N.D. 2001) (“[T]hose decisions are necessarily dependent upon the terminology of a specific statute.”).
issue of whether Tiegs was entitled to immunity for merely driving Swenson to the hospital. A North Dakota case shows how easy it can be for a court to grant immunity to a volunteer at an accident site when public policy dictates as much. In *McDowell v. Gillie* the court had to determine whether the act of stopping at the scene of a winter accident to inquire whether any assistance was needed could constitute rendering aid or assistance under the Good Samaritan Act. The North Dakota Supreme Court broadly defined the term “render” as “[t]o give or make available.” The court also consulted the broad statutory definition of “aid or assistance,” finding that it meant “any actions which the aider reasonably believed were required to prevent [injury to the victim].” Consequently, the court concluded, “the act of stopping at the scene of an accident and inquiring whether any assistance is needed can constitute the rendering of aid and assistance.”

While Minnesota’s Good Samaritan statute does not include such a broad definition of what constitutes “aid or assistance,” had the *Swenson* court used the definition of “render” used by the *McDowell* court, Tiegs would have been granted immunity with relative ease. Tiegs certainly “made available” her assistance because, unlike the defendants in *McDowell* who merely stopped at the scene of an accident to assess the situation, Tiegs offered to give the injured Swenson a ride to the hospital.

*Flynn v. United States* came to the same conclusion as the court in *McDowell*. Park employees approached an accident scene and put on their vehicle’s lights and sirens. The court found the employees had rendered aid or assistance pursuant to the Good Samaritan statute. The *Flynn* court liberally applied the statute because it held that stopping at the scene of an accident without rendering actual physical assistance can constitute rendering

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175. *Id.* at 671.
176. *Id.*
177. *Id.*
178. *Id.* (quoting N.D. CENT. CODE § 32-03.1-01(1) (2001)).
179. *Id.* at 674.
183. *Id.* at 1526.
184. *Id.* at 1530.
emergency care.185

The Washington Court of Appeals offers guidance on treating the issue of whether a brief stop or delay negates the immunity that would otherwise be provided to someone under the Good Samaritan law.186 In Youngblood v. Schireman the court dealt with a young woman, Youngblood, who was assaulted by her boyfriend in his parents’ house.187 His parents gave her a washcloth to clean her injuries, and spent the next thirty minutes trying to calm down their son.188 Youngblood claimed that her boyfriend’s parents’ conduct was grossly negligent or willful or wanton misconduct, and they should therefore not be entitled to immunity under Washington’s Good Samaritan statute.189 The court defined the unprotected conduct as:

[D]o[ing] an act or intentionally fail[ing] to do an act . . . knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.190

Like Washington’s statute, Minnesota’s Good Samaritan law does not protect acts done in a “willful and wanton or reckless manner.”191 The Swenson court could have granted Tiegs immunity because, using the analysis set forth in Youngblood, there was no showing that, in transporting Swenson, Tiegs “intentionally delayed taking her to the hospital in reckless disregard of the consequences in circumstances in which a reasonable man would have had reason to know that such a delay would, to a high degree of probability, result in substantial harm to [Swenson].”192

Finally, a case from Alaska that helps guide courts on the general policy issues accompanying the interpretation of Good Samaritan statutes is Lee v. State.193 The reasoning in Lee makes it easier for other courts to broadly construe such statutes and protect individuals without a preexisting duty because “[a] rescuer under a

185. See id.
187. Id. at 1313.
188. Id. at 1319-20.
189. See id. at 1319.
190. Id. (quoting RESTATEMENT (SECOND) OF TORTS § 500 (1965)).
191. MINN. STAT. § 604A.01, subd. 2 (2002).
192. Youngblood, 765 P.2d at 1320.
preexisting duty to rescue would not need the added inducement of immunity . . . for his ordinary negligence.”

This reasoning justifies a broad interpretation of Minnesota’s Good Samaritan statute to grant Tieg immunity because she had no preexisting duty to rescue or aid, and should therefore be protected for policy reasons.

2. Decisions Restricting Good Samaritan Immunity

Other states have narrowly construed their Good Samaritan statutes, restricting the immunity the statute offers. One such example is *Dahl v. Turner*. The issue presented in *Dahl* is identical to that of *Swenson*: does the act of transporting another constitute “rendering care?” The *Dahl* court held that transporting another did not constitute “rendering care.” The two cases, however, are factually distinguishable.

In *Dahl* the defendant, Mrs. Turner, came upon the scene of an accident. The plaintiff, Mr. Dahl, had wrecked his car. Other than a cut on his arm, Dahl appeared perfectly normal and otherwise uninjured. He did not want to go to a doctor, but rather to a motel in a nearby city to see a friend. Turner happened to be going to the same city. With Dahl in her car, Turner was subsequently involved in an auto accident of her own, in which Dahl received further injuries. He sued Turner for those injuries, and Turner claimed immunity under New Mexico’s Good Samaritan statute. The court held that “[i]f Mrs. Turner was administering ‘care’ in providing transportation to plaintiff, such care was not emergency care within the meaning of the statute. There are no facts indicating a pressing necessity for such transportation; no facts indicating that the transportation was immediately called for.”

194. *Id.* at 1209 n.7.
198. *Id.* at 823.
199. *Id.*
200. *Id.*
201. *Id.*
202. *Id.*
203. *Id.*
204. *Id.* at 818, 823.
205. *Id.* at 824.
Clearly the events in Swenson would indicate a “pressing necessity” to any passing motorist. Perhaps the New Mexico Court of Appeals would have held differently had Dahl’s injuries been more severe, or if Turner would have provided transportation to a place other than a destination to which she also happened to be traveling. Nonetheless, the Dahl decision is an example of denying Good Samaritan immunity to an actor in a situation where another court probably would have granted the immunity.

Two other cases show a narrow interpretation of the applicable Good Samaritan statute. In Buck v. Greyhound Lines, Inc. the Nevada Supreme Court strictly read the statute as applying only to those who render emergency care to injured persons. The defendant in Buck was driving his truck at night when he came upon a stalled car in the middle of the highway. He offered to assist the women in the car by alerting other drivers to their presence with his headlights. The driver of an approaching bus did not realize the women’s car was in the middle of the road. The bus struck the women’s car, injuring the occupants. The court denied the defendant’s claim of Good Samaritan immunity because the women were uninjured at the time he offered assistance. This holding is also far more restrictive than decisions that grant immunity to those who merely ask whether any assistance is needed or turn on safety lights at the scene of an emergency.

Finally, in Howell v. City Towing Associates, Inc. a call for help did not satisfy the requirement of rendering emergency care. The defendant tow truck driver gave the elderly plaintiff a ride home after the plaintiff had been involved in a car accident. Shortly after the ride began, the plaintiff went into cardiac arrest.

209. Id. at 439.
210. Id.
211. Id.
212. Id. at 441.
214. See Flynn v. United States, 902 F.2d 1524 (10th Cir. 1990).
216. Id. at 729.
217. Id.
driver called his dispatcher for assistance, and the dispatcher then contacted emergency personnel. 218 Without much analysis, the court simply laid out its reasoning by stating “[w]e can find no basis in law for a determination that a person who calls his dispatcher to notify EMS is performing emergency care as contemplated by the Good Samaritan statute.” 219 Perhaps the court would have decided differently had the driver contacted medical personnel directly, rather than through his dispatcher. This decision is not aligned with Minnesota law, however, because Minnesota’s Good Samaritan statute specifically defines reasonable assistance as “obtaining or attempting to obtain aid from law enforcement or medical personnel.” 220

E. The Role of Policy Concerns

Because the states’ Good Samaritan statutes are not identical, the decision in one state will not necessarily translate into an appropriate decision in another state. Consequently, one must ultimately determine the policy interests to be satisfied when choosing an out-of-state decision to follow.

The area of Good Samaritan law is very much a policy-driven area because it goes against decades of case law that does not recognize any duty to assist in emergencies. 221 These statutes take on the difficult task of regulating common sense. For example, North Dakota’s Good Samaritan statute provides immunity for “aid or assistance necessary or helpful in the circumstances.” 222 The statute proceeds to define “aid or assistance necessary or helpful in the circumstances” as any actions the aider reasonably believed were required to prevent injury depending upon the aider’s perception. 223 One burden that may flow from this type of legislation is the evidentiary issue of determining how the actor perceived the situation, and then determining what actions the actor reasonably believed were necessary to prevent injury.

If the policy behind Good Samaritan statutes is to encourage

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218. Id.
219. Id. at 731.
220. MINN. STAT. § 604A.01, subd. 1 (2002).
223. § 32-03.1-01.
those without a preexisting duty to help to come to another’s aid, then Minnesota courts must address certain issues. First, courts should stress the importance of the reasonableness standard set forth in the Good Samaritan statute. By granting immunity to individuals who act merely by contacting law enforcement or medical professionals, the courts can encourage others to assist in some way, even if they do so with a less-than-heroic act.

The *Swenson* court took a step in the right direction by finding that transporting an injured person to a hospital constituted rendering assistance pursuant to the Good Samaritan statute. This decision operates to decrease the time between the moment an injury is sustained in an accident and the time when professionals can tend to the injury; a passer-by who sees the victim can transport him to a hospital in less time than would be required to wait for an emergency vehicle to arrive at the scene and then proceed to transport the victim to a hospital. Continuing to hold as such may encourage more individuals to act at the scenes of emergencies.

**F. An Unanswered Question**

The *Swenson* court left a question unanswered in its analysis of the requirements for Good Samaritan immunity. What if the actor does not try to call 911 first in an effort to get professional medical care to the scene of the emergency but instead transports the victim to the hospital? This seemed like an important piece of information to the *Swenson* court because the decision twice mentions Tiegs’ attempt to call 911. However, the court conducted no analysis regarding whether such conduct was necessary to grant immunity to a volunteer at an emergency.

The answer would seem to require an actor to try to contact medical or law enforcement professionals in all situations if it can be done so with relative ease. The *Swenson* court seemed to imply

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224. See Veilleux, *supra* note 41.
225. § 604A.01, subd. 1 (2002).
226. § 604A.01, subd. 1.
228. *Swenson*, 653 N.W.2d at 796, 800.
this with its repeated references to Tiegs’ attempt to contact emergency personnel.\textsuperscript{229} This notion is also consistent with the statutory requirement that the actor “give reasonable assistance to the exposed person.”\textsuperscript{230} The fact that an actor does not have immediate access to a phone need not preclude granting immunity to such actor. However, if a phone line is available, it seems a call should be placed even if only to alert the professionals that the actor and victim are en route to the location where further professional aid can be rendered.

V. CONCLUSION

While the Minnesota Good Samaritan statute opposes a decades-old and commonly-accepted rule that does not require one to aid or assist an individual in danger,\textsuperscript{231} it is a legislative decision to eliminate or retain the duty to assist. The \textit{Swenson} court was required to analyze the existing statute, and correctly decided two issues of first impression: first, that Good Samaritan immunity should be granted to an actor who merely transports a victim to a health care facility; and second, that a brief stop along the way to such facility does not negate the seriousness of that emergency.

Public policy favors a broad interpretation of the immunity statute to encourage individuals to act at the scene of an emergency even if only by contacting professionals or driving the victim to a health care facility. Such acts will allow medical professionals to tend to the victim’s wounds more quickly. By continuing to broadly construe the immunity granted by Minnesota’s Good Samaritan statute, individuals will, in time, be more apt to respond at the scenes of emergencies without fear of suffering legal repercussions for any injuries the victim may suffer due to the actor’s negligence.

\textsuperscript{229} Id. Apparently the only reason Tiegs decided to take Swenson to the hospital instead of allowing an emergency vehicle to transport her was Tiegs’ inability to raise a signal on her cell phone. \textit{Id.} at 796.

\textsuperscript{230} \textsc{Minn. Stat.} \textsection 604A.01 subd. 1 (2002). The statute also defines reasonable assistance as including the act of “obtaining or attempting to obtain aid from law enforcement or medical personnel.” \textit{Id.}

\textsuperscript{231} \textit{See supra} Parts II.B, II.D.1-2.