

## **Good samaritans: When do you have a duty to act?**

by Bradley M. Pinsky

People always ask me, "when do I have a duty to act?" They pose situations where they are in a uniform, off duty, and encounter a medical emergency in a restaurant. In all cases, people want to know, do they legally have to get involved? (we'll ignore the moral answer for now.)

A recent case provides a good example of the answer.

A restaurant employee observed a person choking. He jumped up and informed the restaurant crowd that he would call 911. For some unexplained reason, the employee failed to call 911 until a significant amount of time had passed. The patron died, possibly due to the delay of 911 being called.

The employee's (ie: defendant's) lawyer asked the court to dismiss the case, arguing that the employee owed no duty to assist the patron, and thus any delay in calling 911 cannot be used to prosecute the employee.

### The law

In order to win a negligence lawsuit, the law requires that a defendant owe a duty to the injured person, and that the defendant breach the duty, directly causing injury.

Thus, if the restaurant employee owed no duty to the patron, then his delay in calling 911 is not actionable (ie: the injured party could not win a lawsuit for this delay in calling).

The court stated the well accepted rule that normally, a bystander has no duty to act. However, in this case, the employee assumed a duty to act by announcing that he will call 911. Once the employee assumed that duty, his delay in calling 911 could have caused injury to the patron. Thus, the court permitted the lawsuit to continue as the court found that the employee assumed a duty to the patron to act with care and to promptly call 911 as he stated he would.

The lesson is that most bystanders owe no duty unless they assume a duty to act. How can someone assume a duty? As this case shows, announcing to people that you will become involved is enough to assume the duty. Why? One rationale is that once a person announces that he is involved, he causes other people to not become involved. For instance, if an EMT announces at the scene of an accident that he will save a person, someone might not call 911.

In short, once you assume a duty to act, you must perform that duty. Until you have a duty to act, you cannot be liable for any injuries suffered.