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MEDICAL MALPRACTICE GOOD SAMARITAN ACT

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As part of the 2004 Tort Reform, the Florida Legislature passed Fla. Stat.

768.13(2)(c)(1) which states:

“Any health care practitioner as defined in s. 456.001(4) who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, shall not be held liable for any civil damages as a result of any act or omission relative to that care or treatment, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another.”

In passing that statute, the Legislature stated as its intent to “encourage health care practitioners to provide necessary emergency care for all persons without fear of litigation.” In Harris v. Soha, 34 Fla. L. Weekly D1436 (1st DCA, July 16, 2009), the Court was faced with interpreting the meaning of that statute.

In that case, plaintiff’s decedent presented himself to the emergency room with a throat swollen because of reaction to medication to the point that it was interfering with his breathing. The doctor was at the hospital because he was the

on call physician for obstetrical care and was attending a delivery when the emergency room requested his assistance. It was undisputed that the anesthesia department of the defendant hospital did not provide on call services to the emergency room but plaintiff contended that an informal agreement had been reached with the hospital's anesthesiologist to provide such on call services to the emergency room because they had previously responded to emergency room requests if they were available.

The trial court entered a directed verdict based upon the applicability of the statute and the lack of evidence establishing willful and wanton misconduct and the plaintiff appealed. The First DCA affirmed the directed verdict, rejecting the plaintiff's position that an anesthesiologist does not have patients of his own and, therefore, cannot fit within the statutory requirement of attending a patient of his or her practice. The Court reasoned

“... pursuant to the plain language of the statute, the phrase ‘a patient of his or her *practice*’ operates simply to distinguish the next requirement under this section, which is that the doctor then provide assistance to a patient “with whom at that time the practitioner does *not* have then-existing health care patient-practitioner relationship.”

The Court further concluded that the fact that other anesthesiologists had previously volunteered to respond to the emergency room failed to demonstrate that an anesthesiologist had any responsibility for patients in the emergency room and that the statute was, therefore, applicable.

This status is one of many “tort reform” statutes limiting the rights of injured plaintiffs. Until the Supreme Court of Florida is presented with the issue of the constitutionality of this string of legislation and unless there is a determination that that legislation is unconstitutional, courts are required to, and will, enforce them.

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