Coming to a person’s aid when off duty

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Stuart v Kirkland-Veenstra [2009] HCA 15

• ‘there is no general duty to rescue’ and
• the ‘common law of Australia has not recognised, and should not now recognise, such a general duty …’ (French CJ @ [88], [99]).
He continued (at [116]):

“No doubt it can be said that the police officers knew of the particular risk to Mr Veenstra. But considerations of the same kind will almost always be present when a passer-by observes a person in danger. The passer-by can see there is danger; the passer-by can almost always do something that would reduce the risk of harm. Yet there is no general duty to rescue.”
Crennan and Kiefel JJ (at [123], [127]):

• ‘The common law does not recognise a duty to rescue another person’; and

• ‘The common law generally does not impose a duty upon a person to take affirmative action to protect another from harm. Such an approach is regarded as fundamental to the common law … The law draws a distinction between the creation of, or the material increase of, a risk of harm to another person and the failure to prevent something one has not brought about.’
Woods v Lowns (1995) 36 NSWLR 344

“… circumstances may exist in which a medical practitioner comes under a duty of care, the content of which is a duty to treat a patient in need of emergency care, such as will give rise to a cause of action for damages for negligence in the event of a breach of that duty consisting in a failure to afford such treatment as is requisite and as is within the capacity of the individual practitioner to give… Whether in a particular case a medical practitioner comes under such a duty of care must depend upon … the facts of the particular case…”
Donoghue v Stevenson [1932] AC 562
(Lord Aitken at p 580):

“You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure … persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation … when I am directing my mind to the acts or omissions which are called in question.”
When providing care

• Who is “so closely and directly affected by” your actions that you “ought reasonably to have them in contemplation … when” thinking about what you might do, or not do?
If there is a duty of care, the response must be ‘reasonable’

“… the fact that a person … was acting in an emergency situation is relevant to deciding whether the person acted negligently. It may be reasonable in an emergency situation to take a risk that it would not be reasonable to take if there was no emergency…” (Ipp Review of the Law of Negligence (2002), [7.22]).
Equally, it may be appropriate in the circumstances to *not* do something

- An off duty paramedic can’t be expected to perform as if he or she had the equipment they would normally have when at work.
- It can’t be a breach of care to fail to administer drugs or use equipment that you just don’t have.
The pressure of the emergency

“The standard of care expected of the doctor would be set not only taking account of the emergency nature of the situation, but also of the fact that a doctor who has practised as a dermatologist for many years could not be expected to be as well-qualified and able to provide emergency treatment for a heart-attack victim as a cardiac surgeon or even, perhaps, an active general practitioner.” (Ipp Review, [7.23]).
Does that apply to paramedics?

• The answer of what is reasonable cannot be answered beyond the statement that ‘what is reasonable depends on all the circumstances’.
Good Samaritan legislation

• The *Ipp Review* recommended against it but every state and territory enacted it.
• Why? Not to resolve a legal issue, but a perception issue. If ‘health-care professionals have … a sense of anxiety about the possibility of legal liability for negligence arising from the giving of assistance in emergency situations’ then it was seen as prudent to put their minds at rest.
Civil Law (Wrongs) Act 2002 (ACT) s5

A ‘good samaritan’ is:

… a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently—

(i) injured or at risk of being injured; or
(ii) in need of emergency medical assistance;
A good samaritan

... does not incur personal civil liability for an act done or omission made honestly and without recklessness in assisting, or giving advice about the assistance to be given to, a person who is apparently—

(a) injured or at risk of being injured; or
(b) in need of emergency medical assistance.
‘Good samaritan’ protection is lost if

‘the good samaritan's capacity to exercise appropriate care and skill was, at the relevant time, significantly impaired by a recreational drug’. (s 5(2)(b)).

• That is not the case in Victoria or Queensland.

• But don’t let that stop you.
Will professional registration make a difference?

• It might.

• It depends what the relevant Code of Practice/Professional Standards say.

• What does it say for doctors?
“Good medical practice involves offering assistance in an emergency that takes account of your own safety, your skills, the availability of other options and the impact on any other patients under your care; and continuing to provide that assistance until your services are no longer required.”
Medical Board of Australia v Dekker
[2013] WASAT 182

“… the failure by a medical practitioner to make an assessment and render assistance when he or she is aware that a motor vehicle accident has or may have occurred in their vicinity and that people have or may have been injured, … would…reasonably be regarded as improper by medical practitioners of good repute and competency…”
Dekker v Medical Board of Australia [2014] WASCA 216.

• There is no general duty to act.

• Will the Code of Practice for paramedics including an obligation to assist in an emergency?

• Will there be circumstances where failure to assist ‘would...reasonably be regarded as improper by [paramedic] practitioners of good repute and competency...’?
It would require

- An assessment of all the circumstances including the practitioners current mental state, the circumstances in which they became aware someone needed assistance and all other relevant circumstances.

- A ‘deliberate and conscious choice not to assist ... in circumstances where it would “offend common standards of respect, decency and kindness ...” may well be subject to professional sanctions.
If you’re in the Northern Territory

“Any person who, being able to provide rescue, resuscitation, medical treatment, first aid or succour of any kind to a person urgently in need of it and whose life may be endangered if it is not provided, callously fails to do so is guilty of an offence and is liable to imprisonment for 7 years.” (Criminal Code (NT) s 155).
Conclusion #1

• For off-duty paramedics there is no general duty to render assistance to a stranger.

• That may change with professional registration where failure to render assistance may, in the right circumstances, amount to ‘unsatisfactory professional performance’.
Conclusion #2

• Where a paramedic does assist, he or she must act with honest regard to putting their patient’s best interests first. Whether conduct falls below the standard expected of a reasonable paramedic will require consideration of all the circumstances.

• An off-duty paramedic, who is not affected by a ‘recreational drug’, will be able to take comfort in the good samaritan legislation in every state and territory.
Conclusion #3

- A paramedic resident or travelling in the Northern Territory should be aware that it is a criminal offence to ‘callously fail’ to ‘provide rescue, resuscitation, medical treatment, first aid or succour of any kind’ where the paramedic is ‘able’ to provide that care and the person’s ‘life may be endangered if’ that assistance is not provided.
Questions? Comments?

Thank you for your attention.

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