S152360

In the

Supreme Court

of the

State of California

ALEXANDRA VAN HORN,

Plaintiff-Respondent,

v.

ANTHONY GLEN WATSON,

Defendant-Appellant.

LISA TORTI,

Defendant-Respondent.

CALIFORNIA COURT OF APPEAL · SECOND APPELLATE DISTRICT · NO. B188076(L), B189254
SUPERIOR COURT OF LOS ANGELES · HON. HOWARD J. SCHWAB · PC034945

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF OF BOY SCOUTS OF AMERICA IN SUPPORT OF DEFENDANT AND RESPONDENT LISA TORTI

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TO THE HONORABLE CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT:

Boy Scouts of America respectfully requests leave to file the accompanying *amicus curiae* brief in support of Defendant and Respondent Lisa Torti pursuant to Rule 8.520(f) of the California Rules of Court.

Boy Scouts of America is the nation's foremost youth program for character development and values-based leadership training. Boy Scouts charters approximately 300 local councils across the country, including 24 in California, to support Scouting programs at the local level. More than three million youth members and one million adult leaders nationwide are active in the traditional programs of Cub Scouting, Boy Scouting, and Venturing. Membership in Scouting since 1910 totals more than 110 million.

Boy Scouts teaches youth and their leaders to "be prepared," to "do a good turn daily," and "to help other people at all times." Boy Scouts of America has a substantial interest in seeing that its members are not subject to liability for being helpful to others. Under the Court of Appeal's interpretation of the Good Samaritan statute, Cal. Health &

Safety Code § 1799.102, any Scout who helps someone in an emergency would be exposed to liability, unless the emergency and the care rendered were both purely "medical." Boy Scouts of America is concerned that the California Court of Appeal's construction of California law will discourage citizens from helping one another, especially in emergencies, and subject well-intentioned rescuers to liability.

For the foregoing reasons, *amicus curiae* Boy Scouts of America respectfully requests leave to file the attached brief in support of Defendant and Respondent Lisa Torti.

Dated: January 2, 2008 Respectfully submitted,

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***AMICUS CURIAE* BRIEF**

Boy Scouts of America's Mission is "to prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law." In the Scout Oath, Scouts promise "To help other people at all times," and the Scout Law requires a Scout to be "helpful." Thousands of Boy Scouts have earned merits badges for Emergency Preparedness and Lifesaving.

Boy Scouts of America is committed to encouraging boys to help others at all times, especially in emergencies. The familiar Boy Scout Motto is "Be Prepared," which means that "[w]hen someone has an accident, you are prepared because of your first aid instruction. Because of lifesaving practice, you might be able to save a nonswimmer who has fallen into deep water." *Boy Scout Handbook* 54 (11th ed. 1998). The Slogan of Boy Scouts of America is "Do a Good Turn Daily," which the *Handbook* says may include "saving a life" or "helping out after floods or other disasters." *Id.* at 55.

Because of their values and training, Boy Scouts do not hesitate to help fellow citizens in need. From 2004 through 2006, Boy Scouts of America awarded medals to over 80 Cub

Scouts and Boy Scouts in California for saving lives, including:

- In August 2005, a 14-year-old Boy Scout from Sacramento held onto the legs of a 4-year-old girl who had fallen head first into a crevice until adults could free the trapped girl.
- In May 2005, an 18-year-old Boy Scout from Ventura searched for and found two women stranded in the rough, cold waters off Santa Cruz Island and helped support one of the women until a boat could take all of them to safety.
- In April 2005, a 10-year-old Cub Scout from Sacramento jumped into a swimming pool to bring a 5-year-old to the steps after the younger child fell into the water.
- In June 2005, after the mast of the ship on which his family was sailing broke and pinned his father to the deck, a 16-year-old Boy Scout from Rancho Santa Fe moved his siblings to a small atoll and helped free his father.
- In September 2004, a 13-year-old Boy Scout from Lake Forest held another boy from slipping down a steep slope until an adult could help.
- In July 2004, a 13-year-old Boy Scout from Victorville swam his 16-year-old cousin back to a lifeguard on shore at Huntington Beach after his cousin had been carried out by the current.
- In July 2004, 14-year-old Boy Scout from Oakhurst helped bring a 5-year-old girl safely to shore after she was pulled downriver by the current.

- In May 2004, a 15-year-old Boy Scout from Fullerton stopped the fall of a girl who had hit her head on a metal pole while climbing up Half Dome at Yosemite.

- In April 2004, a 15-year-old Boy Scout from El Cajon and a 17-year-old Boy Scout from Garden Grove helped rescue a scuba diver in the Pacific Ocean who had been left behind by his boat.

Each of these situations presented a pressing exigency that required immediate action. But under the Court of Appeal's holding, the Scouts would not be protected by the Good Samaritan law because these are not "medical" emergencies beyond a threat to life and limb and do not involve "medical" care beyond saving a life. These Scouts deserve the gratitude and encouragement of the State and not exposure to liability.

ARGUMENT

I. THE GOOD SAMARITAN STATUTE IS NOT LIMITED TO "MEDICAL CARE"

The Court of Appeal's construction of the Good Samaritan statute in *Van Horn v. Watson*, 148 Cal. App. 4th 1013 (2007), would eviscerate Section 1799.102 of the Health & Safety Code by inserting language that would artificially narrow its application and undermine the public policy that encourages helping others. Section 1799.102 provides that,

> No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered.

Cal. Health & Safety Code § 1799.102 (2007). The Court of Appeal correctly observed that "Section 1799.102, on its face, clearly applies to 'any person' providing 'emergency care' at the 'scene of an emergency.'" 148 Cal. App. 4th at 1020 n.7.

Nevertheless, the Court of Appeal concluded that the term "medical" must be read into Section 1799.102 and so limit its application: "the immunity provided by Health and Safety Code section 1799.102 applies only to the rendition of emergency *medical* care at the scene of a *medical* emergency." *Id.* at 1021 (emphasis added). The court offered no definition or explanation of the term "medical." From the court's holding, however, a Good Samaritan who, following an automobile accident, removed someone from a "vehicle because she feared the car would catch fire or 'blow up,'" *id.* at 1017, is not offering medical care in a medical emergency. According to the court, removing the accident victim from the car cannot be considered "*medical* care" because the injured

person's "*medical condition*" would not be treated by removing her from the car. *Id.* at 1021 n.8. The Court of Appeal thus added to Section 1799.102 what it describes as a "medical treatment motive" for a Good Samaritan's act to remain immune from liability. *Id.*

The Court of Appeal's holding ignores the full context of the "Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act," which shows the Legislature was deliberate in its inclusion or exclusion of the word "medical." The plain language of a statute "is generally the most reliable indicator of legislative intent." *Hassan v. Mercy American River Hospital*, 31 Cal. 4th 709, 715 (2003). Statutory language should be given its ordinary meaning, construed in its statutory context, and given the same meaning throughout the code unless the Legislature indicated otherwise. *Id.* at 715-16. Here, the plain language of the first sentence of Section 1799.102 provides immunity for "emergency care at the scene of an emergency."[1] The

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[1] Courts in other states have construed similarly-worded statutes to provide immunity for emergency care not so

(Footnote continued on next page)

Legislature did not qualify the "emergency care" as necessarily "medical" in nature. The second sentence of Section 1799.102 exempts "places where medical care is usually offered" from immunity. The omission of the word "medical" from the first sentence should be considered deliberate.

The language of Section 1799.102 is clear in the context of the surrounding statute. Two other sections — both dealing with the level of immunity granted to professional, non-volunteer emergency care providers — show that the Court of Appeal's reasoning is incomplete. In Section 1799.107, the Legislature provided immunity to emergency rescue personnel for "emergency services," which

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limited. *See, e.g., Mueller v. McMillian Warner Insurance Co.*, 714 N.W.2d 183, 186 (Wis. 2006) (holding that "emergency care . . . refers to the initial evaluation and immediate assistance, treatment, and intervention rendered to the plaintiff"); *Held v. City of Rocky River*, 516 N.E.2d 1272, 1276-77 (Ohio Ct. App. 1986) (holding a statute granting immunity "for administering emergency care or treatment" applied to a firefighter who rescued another firefighter who "had been knocked to the ground and pinned there by a continuous stream of rushing water").

were defined as "activities necessary to insure the health or safety of a person in imminent peril." Cal. Health & Safety Code § 1799.107(e) (2007). The definition of "emergency services" included "rescue procedures and transportation" and expressly did not limit immunity to "medical services." *Id.* In contrast, Section 1799.110, which provides some protection for physicians and surgeons, is limited to "emergency *medical* services." *Id.* § 1799.110(a) (2007) (emphasis added). These two sections further illustrate the Legislature's attention to the inclusion or exclusion of the word "medical" in Section 1799.102.

The Court of Appeal erred in finding support for its decision in former Section 1767 of the Act, which provided:

> In order to encourage local agencies and other organizations to train people in emergency medical service programs and to render emergency medical services to others, no person who in good faith renders *emergency medical care* at the scene of an emergency shall be liable for any civil damages resulting from any act or omission . . . . The scene of an emergency shall not include emergency departments and other places where medical care is usually offered.

148 Cal. App. 4th at 1019-20 (quoting Cal. Health & Safety Code former § 1767) (emphasis added). First, the Legislature subsequently changed the immunity provision, now granting

immunity to providers of "emergency care," not merely providers of "emergency *medical* care." The Legislature thus took the affirmative step of removing the term "medical" and expanding the scope of the statutory language. Second, the statutory intent provision of former Section 1767 (now in Section 1797.5), which refers to "emergency medical services," cannot be considered exhaustive because the Act includes protection for "rescue procedures and transportation" and other forms of non-medical emergency aid in Section 1799.107, as discussed above.

Encouraging selfless acts by ordinary citizens to help each other in times of emergency is threatened by the Court of Appeal's limiting the law to "medical" care for a "medical" emergency. Many life-saving acts of heroism do not satisfy the Court of Appeal's requirement of a "medical treatment motive" and dual requirements of "medical care" in a "medical emergency," thereby exposing Good Samaritans to liability. At the very least, the Court of Appeal's addition of words to the statute not placed there by the Legislature injects confusion into the law that would chill efforts to help rather than encourage them. A full analysis of the Act, along with

former versions of the section at issue, leads to the same conclusion that is clear from the plain language of Section 1799.102: Immunity should not be artificially limited to providers of "emergency medical care," but extended to providers of "emergency care" of any kind.

II. IF THE GOOD SAMARITAN STATUTE WERE LIMITED TO "MEDICAL CARE," THEN "MEDICAL CARE" SHOULD BE CONSTRUED BROADLY

If Section 1799.102 were limited to "medical care" in a "medical emergency," then the term "medical" should be construed broadly to encompass the sort of good-faith rescue at issue here.[2]

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[2] Both Appellant Watson and Respondent Van Horn contend that Ms. Torti's emergency care was not performed in "good faith" as required by Section 1799.102. *E.g.*, Van Horn Brief at 4-5; Watson Brief at 3-4, 6, 9, 25. This issue, however, is not before this Court because the Court of Appeal explicitly declined to address it. *Van Horn*, 148 Cal. App. 4th at 1021 ("Assuming, without deciding, that Torti believed plaintiff had to be immediately removed from the car due to a risk of fire or explosion . . . ."). The issue before the Court is whether a good-faith rescue attempt constitutes emergency care under Section 1799.102. Boy Scouts of America does not take a position on whether the facts here support a finding of good faith, but rather urges the Court to rule that a good-faith rescue attempt triggers immunity.

The Court of Appeal held that rescuing Ms. Van Horn from a perceived imminent threat of fire could not be considered medical care. 148 Cal. App. 4th at 1021. The opinion also noted, however, that a rescue could be "a matter of medical exigency, such as where a carbon monoxide poisoning victim needs to be moved to a source of fresh air." *Id.* at 1021 n.8. The Court of Appeal thus creates an untenable distinction that finds a medical threat in smoke but not fire.

Relying on the imminence of the harm — i.e., the carbon monoxide poisoning victim has already suffered injury, while Ms. Van Horn had only a perceived threat of burns — cannot save the Court of Appeal's distinction. Preventative medicine and curative medicine both should be considered medical care. A physician who prescribes a vaccine to immunize from polio is giving care just as medical in nature as a physician who treats a patient afflicted with polio.

The Court of Appeal's holding creates a perverse incentive: a rescuer desiring immunity from potential liability must wait for a victim to suffer burns before removal from a

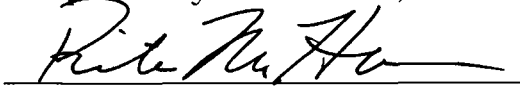
fire becomes care that is "medical." But an "emergency" is "an 'exigency of so pressing a character that some kind of action must be taken'" before a licensed physician can be found. *Perkins v. Howard*, 232 Cal. App. 3d 708, 715 (1991) (citation omitted); *accord People v. Lee Wah*, 71 Cal. 80, 82 (1886). By definition, an emergency leaves little or no opportunity to evaluate whether the circumstances and the care required are more like the smoke or the fire in the Court of Appeal's analysis. In exigent circumstances, taking the time to analyze technical distinctions is impractical and inappropriate. As a result, if the term "medical" forever after qualifies the kind of emergency and the kind of care protected in Section 1799.102, then the term "medical" should be understood to apply broadly to the sort of good-faith rescue at issue in this case and the sort of heroic acts performed by Boy Scouts and Cub Scouts discussed above.

CONCLUSION

For the foregoing reasons, the Boy Scouts of America requests that this Court reverse the decision of the Court of Appeal.

Dated: January 2, 2008

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 8.520(c) of the California Rules of Court, I hereby certify that this brief contains 2,488 words (as counted by the word processing system used to prepare the brief) and thus is in compliance with the word limitation set forth in Rule 8.520(c).

Dated: January 2, 2008

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