**03.11 “GOOD SAMARITAN” DEFENSE**

The defendant is not liable for the plaintiff’s harm if it is more likely true than not true that:

(1) the defendant was providing emergency care or emergency counseling to the plaintiff at the time the plaintiff was harmed; and

(2) the defendant reasonably believed that the plaintiff was in immediate need of emergency aid in order to avoid serious harm or death.

[The defense is not available if it is more likely true than not true that the plaintiff’s harm resulted from gross negligence, reckless misconduct, or intentional misconduct by the defendant.

To understand “gross negligence,” you must first understand what ordinary negligence means. Negligence is the failure to use reasonable care, which is the amount of care a reasonably careful person would use in the same situation. Gross negligence is an extreme departure from this standard. Gross negligence means more than ordinary inadvertence or inattention, but less than conscious indifference to consequences.

A person engages in reckless misconduct when the person consciously disregards a substantial and unjustifiable risk. Disregard of this risk must be a gross deviation from the way a reasonable person would act.

“Intentional misconduct” means that the defendant acted, or failed to act, either with the purpose of harming the plaintiff or knowing that [his] [her] act or failure to act was substantially certain to harm the plaintiff.]

Directions for Use

This instruction should be given in a negligence case arising out of a defendant’s voluntary efforts to help a person in need of emergency aid. It should not be given, however, in a case in which the defendant is a volunteer member of an emergency first aid, rescue, or search organization, for reasons discussed below in the Comment.

Comment

Alaska’s “Good Samaritan” defense is statutory, and this instruction is derived from AS 09.65.090(a). The statute, under stated circumstances, affords the defense to “[a] person at a hospital or any other location who renders emergency care or emergency counseling.” Subsection (b) of the same statute provides a defense more specifically to a “member of an organization that exists for the purpose of providing emergency services,” if the defendant is acting as a “volunteer” as that term is defined in the statute and if harm “results from an act or omission in providing first aid, search, rescue, or other emergency services” to the plaintiff. The defense of subsection (b), however, appears unlikely to involve jury questions in the usual case, since, unlike the more general defense of subsection (a), subsection (b) does not specifically require a reasonable belief on the part of the defendant that the plaintiff “is in immediate need of emergency aid in order to avoid serious harm or death.” Instruction 03.03E, therefore, is not intended to be used in a case in which the defendant is a volunteer member of an emergency first aid, rescue, or search organization.

The Alaska Supreme Court has held that the “Good Samaritan” defense is unavailable if the defendant had a pre-existing duty to render aid. *Deal v. Kearney*, 851 P.2d 1353, 1357 (Alaska 1993). Whether there is such a pre-existing duty is not included in Instruction 03.03E; however, as in most instances “[w]hether an actionable duty exists is a question of law and public policy.” *Mesiar v. Heckman*, 964 P.2d 445, 448 (Alaska 1998); *see also State v. Sandsness*, 72 P.3d 299, 306 n. 41 (Alaska 2003), *quoting Division of Corrections v. Neakok*, 721 P.2d 1121, 1127 n. 7 (Alaska 1986). *Cf. Deal*, 851 P.2d at 1360-61 (evidence inadequate to support summary judgment on whether emergency-call physician had pre-existing duty).

The instruction’s definitions of “gross negligence” and “reckless misconduct” are derived from *Storrs v. Lutheran Hospital & Homes Society, Inc.*, 661 P.2d 632, 634 & n.1 (Alaska 1983).