



### **Knowing Too Much:**

#### **Does your advanced tree-care training make you a 24/7 Good Samaritan?**

Tree-care professionals with training in risk assessment or the Electrical Hazards Awareness Program (EHAP) are sometimes concerned that they may be responsible for not taking action when they observe a tree hazard. Some feel that their advanced training has made them round-the-clock Good Samaritans with respect to

every piece of property they enter, regardless of the reason for entry. Breathe a bit easier and read on.

A Good Samaritan is an individual who, out of the kindness of his heart, assists others who are downtrodden or injured.<sup>1</sup> The first Good Samaritan statute was passed in 1959 in California. Since then, every state has enacted some form of the law. The purpose of Good Samaritan laws is to encourage prompt, voluntary assistance in emergencies and to remove the fear of liability for trying to help. A classic case of an emergency is coming upon a roadside personal-injury crash scene.

In Minnesota, there are two parts to the Good Samaritan law. First, Minnesota's Good Samaritan law provides immunity from liability to a person who gives reasonable assistance at the scene of an emergency.<sup>2</sup> If the injured person is unintentionally harmed by your attempts to help and sues you, the Good Samaritan law protects you from liability and payment of monetary damages. Second, Minnesota is one of only three states (Rhode Island and Vermont are the other two) that have created a statutory duty to render assistance to a person who is exposed to or has suffered grave physical harm at the scene of an emergency.<sup>3</sup> For example, if you come upon a person injured in a car crash, you have a duty to do something to help. It can be as simple as calling 911 for an ambulance.

*What does this mean for tree-care professionals?* The immunity part of the Good Samaritan law "does not apply to a person rendering emergency care, advice, or assistance during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering the care, advice, or assistance."<sup>4</sup> If you respond to a tree emergency in the course of your employment, follow the risk-assessment procedures and policies of your employer. If you are sued for negligence, you may have other defenses, but the Good Samaritan shield does not apply, because you are on the job.

<sup>1</sup> *Gust v. Minn. Dep't of Natural Res.*, 486 N.W.2d 7 (Minn. App. 1992)

<sup>2</sup> Minn. Stat. §604A, subd. 2 (a), provides: "A person who, without compensation or the expectation of compensation, renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care, advice, or assistance, unless that person acts in a willful and wanton or reckless manner in providing the care, advice, or assistance. This subdivision does not apply to a person rendering emergency care, advice, or assistance during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering the care, advice, or assistance."

<sup>3</sup> Minn. Stat. §604A.01, subd. 1, provides: "A person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. A person who violates this subdivision is guilty of a petty misdemeanor."

<sup>4</sup> Minn. Stat. §604A, subd. 2(a)

*What about the second part of the Good Samaritan law that requires people to give assistance in emergency situations?* Everyone in Minnesota has an obligation to give reasonable assistance at the scene of an emergency, regardless of background or employment status. An emergency is defined as a “situation which has suddenly and unexpectedly arisen and which requires speedy action.”<sup>5</sup> The suddenness or unexpectedness of a situation makes it an emergency. There are no Minnesota appellate court cases dealing with the applicability of the Good Samaritan law to tree emergencies. So, there is no binding legal authority on this subject. But a likely scenario for a tree emergency would be a tree that falls suddenly and injures someone. Any passerby would have an obligation to try to give assistance in that situation.

The Good Samaritan law applies to *present or existing* emergencies, *not future* emergencies, according to the Minnesota Appellate Court.<sup>6</sup> The scenario above about the tree that suddenly fell is a *present or existing* emergency. Trees with defects or other problems are risks that should be properly managed, but they are not *existing* emergencies, unless a tree’s failure is imminent. Arborists are no more expected to be able to predict emergencies than anyone else. If you come upon a genuine emergency (involving trees or otherwise), render assistance, as required by law.

If you come upon a tree that could fail some time in the future but hasn’t yet failed, don’t panic. You are not legally obligated to act to protect another person from a potential danger, unless you have a special relationship with the other person.<sup>7</sup> A “special relationship” exists between an innkeeper and a guest, a bus company and a passenger, a hospital and a patient, etc. In those situations, the person in need of protection is vulnerable or dependent. A business/customer relationship is not a special relationship.<sup>8</sup>

Although you have no legal obligation to correct every tree problem you observe, your conscience will probably prompt you to report a dangerous tree to the property owner or appropriate governmental agency. You will feel better knowing that you have done what you could to protect the public by putting the tree owner on notice of the problem. You do not have the right to enter a person’s property and cut down a hazardous limb or a tree without permission, even if your intent is to do a good deed by fixing a tree defect. Entering a person’s property without permission is trespass. Cutting down a tree without the tree owner’s permission carries a stiff penalty. A state law provides that whoever intentionally cuts down a tree without the owner’s permission can be assessed three times (“treble”) the amount of damages awarded in court.<sup>9</sup>

*Bottom line:* Rely on your professional training, good judgment, and common sense. You were trained to be a tree-care specialist, not a guardian angel.

*Disclaimer:* The information included in this fact sheet is intended to be educational, not legal advice. If you have a legal problem and require legal advice, you should consult a lawyer.

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<sup>5</sup> *Id.*, 486 N.W.2d at 9.

<sup>6</sup> *Johnson v. Thompson Motors of Wykoff, Inc.*, No. C1-99-666 (Minn. Ct. App. Feb. 2, 2000)

<sup>7</sup> *Donaldson v. Young Women’s Christian Ass’n*, 539 N.W.2d 789, 792 (Minn. 1995).

<sup>8</sup> *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 164, 168 (Minn. 1989).

<sup>9</sup> Minn. Stat. §561.04.