THE FIRST AIDER AND THE LAW

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&
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We are all aware that in every First Aid class, a student asks a question about the legal ramifications of their actions as First Aiders. This article has been written to try and provide instructors with some general answers to the questions that are most commonly asked. It is not intended to be definitive legal advice as each case depends on the facts of the matter. If a student wants advice on a particular event that has occurred to them (or someone they know) they should be referred to a solicitor for that advice. The material here is a guide to give instructors confidence to answer the general questions that we already try to answer.

With that in mind, there are two important distinctions to be made. The first is between the Civil and the Criminal law. People are often concerned about being sued or being charged. They are two different matters. If a first aider is sued, it because another person claims that the first aider has caused some injury, or caused the injury to get worse. It is an action between two individuals. A charge on the other hand, is brought by the Police, on behalf of the "Crown" and represents the State against the individual. The matters referred to in this article are limited to civil matters. We have not considered issues of when a first aider could be "charged". That may have to wait for another article, if there is sufficient interest.

The second distinction is between being sued and being liable. Being sued is the actual process of being taken to Court. That can happen even if there is no real chance of success. Because of this, the answer to the question "Can I be sued if ....?" is always "Yes". The real question that people are interested in, however, is "Will I be liable if I am sued?", that is, will the person claiming that I did the wrong thing, win. As that is
the real issue, we have attempted to answer the following questions on that basis.

Throughout the article, we refer to "reasonable care", the "reasonable first aider" etc. What is reasonable depends on the circumstances. The First Aid manual does not dictate what is reasonable, and deviation from it, if it can be justified, will not automatically be unreasonable. If however, we were to find ourselves at the wrong end of a law suit, then the Court would, if it is presented to the Court, look to the First Aid manual to see what should be done. If we have abided by that, then it would be very hard to say that what was done was unreasonable.

The test does however depend on the facts. A person who, on the way home from his or her first First Aid course and who comes across a major accident will be excused if they fail to do it all "by the book". Attendance at a course does not make you an expert. In fact, although there is no authority to support this, I suspect a Court would expect the same from a First Aider as a untrained person in those circumstances. The difference comes in for Instructors, Operations Branch members and permanent Ambulance Officers, who hold themselves out as having a higher level of skill than the average and therefore should not get as flustered at the scene. For them, they will have to justify their actions if those actions are called into question. If they can show compliance with teaching and protocols, no more could be expected.

Finally, it should be remembered that despite the mysterious nature of the law and the legal processes, they are very much concerned with common sense. This article has been written because students and instructors are naturally concerned with their legal position. While that is reasonable, we would try to stress that notwithstanding the fear of law, it is extremely unlikely that a first aider should be sued. We should try to do the best for our patients, not because of a fear of litigation but because it is the care of patients that we are concerned with; our professional pride should ensure that we are always trying to improve our knowledge and skill. If we always act within our own limitations and in the best interests of our patient, there should be no cause for concern.
Turning then to the popular questions:

1. Will I be liable if I stop at a car accident, render first aid and my casualty dies?

If a person wants to sue another in these circumstances, they would have to show that the First Aider was "negligent". That means they would have to show that the First Aider did not act in accordance with the standard of a "reasonable first aider".

If faced with such a situation, a Court would have to look for evidence as to what a First Aider would do. In so doing, the Court should get the First Aid Book. If the treatment was in accordance with that teaching, it would be very difficult for the person who was suing (the plaintiff) to prove negligence!

(The book however may not be sufficient protection if the treatment therein is itself negligent [Rogers v. Whittaker (1991) 23 NSWLR 600]. To ensure that the treatment is "reasonable" we must depend on the various persons who contribute to the syllabus. As first aiders, we are not equipped with the knowledge to question that treatment, we are entitled to put a certain amount of faith in "the book".)

The plaintiff would need to show that the negligence of the First Aider actually caused the death. In most cases, that will be virtually impossible. If the patient has been involved in a car or industrial accident, or suffered any illness or injury that is so serious as to warrant First Aid intervention, it is likely that the Courts would hold that the cause of death was, say, the accident. Accordingly a patient in the car accident will be held to have died as a result of the accident. The driver responsible for causing the accident will be liable, not the First Aider. This of course is of practical value, as the driver is always insured!

There are of course exceptions. If some keen first aider attempted to do CPR on a casualty whose only complaint was a fractured leg, that would be new or intervening act, between the accident and the death, and yes the First Aider could well be liable.
However, in the majority of cases where the patient dies, the patient is very seriously ill or injured prior to treatment. In these cases the First Aider will not be liable, even if their action does not come up to the requisite standard.

The courts are willing to forgive "rescuers" who do not reach the perfect standard because of the urgency of the situation. This will protect students if they are flustered at an accident. Instructors, Operations Branch Members and NSW Ambulance Officers should not expect such leniency as we hold ourselves out as having greater skill and experience than the average First Aid Student.

2. If I render first aid at work and my casualty suffers a permanent disability or dies, can I be sued, or is the employer liable?

The answer to this question is the same as in (1) above, with this extra. If you are employed as the company First Aid officer, then in providing First Aid you are acting on behalf of the employer. The Employees Liability Act 1991 provides that the employer is liable for your actions (provided that you are not guilty of "serious or wilful misconduct"), and you cannot be sued. If you are just acting as a Good Samaritan, then the normal law of negligence, as discussed above, would apply.

3. What is the Good Samaritan Act?

A myth. There is no such Act.

4. If I am sued, who pays my legal fees?

If sued in a personal capacity, you are liable for your own legal costs, subject to the availability of Legal Aid. Members of the Training and Operations Branches are covered by a policy of insurance. (We are not aware of the precise terms of such policy and details should be sought, if required, from Head Office). Members of the public who have attended a First Aid course, are not covered by a St. John Ambulance policy of insurance.

5. Has a first aider ever been sued in Australia?

We have not been able to find any reported cases of a First Aider (or anyone rendering emergency first aid treatment, including a doctor) being sued in Australia.
6. Will I be liable if I do something wrong e.g. don't splint a fracture as I failed to determine that it was broken?

Negligence can be found by either act or omission. As such failing to do what a reasonable first aider would have done is as bad as doing something that a reasonable first aider would not have done. Again it depends on the circumstances. An Operations Branch member who fails to suspect a fracture and sends the patient home, may incur liability. An individual First Aider, who has attended a course, would probably not be liable as they do not profess to have the skill or experience.

Further, it must be shown that the failure to treat caused the injury to be worse than it would otherwise have been. For example, if you do not treat as a fracture, but send the patient to hospital anyway, there is likely to be no aggravation of the injury. If the patient has fractured a limb, is comfortable and circulation has not been impaired, no first aider would be liable for letting the patient wait for the ambulance without direct intervention.

Without further injury, it does not matter how poor the treatment, there will be no liability.

7. What is my position if a casualty refuses to let me treat them?

A casualty has every right to refuse treatment. Ideally you should get refusal in writing as it could be evidence if they later deny that they refused treatment.

8. What if the bystanders wont let me treat the casualty?

Provided you do all that you can in the circumstances, there can be no liability attracting to you.

9. What is the position if an employee has an accident and the first aid kit is locked or someone has taken supplies since I checked it last?

As an Occupational First Aider, it may be your part of your job to check the equipment, but the legal liability will always rest on the employer.
10. **What should I do if a casualty loses a wallet or jewellery and they accuse me of taking it while rendering first aid?**

There is very little that you can do. If they make the accusation to the police, you have the right not to answer any questions, but if you really did not take it, you should give a statement explaining what happened.

If the patient sues you, it is up to them to prove that you took it. If you did not, it is hard to imagine what evidence they would have to say that you did. The mere fact that you might have had an opportunity, say while the patient was unconscious, is not enough.

11. **Do I have to stop and render first aid?**

No, but if you do, you must use reasonable care.

11. **What can I do if whom can I sue,**

   a) **if I get AIDS (or other disease) while administering first aid?**

   If rendering First Aid as part of your occupation, then this would be disease contacted as part of your work and you would be entitled to Workers Compensation. If not, unless you could show that someone owed a duty to you to protect you from that disease, and they failed in that duty, you could sue no one. It is a risk we take and the onus is on us to protect ourselves.

   b) **if I am injured while rendering first aid?**

   There have been cases of First Aiders injured while attending car accidents. It has been held that the driver that caused the car accident should have foreseen that in such an accident a person may come forward to render assistance and may get injured. The rescuer has been able to succeed against that driver. So, if you are injured, you may be able to sue the driver at fault. [Chapman v. Hearse (1961) 106 CLR 112]

   Again, if you are rendering First Aid as part of your job (e.g. Occupational First Aiders, NSW Ambulance Officers etc) you could also claim Workers Compensation from your employer.
12. What is the position if:

a. I break a rib whilst doing CPR and thereby complicate the patient's position;

It may be a cliche but it is true. If you do CPR and break a rib, the patient may wake up with sore ribs. If you don't do CPR, they will die. Anything that you do is not as severe as the result if you don't. If the rib punctures the heart and they die then they are no worse off than if you did nothing. Further, CPR performed in accordance with proper methods does break ribs due to the nature of the bones, the age of the patient etc. In short, if you do CPR and break a rib, keep going. There is no way that I can imagine, that you will be liable for that injury.

b. I compromise a spinal injury due to movement?

This is a different matter. A reasonable first aider would not move a patient with a spinal injury except in the circumstances set out in the manual. We can imagine a patient in a burning car where the option is spinal complications or death. Then what is reasonable depends on the circumstances. The football player on the field can be left until appropriate transport is arranged. As in all matters it depends on the circumstances and why the patient was moved.

The worst case of course will be the First Aider who doesn't look for spinal injury. Tells the player to get up without attempting a secondary assessment only to see his patient collapse due to spinal injury. If I were that first aider, I would want insurance.

Remember however, that the First Aider is the last person the plaintiff wants to sue. The driver/employer/sports association etc is more likely to be insured.

13. Am I liable if one of my students is in Court for administering incorrect first aid treatment and insists that I taught them to do it that way?

It seems unlikely. That would be like saying driving instructors are liable for the accidents caused by their students.
14. If an examiner conducts an examination not in accordance with St. John syllabus, can there be any liability if the student fails to perform as a reasonable first aider?

If it could be proved that the student acted as taught, and the teaching was not of proper methods, the student may avoid liability, as a reasonable person in his or her shoes would have acted as taught. Again, it seems that the examiner would not be liable as the connection between any injury and the teaching would be too distant. I can imagine the Court having serious words to say and the reputation of St. John suffering irreparable damage. The examiner may be liable to St. John internal discipline.

We hope that this goes some way to alleviating people's concerns about legal liability and gives instructors more confidence in answering the questions that generally arise. Remember that the matters contained herein are of a general nature only and for specific advice regarding specific incidents, people should be referred to their solicitor or insurer.