DOCTORS, THE DUTY TO RESCUE and the Ambulance Service

The ‘Emergency Medicine Quiz’ that appeared in the June 1999 edition of *Current Therapeutics* raised the issue of whether a doctor, who encounters a cyclist who has been struck by a car and is being attended by ambulance officers near the doctor’s surgery, is legally obliged to offer his assistance. This article will consider the legal duties that may be imposed on doctors in this scenario and will conclude, perhaps rather unsatisfactorily, that the legal answer is not clear.

**Woods v Lowns**

In *Woods v Lowns*, Dr Lowns was found to have been negligent when he refused to leave his surgery and travel 300 m to where Patrick Woods was having an epileptic seizure, even though there was no pre-existing doctor/patient relationship. The effect of this case was to establish that, in certain circumstances, a doctor is under a legal duty to go to the aid of a stranger and may be liable in damages for failing to attend when called upon to do so. The case represents a significant departure from the previously accepted position that, at common law, there was no obligation to go to the aid of a stranger.

**Rationale for the duty**

The law of negligence will impose a duty on one person to take care to avoid acts or omissions that may foreseeably harm another, provided that there is sufficient proximity, or closeness, between the plaintiff and the defendant. In *Woods v Lowns*, the trial judge found that there was sufficient proximity between Dr Lowns and Patrick Woods: there was physical proximity as Patrick was only some 300 m from Dr Lowns’ surgery; causal proximity, as Dr Lowns knew that there was a ‘major medical emergency, life threatening and calling for urgent attention’ and circumstantial proximity in that Dr Lowns knew that there would be serious consequences for Patrick if he was not treated and that he, Dr Lowns, was competent and equipped to treat him. Further Dr Lowns was:

...at his place of practice ready to begin his day's work and not yet occupied in any other professional activity which would preclude his treating the plaintiff. What was asked of him involved no health or safety risk to himself, and he was not disabled by any physical or mental condition from travelling to and treating the plaintiff. 2

Badger-Parker J also considered

...that a doctor is, by virtue of his training, qualifications and registration, permitted by the community to become a member of a relatively small

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3. Ibid 360.
Being engaged with another patient, being tired, ill or inebriated, or exposure to a health and safety risk are reasons that would justify a doctor's non-attendance at an emergency.

The conclusion was that Dr Lowns fell under a duty to attend because he:
1. Was asked in a professional capacity
2. Was able to easily get to the patient
3. Knew of the seriousness of the condition
4. Believed he would be able to assist him.

What is the relevance of being 'asked in a professional capacity'?

One essential aspect of the finding of a duty of care was the fact that Dr Lowns was 'asked in a professional capacity' to attend. That is, Patrick's sister approached him because he was a doctor at his surgery. What if he was not at his surgery? What if, for example, a doctor is at a sporting event watching her children play and is known to the other families to be a doctor. When a player is injured and the doctor is asked to assist, are they being asked in a professional capacity?

On one view the answer must be 'no'. They are not at their surgery and not ready to see patients. On another view, the answer is 'yes', they are being asked to assist precisely because they are a doctor and for no other reason. It is their professional assistance that is being sought whether they like it or not. The question of what determines whether a person is being asked in a professional capacity? remains to be answered.

Whether or not a doctor is asked in a 'professional capacity' the fact remains that there is a person in need of care, and a doctor who is (by virtue of their training and registration) able to assist, aware of the need for assistance and aware that they can provide some necessary assistance. It would be perverse to hold that a doctor who is in his or her surgery is under a duty to attend when called upon, but a doctor at the scene is under no duty, or only under a duty if directly called upon because others at the scene recognise him or her as a doctor.

To put that into context, imagine that the doctor at the sporting event described above, is a general practitioner who has invited her friend, an orthopaedic surgeon along to watch. Because the other parents know the GP and know that she is a doctor, she is asked to assist. If the crucial legal issue is 'was the doctor asked to assist' (whether in a professional capacity or not) then the GP is under a duty to attend. The orthopaedic surgeon, who is not asked, would be under no such duty, either because he is not asked or because he is not recognised as being a doctor. If this were correct, then the question of whether 'A', a doctor, is under a legal duty to assist in an injury, is answered by reference to another person, 'B's', knowledge that A is a doctor. The obligation upon A would depend on facts personal to B. That is, the state of B's knowledge about A, rather than on facts personal to A. The state of B's knowledge about A cannot however, in the circumstances, be a suitable basis for the imposition of a duty on A.

If, on the other hand, the essential issues are physical closeness, an awareness of the need for assistance and a belief in ability to assist, then both doctors in the above example are duty bound to help to the best of their ability, as would be a doctor who sees a cyclist who has been hit by a car. Disregarding how a doctor came to know that there was an emergency requiring medical assistance (ie disregarding whether they are asked as a bystander, asked as a doctor or merely see the emergency occur) would be consistent with the view that doctors may be expected to render assistance when able to do so because of the privileged position they are accorded in society by virtue of their 'training and registration'. The test should be: 'Did the doctor become aware that there was a person in need of urgent medical care (where there would be serious consequences to life and limb if care was not provided as soon as possible), in circumstances where there was nothing to stop the doctor coming to assist, and in circumstances where it was reasonable for the doctor to believe that if he or she attended they would be able to provide some care that would assist the person in need?'

Doctors may be expected to render assistance due to the privileged position they are accorded in society by virtue of their 'training and registration'.

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4 ibid 358.
5 It would also be consistent with the definition of unsatisfactory professional conduct contained in the Medical Practice Act 1992 (NSW) s 36. That Act provides that it is either unsatisfactory professional conduct, or professional misconduct, for a medical practitioner to refuse or fail to attend: '...on a person for the purpose of rendering professional services in the capacity of a registered medical practitioner in any case where the practitioner has reasonable cause to believe that the person is in need of urgent attention by a registered medical practitioner. The section makes no reference to how the practitioner may come to know that the person is in need of care.'
Stated in that form the test adopts the issues of proximity identified in Woods v Louws, yet avoids the irrelevant issue of how did the doctor become aware of the need to attend. The fact that the doctor is subject to 'a direct request for assistance' becomes relevant to the question of whether or not the doctor was aware that assistance was required. In cases where the emergency is not independently observed by the doctor, or in circumstances where the practitioner sees what appears to be a minor incident, the fact that there is a direct request for assistance will alert the practitioner to the fact that their assistance is required. In obviously serious cases, the duty to attend may be imposed whether or not there is a direct request for assistance.

**Reasons to justify non-attendance**

Notwithstanding the finding that in some circumstances there may be a duty to assist another, the court did accept that there may be reasons that would justify a doctor’s non-attendance at an emergency. Matters such as being engaged with another patient, being tired, ill or inebriated, or being required to expose oneself to a health and safety risk were all suggested as being grounds to refuse to attend when asked.

One fact that may justify non-attendance is that the person is already being cared for by ambulance officers. In his judgement in Woods v Louws, Kirby P acknowledged that had Dr Louws attended he may have:

‘...reasonably concluded, that the best course, the ambulance being available, was simply to expedite Patrick’s transfer to hospital, avoiding the delay of any attempted treatment on his own part.’

Mahoney JA (dissenting) said that:

‘An experienced doctor may properly conclude that the stated condition was properly accommodated by eg, ambulance officers or other paramedics or require the hospital, rather than him.’

In 1996–1997 officers of the Ambulance Service of NSW responded to approximately 500,000 emergency calls. This figure increased to over 545,000 emergency responses in 1997–1998. The number of cases classified as ‘fits/convulsions’ exceeded 16,000 in both years. There are in excess of 2,300 Ambulance Officers based at 228 locations throughout the State. On those approximate figures, the average number of emergency calls dealt with by an individual officer was 227 in the year 1997–1998 with an average of seven cases being ‘fits/convulsions’. Of course this figure is misleading as it is likely that Paramedic Officers in the major population centres attended many more emergency calls than officers in remote areas. Notwithstanding the imprecise figures, it appears likely that an average ambulance officer will attend many emergencies and may be expected to be ‘more skilled and equipped to render first aid in a “hostile” environment’ than the average GP practicing in his or her suburban rooms. Similar conclusions might also be expected with respect to ambulance services in other States and Territories.

The Medical Practice Act 1992 (NSW) limits who may provide medical care but does allow for people other than doctors to provide ‘any medical or surgical advice, service, attendance or operation’. Ambulance officers are expressly provided for in the Act and this reflects the Parliament’s view that ambulance officers do, in fact, provide medical care (otherwise they would not need the exemption).

It is the function of an ambulance officer to render treatment in accordance with his or her training and protocols and to transport the patient to hospital for further treatment. The presence of a doctor would not necessarily determine the course of action taken by the ambulance officers and is not required to ensure that ambulance officers provide the care they are trained to provide or transport the patient to hospital. Although Dr Louws gave evidence that he would have given directions to the ambulance officers and would have been successful in administering intravenous drugs when the ambulance officers could not, another doctor, in another case, may well concede that the ambulance officers knew what to do without direction.

A doctor in a future case may be justified in arguing that when the ambulance service is in attendance the person in need of care is in fact receiving adequate and specialised medical care.

It follows that a doctor in a future case may be justified in arguing that when the ambulance service is in attendance the person in need of care is in fact receiving adequate and specialised medical care, with the result that there would be little, if anything, that the doctor can do to add to that care. In that case there could be no duty to attend, and even if there was, a failure to attend would not be a

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7 ibid 63,156.
8 ibid 63,168.
12 ibid s 111.
13 Bendall J, op. cit.
If nothing else, in Australia, there are no reported cases of a doctor being sued for negligently assisting at an emergency, but there is now one case where a doctor has been sued for refusing to assist because of any damage if the doctor’s attendance would not, in fact, have affected the outcome for the patient.

The situation may be different if the doctor was asked to assist by the ambulance officers themselves. This would not be because the doctor is asked per se, but because the fact that he or she is asked to assist makes it clear that his or her services are required, even though the ambulance is in attendance. Where there is no direct request however, it may be reasonable for a doctor to believe that the presence of the ambulance service means that his or her services are not required, as the person concerned is already receiving adequate medical care.

Conclusion

The decision in Woods v Louns established the principle that there will be, in some circumstances, a legal duty cast upon doctors to assist strangers in need of medical care. It remains to be seen how and when that duty will be found to exist.

It has been argued here that in determining when that duty arises, the fact that a doctor is asked to assist should be considered relevant only in determining whether the doctor was aware that his or her services were needed. As a matter of principle, the duty should exist whenever a doctor is aware that his or her services are needed in circumstances where the doctor is physically close to the patient and believes that they will be able to assist the patient. Whether they are asked directly or not, and whether others at the scene of the emergency know they are a doctor, should not be considered directly relevant to the imposition of the legal duty.

It has been further argued that where the ambulance service is in attendance, that should, in the absence of a request from the ambulance officers, represent sufficient justification for a doctor not to attend the scene of the accident, as the ambulance officers are equipped and trained to provide emergency medical care and have the statutory authority and responsibility for the treatment and transport of the patient.

If these conclusions are correct, it is now possible to revisit the scenario of a doctor, who encounters a cyclist who has been struck by a car and is being attended by ambulance officers near the doctor’s surgery and answer the question ‘Are you, as a doctor, under a duty to assist?’ In my view, whether or not you are under a duty to attend, given that you are physically close to the patient and can see that there is a potentially serious incident, depends on whether it is reasonable to think that you will be able to help the patient involved.

The existence of the duty will not depend on whether or not members of the public recognise that you are a doctor, but because you are a doctor. Having said that, prima facie it would appear that there would be a duty to attend and offer assistance unless you reasonably believe that you will be able to add nothing to the care being given by the ambulance officers (and that will depend on what you can see of the situation and your own experience in trauma medicine, and the equipment if any that you have with you). You may then argue (if the matter arose) that there was no duty to attend as there was no reason to think that your services were required.

It remains to be seen how the courts will approach these issues should they arise in future litigation. However, if doctors want to avoid being the subject of such litigation, they should never refuse to assist at an emergency when it is reasonably open for them to do so. The courts have said that they wish to encourage rescuers and Woods v Louns can be seen to be consistent with that philosophy. If nothing else, in Australia, there are no reported cases of a doctor being sued for negligently assisting at an emergency, but there is now one case where a doctor has been sued for refusing to assist.

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14 Albert not by a medical practitioner.
15 Except in the Northern Territory and Western Australia.
16 Fulde, G op. cit. 29.
17 Here medical practitioners in NSW are reminded that failure to provide emergency medical assistance is an express part of the definition of unsatisfactory professional conduct or professional misconduct under the Medical Practice Act 1992 (NSW). A similar view may be inferred into the legislation governing medical practitioners in each State and Territory: Law Reform Committee Legal Liability of Health Service Providers, Final Report Parliament of Victoria, Melbourne, 1997 at 25. Eburn M, Emergency Law. Sydney: Federation Press, 1999: 64.