



## POSITION STATEMENT

August 2023

### RESUSCITATION COUNCIL OF SOUTHERN AFRICA

#### POSITION STATEMENT ON LEGAL STATUS OF THOSE WHO ATTEMPT CPR.

**Disclaimer:**

The information provided below does not constitute and should not be perceived and/or interpreted as, professional legal advice. It is solely aimed at providing basic and broad principles pertaining to the rendering of assistance during emergency situations, and the possible implications thereof. Please consult a legal practitioner in the event that you require clarification and/or assistance with regards to a specific situation.

The rendering assistance during an emergency can be an overwhelming undertaking. Besides the emotional and physical effects, a 'rescuer' may experience, the rescuer's actions may also receive scrutiny, and in some cases, even incur legal liability. For this reason, it is important for all rescuers to take note of legal aspects pertaining to the rendering of assistance in emergency situations.

The aspects dealt with below accounts for general principles relevant within the context. The facts of each situation will however differ and the manner in which these, and other principles, are applied could be influenced by the facts of the particular situation.

#### 1. Types of rescuers:

Rescuers can be classified into two categories: (1) Professional health care providers, and (2) "Lay rescuers". Professional health care providers are health care practitioners that are professionally qualified and duly registered with a relevant statutory body (such as HPCSA, SANC, SAPC). These practitioners are subject to strict legislative and ethical requirements, guidelines, and protocols according to which their conduct is adjudicated. Although not all registered health care providers are necessarily trained in rendering assistance in emergency situations, their registration category, ethical codes, and scopes of practice determine to what extent they are capable of rendering assistance.

"Lay rescuers" are individuals who do not have professional qualifications nor registrations in any emergency health care discipline. This includes persons without any medical and/or health care training, as well as individuals who have minimal training, such as first aiders (level I – III) and/or other short course-based non-professional training.



## 2. Legal aspects:

In general, most of the legal aspects pertaining to health care practitioners and “lay rescuers” overlap. In both instances a rescuer may incur civil and/or criminal liability if his/her actions amount to either intentional harm, or alternatively, negligence.

### 2.1. *Legal liability: Health care practitioners*

A health care practitioner’s ability to render assistance in an emergency situation is mostly determined by the qualification and registration category of said practitioner. It is considered an ethical obligation of all health care practitioners to be knowledgeable about the exact scope of practice of his/her profession and registration category.

It should however be noted that health care practitioners (such as Psychologists, Pharmacists, Dieticians etc.) who are not specifically qualified in rendering emergency health care, may in certain circumstances be considered as lay rescuers.

Emergency care qualified health care practitioners may incur legal and/or ethical liability if:

- An on-duty health practitioner refuses emergency health care to a patient,
- Misrepresents and/or exceeds his/her scope of practice,
- Breaches the ethical obligations relevant to his/her registration category and scope of practice.

In the event that professional activities are undertaken in line with the relevant scope of practice, protocols and professional guidelines, a health care practitioner’s conduct will be measured against the skill of the reasonable health care practitioner, and if considered to be reasonable and in accordance with standardised practices, the practitioner will be deemed to have acted in official capacity (as a defence against unlawfulness).

### 2.2. *Legal liability: “Lay rescuers”*

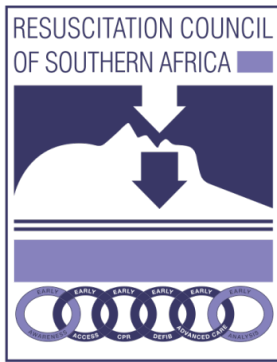
Lay rescuers do not have the same legal obligations nor professional guidelines which apply to professional emergency health care providers. For legal liability to be assigned to a lay rescuer, it must be proven that a lay rescuer’s actions lead to the harm of the aggrieved party, that the actions were unlawful, and that the actions were committed, either with the intent to cause harm, or alternatively negligently.

#### 2.2.1. *Necessity:*

Necessity is a defence that excludes unlawfulness. Necessity refers to a situation whereby:

a person acts in protection of his/her own or someone else’s life, bodily integrity and/or other legally recognised interest, which is endangered by a threat of harm that is imminent and that cannot be avoided in another way. (Hoctor SV *Snyman’s Criminal Law* 95)

By coming to the assistance of a person in a life-threatening emergency and rendering reasonable assistance, a lay rescuer would not be liable for harm that was inflicted, subject to the requirement that the harm inflicted wasn’t more severe than the original threat that was experienced. For example: By providing CPR in the event of cardiac arrest, any injuries inflicted during compressions would be outweighed by the threat posed by cardiac arrest. As a result, the lay rescuer would not be criminally or civilly liable for assault.



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2.2.2. In certain respects, the defence of necessity affords similar protection to that of the so-called *Good Samaritan Laws*, applicable in other legal jurisdictions/countries. *Good Samaritan Laws* do not form part of the South African legal system and is predominantly found in commonwealth nations, European states, several provinces in Canada and parts of the United States of America. *Reasonable person test*:

The reasonable person test is utilised to determine whether conduct constitutes negligence. In order to make a determination a court would test a person's conduct against that of an average reasonable person in the same situation. In doing so it is considered whether the reasonable person could have foreseen the harm that may be caused, and whether a person took reasonable steps to mitigate such harm.

In the context of a lay rescuer the consideration would be whether an average, reasonable person, with similar knowledge and/or first aid training would have acted in a similar manner, and whether any harm should have been foreseeable and prevented.

It should however be noted, that in the case of a lay rescuer being a health care practitioner, the practitioner could be held to the standard of the average, reasonable lay rescuer with equal qualification and experience, even if the relevant qualification doesn't entail emergency care.

### 3. Summary

From the above discussion it should be clear that, although rendering assistance to those in need may be considered as an honourable endeavour, the actions undertaken by a rescuer (including professional health care practitioners and lay rescuers) must still adhere to legal principles. Exceeding the scope of practice (for practitioners) or the reasonable measures (for lay rescuers) could place the rescuer in a legally compromised position. All rescuers should therefore refrain from engaging in actions which may result in harm, unless such harm is required to overcome a greater harm. Regardless of the factual situation, all activities aimed at rendering assistance should be undertaken with care and consideration of the appropriateness and reasonableness thereof.

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