



SUDDEN MEDICAL EMERGENCY DEFENSE IN PENNSYLVANIA

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I. CONCEPTUAL FOUNDATION

The conceptual foundation for the Sudden Medical Emergency Defense is implicitly recognized in Pennsylvania pursuant to three sections of the Restatement Second of Torts: Section 283C "Physical Disability," Section 296 "Emergency," and Sections 288A and B "Excused Violations." The application of these sections typically involves a vehicle operator (auto, boat, heavy machinery, etc.) who suddenly and either unexpectedly, or not, suffers a debilitating medical condition such as a heart attack, seizure, stroke or sudden loss of consciousness. As a result of that medical emergency, he or she loses control of the vehicle or the boat or the piece of machinery and operates in such a fashion that it would otherwise be considered negligent. There is very little case law in Pennsylvania construing these Restatement provisions and officially acknowledging the "Sudden Medical Emergency Defense."

A. Restatement (Second) of Torts Section 283c "Physical Disability"

"If the actor is ill or otherwise physically disabled, a standard of conduct to which he must conform to avoid being negligent is that of a reasonable man under like disability."

The comment to Section 283C is particularly applicable. It states:

"A person under such temporary or permanent physical disability may be required, under particular circumstances, to take more precautions than one who is not so disabled, while under other circumstances he may be required to take less. Thus, an automobile driver who suddenly and quite unexpectedly suffers a heart attack does not become negligent if he loses control of his car and drives it in a manner which would otherwise be unreasonable; the one who knows he is subject to such attacks may be negligent in driving at all."

B. Restatement (Second) of Torts Section 296 "Emergency"

"(1) In determining whether conduct is negligent in tort and other, the fact that the actor is confronted with a sudden emergency, which requires rapid decision, is a factor in determining the reasonable character of his choice of action.

(2) The fact that the actor is not negligent after the emergency has arisen does not preclude his liability for his tortious conduct which has produced the emergency."

C. Restatement (Second) of Torts Section 288a "Excused Violations"

- "(1) An excused violation of the legislative enactment or an administrative regulation is not negligence.
- (2) Unless the enactment or regulation is construed not to permit such excuse, its violation is excused when:
 - (a) The violation is reasonable because of the actor's incapacity;
 - (b) He neither knows nor should know of the occasion for compliance;
 - (c) He is unable after reasonable diligence or care to comply;
 - (d) He is confronted by an emergency not due to his own misconduct;
 - (e) Compliance would involve a greater risk of harm to the actor or to others."

The comment to (d) states:

"As in other cases of negligence, the violation of an enactment or regulation would ordinarily be excused when the actor is confronted by an emergency which is not caused by his own misconduct. It is for the court to determine in the first instance whether the excuse is one which the law will recognize, but whether it is necessarily sufficient. In cases where reasonable men may differ as to the sufficiency of the excuse, it is up to the jury to determine whether the conduct is excused under the particular circumstances, under proper instructions from the court."

II. THE SUDDEN MEDICAL EMERGENCY DEFENSE DISTINGUISHED FROM THE SUDDEN EMERGENCY DOCTRINE

A "sudden medical emergency defense" is separate and distinct from the "sudden emergency doctrine" which is generally applied to the Assured Clear Distance rule in the Pennsylvania Motor Vehicle Code, although there are some similarities. The commentators to the Pennsylvania Standard Civil Jury Instructions prefer that the court give no special charge on sudden emergency beyond what constitutes ordinary negligent conduct. However, appellate law and the Motor Vehicle Code require the charge when appropriate in a given case.

The doctrine of sudden emergency and the sudden medical emergency defense defer in two respects:

- (1) The doctrine of sudden emergency is not an affirmative defense and need not be pled as New Matter, *Shiner v. Ralston*, 64 A3d. 1 (Pa. Super 2013). Sudden medical emergency is an affirmative defense and must be pled under New Matter pursuant to Pennsylvania Rule of Civil Procedure 1030(b); and

(2) The doctrine of sudden emergency addresses situations which are extrinsic to the defendant wherein he or she reacts to situations. The sudden medical emergency addresses intrinsic situations where the defendant is reacting to his or her own physical situation such as an incapacitating stroke, sudden heart attack or loss of consciousness.

Both the doctrine and the defense require the defendant to react as reasonably as possible with the best exercise of judgment under the circumstances. The doctrine relates to a standard of conduct to be applied in determining the reasonableness of an actor's conduct, *Leahy v. McClain*, 732 A2d. 619 (Pa. Super 1999). The doctrine is offered in denial of negligence and serves an explanation of what occurred. It is a legal principle that provides that "an individual will not be held to the 'usual degree of care', or be required to exercise his or her 'best judgment' when confronted with a sudden and unexplained position of peril created in whole or in part by someone other than the person claiming protection under the doctrine." *Lockhart v. List*, 542 Pa. 141, 665 A2d. 1176 (1995). It does not relieve one of all responsibility to act with reasonable care to avoid an accident.

In contrast, the sudden medical emergency defense is an avoidance of the attribution of negligent conduct to the defendant. It has been recognized and applied in situations where a vehicle operator was suddenly stricken by an unforeseeable loss of consciousness. The assumption is that when a person is unconscious, or paralyzed, and unable to act, the operator is incapable of negligence and thus has a complete defense to a charge of negligence. Whether proceeding under a theory of sudden emergency or sudden medical emergency defense, the defendant has the burden of proof.

A defendant is not chargeable with negligence if, in a sudden emergency, he or she acts according to his or her best judgment or omits to act in the most judicious manner due to a sudden or unexpected event which leaves no time to form such a judgment. The mere fact that the driver's choice of action in the face of the emergency is unfortunate, does not make it improper, even though it is one which the actor should not have made had he or she had sufficient time to consider all the effects likely to follow from his or her action. It is implied in these principles of law relating to sudden emergency that the rule does not apply if the emergency arises through the prior negligence of the person invoking its protection. Typical examples are voluntary intoxication and distracted driving. This limitation applies both to the one causing the injury and the injured person. In other words, the sudden emergency rule does not excuse the fault of one who, by his or her own negligence, creates the emergency, but whose conduct has brought about or created the emergency. The doctrine of sudden emergency makes the actor not contributorily negligent for a mistake in judgment required by the necessity of an immediate decision not of his making. The actor, however, must still act with reasonable care commensurate with the care required under the circumstances.

III. SUDDEN MEDICAL EMERGENCY

If the driver or operator has a medical condition, of which he or she is aware, prior to operation of the vehicle, boat, machinery, etc., the driver's standard of care is that of a reasonable and prudent driver under those circumstances. Physical handicap, a heart condition, periodic dizziness and balance problems are types of physical conditions which dictate the circumstances

to take into account in determining what a reasonable man would do. Thus, the standard of conduct for a man who has a handicap is that of a reasonable man under a like disability. An actor may be found negligent by attempting to drive while suffering with tremors or dizziness causing an unreasonable risk of harm to others. Consider the case where the plaintiff was operating his motor vehicle and stopped at a traffic signal and was struck from behind by the defendant's vehicle. The defendant sought to rebut the inference of negligence which attaches to the driver of the motor vehicle who rear ends the plaintiff by asserting that the collision was an unavoidable accident which occurred when he temporarily lost consciousness. However, the evidence demonstrated that the defendant suffered from periodic lightheadedness as a result of medication taken for his diabetic and osteoarthritic conditions. That raised the factual issue as to whether the defendant's blackout was foreseeable and a jury would be instructed on the law governing individuals who suffer from known disabilities but nevertheless undertake an activity which is potentially hazardous to others. The obvious key to this case is the foreseeability of harm to others, and foreseeability is an element of negligent conduct. Operation of a motor vehicle with such knowledge would potentially disqualify the driver from being able to carry the burden of proof to establish a sudden medical emergency. His existing medical condition would be considered as one of the circumstances to be considered when determining if he was negligent; meaning, that he conformed to the appropriate standard of conduct. It will be up to the jury to determine whether the driver took an unreasonable risk by driving, knowing that he suffered with a blackout disorder that caused a loss of consciousness and whether it was reasonably foreseeable that an accident might occur in the event he experienced a blackout while driving.

In the case of *Freifield v. Hennessy*, 353 F.2d. 97 (3d Cir. 1965), the federal court applying Pennsylvania law was confronted with the case where the defendant claimed he was stricken by an unforeseeable loss of consciousness before he went up over the curb and struck a pedestrian. The court stated that it was generally recognized that an automobile operator who, while driving, is suddenly stricken by an unforeseeable loss of consciousness, is not chargeable with negligence. The court cited cases from other jurisdictions and concluded that absent any case directly on point it assumed that this was also the law in Pennsylvania. The court went on to state that if such an operator is aware that he is subject to attacks in the course of which he is likely to lose consciousness, he may be charged with negligence. The application of this exception is dependent upon the circumstances and conditions under which the attack occurs. The driver explained that immediately prior to the accident, he suffered a momentary loss of consciousness which he described as a blackout. During the trial of the case, the defendant's neurosurgeon testified that the episode of unconsciousness must have been related to a circulatory change defined as a drop in blood pressure or some change in the circulation which resulted in a fainting attack. Based on the evidence presented by the defendant, the court charged the jury on the issue of the defendant's negligence in leaving the traveled portion of the roadway and his affirmative defense based on his sudden loss of consciousness (medical emergency). When the case was submitted to the jury on the issue of whether the defendant suffered a fainting spell which came so suddenly that he was deprived of the ability to act as a reasonable and prudent person would have acted and continuing to drive his vehicle in the manner that he did after the condition first struck him. The jury was instructed that if they find that the condition which confronted the driver was such that he had no time or opportunity to stop or cease the operation of the vehicle and that his mental and physical condition was such that he was not capable of sensory perception and judgment and that he did what a reasonably

prudent person would have done under the circumstances, or should have done under the same circumstances, then his conduct would not be conscious and he would not be responsible for the manner in which the automobile was operated and driven when it struck and killed the pedestrian.

When the plaintiff can establish a prima facie case of negligence such as a rear end collision, the burden will switch to the defendant to carry the burden of proof that he or she suffered a sudden illness or attack and that it could not have been anticipated, *Moore v. Presnell*, 38 Maryland App. 243, 379 A2d. 1246 (1977):

"It is generally recognized that a driver of a motor vehicle has the duty to exercise ordinary, reasonable or due care, but this duty includes keeping his vehicle under control at all times so as to avoid collision or contact with vehicles, pedestrians, and other persons properly using a highway. Within these rules, however, is an exception from liability for the sudden and unforeseen loss of consciousness by a driver, resulting in an accident. Thus, the case is decided under negligence theories and uniformly held that a sudden loss of consciousness while driving is a complete defense to an action based on negligence or gross negligence, if such loss of consciousness was not foreseeable. And it has been held that a sudden loss of consciousness while driving is a good defense to an action based on trespass."

IV. PENNSYLVANIA STANDARD CIVIL JURY INSTRUCTIONS

The Standard Pennsylvania Civil Jury Instructions are universally followed by the trial courts in Pennsylvania. They purport to be the law and are accepted as such by the courts. The civil jury instructions recognize "Sudden Emergency" in Section 13.230 (2013), and "Evidence of Negligence - Violation of a Statute (With Exculpatory Explanation)" and Section 13.240 (2013).

A. When a defendant claimed that he or she was not liable for a plaintiff's harm because the operator faced a sudden emergency and responded reasonably under the circumstances, the operator has the burden of proof to establish:

1. The defendant faced a "sudden emergency requiring immediate responsive action;"
2. The defendant did not create the sudden emergency; and
3. The defendant's response to the sudden emergency was reasonable under the circumstances.

The classic cases for application of the doctrine are deer darting out into the roadway in front of the vehicle; or the driver being blinded by the approaching headlights of another vehicle; or suddenly and unexpectedly encountering a fog bank or dust cloud on the roadway.

B. The doctrine of justification or excuse for violation of a statute such as the Motor Vehicle Code has its foundation in the Restatement Second of Torts Section 288(A) and (B).

The law will dictate the standard of care required of a person in the same situation as the defendant. When the defendant asserts that even though he violated the law, he acted in a reasonably careful manner under the circumstances, and therefore was not negligent. A common example is a driver who is forced to change lanes and into an oncoming lane because another vehicle was dangerously encroached into his lane.

C. Integrating the above standard jury instructions, the defendant's burden of proof to establish that the defendant's conduct was not negligent even though that conduct caused an accident and potentially compensable injuries, requires the following elements:

1. The sudden onset of a medical condition;
2. The unexpected and unforeseeable development of the medical condition;
3. The medical condition was not caused or contributed to by the defendant;
4. There was reasonable reaction by the defendant to the circumstances of his illness; and
5. The illness or medical condition was the factual cause of the accident.

If the defendant is able to establish these criteria, then his conduct was not negligent. The highway brake failure defense which is recognized under Pennsylvania law has all of the analogous elements to a sudden medical emergency:

1. An emergency situation requiring immediate action due to the brake failure;
2. An emergency which occurred suddenly;
3. An emergency which occurred without warning;
4. An emergency which occurred without the fault of the driver; and
5. A reasonable reaction by the driver to the emergency under the circumstances.

V. CONCLUSION

The Sudden Medical Emergency defense was not directly addressed by Pennsylvania appellate courts until 2013 in the case of *Shiner v. Ralston, Supra*. Although the appellate courts have had decades to address the parameters of a sudden emergency, it was not until 2013 that it addressed a sudden emergency in the context of a medical defense. Every case is driven by its own particular set of facts and circumstances. The easiest case for the defense involves a young healthy driver who is not under a doctor's care for any condition, who has an instant heart attack or seizure rendering him or her incapable of the safe operation of the vehicle and an inability to

operate the vehicle. He or she would not be held accountable for the consequences which occurred after the debilitating medical attack. As the facts change, the defense may become more difficult. For example, an otherwise healthy driver begins to experience heart palpitations or tremors or his vision becomes fuzzy. At that point, the driver must act as a reasonably prudent driver and cease the operation of his vehicle, if at all possible, to avoid foreseeable injury to others due to his erratic driving. The situation becomes even more difficult for the defense when an individual had a preexisting history of blackouts which render him or her immediately incapacitated. Should that person be considered negligent for even attempting to drive? The answer will be gauged in terms of how foreseeable the probability of harm to others would be by his mere operation of the vehicle. The standard of conduct will evolve based on how "sudden" the sudden medical emergency really was.

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William R. Haushalter represents defendants in tort and insurance litigation, including product liability, professional liability, municipal liability, insurance coverage, bad faith litigation, construction site accidents, toxic tort litigation, and general property and casualty matters. He regularly counsels insurance carriers about proper claims handling to avoid bad faith claims