

Medical Malpractice Defense

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*Impacts of the COVID-19 pandemic on prosecution of existing cases including discovery schedules, trial dates and the conduct of discovery and trials: Please see section on Jury Trials / Case Management Order.

Relevant United States Government Statutes and Executive Orders:

H.R. 748, The "Corona Virus Aid, Relief and Economic Security Act" (CARES act)

- §3215 of the CARES acts includes Good Samaritan language providing additional federal liability protection for volunteer healthcare professionals during the COVID-19 emergency response.
 - o Physicians and other healthcare professionals who provide volunteer medical services during the public health emergency related to COVID-19 shall not be liable for providing such services that relate to the diagnosis, prevention or treatment of COVID-19 or the assessment of care of a patient related to an actual or suspected case of COVID-19.
 - o Liability protection is limited and will not apply for conduct such as gross negligence, criminal misconduct and providing care will intoxicated.
 - o These additional federal protections preempt state and local laws that are inconsistent with the CARES act.

Public Readiness and Emergency Preparedness Act (PREP)

- PREP provides broad immunity protections to healthcare professionals who administer or use countermeasures covered by declarations issued by the Secretary of Health and Human Services.
- The Secretary of Health and Human Services issued such a declaration on March 17, 2020. This applies immunity protections to physicians and other healthcare professionals who administer or use such countermeasures as antiviral medications, other drugs, biologics, vaccines, diagnostics / or devices (e.g. COVID-19 testing and respiratory therapy) to treat, diagnose, cure, prevent or mitigation COVID-19 or the transmission of SARS-CoV-2 or a virus mutating therefrom.

Volunteer Protection Act of 1997 (VPA)

- VPA Provides liability protection to volunteers, including physicians, who are performing services for non-profit organizations or government entities.
- These protections apply with or without a public health emergency or national emergency declaration. Protections apply to uncompensated volunteers for acts of ordinary negligence committed within the scope of the volunteer's responsibilities.
- The volunteer must be properly licensed, certified or authorized by the appropriate authorities by the laws in the state in which the harm occurred.
- Additional exceptions apply for such things as gross negligence or reckless, willful and wanton misconduct.

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

- §194 of HIPAA provides eligibility for Federal Tort Claims Act liability protections to volunteer health professionals at qualifying free clinics provide that the clinic sponsors the physician by submitting an application to the Health Resources and Services Administration.

Ohio Statutes

Pending legislation:

Ohio Senate Bill 308 (SB 308)

- SB 308 is currently in hearings before the Senate Judiciary Committee.
- SB 308 would provide immunity from liability of service providers and medical professionals during a declared disaster.
- SB 308 would specifically provide that “no service provider shall be liable in damages to any person in a civil action for illness or for injury, death, or loss to personal property allegedly arising directly or indirectly from the service provider’s act or omission in providing or performing the service provider’s services as a result of or in response to a disaster or emergency or that are intended to assist persons to recover from a disaster or emergency . . .”
- The current form of SB 308 provides exceptions to immunity for reckless or intentional conduct or willful or wanton misconduct.

Ohio House Bill 606 (HB 606)

- HB 606 is currently proceeding through the Ohio House of Representatives. HB 606 would grant a person providing services for “essential businesses and operations” civil immunity for injury, death or lost to person or property caused by the transmission of COVID-19.
- Exceptions from immunity include wanton or reckless misconduct.
- HB 606 includes liability coverage specific to physicians.

*SB 308 and HB 606 are currently in progress in the Ohio legislature. We will continue to monitor their progress.