

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1678

By: Ownbey, Tibbs, Faught and
McDaniel (Randy) of the
House

7 and

8 Paddack and Stanislawski of
the Senate

9
10
11 CONFERENCE COMMITTEE SUBSTITUTE

12 An Act relating to torts; amending Section 1, Chapter
13 138, O.S.L. 2003, as last amended by Section 3,
14 Chapter 133, O.S.L. 2007 (59 O.S. Supp. 2008, Section
15 493.5, which relates to volunteer medical licenses;
16 expanding scope; amending Section 34, Chapter 368,
17 O.S.L. 2004 (76 O.S. Supp. 2008, Section 32), as
18 amended by Section 1 of Enrolled House Bill No. 2093
19 of the 1st Session of the 52nd Oklahoma Legislature,
20 which relates to the Volunteer Medical Professional
21 Services Immunity Act; modifying definition;
22 expanding scope of certain circumstances in which
23 certain persons are immune from liability; specifying
24 application; defining term; providing for certain
immunity from liability for certain entities;
specifying application; providing certain
limitations; providing for codification; and
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY Section 1, Chapter 138, O.S.L.
2 2003, as last amended by Section 3, Chapter 133, O.S.L. 2007 (59
3 O.S. Supp. 2008, Section 493.5), is amended to read as follows:

4 Section 493.5 A. 1. There is established a special volunteer
5 ~~medical~~ license for ~~physicians~~ eligible volunteers from a medically
6 related field who are retired from active practice or actively
7 licensed in another state and practicing in that state and wish to
8 donate their expertise for the ~~medical~~ care and treatment of
9 indigent and needy persons of this state.

10 2. For purposes of this section:

11 a. "eligible volunteer" means a physician, physician
12 assistant, nurse, dentist, optometrist or pharmacist,
13 and

14 b. "nurse" means an advanced practice nurse, advanced
15 registered nurse practitioner, registered nurse, or
16 licensed practical nurse.

17 3. The special volunteer ~~medical~~ license shall be:

18 ~~1. Issued~~

19 a. issued by the State Board of Medical Licensure and
20 Supervision to eligible physicians~~;~~

21 ~~2. Issued~~ and physician assistants, by the Oklahoma Board of
22 Nursing to eligible nurses, the Board of Dentistry to
23 eligible dentists, the Board of Examiners in Optometry

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1 to eligible optometrists, and by the Board of Pharmacy
2 to eligible pharmacists,

3 b. issued without the payment of an application fee,
4 license fee or renewal fee;

5 ~~3. Issued,~~

6 c. issued or renewed without any continuing education
7 requirements in this state;

8 ~~4. Issued,~~

9 d. issued for a fiscal year or part thereof, and

10 ~~5. Renewable~~

11 e. renewable annually upon approval of the applicable
12 Board.

13 B. ~~A physician must~~ An eligible volunteer shall meet the
14 following requirements ~~to be eligible for~~ before obtaining a special
15 volunteer ~~medical~~ license:

16 1. Completion of a special volunteer ~~medical~~ license
17 application, including, as applicable, documentation of:

18 a. the ~~physician's~~ medical school graduation of the
19 physician,

20 b. the completion of a physician assistant program by a
21 physician assistant,

22 c. the completion of the basic professional curricula of
23 a school of nursing by the nurse,

24 d. the dental school graduation of the dentist,

- 1 e. the optometry school graduation of the optometrist, or
2 f. the school or college of pharmacy graduation of a
3 pharmacist, and
4 g. the relevant practice history of the applicant;

5 2. Documentation that the ~~physician~~ eligible volunteer has been
6 previously issued a full and unrestricted license to practice
7 ~~medicine~~ in Oklahoma or in another state of the United States and
8 that he or she has never been the subject of any ~~medical~~
9 professional disciplinary action in any jurisdiction;

10 3. Acknowledgement and documentation that the ~~physician's~~
11 practice of the eligible volunteer under the special volunteer
12 ~~medical~~ license will be exclusively and totally devoted to providing
13 ~~medical~~ care to needy and indigent persons in Oklahoma or to
14 providing care under the Oklahoma Medical Reserve Corps; and

15 4. Acknowledgement and documentation that the ~~physician~~
16 eligible volunteer ~~will~~ shall not receive or have the expectation to
17 receive any payment or compensation, either direct or indirect, for
18 any ~~medical~~ services rendered in this state under the special
19 volunteer ~~medical~~ license. The only exception to the indirect
20 compensation provision is for those out-of-state physicians,
21 physician assistants, nurses, dentists, optometrists or pharmacists
22 that participate in the free ~~medical~~ care given by means of
23 Telemedicine through the Shriners Hospitals for Children national
24 network.

1 SECTION 2. AMENDATORY Section 34, Chapter 368, O.S.L.
2 2004 (76 O.S. Supp. 2008, Section 32), as amended by Section 1 of
3 Enrolled House Bill No. 2093 of the 1st Session of the 52nd Oklahoma
4 Legislature, is amended to read as follows:

5 Section 32. A. This section shall be known and may be cited as
6 the "Volunteer ~~Medical~~ Professional Services Immunity Act".

7 B. Any volunteer ~~medical~~ professional or volunteer health
8 practitioner and any organization that arranges for the care given
9 by the volunteer professional shall be immune from liability in a
10 civil action on the basis of any act or omission of the volunteer
11 ~~medical~~ professional or volunteer health practitioner resulting in
12 damage or injury if:

13 1. The volunteer ~~medical~~ professional or volunteer health
14 practitioner services were provided at a free clinic where neither
15 the professional or practitioner nor the clinic receives any kind of
16 compensation for any treatment provided at the clinic;

17 2. The volunteer ~~medical~~ professional or volunteer health
18 practitioner was acting in good faith and, if licensed, the services
19 provided were within the scope of the license of the volunteer
20 ~~medical~~ professional or volunteer health practitioner;

21 3. The volunteer ~~medical~~ professional or volunteer health
22 practitioner commits the act or omission in the course of providing
23 ~~professional~~ services; and

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1 4. The damage or injury was not caused by gross negligence or
2 willful and wanton misconduct by the volunteer ~~medical~~ professional
3 or volunteer health practitioner; and

4 5. Before the volunteer ~~medical~~ professional or volunteer
5 health practitioner provides ~~professional medical~~ services, the
6 volunteer ~~medical~~ professional and the person receiving the services
7 or, if that person is a minor or otherwise legally incapacitated,
8 the person's parent, conservator, legal guardian, or other person
9 with legal responsibility for the care of the person signs a written
10 statement that acknowledges:

11 a. that the volunteer ~~medical~~ professional or volunteer
12 health practitioner providing ~~professional medical~~
13 services has no expectation of and will receive no
14 compensation of any kind for providing the
15 ~~professional medical~~ services, and

16 b. an understanding of the limitations on the recovery of
17 damages from the volunteer ~~medical~~ professional or
18 volunteer health practitioner in exchange for
19 receiving free ~~professional medical~~ services.

20 C. In the event the volunteer ~~medical~~ professional or volunteer
21 health practitioner refers the patient covered by this section to
22 another volunteer ~~medical~~ professional or volunteer health
23 practitioner for additional treatment, the referred volunteer
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1 ~~medical~~ professional or volunteer health practitioner shall be
2 subject to the provisions of this section if:

3 1. The referred volunteer ~~medical~~ professional or volunteer
4 health practitioner provides services without receiving any
5 compensation for the treatment;

6 2. The referred volunteer ~~medical~~ professional or volunteer
7 health practitioner was acting in good faith and, if licensed, the
8 services provided were within the scope of the license of the
9 referred volunteer ~~medical~~ professional or volunteer health
10 practitioner;

11 3. The referred volunteer ~~medical~~ professional or volunteer
12 health practitioner commits the act or omission in the course of
13 providing ~~professional~~ services;

14 4. The damage or injury was not caused by gross negligence or
15 willful and wanton misconduct by the referred volunteer ~~medical~~
16 professional or volunteer health practitioner; and

17 5. Before the referred volunteer ~~medical~~ professional or
18 volunteer health practitioner provides ~~professional~~ services, the
19 referred volunteer ~~medical~~ professional or volunteer health
20 practitioner and the person receiving the services or, if that
21 person is a minor or otherwise legally incapacitated, the person's
22 parent, conservator, legal guardian, or other person with legal
23 responsibility for the care of the person signs a written statement
24 that acknowledges:

1 a. that the referred volunteer ~~medical~~ professional or
2 volunteer health practitioner providing ~~professional~~
3 ~~medical~~ services has no expectation of and will
4 receive no compensation of any kind for providing the
5 ~~professional medical~~ services, and

6 b. an understanding of the limitations on the recovery of
7 damages from the volunteer ~~medical~~ professional or
8 volunteer health practitioner in exchange for
9 receiving free ~~professional medical~~ services.

10 D. The provisions of this section shall not affect the
11 liability that any person may have which arises from the operation
12 of a motor vehicle, watercraft, or aircraft in rendering the
13 service, care, assistance, advice or other benefit as a volunteer
14 ~~medical~~ professional or volunteer health practitioner.

15 E. The immunity from civil liability provided by this section
16 shall extend only to the actions taken by a person rendering the
17 service, care, assistance, advice or other benefit as a volunteer
18 ~~medical~~ professional or volunteer health practitioner, and does not
19 confer any immunity to any person for actions taken by the volunteer
20 ~~medical~~ professional or volunteer health practitioner prior to or
21 after the rendering of the service, care, assistance, advice or
22 other benefit as a volunteer ~~medical~~ professional or volunteer
23 health practitioner.

1 F. For the purpose of this section, the term "volunteer ~~medical~~
2 professional" and "referred volunteer ~~medical~~ professional" means a
3 person who voluntarily provides professional ~~medical~~ medically
4 related services without compensation or expectation of compensation
5 of any kind. A volunteer ~~medical~~ professional or a referred
6 volunteer ~~medical~~ professional shall include the following licensed
7 professionals, including those persons licensed in accordance with
8 Section 493.5 of Title 59 of the Oklahoma Statutes:

- 9 1. Physician;
- 10 2. ~~Physician's~~ Physician assistant;
- 11 3. Registered nurse;
- 12 4. Advanced practice nurse ~~practitioner~~ or vocational nurse;
- 13 5. Pharmacist;
- 14 6. Podiatrist;
- 15 7. Dentist or dental hygienist; or
- 16 8. Optometrist.

17 A volunteer ~~medical~~ professional shall be engaged in the active
18 practice of a medical professional or retired from a ~~medical~~
19 medically related profession, if still eligible to provide ~~medical~~
20 medically related professional services within this state.

21 G. For the purposes of the this section, the term "volunteer
22 health practitioner" and "referred volunteer health practitioner"
23 means a person who voluntarily provides health-related services
24 without compensation or expectation of compensation of any kind. A

1 volunteer health practitioner or referred volunteer health
2 practitioner shall include the following:

- 3 1. Certified nurse aide;
- 4 2. Chiropractor;
- 5 3. Dental assistant;
- 6 4. Dental technician;
- 7 5. Dietitian/nutritionist;
- 8 6. Emergency medical technician;
- 9 7. Licensed alcohol and drug counselor;
- 10 8. Licensed behavioral practitioner;
- 11 9. Licensed clinical social worker;
- 12 10. Licensed practical nurse;
- 13 11. Licensed professional counselor;
- 14 12. Marital/family therapist;
- 15 13. Medical assistant;
- 16 14. Medical laboratory technologist;
- 17 15. Medical technician;
- 18 16. Nuclear medicine technologist;
- 19 17. Occupational therapist;
- 20 18. Orthopedic technologist;
- 21 19. Paramedic;
- 22 20. Pharmacy technician;
- 23 21. Physical therapist;
- 24 22. Psychologist;

1 23. Radiology technician/technologist;

2 24. Respiratory therapist;

3 25. Sonographer;

4 26. Speech/language pathologist;

5 27. Veterinarian; and

6 28. Veterinary technician.

7 A volunteer health practitioner shall be engaged as an active health
8 practitioner or retired from a health-related practice if still
9 eligible to provide health-related services within this state.

10 H. Any person or entity participating in a the Oklahoma Medical
11 Reserve Corps and assisting with emergency management, emergency
12 operations, or hazard mitigation in response to any emergency, man-
13 made disaster, or natural disaster, or participating as authorized
14 in public health initiatives, disaster drills, or other activities
15 designed to strengthen emergency response that are endorsed by a
16 city-county health department, county health department or the state
17 health department in the State of Oklahoma, shall not be liable for
18 civil damages on the basis of any act or omission, if:

19 1. The person was acting in good faith and within the scope of
20 the official duties and functions of the Oklahoma Medical Reserve
21 Corps; and

22 2. The acts or omissions were not caused from gross, willful,
23 or wanton acts of negligence.

1 ~~H.~~ I. This section shall apply to all civil actions filed on
2 or after:

3 1. November 1, 2004, for those persons listed in subsection F
4 of this section; and

5 2. November 1, 2009, for all other persons listed in subsection
6 G of this section.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 33 of Title 76, unless there is
9 created a duplication in numbering, reads as follows:

10 A. For the purposes of this section, "person" means an
11 individual, association, for-profit or nonprofit artificial entity
12 created under state law, religious organization, or charitable
13 organization.

14 B. Any person, or any agent of that person, who voluntarily and
15 without the expectation or receipt of compensation provides services
16 and goods at any place in this state subject to the order or control
17 of, or pursuant to a request of, the state government or any
18 political subdivision thereof:

19 1. In preparation for, anticipation of, or during a time of
20 emergency;

21 2. In a place of emergency, as declared by the Governor; and

22 3. For the benefit of any person or to prevent, minimize, or
23 repair injury or damage to the property of a person resulting from:

24 a. biological, chemical, or nuclear agents,

- 1 b. terrorism,
- 2 c. pandemic or epidemic of infectious disease,
- 3 d. catastrophic acts of nature, including but not limited
- 4 to fire, flood, earthquake, wind, storm, or wave
- 5 action, or
- 6 e. any other emergency situation as declared by the
- 7 Governor by executive order under Oklahoma law,

8 shall not be liable to any person receiving assistance as a result
9 of any act or omission in rendering the service if the person was
10 acting in good faith and the damage or injury was not caused by the
11 willful or wanton negligence or misconduct of the person.

12 C. The immunity from liability provided in subsection B of this
13 section shall:

14 1. Not apply to any person, or any employee or agent thereof,
15 whose act or omission caused in whole or in part the actual or
16 imminent disaster or emergency, or whose act or omission
17 necessitated emergency management measures; and

18 2. Only apply to a person for such person's act or omission
19 that directly relates to preparation for, anticipation of, or
20 responding to an emergency. For purposes of this paragraph,
21 "directly relates to" means providing goods or services pursuant to
22 a request of an official or employee of state government, or any
23 political subdivision thereof, who is authorized to make such a
24 request.

1 D. This section shall apply to all civil actions filed on or
2 after November 1, 2009.

3 E. Nothing contained in this section shall amend, repeal,
4 alter, or affect any other immunity or limitation of liability
5 provided for under Oklahoma law.

6 SECTION 4. This act shall become effective November 1, 2009.

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