

1 STATE OF OKLAHOMA

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

3 PCOMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1678

By: Ownbey

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to torts; amending Section 34, Chapter 368, O.S.L. 2004 (76
9 O.S. Supp. 2008, Section 32), which relates to the Volunteer Medical
10 Professional Services Immunity Act; modifying definition; expanding scope of
11 certain circumstances in which certain persons are immune from liability;
12 specifying application; defining term; providing for certain immunity from
13 liability for certain entities; specifying application; providing certain limitations;
14 providing for codification; and providing an effective date.

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

16 SECTION 1. AMENDATORY Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2008,
17 Section 32), is amended to read as follows:

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

20 B. Any volunteer medical professional shall be immune from liability in a civil action on the
21 basis of any act or omission of the volunteer medical professional resulting in damage or injury if:

22 1. The volunteer medical professional services were provided at a free clinic where neither the
23 professional nor the clinic receives any kind of compensation for any treatment provided at the clinic;
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1 2. The volunteer medical professional was acting in good faith and, if licensed, the services
2 provided were within the scope of the license of the volunteer medical professional;

3 3. The volunteer medical professional commits the act or omission in the course of providing
4 professional services;

5 4. The damage or injury was not caused by gross negligence or willful and wanton misconduct
6 by the volunteer medical professional; and

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

- 11 a. that the volunteer medical professional providing professional medical services
12 has no expectation of and will receive no compensation of any kind for providing
13 the professional medical services, and
- 14 b. an understanding of the limitations on the recovery of damages from the volunteer
15 medical professional in exchange for receiving free professional medical services.

16 C. In the event the volunteer medical professional refers the patient covered by this section to
17 another volunteer medical professional for additional treatment, the referred volunteer medical
18 professional shall be subject to the provisions of this section if:

19 1. The referred volunteer medical professional provides services without receiving any
20 compensation for the treatment;

21 2. The referred volunteer medical professional was acting in good faith and, if licensed, the
22 services provided were within the scope of the license of the referred volunteer medical professional;
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1 3. The referred volunteer medical professional commits the act or omission in the course of
2 providing professional services;

3 4. The damage or injury was not caused by gross negligence or willful and wanton misconduct
4 by the referred volunteer medical professional; and

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

9 a. that the referred volunteer medical professional providing professional medical
10 services has no expectation of and will receive no compensation of any kind for
11 providing the professional medical services, and

12 b. an understanding of the limitations on the recovery of damages from the volunteer
13 medical professional in exchange for receiving free professional medical services.

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

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

22 F. For the purpose of this section, the term "volunteer medical professional" and "referred
23 volunteer medical professional" means a person who voluntarily provides professional medical
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1 services without compensation or expectation of compensation of any kind. A volunteer medical
2 professional or a referred volunteer medical professional shall include ~~the following licensed~~
3 ~~professionals:~~

- 4 1. Advanced nurse practitioner;
- 5 2. Certified nurses aide;
- 6 3. Chiropractor;
- 7 4. Dental assistant;
- 8 5. Dental hygienist;
- 9 6. Dental technician;
- 10 7. Dentist;
- 11 8. Dietitian/Nutritionist;
- 12 9. Emergency medical technician;
- 13 10. Licensed alcohol and drug counselor;
- 14 11. Licensed behavioral practitioner;
- 15 12. Licensed clinical social worker;
- 16 13. Licensed practical nurse;
- 17 14. Licensed professional counselor;
- 18 15. Marital/Family therapist;
- 19 16. Medical assistant;
- 20 17. Medical laboratory technologist;
- 21 18. Medical technician;
- 22 19. Nuclear medicine technologist;
- 23 20. Occupational therapist;
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- 1 21. Optometrist;
- 2 22. Orthopedic technologist;
- 3 23. Paramedic;
- 4 24. Pharmacist;
- 5 25. Pharmacy technician;
- 6 26. Physical therapist;
- 7 27. Physician (MD/DO);
- 8 ~~2.~~ 28. Physician's assistant;
- 9 ~~3.~~ 29. Podiatrist;
- 10 30. Psychologist;
- 11 31. Radiology technician/technologist;
- 12 32. Registered nurse;
- 13 ~~4. Advanced nurse practitioner or vocational nurse;~~
- 14 ~~5. Pharmacist;~~
- 15 ~~6. Podiatrist;~~
- 16 ~~7. Dentist or dental hygienist; or~~
- 17 ~~8. Optometrist~~
- 18 33. Respiratory therapist;
- 19 34. Sonographer;
- 20 35. Speech/Language pathologist;
- 21 36. Veterinarian; and
- 22 37. Veterinary technician.
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1 A volunteer medical professional shall be engaged in the active practice of a medical professional or
2 retired from a medical profession, if still eligible to provide medical professional services within this
3 state.

4 G. Any person participating in ~~a~~ the Oklahoma Medical Reserve Corps and assisting with
5 emergency management, emergency operations, or hazard mitigation in response to any emergency,
6 man-made disaster, or natural disaster, or participating in public health initiatives, disaster drills, or
7 other activities designed to strengthen emergency response that are endorsed by a city-county health
8 department, county health department or the state health department in the State of Oklahoma, shall
9 not be liable for civil damages on the basis of any act or omission, if:

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

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

13 H. This section shall apply to all civil actions filed on or after:

14 1. November 1, 2004, for a physician, physician's assistant, registered nurse, advanced nurse
15 practitioner, pharmacist, podiatrist, dentist, dental hygienist, and optometrist; and

16 2. November 1, 2009, for all other persons listed in subsection F of this section.

17 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as
18 Section 33 of Title 76, unless there is created a duplication in numbering, reads as follows:

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

21 B. Any person, or any agent of that person, who:
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1 1. Voluntarily and without the expectation or receipt of compensation provides services and
2 goods at any place in this state subject to the order or control of, or pursuant to a request of, the state
3 government or any political subdivision thereof:

4 a. in preparation for, anticipation of, or during a time of emergency, and

5 b. in a place of emergency, as declared by the Governor; and

6 2. For the benefit of any person or to prevent, minimize, or repair injury or damage to the
7 property of a person resulting from:

8 a. biological, chemical, or nuclear agents,

9 b. terrorism,

10 c. pandemic or epidemic of infectious disease,

11 d. catastrophic acts of nature, including but not limited to fire, flood, earthquake,
12 wind, storm, or wave action, or

13 e. any other emergency situation as declared by the Governor by executive order
14 under Oklahoma law,

15 shall not be liable to any person receiving assistance as a result of any act or omission in rendering the
16 service if the person was acting in good faith and the damage or injury was not caused by the will or
17 wanton negligence or misconduct of the person.

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

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

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

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

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

6 SECTION 3. This act shall become effective November 1, 2009.

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