

ENROLLED HOUSE  
BILL NO. 1678

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

and

Paddack and Stanislawski of  
the Senate

An Act relating to torts; amending Section 1, Chapter 138, O.S.L. 2003, as last amended by Section 3, Chapter 133, O.S.L. 2007 (59 O.S. Supp. 2008, Section 493.5, which relates to volunteer medical licenses; expanding scope; amending Section 34, Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2008, Section 32), as amended by Section 1 of Enrolled House Bill No. 2093 of the 1st Session of the 52nd Oklahoma Legislature, which relates to the Volunteer Medical Professional Services Immunity Act; modifying definition; expanding scope of certain circumstances in which certain persons are immune from liability; specifying 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:

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

Section 493.5 A. 1. There is established a special volunteer ~~medical~~ license for ~~physicians~~ eligible volunteers from a medically related field who are retired from active practice or actively

licensed in another state and practicing in that state and wish to donate their expertise for the ~~medical~~ care and treatment of indigent and needy persons of this state.

2. For purposes of this section:

- a. "eligible volunteer" means a physician, physician assistant, nurse, dentist, optometrist or pharmacist, and
- b. "nurse" means an advanced practice nurse, advanced registered nurse practitioner, registered nurse, or licensed practical nurse.

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

~~1. Issued~~

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

~~2. Issued~~ and physician assistants, by the Oklahoma Board of Nursing to eligible nurses, the Board of Dentistry to eligible dentists, the Board of Examiners in Optometry to eligible optometrists, and by the Board of Pharmacy to eligible pharmacists,

- b. issued without the payment of an application fee, license fee or renewal fee~~;~~

~~3. Issued,~~

- c. issued or renewed without any continuing education requirements in this state~~;~~

~~4. Issued,~~

- d. issued for a fiscal year or part thereof~~;~~ and

~~5. Renewable~~

- e. renewable annually upon approval of the applicable Board.

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

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

- a. the ~~physician's~~ medical school graduation of the physician,
- b. the completion of a physician assistant program by a physician assistant,
- c. the completion of the basic professional curricula of a school of nursing by the nurse,
- d. the dental school graduation of the dentist,
- e. the optometry school graduation of the optometrist, or
- f. the school or college of pharmacy graduation of a pharmacist, and
- g. the relevant practice history of the applicant;

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

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

4. Acknowledgement and documentation that the ~~physician~~ eligible volunteer ~~will~~ shall not receive or have the expectation to receive any payment or compensation, either direct or indirect, for any ~~medical~~ services rendered in this state under the special volunteer ~~medical~~ license. The only exception to the indirect compensation provision is for those out-of-state physicians, physician assistants, nurses, dentists, optometrists or pharmacists that participate in the free ~~medical~~ care given by means of

Telemedicine through the Shriners Hospitals for Children national network.

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

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

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

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

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

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

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

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

- a. that the volunteer ~~medical~~ professional or volunteer health practitioner providing ~~professional medical~~ services has no expectation of and will receive no compensation of any kind for providing the ~~professional medical~~ services, and
- b. an understanding of the limitations on the recovery of damages from the volunteer ~~medical~~ professional or volunteer health practitioner in exchange for receiving free ~~professional medical~~ services.

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

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

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

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

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

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

- a. that the referred volunteer ~~medical~~ professional or volunteer health practitioner providing ~~professional~~ ~~medical~~ services has no expectation of and will receive no compensation of any kind for providing the ~~professional~~ ~~medical~~ services, and
- b. an understanding of the limitations on the recovery of damages from the volunteer ~~medical~~ professional or volunteer health practitioner in exchange for receiving free ~~professional~~ ~~medical~~ services.

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

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

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

1. Physician;
2. ~~Physician's~~ Physician assistant;
3. Registered nurse;
4. Advanced practice nurse ~~practitioner~~ or vocational nurse;
5. Pharmacist;

6. Podiatrist;
7. Dentist or dental hygienist; or
8. Optometrist.

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

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

1. Certified nurse aide;
2. Chiropractor;
3. Dental assistant;
4. Dental technician;
5. Dietitian/nutritionist;
6. Emergency medical technician;
7. Licensed alcohol and drug counselor;
8. Licensed behavioral practitioner;
9. Licensed clinical social worker;
10. Licensed practical nurse;
11. Licensed professional counselor;
12. Marital/family therapist;
13. Medical assistant;

14. Medical laboratory technologist;
15. Medical technician;
16. Nuclear medicine technologist;
17. Occupational therapist;
18. Orthopedic technologist;
19. Paramedic;
20. Pharmacy technician;
21. Physical therapist;
22. Psychologist;
23. Radiology technician/technologist;
24. Respiratory therapist;
25. Sonographer;
26. Speech/language pathologist;
27. Veterinarian; and
28. Veterinary technician.

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

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

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

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

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

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

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

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

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

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

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

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

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

a. biological, chemical, or nuclear agents,

b. terrorism,

c. pandemic or epidemic of infectious disease,

- d. catastrophic acts of nature, including but not limited to fire, flood, earthquake, wind, storm, or wave action, or
- e. any other emergency situation as declared by the Governor by executive order under Oklahoma law,

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

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

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

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

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

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

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

Passed the House of Representatives the 13th day of May, 2009.

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Presiding Officer of the House of  
Representatives

Passed the Senate the 18th day of May, 2009.

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Presiding Officer of the Senate