

THE HOUSE OF REPRESENTATIVES
Thursday, April 9, 2009

Committee Substitute for
ENGROSSED
Senate Bill No. 487

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 487 - By:
PADDACK, GARRISON AND BALLENGER of the Senate and COX of the House.

(officers - community health care providers – volunteer license – Volunteer
Professional Services Immunity Act -
effective date)

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

1 SECTION 1. AMENDATORY 51 O.S. 2001, Section 152, as last amended by
2 Section 1, Chapter 348, O.S.L. 2008 (51 O.S. Supp. 2008, Section 152), is amended to
3 read as follows:

4 Section 152. As used in The Governmental Tort Claims Act:

5 1. "Action" means a proceeding in a court of competent jurisdiction by which one
6 party brings a suit against another;

7 2. "Agency" means any board, commission, committee, department or other
8 instrumentality or entity designated to act in behalf of the state or a political subdivision;

9 3. "Charitable health care provider" means a person who is licensed, certified, or
10 otherwise authorized by the laws of this state to administer health care in the ordinary
11 course of business or the practice of a profession and who provides care to a medically

1 indigent person, as defined in paragraph 8 of this section, with no expectation of or
2 acceptance of compensation of any kind;

3 4. "Claim" means any written demand presented by a claimant or the claimant's
4 authorized representative in accordance with this act to recover money from the state or
5 political subdivision as compensation for an act or omission of a political subdivision or
6 the state or an employee;

7 5. "Claimant" means the person or the person's authorized representative who files
8 notice of a claim in accordance with The Governmental Tort Claims Act. Only the
9 following persons and no others may be claimants:

- 10 a. any person holding an interest in real or personal property which
11 suffers a loss, provided that the claim of the person shall be aggregated
12 with claims of all other persons holding an interest in the property and
13 the claims of all other persons which are derivative of the loss, and
14 that multiple claimants shall be considered a single claimant,
15 b. the individual actually involved in the accident or occurrence who
16 suffers a loss, provided that the individual shall aggregate in the claim
17 the losses of all other persons which are derivative of the loss, or
18 c. in the case of death, an administrator, special administrator or a
19 personal representative who shall aggregate in the claim all losses of
20 all persons which are derivative of the death;

21 6. “Community health care provider” means:

- 1 a. a health care provider who volunteers services at a community health
2 center that has been deemed by the U.S. Department of Health and
3 Human Services as a federally qualified health center as defined by 42
4 U.S.C., Section 1396d(1)(2)(B),
- 5 b. a health provider who provides services to an organization that has
6 been deemed a federally qualified look-alike community health center,
7 and
- 8 c. a health care provider who provides services to a community health
9 center that has made application to the U.S. Department of Health and
10 Human Services for approval and deeming as a federally qualified
11 look-alike community health center in compliance with federal
12 application guidance, and has received comments from the U.S.
13 Department of Health and Human Services as to the status of such
14 application with the established intent of resubmitting a modified
15 application, or, if denied, a new application, no later than six (6)
16 months from the date of the official notification from the U.S.
17 Department of Health and Human Services requiring resubmission of
18 a new application;

19 7. "Employee" means any person who is authorized to act in behalf of a political
20 subdivision or the state whether that person is acting on a permanent or temporary
21 basis, with or without being compensated or on a full-time or part-time basis.

- 22 a. Employee also includes:

- 1 (1) all elected or appointed officers, members of governing bodies
2 and other persons designated to act for an agency or political
3 subdivision, but the term does not mean a person or other legal
4 entity while acting in the capacity of an independent contractor
5 or an employee of an independent contractor,
- 6 (2) from September 1, 1991, through June 30, 1996, licensed
7 physicians, licensed osteopathic physicians and certified nurse-
8 midwives providing prenatal, delivery or infant care services to
9 State Department of Health clients pursuant to a contract
10 entered into with the State Department of Health in accordance
11 with paragraph 3 of subsection B of Section 1-106 of Title 63 of
12 the Oklahoma Statutes but only insofar as services authorized
13 by and in conformity with the terms of the contract and the
14 requirements of Section 1-233 of Title 63 of the Oklahoma
15 Statutes, and
- 16 (3) any volunteer, full-time or part-time firefighter when
17 performing duties for a fire department provided for in
18 subparagraph j of paragraph 10 of this section.
- 19 b. For the purpose of The Governmental Tort Claims Act, the following
20 are employees of this state, regardless of the place in this state where
21 duties as employees are performed:
- 22 (1) physicians acting in an administrative capacity,

- 1 (2) resident physicians and resident interns participating in a
2 graduate medical education program of the University of
3 Oklahoma Health Sciences Center, the College of Osteopathic
4 Medicine of Oklahoma State University, or the Department of
5 Mental Health and Substance Abuse Services,
6 (3) faculty members and staff of the University of Oklahoma Health
7 Sciences Center and the College of Osteopathic Medicine of
8 Oklahoma State University, while engaged in teaching duties,
9 (4) physicians who practice medicine or act in an administrative
10 capacity as an employee of an agency of the State of Oklahoma,
11 (5) physicians who provide medical care to inmates pursuant to a
12 contract with the Department of Corrections,
13 (6) any person who is licensed to practice medicine pursuant to Title
14 59 of the Oklahoma Statutes, who is under an administrative
15 professional services contract with the Oklahoma Health Care
16 Authority under the auspices of the Oklahoma Health Care
17 Authority Chief Medical Officer, and who is limited to
18 performing administrative duties such as professional guidance
19 for medical reviews, reimbursement rates, service utilization,
20 health care delivery and benefit design for the Oklahoma Health
21 Care Authority, only while acting within the scope of such
22 contract,

1 (7) licensed medical professionals under contract with city, county,
2 or state entities who provide medical care to inmates or
3 detainees in the custody or control of law enforcement agencies,
4 and

5 (8) licensed mental health professionals as defined in Sections 1-103
6 and 5-502 of Title 43A of the Oklahoma Statutes, who are
7 conducting initial examinations of individuals for the purpose of
8 determining whether an individual meets the criteria for
9 emergency detention as part of a contract with the Department
10 of Mental Health and Substance Abuse Services.

11 Physician faculty members and staff of the University of Oklahoma
12 Health Sciences Center and the College of Osteopathic Medicine of
13 Oklahoma State University not acting in an administrative capacity or
14 engaged in teaching duties are not employees or agents of the state.

15 c. Except as provided in subparagraph b of this paragraph, in no event
16 shall the state be held liable for the tortious conduct of any physician,
17 resident physician or intern while practicing medicine or providing
18 medical treatment to patients;

19 ~~7.~~ 8. "Loss" means death or injury to the body or rights of a person or damage to
20 real or personal property or rights therein;

21 ~~8.~~ 9. "Medically indigent" means a person requiring medically necessary hospital or
22 other health care services for the person or the dependents of the person who has no

1 public or private third-party coverage, and whose personal resources are insufficient to
2 provide for needed health care;

3 ~~9.~~ 10. "Municipality" means any incorporated city or town, and all institutions,
4 agencies or instrumentalities of a municipality;

5 ~~10.~~ 11. "Political subdivision" means:

- 6 a. a municipality,
- 7 b. a school district,
- 8 c. a county,
- 9 d. a public trust where the sole beneficiary or beneficiaries are a city,
10 town, school district or county. For purposes of The Governmental
11 Tort Claims Act, a public trust shall include a municipal hospital
12 created pursuant to Section 30-101 et seq. of Title 11 of the Oklahoma
13 Statutes, a county hospital created pursuant to Section 781 et seq. of
14 Title 19 of the Oklahoma Statutes, or is created pursuant to a joint
15 agreement between such governing authorities, that is operated for the
16 public benefit by a public trust created pursuant to Section 176 et seq.
17 of Title 60 of the Oklahoma Statutes and managed by a governing
18 board appointed or elected by the municipality, county, or both, who
19 exercises control of the hospital, subject to the approval of the
20 governing body of the municipality, county, or both,

- 1 e. for the purposes of The Governmental Tort Claims Act only, a housing
2 authority created pursuant to the provisions of the Oklahoma Housing
3 Authority Act,
- 4 f. for the purposes of The Governmental Tort Claims Act only,
5 corporations organized not for profit pursuant to the provisions of the
6 Oklahoma General Corporation Act for the primary purpose of
7 developing and providing rural water supply and sewage disposal
8 facilities to serve rural residents,
- 9 g. for the purposes of The Governmental Tort Claims Act only, districts
10 formed pursuant to the Rural Water, Sewer, Gas and Solid Waste
11 Management Districts Act,
- 12 h. for the purposes of The Governmental Tort Claims Act only, master
13 conservancy districts formed pursuant to the Conservancy Act of
14 Oklahoma,
- 15 i. for the purposes of The Governmental Tort Claims Act only, a fire
16 protection district created pursuant to the provisions of Section 901.1
17 et seq. of Title 19 of the Oklahoma Statutes,
- 18 j. for the purposes of The Governmental Tort Claims Act only, a
19 benevolent or charitable corporate volunteer or full-time fire
20 department for an unincorporated area created pursuant to the
21 provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,

- 1 k. for purposes of The Governmental Tort Claims Act only, an Emergency
2 Services Provider rendering services within the boundaries of a
3 Supplemental Emergency Services District pursuant to an existing
4 contract between the Emergency Services Provider and the Oklahoma
5 State Department of Health. Provided, however, that the acquisition
6 of commercial liability insurance covering the activities of such
7 Emergency Services Provider performed within the State of Oklahoma
8 shall not operate as a waiver of any of the limitations, immunities or
9 defenses provided for political subdivisions pursuant to the terms of
10 The Governmental Tort Claims Act,
- 11 l. for purposes of The Governmental Tort Claims Act only, a conservation
12 district created pursuant to the provisions of the Conservation District
13 Act,
- 14 m. for purposes of The Governmental Tort Claims Act, districts formed
15 pursuant to the Oklahoma Irrigation District Act,
- 16 n. for purposes of The Governmental Tort Claims Act only, any
17 community action agency established pursuant to Sections 5035
18 through 5040 of Title 74 of the Oklahoma Statutes,
- 19 o. for purposes of The Governmental Tort Claims Act only, any
20 organization that is designated as a youth services agency, pursuant to
21 Section 7302-3.6a of Title 10 of the Oklahoma Statutes,

1 p. for purposes of The Governmental Tort Claims Act only, any judge
2 presiding over a drug court, as defined by Section 471.1 of Title 22 of
3 the Oklahoma Statutes, and

4 q. for purposes of The Governmental Tort Claims Act only, any child-
5 placing agency licensed by this state to place children in foster family
6 homes,
7 and all their institutions, instrumentalities or agencies;

8 ~~11.~~ 12. "Scope of employment" means performance by an employee acting in good
9 faith within the duties of the employee's office or employment or of tasks lawfully
10 assigned by a competent authority including the operation or use of an agency vehicle or
11 equipment with actual or implied consent of the supervisor of the employee, but shall not
12 include corruption or fraud;

13 ~~12.~~ 13. "State" means the State of Oklahoma or any office, department, agency,
14 authority, commission, board, institution, hospital, college, university, public trust
15 created pursuant to Title 60 of the Oklahoma Statutes of which the State of Oklahoma is
16 the beneficiary, or other instrumentality thereof; and

17 ~~13.~~ 14. "Tort" means a legal wrong, independent of contract, involving violation of a
18 duty imposed by general law or otherwise, resulting in a loss to any person, association
19 or corporation as the proximate result of an act or omission of a political subdivision or
20 the state or an employee acting within the scope of employment.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 152.3 of Title 51, unless there is created a duplication in numbering,
3 reads as follows:

4 A. 1. The State Department of Health may enter into agreements with community
5 health care providers in which the provider stipulates to the State Department of Health
6 that when the provider renders professional services, such services will be provided
7 without compensation to the community health care provider, although the facility may
8 assess a sliding scale co-pay fee;

9 2. The State Department of Health shall adopt rules which specify the conditions
10 for termination of any such agreement, and the rules shall be made a part of the
11 agreement; and

12 3. A community health care provider, for purposes of any claim for damages arising
13 as a result of rendering professional services to a person, which professional services
14 were rendered without compensation or expectation of payment to the community health
15 care provider, at a time when an agreement entered into by the community health care
16 provider with the State Department of Health, pursuant to this section was in effect,
17 shall be considered an employee of the state under The Governmental Tort Claims Act.

18 B. The State Department of Health shall adopt rules on eligibility criteria for
19 determining whether a person qualifies to receive services on a sliding scale co-pay basis.

20 C. Any claim arising from the rendering of or failure to render professional services
21 by a community health care provider brought pursuant to The Governmental Tort
22 Claims Act shall not be considered by an insurance company in determining the rate

1 charged for any professional liability insurance policy for health care providers nor
2 whether to cancel any such policy.

3 SECTION 3. AMENDATORY 51 O.S. 2001, Section 158, as amended by
4 Section 2, Chapter 102, O.S.L. 2006 (51 O.S. Supp. 2008, Section 158), is amended to
5 read as follows:

6 Section 158. A. The state or a political subdivision, after conferring with
7 authorized legal counsel, may settle or defend against a claim or suit brought against it
8 or its employee under this act subject to any procedural requirements imposed by
9 statute, ordinance, resolution or written policy, and may appropriate money for the
10 payment of amounts agreed upon. When the amount of any settlement exceeds Twenty-
11 five Thousand Dollars (\$25,000.00), and any payment required by the settlement will not
12 be paid through an applicable contract or policy of insurance, the settlement shall not be
13 effective until approved by the district court and entered as a judgment as provided by
14 law.

15 B. Any settlement payout pursuant to this section may be structured in any
16 manner as agreed to by the parties involved.

17 C. If a policy or contract of liability insurance covering the state or political
18 subdivision or its employees is applicable, the terms of the policy govern the rights and
19 obligations of the state or political subdivision and the insurer with respect to the
20 investigation, settlement, payment and defense of claims or suits against the state or
21 political subdivision or its employees covered by the policy. However, the insurer may
22 not enter into a settlement for an amount which exceeds the insurance coverage without

1 the approval of the governing body of the state or political subdivision or its designated
2 representative if the state or political subdivision is insured.

3 ~~C.~~ D. Nothing in this section shall be construed to repeal or modify Sections 361
4 through 365.6 and 435 of Title 62 of the Oklahoma Statutes and it is intended that this
5 section be construed in conformance with those sections.

6 ~~D.~~ E. The state or a political subdivision shall not be liable for any costs, judgments
7 or settlements paid through an applicable contract or policy of insurance but shall be
8 entitled to set off those payments against liability arising from the same occurrence.

9 ~~E.~~ F. The state or a political subdivision shall have the right of subrogation against
10 the insurer issuing any applicable contractor policy of insurance to the monetary limit of
11 said policy of insurance or contract, if judgment or settlement of any claim arising
12 pursuant to this act results in the imposition of monetary liability upon the state or the
13 political subdivision.

14 ~~F.~~ G. Judgments, orders, and settlements of claims shall be open public records
15 unless sealed by the court for good cause shown.

16 SECTION 4. AMENDATORY Section 1, Chapter 138, O.S.L. 2003, as last
17 amended by Section 3, Chapter 133, O.S.L. 2007 (59 O.S. Supp. 2008, Section 493.5), is
18 amended to read as follows:

19 Section 493.5 A. 1. There is established a special volunteer ~~medical~~ license for
20 ~~physicians~~ eligible volunteers from a medically related field who are retired from active
21 practice or actively licensed in another state and practicing in that state and wish to

1 donate their expertise for the ~~medical~~ care and treatment of indigent and needy persons
2 of this state.

3 2. For purposes of this section:

- 4 a. “eligible volunteer” means a physician, physician assistant, nurse,
5 dentist, optometrist or pharmacist, and
- 6 b. “nurse” means an advanced practice nurse, advanced registered nurse
7 practitioner, registered nurse, or licensed practical nurse.

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

9 ~~1. Issued~~

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

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

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

18 ~~3. Issued,~~

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

21 ~~4. Issued,~~

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 ~~5. Renewable~~

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

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

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

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

8 b. the completion of a physician assistant program by a physician
9 assistant,

10 c. the completion of the basic professional curricula of a school of nursing
11 by the nurse,

12 d. the dental school graduation of the dentist,

13 e. the optometry school graduation of the optometrist, or

14 f. the school or college of pharmacy graduation of a pharmacist, and

15 g. the relevant practice history of the applicant;

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

20 3. Acknowledgement and documentation that the ~~physician's~~ practice of the eligible
21 volunteer under the special volunteer ~~medical~~ license will be exclusively and totally

1 devoted to providing ~~medical~~ care to needy and indigent persons in Oklahoma or to
2 providing care under the Oklahoma Medical Reserve Corps; and

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

10 SECTION 5. AMENDATORY Section 34, Chapter 368, O.S.L. 2004 (76 O.S.
11 Supp. 2008, Section 32), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

6 3. The referred volunteer ~~medical~~ professional commits the act or omission in the
7 course of providing professional services; and

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

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

15 a. ~~that the referred volunteer medical professional providing professional~~
16 ~~medical services has no expectation of and will receive no~~
17 ~~compensation of any kind for providing the professional medical~~
18 ~~services, and~~

19 b. ~~an understanding of the limitations on the recovery of damages from~~
20 ~~the volunteer medical professional in exchange for receiving free~~
21 ~~professional medical services.~~

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

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

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

- 17 1. Physician;
- 18 2. ~~Physician's~~ Physician assistant;
- 19 3. Registered nurse;
- 20 4. Advanced nurse practitioner or vocational nurse;
- 21 5. Pharmacist;
- 22 6. Podiatrist;

1 7. Dentist or dental hygienist; or

2 8. Optometrist.

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

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

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

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

15 H. This section shall apply to all civil actions filed on or after November 1, 2004.

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

17 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04-08-09 - DO
18 PASS, As Amended.