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## I. INTRODUCTION

In order to protect medical care professionals, such as physicians and nursing home staff, from burdensome litigation during the COVID-19 emergency, states and the federal government of the United States provide liability protection for medical practices that do not arise out of gross negligence or willful misconduct.

Some states, such as Maryland, have already had statutes in place before the COVID-19 emergency that provides for liability immunity in case of disasters. Likewise, states like Virginia, already have such a statute in place and only require the state governor to declare that the current situation qualifies as a disaster within the meaning of the statute. Alternatively, states such as Illinois, provide liability protection through the issuance of the governor's executive orders. Finally, others, such as Louisiana, have enacted new statutes that explicitly provide for liability during the time of COVID-19.

Most states provide civil liability for good faith medical acts for individuals and facilities, while a small number of states, such as New York and Maryland, extend immunity to criminal liability. The following outlines relevant administrative guidance or statutes of the federal and state governments.

## II. FEDERAL MEASURES

### A. Federal Declaration

The Secretary of the U.S. Department of Health and Human Services issued a declaration under the Public Readiness and Emergency Preparedness Act ("PREP Act"), which provides liability immunity for "...individuals and entities against claims arising out of the manufacture, testing, development, distribution, administration, or use of Covered Countermeasures to address the COVID-19 outbreak."<sup>2</sup>

85 Fed. Reg. 15198 (Mar. 17, 2020) states (emphasis added):

...The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a Declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the manufacture, distribution, administration, or use of medical countermeasures (Covered Countermeasures), except for claims involving "willful misconduct" as defined in the PREP Act...

Section IV. Limited Immunity The Secretary must also state that liability protections available under the PREP Act are in effect with respect to the Recommended Activities. These liability protections provide that, "[s]ubject to other provisions of [the PREP Act], a covered person shall be immune from suit and liability under federal and state law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the

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<sup>2</sup> Designation of Authorized Health Care Activities Pursuant to the PREP Act. The Secretary's Declaration provides that the immunity extends to activities authorized by the "Authority Having Jurisdiction" to prescribe, administer, deliver, distribute, or dispense "Covered Countermeasures" following a declaration of an emergency. See *id.* at 15202, § VII(b); Public Health Emergency; Public Readiness and Emergency Preparedness Act, available at <https://www.phe.gov/Preparedness/legal/prepact/Pages/default.aspx>.

administration to or use by an individual of a covered countermeasure if a Declaration has been issued with respect to such countermeasure.”...

Section VII. Limitations on Distribution The Secretary may specify that liability immunity is in effect only to Covered Countermeasures obtained through a particular means of distribution. The Declaration states that liability immunity is afforded to Covered Persons for Recommended Activities related to (a) present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, or memoranda of understanding or other federal agreements; or (b) activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following a Declaration of an emergency.

...Section XII. Effective Time Period The Secretary must identify, for each Covered Countermeasure, the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act. Section XII of the Declaration extends the effective period for different means of distribution of Covered Countermeasures through October 1, 2024.

Additionally, 116<sup>th</sup> of the U.S. Congress passed the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, signed by President Donald Trump on March 27, 2020. Among others, section 3215 states:

SEC. 3215. LIMITATION ON LIABILITY FOR VOLUNTEER HEALTH CARE PROFESSIONALS DURING COVID-19 EMERGENCY RESPONSE.

(a) Limitation on Liability.--Except as provided in subsection (b), a health care professional shall not be liable under Federal or State law for any harm caused by an act or omission of the professional in the provision of health care services during the public health emergency with respect to COVID-19 declared by the Secretary of Health and Human Services (referred to in this section as the “Secretary”) under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, if--

- (1) the professional is providing health care services in response to such public health emergency, as a volunteer; and
- (2) the act or omission occurs—

- (A) in the course of providing health care services;
  - (B) in the health care professional's capacity as a volunteer;
  - (C) in the course of providing health care services
- that--

(i) are within the scope of the license, registration, or certification of the volunteer, as defined by the State of licensure, registration, or certification; and (ii) do not exceed the scope of license, registration, or certification of a substantially similar health professional in the State in which such act or omission occurs; and (D) in a good faith belief that the individual being treated is in need of health care services.

(b) Exceptions.--Subsection (a) does not apply if-- (1) the harm was caused by an act or omission constituting willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed by the health care

professional; or (2) the health care professional rendered the health care services under the influence (as determined pursuant to applicable State law) of alcohol or an intoxicating drug.

(c) Preemption.--

(1) In general.--This section preempts the laws of a State or any political subdivision of a State to the extent that such laws are inconsistent with this section, unless such laws provide greater protection from liability.

(2) Volunteer protection act.--Protections afforded by this section are in addition to those provided by the Volunteer Protection Act of 1997 (Public Law 105-19).

...

Sec. 3215, H.R. 748, CARES Act, 116<sup>th</sup> Congress

On May 6, 2020, Senator of Nebraska Ben Sasse introduced S.3630 - Facilitating Innovation to Fight Coronavirus Act. The proposed bill states:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Facilitating Innovation to Fight Coronavirus Act”.

SEC. 2. LIMITATIONS ON CERTAIN HEALTH PROVIDER LIABILITY.

(a) In General.—Notwithstanding any other provision of Federal, State, or local law, no health care provider shall be liable in any Federal, State, or local civil proceeding for—

- (1) using or modifying a medical device for an unapproved use or indication;
- (2) practicing without a license or outside of an area of specialty if instructed to do so by an individual with such a license or within such an area of specialty; or
- (3) conducting the testing of, or the provision of treatment to, a patient outside of the premises of standard health care facilities, where such action was carried out to test, treat, or otherwise counter the effects of the Coronavirus Disease COVID–19 during the duration of the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to that disease.

(b) Definition.—In this section, the term “health care provider” has the meaning given such term in section 3000(j) of the Public Health Service Act (42 U.S.C. 300jj(3)).

SEC. 3. TERM OF CERTAIN PATENTS.

(a) Effective Date.—Notwithstanding any provision of title 35, United States Code, with respect to an eligible patent, the term of the patent shall not begin until the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to that disease terminates.

(b) Length Of Term.—Notwithstanding any provision of title 35, United States Code, with respect to an eligible patent, the term of the patent shall extend for 10 years longer than it otherwise would under such title.

(c) Definition.—In this section, the term “eligible patent” means a patent issued for a new or existing pharmaceutical, medical device, or other process, machine, manufacture, or composition of matter, or any new and useful improvement thereof used or intended for use in the treatment of the Coronavirus Disease 2019 (COVID–19).

S.3630 — 116th Congress (2019-2020).

Finally, the U.S. Secretary of Health and Human Services Alex Azar issued a letter on March 24, 2020, calling state authorities to, among others, “alleviate Medical Malpractice Liability for In-State Health Care Professionals, Including Volunteers, Working across State Lines”<sup>3</sup>

## B. Example State Measures

### ALABAMA

Alabama Code Title 6. Civil Practice § 6-5-332 states:

(a) When any doctor of medicine or dentistry, nurse, member of any organized rescue squad... gratuitously and in good faith, renders first aid or emergency care at the scene of an accident, casualty, or disaster to a person injured therein, he or she shall not be liable for any civil damages as a result of his or her acts or omissions in rendering first aid or emergency care, nor shall he or she be liable for any civil damages as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person.

...

(c) When any physician gratuitously advises medical personnel at the scene of an emergency episode by direct voice contact, to render medical assistance based upon information received by voice or biotelemetry equipment, the actions ordered taken by the physician to sustain life or reduce disability shall not be considered liable when the actions are within the established medical procedures.

...

(e) A person or entity, who in good faith and without compensation renders emergency care or treatment to a person suffering or appearing to suffer from cardiac arrest, which may include the use of an automated external defibrillator, shall be immune from civil liability for any personal injury as a result of care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary prudent person would have acted under the same or similar circumstances, except damages that may result from the gross negligence of the person rendering emergency care. This immunity shall extend to the licensed physician or medical authority who is involved in automated external defibrillator site placement, the person who provides training in CPR and the use of the automated external defibrillator, and the

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<sup>3</sup> Alex Azar, Lifting Restrictions to Extend the Capacity of the Health Care Workforce during the COVID-19 National Emergency (March 24, 2020), available at [https://www.ncsbn.org/HHS\\_Guidance\\_to\\_States\\_on\\_Regulations\\_on\\_Healthcare\\_Workers.pdf](https://www.ncsbn.org/HHS_Guidance_to_States_on_Regulations_on_Healthcare_Workers.pdf).

person or entity responsible for the site where the automated external defibrillator is located. This subsection specifically excludes from the provision of immunity any designers, manufacturers, or sellers of automated external defibrillators for any claims that may be brought against such entities based upon current Alabama law.

...

Additionally, Alabama Code § 31-9-16 (2016)( Immunity of state, etc., from liability for torts resulting from emergency management activities; exemptions of emergency management workers from license requirements; powers, duties, etc., of emergency management workers.) states:

(a) All functions under this article and all other activities relating to emergency management are hereby declared to be governmental functions.

...

(c) Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing his duties as such, practice such professional, mechanical, or other skill during an emergency management emergency.

(d) As used in this section, the term "emergency management worker" shall include any full-or part-time paid, volunteer, or auxiliary employee of this state, or other states, territories, possessions, or the District of Columbia, of the federal government, of any neighboring county or of any political subdivision thereof, or of any agency or organization performing emergency management services 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.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this state pursuant to agreements, compacts, or arrangements for mutual aid and assistance to which the state or a political subdivision thereof is a party, shall possess the same powers, duties, immunities, and privileges he would ordinarily possess if performing his duties in the state, province, or political subdivision thereof in which normally employed or rendering services.

## CALIFORNIA

California Emergency Services Act, Government Code Section §8659 states:

(a) Any physician or surgeon (whether licensed in this state or any other state), hospital, pharmacist, respiratory care practitioner, nurse, or dentist who renders services during any state of war emergency, a state of emergency, or a local emergency at the express or implied request of any responsible state or local official or agency shall have no liability for any injury sustained by any person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful act or omission.

Additionally, Section (g) of the California Health and Safety Code §1317ststes:

(g) An act or omission of a rescue team established by a health facility licensed under this chapter, or operated by the federal or state government, a county, or by the Regents of the University of California, done or omitted while attempting to resuscitate a person

who is in immediate danger of loss of life shall not impose any liability upon the health facility, the officers, members of the staff, nurses, or employees of the health facility, including, but not limited to, the members of the rescue team, or upon the federal or state government or a county, if good faith is exercised.

## CONNECTICUT

Governor Ned Lamont's Executive Order NO. 7U states (emphasis added):

... in order to encourage maximum participation in efforts to expeditiously expand Connecticut's health care workforce and facilities capacity, there exists a compelling state interest in affording such professionals and facilities protection against liability for good faith actions taken in the course of their significant efforts to assist in the state's response to the current public health and civil preparedness emergency...

**1. Protection from Civil Liability for Actions or Omissions in Support of the State's COVID-19 Response.** Notwithstanding any provision of the Connecticut General Statutes, or any associated regulations, rules, policies, or procedures, any health care professional or health care facility shall be immune from suit for civil liability for any injury or death alleged to have been sustained because of the individual's or health care facility's acts or omissions undertaken in good faith while providing health care services in support of the State's COVID-19 response, including but not limited to acts or omissions undertaken because of a lack of resources, attributable to the COVID-19 pandemic, that renders the health care professional or health care facility unable to provide the level or manner of care that otherwise would have been required in the absence of the COVID-19 pandemic and which resulted in the damages at issue, provided that nothing in this order shall remove or limit any immunity conferred by any provision of the Connecticut General Statutes or other law. Such immunity shall not extend to acts or omissions that constitute a crime, fraud, malice, gross negligence, willful misconduct, or would otherwise constitute a false claim or prohibited act pursuant to Section 4-275 et seq. of the Connecticut General Statutes or 31 U.S.C. §§3729 et seq. The term "health care professional" means an individual who is licensed, registered, permitted, or certified in any state in the United States to provide health care services and any retired professional, professional with an inactive license, or volunteer approved by the Commissioner of the Department of Public Health or her designee. The term "health care facility" means a licensed or state approved hospital, clinic, nursing home, field hospital or other facility designated by the Commissioner of the Department of Public Health for temporary use for the purposes of providing essential services in support of the State's COVID-19 response...

## FLORIDA

FL. Stat. §768.13 (Good Samaritan Act; immunity from civil liability.—) states:

(1) This act shall be known and cited as the "Good Samaritan Act."

(2)(a) Any person, including those licensed to practice medicine, who gratuitously and in good faith renders emergency care or treatment either in direct response to emergency situations related to and arising out of a public health emergency declared pursuant to s. 381.00315, a state of emergency which has been declared pursuant to s. 252.36 or at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, without objection of the injured victim or victims thereof, shall not

be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

(b)1. Any health care provider, including a hospital licensed under chapter 395, providing emergency services pursuant to obligations imposed by 42 U.S.C. s. 1395dd, s. 395.1041, s. 395.401, or s. 401.45 shall not be held liable for any civil damages as a result of such medical care or treatment unless such damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of another.

2. The immunity provided by this paragraph applies to damages as a result of any act or omission of providing medical care or treatment, including diagnosis:

a. Which occurs prior to the time the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the immunity provided by this paragraph applies to any act or omission of providing medical care or treatment which occurs prior to the stabilization of the patient following the surgery.

b. Which is related to the original medical emergency.

3. For purposes of this paragraph, “reckless disregard” as it applies to a given health care provider rendering emergency medical services shall be such conduct that a health care provider knew or should have known, at the time such services were rendered, created an unreasonable risk of injury so as to affect the life or health of another, and such risk was substantially greater than that which is necessary to make the conduct negligent.

4. Every emergency care facility granted immunity under this paragraph shall accept and treat all emergency care patients within the operational capacity of such facility without regard to ability to pay, including patients transferred from another emergency care facility or other health care provider pursuant to Pub. L. No. 99-272, s. 9121. The failure of an emergency care facility to comply with this subparagraph constitutes grounds for the department to initiate disciplinary action against the facility pursuant to chapter 395.

(c)1. Any health care practitioner as defined in s. 456.001(4) who is in a hospital attending to a patient of his or her practice or for business or personal reasons unrelated to direct patient care, and who voluntarily responds to provide care or treatment to a patient with whom at that time the practitioner does not have a then-existing health care patient-practitioner relationship, and when such care or treatment is necessitated by a sudden or unexpected situation or by an occurrence that demands immediate medical attention, shall not be held liable for any civil damages as a result of any act or omission relative to that care or treatment, unless that care or treatment is proven to amount to conduct that is willful and wanton and would likely result in injury so as to affect the life or health of another.

2. The immunity provided by this paragraph does not apply to damages as a result of any act or omission of providing medical care or treatment unrelated to the original situation that demanded immediate medical attention.



3. For purposes of this paragraph, the Legislature's intent is to encourage health care practitioners to provide necessary emergency care to all persons without fear of litigation as described in this paragraph.

(d) Any person whose acts or omissions are not otherwise covered by this section and who participates in emergency response activities under the direction of or in connection with a community emergency response team, local emergency management agencies, the Division of Emergency Management, or the Federal Emergency Management Agency is not liable for any civil damages as a result of care, treatment, or services provided gratuitously in such capacity and resulting from any act or failure to act in such capacity in providing or arranging further care, treatment, or services, if such person acts as a reasonably prudent person would have acted under the same or similar circumstances.

(3) Any person, including those licensed to practice veterinary medicine, who gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency on or adjacent to a roadway shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.

Governor of the State of Florida, Ron Desantis, issued Executive Order #2020-25 and declared a state of emergency on March 9, 2020, and the state of emergency has been extended by the Executive Order #2020-316 made on December 29, 2029.

#### GEORGIA

GA CODE § 31-11-8 (2010) (Liability of persons rendering emergency care; liability of physicians advising ambulance service pursuant to Code Section 31-11-50; limitation to gratuitous services) states:

(a) Any person, including agents and employees, who is licensed to furnish ambulance service and who in good faith renders emergency care to a person who is a victim of an accident or emergency shall not be liable for any civil damages to such victim as a result of any act or omission by such person in rendering such emergency care to such victim.

(b) A physician shall not be civilly liable for damages resulting from that physician's acting as medical adviser to an ambulance service, pursuant to Code Section 31-11-50, if those damages are not a result of that physician's willful and wanton negligence.

(c) The immunity provided in this Code section shall apply only to those persons who perform the aforesaid emergency services for no remuneration.

GA CODE §51-1-28 (Liability of persons rendering emergency care) states:

Any person, including any person licensed to practice medicine and surgery pursuant to Article 2 of Chapter 34 of Title 43 and including any person licensed to render services ancillary thereto, who in good faith renders emergency care at the scene of an accident or emergency to the victim or victims thereof without making any charge therefor shall not be liable for any civil damages as a result of any act or omission by such person in

rendering emergency care or as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person.

GA CODE § 51-1-29.1. (Liability of voluntary health care provider and sponsoring organization) provides:

(a) Without waiving or affecting and cumulative of any existing immunity from any source, unless it is established that injuries or death were caused by gross negligence or willful or wanton misconduct:

(1) No health care provider licensed under Chapter 9, 11, 26, 30, 33, or 34 of Title 43 who voluntarily and without the expectation or receipt of compensation provides professional services, within the scope of such health care provider's licensure, for and at the request of a hospital, public school, nonprofit organization, or an agency of the state or one of its political subdivisions or provides such professional services to a person at the request of such an organization, which organization does not expect or receive compensation with respect to such services from the recipient of such services; or

(2) No licensed hospital, public school, or nonprofit organization which requests, sponsors, or participates in the providing of the services under the circumstances provided in paragraph (1) of this subsection shall be liable for damages or injuries alleged to have been sustained by the person nor for damages for the injury or death of the person when the injuries or death are alleged to have occurred by reason of an act or omission in the rendering of such services.

(b) Nothing in this Code section shall be construed to change the scope of practice of any health care provider granted immunity in this Code section.

...

Finally, GA CODE § 51-1-29.2 (Liability of persons or entities acting to prevent, minimize, and repair injury and damage resulting from catastrophic acts of nature) states:

Any natural person and any association, fraternal organization, private for profit entity, not for profit entity, religious organization, or charitable organization and the officers, directors, employees, and agents of such associations, organizations, and entities, when such persons, associations, organizations, or entities are working in coordination and under the direction of an appropriate state agency, who voluntarily and without the expectation or receipt of compensation provides services or goods in preparation for, anticipation of, or during a time of emergency and in a place of emergency as declared by the Governor for the benefit of any natural person or his or her property to prevent or minimize harm to such natural person or to prevent, minimize, and repair injury and damage to such person's property resulting from biological, chemical, or nuclear agents; terrorism; pandemics or epidemics of infectious disease; or catastrophic acts of nature, including, but not limited to, fire, flood, earthquake, wind, storm, or wave action, or any other occurrence which warrants the declaration of a state of emergency or disaster by the Governor pursuant to Code Section 38-3-51 or by a federal agency shall not be civilly liable to any natural person receiving such assistance as a result of any act or omission in rendering such service if such natural person, association, organization, or entity was

acting in good faith and unless the damage or injury was caused by the willful or wanton negligence or misconduct of such natural person, association, organization, or entity. Nothing in this Code section shall be construed to amend, repeal, alter, or affect in any manner any other provision of law granting immunity or limiting liability. Nothing in this Code section shall be construed to abrogate the sovereign immunity of this state as to all actions executed by any party under this Code section.

Brian Kemp, the Governor of the state of Georgia issues Executive Order 03.14.20.01 to declare the COVID-19 outbreak as a public health state of emergency on March 14, 2020, which has been extended by the Executive Order 12.30.20.01.

## HAWAII

(Update on Dec. 7, 2020)

On, April 16, 2020 David Y. Ige, Governor of the State of Hawai'i issued Executive Order No. 20-25. The order states, among others, (emphasis added):

...3. Pursuant to sections 127A-9 and 127A-12(a)(5), HRS, I direct that during the pendency of the Emergency Proclamations, health care facilities, as defined in section 1 of this Executive Order, that in good faith comply completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission by the health care facility, which death of or injury to persons, or property damage occurred at a time when ... in response to the COVID-19 outbreak, unless it is established that such death or injury to persons, or property damage was caused by willful misconduct, gross negligence, or recklessness of the health care facility.

4. Pursuant to sections 127A-9 and 127A-12(a)(5), HRS, I direct that during the pendency of the Emergency Proclamations, health care professionals, as defined in section 1 of this Executive Order, who in good faith comply completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death or injury to persons, or property damage alleged to have been caused by any act or omission by the health care professional, which death of or injury to persons, or property damage occurred at a time when ...in response to the COVID-19 outbreak, unless it is established that such death or injury to persons, or property damage was caused by willful misconduct, gross negligence, or recklessness of the health care professional.

5. Pursuant to sections 127A-9 and 127A-12(a)(5), Hawaii Revised Statutes, I direct that during the pendency of the Emergency Proclamations, any health care volunteer, as defined in section 1 of this Executive Order, who in good faith comply completely with all state and federal orders regarding the disaster emergency, shall be immune from civil liability for any death of or injury to persons, or property damage alleged to have been caused by any act or omission by the health care volunteer at a time when the health care volunteer was engaged in the course of rendering assistance to the State by providing services, assistance, or support in response to the COVID-19 outbreak, unless it is established that such death of or injury to persons, or property damage was caused by the willful misconduct, gross negligence, or recklessness of the health care volunteer.

## ILLINOIS

On May 13, 2020, Illinois's Governor J.B. Pritzker issued Executive Order 2020-37, Executive Order in Response to Covid-19 (Covid-19 Executive Order No. 35). It states (emphasis added):

**Section 3.** Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), I direct that during the pendency of the Gubernatorial Disaster Proclamations, Hospitals that continue to cancel or postpone all elective surgeries or procedures in order to respond to the COVID-19 outbreak, or Health Care Professionals providing service in such a Hospital, shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission by the Hospital or Health Care Professional, which injury or death occurred at a time when a Hospital or Health Care Professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance issued by IDPH...

**Section 4.** Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), I direct that during the pendency of the Gubernatorial Disaster Proclamations, Hospitals that conduct elective surgeries or procedures beginning on or after May 11, 2020, or Health Care Professionals providing services in such a Hospital, shall be immune from civil liability for any injury or death relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by any act or omission by the Hospital or the Health Care Professional, which injury or death occurred at a time when a Hospital or Health Care Professional was rendering assistance to the State in response to the COVID-19 outbreak...

**Section 5.** Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), I direct that during the pendency of the Gubernatorial Disaster Proclamations, Health Care Facilities or Health Care Professionals providing services in a Health Care Facility, shall be immune from civil liability for any injury or death relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by any act or omission by the Health Care Facility or the Health Care Professional, which injury or death occurred at a time when a Health Care Facility or Health Care Professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance issued by IDPH...

**Section 6.** Pursuant to Section 21(c) of the IEMA Act, 20 ILCS 3305/21(c), and the Good Samaritan Act, 745 ILCS 49, I direct that during the pendency of the Gubernatorial Disaster Proclamations, any Health Care Volunteer, as defined in Section 1 of this Executive Order, shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission by such Health Care Volunteer, which injury or death occurred at a time when the Health Care Volunteer was rendering assistance to the State in response to the COVID-19 outbreak by providing services, assistance, or support consistent with current guidance issued by IDPH...

## INDIANA

The government of Indiana has enacted statutes that provides for immunity for health care service providers in the time of a disaster.

Article 30. Immunity from Civil Liability: Chapter 13.5. Health Care: Immunity for Persons Providing Services in a Disaster<sup>4</sup> provides that (emphasis added):

IC 34-30-13.5-1 **Immunity** Sec. 1. Except as provided in section 2 of this chapter, a person who meets the following criteria may not be held civilly liable for an act or omission relating to the provision of health care services in response to an event that is declared a disaster emergency under IC 10-14-3-12, regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency: (1) Has a license to provide health care services under Indiana law or the law of another state. (2) Provides a health care service: (A) within the scope of the person's license to another person; and (B) at a location where health care services are provided during an event that is declared as a disaster. As added by P.L.138-2006, SEC.13.

IC 34-30-13.5-2 **Liability for gross negligence or willful misconduct** Sec. 2. A person described in this chapter is not immune from civil liability if the damages resulting from the act or omission relating to the provision of the health care services resulted from the person's gross negligence or willful misconduct. As added by P.L.138-2006, SEC.13.

IC 34-30-13.5-3 **Immunity of facility** Sec. 3. A facility or other location that is providing health care services in response to an event that is declared as a disaster emergency may not be held civilly liable for an act or omission relating to the provision of health care services in response to that event by a health professional licensed to provide the health care service under Indiana law or the law of another state if the person is acting during an event that is declared as a disaster emergency, regardless of whether the provision of health care services occurred before or after the declaration of a disaster emergency. As added by P.L.138-2006, SEC.13.

## LOUISIANA

The state of Louisiana provides statutory protection against civil liability for health care providers during a disaster.

La. Stat. Ann. § 29:771<sup>5</sup> states (emphasis added):

...(c) During a state of public health emergency, any health care providers shall not be civilly liable for causing the death of, or, injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.

If a public health emergency is determined to have occurred or a threat thereof is imminent, the Governor has the sole authority to declare a public health emergency under Louisiana Health Emergency Powers Act.<sup>6</sup> The immunity provisions contained in La. R.S. 29:735 are afforded to anyone engaged in any homeland security and emergency preparedness activity after a public health emergency is declared, except in cases of willful misconduct.<sup>7</sup>

## Other Related Statues

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<sup>4</sup> Title 34. Civil Law and Procedure in the 2015 Indiana Code.

<sup>5</sup> 2012 Louisiana Laws Revised Statutes, TITLE 29 Military, naval, and veteran's affairs, RS 29:771 — Miscellaneous.

<sup>6</sup> La. Att'y Gen. Op. No. 10-0124 (July 23, 2010).

<sup>7</sup> La. Att'y Gen. Op. No. 10-0124 (July 23, 2010).

La. Stat. Ann. § 29:773. Limitation of liability during the COVID-19 public health emergency States (emphasis added):

A. Notwithstanding any other provision of law to the contrary, no natural or juridical person, state or local government, or political subdivision thereof, shall be liable for damages or personal injury resulting from or related to an actual or alleged exposure to COVID-19 in the course of or through the performance or provision of the person's, government's, or political subdivision's business operations unless the person, government, or political subdivision failed to substantially comply with the applicable COVID-19 procedures established by the federal, state, or local agency which governs the business operations and the injury or death was caused by the person's, government's, or political subdivision's gross negligence or wanton or reckless misconduct...

B. This Section shall not apply if the damages that resulted from or are related to the actual or alleged exposure to COVID-19 are shown by the evidence to be the result of gross negligence, willful misconduct, or intentional criminal misconduct....

§ 791. Limitations on civil liability for volunteer health practitioners; vicarious liability (emphasis added):<sup>8</sup>

A. Subject to Subsection C of this Section, a volunteer health practitioner who provides health services pursuant to this Chapter shall not be liable for damages for an act or omission of the practitioner in providing those services.

B. No person shall be vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under Subsection A of this Section.

C. This Section shall not limit the liability of a volunteer health practitioner for any of the following:

(1) Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

(2) An intentional tort.

(3) A breach of contract.

(4) A claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner.

(5) An act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

D. No person that, pursuant to this Chapter...shall be liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

E. In addition to the protections provided in Subsection A of this Section, a volunteer health practitioner who provides health services pursuant to this Chapter is entitled to all the rights, privileges, or immunities provided by other laws of this state.

F. The limitations on liability provided in this Section shall only be effective during the time period set forth in the initial declaration and shall be retroactive to the precipitating event requiring the declaration of disaster or public emergency and for a period of thirty days following the end of the initial declared state of emergency. However, if prior to the expiration of thirty days following the end of the initial declared state of emergency, the governor specifically declares that a public health emergency continues to exist as

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<sup>8</sup> Emergency Volunteer Health Practitioners, 2009 La. Sess. Law Serv. Act 397 (S.B. 107) (WEST).

defined in R.S. 29:762, the limitations on liability shall continue to remain in effect during the time period established by the governor in a declaration issued pursuant to R.S. 29:766.

## MARYLAND

Maryland's Public Safety Code § 14-3A-06 (2014) provides civil or **criminal** immunity for good faith medical provider acts. It states (emphasis added), "A health care provider is immune from civil or criminal liability if the health care provider acts in good faith and under a catastrophic health emergency proclamation."<sup>9</sup>

## MASSACHUSETTS

On April 8, 2020, Massachusetts Governor Charles Baker issued a directive under the name of the Public Readiness and Emergency Preparedness ("PREP") Act immunity, declaration of which states (emphasis added):

As Governor and the Authority Having Jurisdiction<sup>10</sup> to direct the Commonwealth of Massachusetts's response to the COVID-19 outbreak, I hereby designate the following activities as authorized in accordance with the Commonwealth's public health and medical response to the COVID-19 outbreak following my declaration of a state of emergency on March 10, 2020:...

The effect of these designations shall be to provide the covered persons and entities with civil immunity to the fullest extent provided in the PREP Act in their efforts to contribute to the Commonwealth's public health and medical response to the COVID-19 outbreak.

Subsequently, Governor Baker signed Senate No. 2640 that protects health care service providers from civil liability claims arising out of healthcare service during the COVID-19 emergency. Approved on April 17, 2020, Chapter 64 of the Acts of 2020 ("The Immunity Statute") states:

### AN ACT TO PROVIDE LIABILITY PROTECTIONS FOR HEALTH CARE WORKERS AND FACILITIES DURING THE COVID-19 PANDEMIC...

Whereas, The deferred operation of this act would tend to defeat its purposes, which is to provide liability protections for health care workers and facilities during the COVID-19 pandemic, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience....

SECTION 2. (a) Notwithstanding any general or special law to the contrary, except as provided in subsection (b), health care professionals and health care facilities shall be immune from suit and civil liability for any damages alleged to have been sustained by an act or omission by the health care professional or health care facility in the course of providing health care services during the period of the COVID-19 emergency; provided, however, that: (i) the health care facility or health care professional is arranging for or

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<sup>9</sup> 2014 Maryland Code Public Safety: Title 14 - Emergency Management, Subtitle 3A - Governor's Health Emergency Powers § 14-3A-06. Immunity.

<sup>10</sup> 85 Fed. Reg. 15198 (Mar. 17, 2020).

providing health care services pursuant to a COVID-19 emergency rule and in accordance with otherwise applicable law; (ii) arranging for or providing care or treatment of the individual was impacted by the health care facility's or health care professional's decisions or activities in response to treatment conditions resulting from the COVID-19 outbreak or COVID-19 emergency rules; and (iii) the health care facility or health care professional is arranging for or providing health care services in good faith.

(b) The immunity provided in subsection (a) shall not apply: (i) if the damage was caused by an act or omission constituting gross negligence, recklessness or conduct with an intent to harm or to discriminate based on race, ethnicity, national origin, religion, disability, sexual orientation or gender identity by a health care facility or health care professional providing health care services; (ii) to consumer protection actions brought by the attorney general; or (iii) to false claims actions brought by or on behalf of the commonwealth.

SECTION 3. Notwithstanding any general or special law to the contrary, a volunteer organization shall be immune from suit and civil liability for any damages occurring in or at the volunteer organization's facility where the damage arises from use of the facility for the commonwealth's response and activities related to the COVID-19 emergency, unless it is established that the damages were caused by the volunteer organization's gross negligence, recklessness or conduct with an intent to harm.

SECTION 4. This act shall take effect upon its passage and shall apply to claims based on acts or omissions that occur or have occurred during the effective period of the COVID-19 emergency, declared on March 10, 2020 and until terminated or rescinded.

## MICHIGAN

On March 29, 2020, Michigan's Governor Gretchen Whitmer's Executive Order 2020-30 was signed, which states among others, that (emphasis added):

...8. Consistent with MCL 30.411(4), any licensed health care professional or designated health care facility that provides medical services in support of this state's response to the COVID-19 pandemic is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained, unless it is established that such injury or death was caused by the gross negligence, as defined in MCL 30.411(9), of such health care professional or designated health care facility.

This order was rescinded by Executive Order 2020-61, but the EO 2020-61 contains the same provision and is still in effect.

The clause in the executive order is based on §30.411 of the Emergency Management Act, Act 390 of 1976, which states (emphasis added):



Powers and duties of personnel of disaster relief forces; liability for personal injury or property damage; right to benefits or compensation; disaster relief workers; immunity; liability and legal obligation of persons owning or controlling real estate or other premises used for shelter; "gross negligence" defined...

Sec. 11... (4) A person licensed to practice medicine or osteopathic medicine and surgery or a licensed hospital, ... is considered an authorized disaster relief worker or facility and is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained. The immunity granted by this subsection does not apply in the event of an act or omission that is willful or gross negligence. If a civil action for malpractice is filed alleging an act or omission that is willful or gross negligence resulting in injuries, the services rendered that resulted in those injuries shall be judged according to the standards required of persons licensed in this state to perform those services...

## MISSISSIPPI

MS Code § 73-25-37 (2014) (Liability of physician, dentist, nurse, emergency medical technician, etc., for rendering emergency care; immunity from civil liability for good faith use of automated external defibrillator by person untrained in its use; immunity from civil liability for good faith use of auto-injectable epinephrine by trained school personnel) states:

(1) No duly licensed, practicing physician, physician assistant, dentist, registered nurse, licensed practical nurse, certified registered emergency medical technician, or any other person who, in good faith and in the exercise of reasonable care, renders emergency care to any injured person at the scene of an emergency, or in transporting the injured person to a point where medical assistance can be reasonably expected, shall be liable for any civil damages to the injured person as a result of any acts committed in good faith and in the exercise of reasonable care or omissions in good faith and in the exercise of reasonable care by such persons in rendering the emergency care to the injured person.

(2) (a) Any person who in good faith, with or without compensation, renders emergency care or treatment by the use of an Automated External Defibrillator (AED) in accordance with the provisions of Sections 41-60-31 through 41-60-35, as well as the person responsible for the site where the AED is located if the person has provided for compliance with the provisions of Sections 41-60-31 through 41-60-35, shall be immune from civil liability for any personal injury as a result of that care or treatment, or as a result of any act, or failure to act, in providing or arranging further medical treatment, where the person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances and the person's actions or failure to act does not amount to willful or wanton misconduct or gross negligence.

(b) A person who has not complied with the provisions of Sections 41-60-31 through 41-60-35, but who has access to an AED and uses it in good faith in an emergency as an ordinary prudent person would have done in the same or similar circumstances, shall be immune from civil liability for any personal injury as a result of an act or omission

related to the operation of or failure to operate an AED if the person's actions or failure to act do not amount to willful or wanton misconduct or gross negligence.

...

(4) The immunity from civil liability for any personal injury under subsection (2) of this section includes the licensed physician who authorizes, directs or supervises the installation or provision of AED equipment in or on any premises or conveyance other than a medical facility, the owner of the premises where an AED is used, the purchaser of the AED, a person who uses an AED during an emergency for the purpose of attempting to save the life of another person who is or who appears to be in cardiac arrest, and the person who provides the CPR and AED training.

(5) The immunity from civil liability for any personal injury under subsection (3) of this section includes the licensed physician who prescribes the auto-injectable epinephrine, the school district, or any other entity, that legally obtained the auto-injectable epinephrine, and the person who provides the training in the administration of auto-injectable epinephrine.

(6) The immunity from civil liability under subsection (2) and subsection (3) of this section does not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering the emergency care.

Additionally, MS Code § 73-25-38 (2016) (Immunity from liability for physicians, physician assistants or certified nurse practitioners providing charitable medical care or voluntarily providing health services without fee while assisting with emergency management or operations in an emergency):

(1) Any licensed physician, physician assistant or certified nurse practitioner who voluntarily provides needed medical or health services to any person without the expectation of payment due to the inability of such person to pay for said services shall be immune from liability for any civil action arising out of the provision of such medical or health services provided in good faith on a charitable basis. This section shall not extend immunity to acts of willful or gross negligence. Except in cases of rendering emergency care wherein the provisions of Section 73-25-37 apply, immunity under this section shall be extended only if the physician, physician assistant or certified nurse practitioner and patient execute a written waiver in advance of the rendering of such medical services specifying that such services are provided without the expectation of payment and that the licensed physician or certified nurse practitioner shall be immune as provided in this subsection. The immunity from liability granted by this subsection also shall extend to actions arising from a church-operated outpatient medical clinic that exists solely for the purpose of providing charitable medical services to persons who are unable to pay for such services, provided that the outpatient clinic receives less than Forty Thousand Dollars (\$ 40,000.00) annually in patient payments.

(2) Any licensed physician, physician assistant or certified nurse practitioner assisting with emergency management, emergency operations or hazard mitigation in response to any emergency, man-made or natural disaster, who voluntarily provides needed medical

or health services to any person without fee or other compensation, shall not be liable for civil damages on the basis of any act or omission if the physician, physician assistant or nurse practitioner was acting in good faith and within the scope of their license, education and training and the acts or omissions were not caused from gross, willful or wanton acts of negligence.

(3) Any physician who voluntarily renders any medical service under a special volunteer medical license authorized under Section 73-25-18 without any payment or compensation or the expectation or promise of any payment or compensation shall be immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service unless the act or omission was the result of the physician's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there must be a written or oral agreement for the physician to provide a voluntary non-compensated medical service before the rendering of the service by the physician.

(4) Any physician who is retired from active practice, and who has been previously issued an unrestricted license to practice medicine in any state of the United States or who has been issued a special volunteer medical license under Section 73-25-18, shall be immune from liability for any civil action arising out of any medical care or treatment provided while voluntarily serving as "doctor of the day" for members of the Mississippi State Legislature, legislative or other state employees, or any visitors to the State Capitol on the date of such service. This subsection shall not extend immunity to acts of willful or gross negligence or misconduct.

## NEW JERSEY

On April 1, 2020, New Jersey's Governor Philip D. Murphy issued a broad executive order.<sup>11</sup> The order, among others, provides immunity from civil liability for licensed health care providers, in cases for which damages allegedly arise out of their good faith acts or omissions in connection with the State's COVID-19 response.

Executive Order NO. 112 states (emphasis added):

...WHEREAS, in light of the emergent need for the measures adopted herein and adopted previously to supplement the workforce by bringing in healthcare professionals who have not previously maintained liability coverage; by facilitating the deployment of retirees, out-of-state healthcare professionals, and foreign doctors; and by calling upon healthcare professionals to perform acts that they would not perform in the ordinary course of business, it is in the public interest to afford such individuals protection against liability for good faith actions taken in their efforts to offer assistance in response to the call to supplement the healthcare workforce...

... N.J.S.A. 45:9-27.18a contemplates that physician assistants may respond to a need for medical care created by an emergency or a State or local disaster by rendering care without the physician supervision that is ordinarily required, and provides a degree of

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<sup>11</sup> The Official Website for the State of New Jersey, Executive Orders, (Apr. 1, 2020) available at [https://nj.gov/infobank/eo/056murphy/approved/eo\\_archive.html](https://nj.gov/infobank/eo/056murphy/approved/eo_archive.html).

immunity from liability for physicians and physician assistants for certain personal injuries resulting from such acts or omissions; and ...

7. Any individual granted a temporary license, certificate, registration or certification to practice a healthcare profession or occupation in connection with the State's COVID-19 response, including those granted pursuant to paragraph 1 or 2 of this Order, shall be immune from civil liability for any damages alleged to have been sustained as a result of the individual's acts or omissions undertaken in good faith, whether or not within the scope of the licensee's practice, in the course of providing healthcare services in support of the State's COVID-19 response, whether or not such immunity is otherwise available under current law. Such immunity shall not extend to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.

8. Any individual holding a license, certificate, registration or certification to practice a healthcare profession or occupation in New Jersey, including but not limited to any advanced practice nurse or physician assistant acting outside the scope of their ordinary practice pursuant to paragraph 3 or 4 of this Order, shall be immune from civil liability for any damages alleged to have been sustained as a result of the individual's acts or omissions undertaken in good faith in the course of providing healthcare services in support of the State's COVID-19 response, whether or not within the scope of their practice and whether or not such immunity is otherwise available under current law. Such immunity shall not extend to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.

9. Any healthcare facility, within the meaning of N.J.S.A. 26:13-2, any modular field treatment facility, and any other site designated by the Commissioner of the Department of Health for temporary use for the purpose of providing essential services in support of the State's COVID-19 response, including hotels and student dormitories, shall be immune from civil liability for any damages alleged to have been sustained as a result of an act or omission undertaken in good faith in the course of providing services in support of the State's COVID-19 response by one or more of its agents, officers, employees, servants, representatives or volunteers, if, and to the extent, such agent, officer, employee, servant, representative or volunteer is immune from liability, whether or not such immunity is otherwise available under current law. Such immunity shall not extend to acts or omissions that constitute a crime, actual fraud, actual malice, gross negligence or willful misconduct.

## NEW YORK

The state of New York establishes its immunity for health care providers in the time of public health emergency based on the Emergency or Disaster Treatment Protection Act (Article 30-D). New York is unique in that it expands immunity to criminal liability.

The Emergency or Disaster Treatment Protection Act provides (emphasis added):

### **Section 3080** Declaration of purpose

A public health emergency that occurs on a statewide basis requires an enormous response from state and federal and local governments working in concert with private and public health care providers in the community. The furnishing of treatment of patients during such a public health emergency is a matter of vital state concern affecting the public health, safety and welfare of all citizens. It is the purpose of this article to

promote the public health, safety and welfare of all citizens by broadly protecting the health care facilities and health care professionals in this state from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency...

**Section 3082** Limitation of liability

1. Notwithstanding any law to the contrary, except as provided in subdivision two of this section, any health care facility or health care professional shall have immunity from any liability, civil or criminal, for any harm or damages alleged to have been sustained as a result of an act or omission in the course of providing health care services, if:

(a) the health care facility or health care professional is providing health care services in accordance with applicable law, or where appropriate pursuant to a COVID-19 emergency rule;

(b) the act or omission occurs in the course of providing health care services and the treatment of the individual is impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state's directives; and

(c) the health care facility or health care professional is providing health care services in good faith.

2. The immunity provided by subdivision one of this section shall not apply if the harm or damages were caused by an act or omission constituting willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the health care facility or health care professional providing health care services, provided, however, that acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered to be willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm.

3. Notwithstanding any law to the contrary, a volunteer organization shall have immunity from any liability, civil or criminal, for any harm or damages irrespective of the cause of such harm or damage occurring in or at its facility or facilities arising from the state's response and activities under the COVID-19 emergency declaration and in accordance with any applicable COVID-19 emergency rule, unless it is established that such harm or damages were caused by the willful or intentional criminal misconduct, gross negligence, reckless misconduct, or intentional infliction of harm by the volunteer organization.

**NORTH CAROLINA**

(Update on Dec. 7, 2020)

On May 4, 2020, North Carolina Senate Bill 704 was approved and came law. The bill, titled "An Act to Provide Aid to North Carolinians in Response to the Coronavirus Disease 2019 (Covid-19) Crisis," states, among others, that (emphasis added):

... 3D.3.(d) All of the following individuals shall be immune from any civil or criminal liability for actions authorized by this section as follows: (1) The State Health Director acting pursuant to this section. (2) Any pharmacist who administers a COVID-19 immunization or vaccine pursuant to a statewide standing order issued under this section. SECTION 3D.3.(e) This section is effective when it becomes law....

**HEALTH CARE LIABILITY PROTECTION FOR EMERGENCY OR DISASTER TREATMENT SECTION 3D.7.**

(a) Chapter 90 of the General Statutes is amended by adding a new Article to read:  
"Article 1L. "Emergency or Disaster Treatment Protection Act. "§ 90-21.130. Short title.  
This Article shall be known and may be cited as the Emergency or Disaster Treatment  
Protection Act.

§ 90-21.131. Purpose. It is the purpose of this Article to promote the public health, safety,  
and welfare of all citizens by broadly protecting the health care facilities and health care  
providers in this State from liability that may result from treatment of individuals during  
the COVID-19 public health emergency ...

§ 90-21.133. Immunity.

(a) Notwithstanding any law to the contrary, except as provided in subsection (b) of this  
section, any health care facility, health care provider, or entity that has legal  
responsibility for the acts or omissions of a health care provider shall have immunity  
from any civil liability for any harm or damages alleged to have been sustained as a result  
of an act or omission in the course of arranging for or providing health care services only  
if all of the following apply:

(1) The health care facility, health care provider, or entity is arranging for or providing  
health care services during the period of the COVID-19 emergency declaration,  
including, but not limited to, the arrangement or provision of those services pursuant to a  
COVID-19 emergency rule.

(2) The arrangement or provision of health care services is impacted, directly or  
indirectly: a. By a health care facility, health care provider, or entity's decisions or  
activities in response to or as a result of the COVID-19 pandemic; or b. By the decisions  
or activities, in response to or as a result of the COVID-19 pandemic...

(3) The health care facility, health care provider, or entity is arranging for or providing  
health care services in good faith.

(b) The immunity from any civil liability provided in subsection (a) of this section shall  
not apply if the harm or damages were caused by an act or omission constituting gross  
negligence, reckless misconduct, or intentional infliction of harm by the health care  
facility or health care provider ...

(c) Notwithstanding any law to the contrary, a volunteer organization shall have  
immunity from any civil liability for any harm or damages occurring in or at its facility or  
facilities arising from the State's response and activities under the COVID-19 emergency  
declaration and in accordance with any applicable COVID-19 emergency rule, unless it is  
established that such harm or damages were caused by the gross negligence, reckless  
misconduct, or intentional infliction of harm by the volunteer organization.

## SOUTH CAROLINA

SC Code § 15-1-310 (2012) (Liability for emergency care rendered at scene of accident.) states:

Any person, who in good faith gratuitously renders emergency care at the scene of an  
accident or emergency to the victim thereof, shall not be liable for any civil damages for  
any personal injury as a result of any act or omission by such person in rendering the  
emergency care or as a result of any act or failure to act to provide or arrange for further  
medical treatment or care for the injured person, except acts or omissions amounting to  
gross negligence or willful or wanton misconduct.

Governor Henry McMaster of the state of South Carolina issued Executive Order 2020-08 and declared a state of emergency in response to COVID-19 on March 13, 2020, which has been extended by Executive Order 2020-77.

#### TENNESSEE

TN CODE § 63-6-218 (Good Samaritan Law) states:

- (a) This section shall be known and cited as the “Good Samaritan Law.”
- (b) Any person, including those licensed to practice medicine and surgery and including any person licensed or certified to render service ancillary thereto, or any member of a volunteer first aid, rescue or emergency squad that provides emergency public first aid and rescue services, who in good faith:
  - (1) Renders emergency care at the scene of an accident, medical emergency and/or disaster, while en route from such scene to a medical facility and while assisting medical personnel at the receiving medical facility, including use of an automated external defibrillator, to the victim or victims thereof without making any direct charge for the emergency care; or
  - (2) Participates or assists in rendering emergency care, including use of an automated external defibrillator, to persons attending or participating in performances, exhibitions, banquets, sporting events, religious or other gatherings open to the general public, with or without an admission charge, whether or not such emergency care is made available as a service, planned in advance by the promoter of the event and/or any other person or association, shall not be liable to such victims or persons receiving emergency care for any civil damages as a result of any act or omission by such person in rendering the emergency care, or as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person, except such damages as may result from the gross negligence of the person rendering such emergency care.
- (c) A receiving medical facility shall not be liable for any civil damages as a result of any act or omission on the part of any member of a volunteer first aid, rescue or emergency squad that provides emergency public first aid and rescue services while such person is assisting medical personnel at the receiving medical facility.

...

Tennessee Governor Bill Lee declared state of emergency by issuing Executive Order No. 14 on March 12, 2020, which has been extended on December 29, 2020 by Executive Order No. 73.

#### TEXAS

Texas Civil Practice and Remedies Code § 74.151 (Liability for Emergency Care) states:

- (a) A person who in good faith administers emergency care is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent, including a person who:
  - (1) administers emergency care using an automated external defibrillator; or

(2) administers emergency care as a volunteer who is a first responder as the term is defined under Section 421.095, Government Code .

(b) This section does not apply to care administered:

(1) for or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care was administered for or in anticipation of remuneration; or

(2) by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration.

(c), (d) Deleted by Acts 2003, 78th Leg., ch. 204, § 10.01.

(e) Except as provided by this subsection, this section does not apply to a person whose negligent act or omission was a producing cause of the emergency for which care is being administered. This subsection does not apply to liability of a school district or district school officer or employee arising from an act or omission under a program or practice or procedure developed under Subchapter G, Chapter 38, Education Code, other than liability arising from wilful or intentional misconduct.

## VIRGINIA

The Code of Virginia provides for civil liability protection to healthcare providers during a state of emergency. Section §8.01-225.01& §8.01-225.02 states (emphasis added):

§ 8.01-225.01. **Certain immunity for health care providers during disasters under specific circumstances.** A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster by delivering health care to persons injured in such disaster shall be immune from civil liability for any injury or wrongful death arising from abandonment by such health care provider of any person to whom such health care provider owes a duty to provide health care when (i) a state or local emergency has been or is subsequently declared; and (ii) the provider was unable to provide the requisite health care to the person to whom he owed such duty of care as a result of the provider's voluntary or mandatory response to the relevant disaster. B. In the absence of gross negligence or willful misconduct, any hospital or other entity credentialing health care providers to deliver health care in response to a disaster shall be immune from civil liability for any cause of action arising out of such credentialing or granting of practice privileges if (i) a state or local emergency has been or is subsequently declared and (ii) the hospital has followed procedures for such credentialing and granting of practice privileges that are consistent with the applicable standards of an approved national accrediting organization for granting emergency practice privileges...

§ 8.01-225.02. **Certain liability protection for health care providers during disasters.**



A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster shall not be liable for any injury or wrongful death of any person arising from the delivery or withholding of health care when (i) a state or local emergency has been or is subsequently declared in response to such disaster, and (ii) the emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and which resulted in the injury or wrongful death at issue...

Pursuant to the statutes, Virginia's governor Ralph S. Northam issued executive order declaring, among others, that (emphasis added):

...And so, is it imperative that it is clear that the liability protections in these provisions are meant to protect healthcare providers providing healthcare in response to the COVID-19 health emergency... Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia and in furtherance of Executive Order No. 51, I clarify the following with respect to my executive actions and §§ 8.01-225.01 and 8.01-225.02 of the Code of Virginia:

1. COVID-19 is a “communicable disease of public health threat” as defined in § 44-146.16 of the Code of Virginia that constitutes a “disaster” as defined in § 44-146.16 of the Code of Virginia.

WASHINGTON, D.C.

D.C. Code § 7-401 (Limitation on liability for medical care or assistance in emergency situations) states:

(a) Any person who in good faith renders emergency medical care or assistance to an injured person at the scene of an accident or other emergency in the District of Columbia outside of a hospital, without the expectation of receiving or intending to seek compensation from such injured person for such service, shall not be liable in civil damages for any act or omission, not constituting gross negligence, in the course of rendering such care or assistance.

(b) In the case of a person who renders emergency medical care or assistance in circumstances described in subsection (a) of this section and who is not licensed or certified by the District of Columbia or by any state to provide medical care or assistance, the limited immunity provided in subsection (a) of this section shall apply to such persons; provided, that the person shall relinquish the direction of the care of the injured person when an appropriate person licensed or certified by the District of Columbia or by any state to provide medical care or assistance assumes responsibility for the care of the injured person.

(c) A certified emergency medical technician/paramedic or emergency medical technician/intermediate paramedic who, in good faith and pursuant to instructions either directly or via telecommunication from a licensed physician, renders advanced emergency medical care or assistance to an injured person at the scene of an accident or other emergency or in transit from the scene of an accident or emergency to a hospital shall not be liable in civil damages for any act or omission not constituting gross

negligence in the course of rendering such advanced emergency medical care or assistance.

(d) A licensed physician who in good faith gives emergency medical instructions either directly or via telecommunication to a certified emergency medical technician/paramedic or emergency medical technician/intermediate paramedic for the purpose of providing advanced emergency medical care to an injured person at the scene of an accident or other emergency or in transit from the scene of an accident or emergency to a hospital shall not be liable in civil damages for any act or omission not constituting gross negligence in the course of giving such emergency medical instructions.

(d-1) If the Mayor of the District of Columbia declares a state of emergency pursuant to § 7-2304, any act or omission of an emergency medical technician/paramedic (“Paramedic”), an emergency medical technician/intermediate paramedic (“EMT/I”), or an emergency medical technician (“EMT”), performed while providing advanced or basic life support to a patient or trauma victim shall not impose liability upon the Paramedic, EMT/I, or EMT, or any employer of the Paramedic, EMT/I, or EMT; provided, that the care is provided in good faith and does not constitute gross negligence.

(e) For the purposes of this section, the terms “emergency medical technician/paramedic,” and “emergency medical technician/intermediate paramedic,” and “emergency medical technician” mean a person who has been trained in advanced emergency medical care, employed in that capacity, and certified by the appropriate governmental certifying authority in the District of Columbia or in any state to:

(1) Carry out all phases of basic life support;

(2) Administer drugs under the written or oral authorization, including via telecommunication, of a licensed physician;

(3) Administer intravenous solutions under the written or oral authorization, including via telecommunication, of a licensed physician; and

(4) Carry out, either directly or via telecommunication instructions from a licensed physician, certain other phases of advanced life support as authorized by the appropriate governmental certifying authority.

On March 11, 2020, Mayor Muriel Bowser of Washington D.C. has issued Mayor’s Order 2020-045 & 2020-046, declaring a state of emergency and a public health emergency, which has been extended by Mayor’s Order 2021-003.

## WISCONSIN

(Update on Dec. 7, 2020)

On April 15, 2020, Wisconsin Governor Tony Evers signed a new bill, 2019 Wisconsin Act §185, into the law. It states, among others, that (emphasis added):

SECTION 98. 895.4801 of the statutes is created to read:

**895.4801 Immunity for health care providers during COVID–19 emergency.**

(1) DEFINITIONS. In this section: (a) “Health care professional” means an individual licensed, registered, or certified by the medical examining board ... (b) “Health care provider” has the meaning given in s. 146.38 (1) (b) and includes an adult family home, as defined in s. 50.01 (1).

(2) IMMUNITY. Subject to sub. (3), any health care professional, health care provider, or employee, agent, or contractor of a health care professional or health care provider is immune from civil liability for the death of or injury to any individual or any damages caused by actions or omissions that satisfy all of the following:

(a) The action or omission is committed while the professional, provider, employee, agent, or contractor is providing services during the state of emergency declared under s. 323.10 on March 12, 2020, by executive order 72, or the 60 days following the date that the state of emergency terminates.

(b) The actions or omissions relate to health services provided or not provided in good faith or are substantially consistent with any of the following:

1. Any direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster declared as described under par. (a)...

### III. CONCLUSION

Providing liability immunity to medical professionals is not an easy task. In fact, when a group of UK law scholars were asked if liability for negligence liability claims should be granted to doctors who are working on COVID-19 cases, one assented, reasoning that distress and anxiety from negligence claims on top of their already-impossible workload would be too much burden for the health professionals.<sup>12</sup> Others dissented, reasoning that immunity will be superfluous as the patients making such claim should prove that the treating doctor failed to meet the legal standard of care, and that even given the heightened difficulties during the COVID-19 emergency, it is not feasible to ask less for the doctors.<sup>13</sup> Moreover, some pointed out that not only patients, but also doctors and hospital employees who are ill or dying because of lack of sufficient protective equipment may benefit from bringing such negligence claims.<sup>14</sup>

Nonetheless, in weighing different considerations against one another, many jurisdictions in the United States have elected to provide liability immunity in most cases except for of gross negligence or willful misconduct. In deciding the matter of providing medical liability, it should be remembered that its purpose is to lift the additional burden of liability suits for health care professionals and thereby improve the quality of care for patients. Moreover, as medical resources have become limited during the COVID-19 emergency, it should be acknowledged that for some health care professionals, the standard of care may have to be modified to allocate the resources and save the lives of as many patients as possible.<sup>15</sup> Therefore, as other countries

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<sup>12</sup> Tomkins Christine, Purshouse Craig, Heywood Rob, Miola José, Cave Emma, Devaney Sarah et al. Should doctors tackling covid-19 be immune from negligence liability claims? B.M.J. 370 :m2487 (2020).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Valerie Koch, How States are Protecting Health Care Providers from Legal Liability in the COVID-19 Pandemic, Bill of Health, Health Law Policy, Liability, Patient Care, Professional Regulation (2020), available at: <https://blog.petrieflom.law.harvard.edu/2020/05/05/legal-liability-health-care-covid19-coronavirus-pandemic/>

continue to grapple with this complex decision, it should be remembered that the decision should be able to benefit both health professionals and patients.<sup>16</sup>

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<sup>16</sup> Andrea Cioffi & Rinaldi Raffaella, Covid-19 and Medical Liability: A Delicate Balance, *Medico-Legal J.*, 88(4)187, 188 (2020).