



Physicians Caring for Texans

VISION: To improve the health of all Texans.

MISSION: TMA supports Texas physicians by providing distinctive solutions to the challenges they encounter in the care of patients.

General Overview of State Civil Liability Protections for Volunteer Physicians

TMA Office of the General Counsel

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As Texas continues its efforts to address the novel coronavirus (COVID-19) pandemic, many physicians and retired physicians are on the front lines volunteering their services to help remedy shortages in access to patient care. However, they may grapple with liability-related concerns relating to their involvement. The TMA Office of the General Counsel provides this general overview of state civil liability protections available to certain physicians, including retired physicians, who provide volunteer health care services during a disaster. For information on federal volunteer liability protection during COVID-19, please see the American Medical Association's [website](#) on liability protections for health care professionals during COVID-19, as well as other information provided below under the section titled "Where Can I Find More Information?"

Please note that while the protections below do not completely shield volunteer physicians from liability, they do act to significantly reduce liability exposure. **For specific advice on how these statutes may apply to your volunteer activities, you should consult your retained counsel for legal advice.**

Texas Civil Practice and Remedies Code Chapter 79 – Liability Limitations During a Disaster

Section 79.003

[Section 79.003](#) provides civil liability immunity for a person for an act or omission that occurs in giving care, assistance, or advice in response to a man-made or natural disaster, except for conduct that is reckless or for intentional, willful, or wanton misconduct.¹ Such care, assistance, or advice must be given without actual or expected compensation from or on behalf of the recipient of such care, assistance, or advice in an amount that exceeds reimbursement for expenses incurred.²

Further, the civil immunity under this statute only applies if the care, assistance, or advice is provided at the request of:

- (1) An authorized representative of a local, state, or federal agency, including a fire department, a police department, an emergency management agency, and a disaster response agency; or
- (2) A charitable organization, as that term is defined by [Section 84.003](#), that provides services to mitigate the effects of a disaster described by Subdivision (1).³

A "person" for the purpose of this section is defined as an individual, association, corporation, or other private legal entity.⁴

¹ Tex. Civ. Prac. & Rem. Code § 79.003(a).

² *Id.* at § 79.003(b).

³ *Id.* at § 79.003(a)(2).

⁴ *Id.* at § 79.001(2).

Section 79.003 also extends limited liability protection to entities, including charities, that could otherwise be held vicariously liable for the person's actions, so long as the person's care, assistance, or advice meets the requirements described above.⁵

Section 79.0031

Enacted in 2019 as a response to litigation after Hurricane Harvey, Section 79.0031 limits civil liability for certain "volunteer health care providers" providing (within their scope of practice) care, assistance, or advice in relation to a man-made or natural disaster.⁶ The intent when drafting the bill was that it would also apply during government-declared disasters.

Specifically, the statute provides civil liability immunity for a volunteer health care provider for an act or omission that occurs when providing care, assistance, or advice in relation to a natural or man-made disaster (that threatens to endanger individuals, property, or the environment) so long as (1) the provider's actions were provided in accordance with the scope of the provider's practice under the laws of Texas, and (2) the provider did not cause the injury by engaging in reckless conduct or by engaging in intentional, willful, or wanton misconduct.⁷

The [definition](#) of "volunteer health care provider" is linked for reference.⁸ Relevant to physicians, the definition provides that a "volunteer health care provider" means "an individual who voluntarily provides health care services without compensation or expectation of compensation and who is: (A) an individual who is licensed to practice medicine under Subtitle B, Title 3, Occupations Code; (B) a retired physician who is eligible to provide health care services, including a retired physician who is licensed but exempt from paying the required annual registration fee under [Section 156.002, Occupations Code](#)... ."⁹

A health care institution, as defined by the statute, is also immune from liability for the acts or omissions of a volunteer health care provider so long as (1) the volunteer health care provider is immune from civil liability under the statute, and (2) "the institution does not have an expectation of compensation from or on behalf of the recipient of the care, assistance, or advice in excess of reimbursement for expense incurred by the institution in connection with the provision of the care, assistance, or advice."¹⁰

Also, please note that both protections under Chapter 79 expressly state that they are in addition to any other immunities or limitations of liability otherwise authorized by law.¹¹ Thus, in addition to these protections, other limited liability statutes, including the ones discussed below, may also afford protection to volunteer physicians.

If you would like more information on this statute, please see TMA Office of the General Counsel's [white paper](#), "Limiting Liability for Volunteer Health Care Providers During a Disaster: A General Overview of SB 752."

⁵ *Id.* at § 79.003(c)-(d).

⁶ *Id.* at § 79.0031(b).

⁷ *Id.* at § 79.0031(b)(1)-(2).

⁸ *Id.* at § 79.0031(a)(2).

⁹ *Id.* at § 84.003(5)(a)-(b).

¹⁰ *Id.* at § 79.0031(c).

¹¹ *Id.* at § 79.003(e), § 79.0031(d).

Other Texas Civil Practice and Remedies Code Provisions Limiting Liability for Volunteers

Section 74.151

Section 74.151, more commonly known as the “Good Samaritan” statute, was enacted to increase the incentive for volunteers, especially physician volunteers, to respond to medical emergencies.¹² The statute limits liability for an act or omission when providing volunteer emergency care that causes injury if the care was administered in good faith.¹³

One Texas case has defined an “emergency” for the purpose of “emergency care” under the Good Samaritan statute as “a condition arising suddenly and unexpectedly ... which calls for immediate action [by the volunteer] and without time for deliberation.”¹⁴

To qualify as a volunteer, the person must administer care without actual or expected compensation; however, being “legally entitled” to compensation for emergency care does not disqualify a person from asserting the protection under this statute as an affirmative defense.¹⁵ So, the person seeking protection of the statute must only prove that he or she would neither ordinarily receive nor ordinarily be entitled to receive remuneration for the care provided.¹⁶

Note though that the limitation on liability does not apply to an act or omission that is wilfully or wantonly negligent or to a person administering emergency care if the person also caused the emergency.¹⁷ Further, the act does not extend to limit liability for a person or a person’s agent who is at the scene of the emergency with the intent to solicit business or seeking to perform a service for remuneration.¹⁸ There is also no extension to entities for vicarious liability claims like there is in Chapter 79.

Section 84.004

Chapter 84, the Charitable Immunity and Liability Act (CILA), provides limited liability for a volunteer, including a volunteer health care provider, of a charitable organization for death, damage, or injury to a patient.¹⁹ While similar to the protections under Chapter 79, the CILA has more requirements that must be met before its protection may be invoked.

A “volunteer health care provider” under Chapter 84 has the same definition as a “volunteer health care provider” under Chapter 79.0031.²⁰ A volunteer health care provider, who is serving as a direct service volunteer of a charitable organization, and who is seeking immunity from liability under this statute must show:

- (1) The volunteer was acting in the course and scope of the volunteer’s duties or functions within the organization;
- (2) The volunteer commits the act or omission in the course of providing health care services to the patient;
- (3) The services provided are within the scope of the license of the volunteer; and

¹² See *McIntyre v. Ramirez*, 109 S.W.3d 741, 745 (Tex. 2003).

¹³ Tex. Civ. Prac. & Rem. Code § 74.151(a).

¹⁴ *Eoff v. Hal & Charlie Peterson Found.*, 811 S.W.2d 187 (Tex. App.–San Antonio 1991, no pet.) (citing *Goolsbee v. Texas & N. O.R. Co.*, 243 S.W.2d 386, 388 [Tex. 1951]).

¹⁵ Tex. Civ. Prac. & Rem. Code § 74.151(b)(1).

¹⁶ *Eoff*, 811 S.W.2d at 187.

¹⁷ Tex. Civ. Prac. & Rem. Code § 74.151(a), (e).

¹⁸ *Id.* at § 74.151(b)(2).

¹⁹ *Id.* at § 84.004(c).

²⁰ *Id.* at § 84.003(5).

- (4) Before the volunteer provides health care services, the patient or if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient signs a written statement acknowledging:
- (a) That the volunteer is providing care that is not administered for or in expectation of compensation, and
 - (b) The limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.²¹

The elements above apply even if:

- (1) The patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection, or
- (2) The patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.²²

However, the protections offered under this section do not apply to an act or omission that is intentional, wilfully negligent, or done with conscious indifference or reckless disregard for the safety of others.²³ It also does not apply to a volunteer of a charitable organization who is responsible for the death, damage, or injury to a person or a person's property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, including an airplane, to the extent insurance coverage is required by Chapter [601](#), Transportation Code, and to the extent of any existing insurance coverage applicable to the act or omission.²⁴ And, unlike Chapter 79, this section does not limit liability for the organization where care is being provided.²⁵

Final Thoughts

Note that, while these protections exist, these laws do not prevent the physician from being sued. Instead, these are affirmative defenses a physician may raise and must prove to defeat a medical professional liability claim. Thus, it is still highly recommended that a physician (active or retired) carry liability insurance to help offset costs that may be needed to successfully defend a lawsuit. For physicians who have insurance through Texas Medical Liability Trust (TMLT), TMLT offers coverage for active physicians as well as retired physicians who volunteer during the COVID-19 crisis. Links to that information are provided below under the section called "Where Can I Find More Information?"

Please also understand that the limited liability protections discussed above only apply to limit state *civil* liability. These laws do not alter the Texas Medical Board's (TMB's) enforcement authority. So even though a retired physician without an active license to practice medicine may be protected from civil liability under one of the statutes discussed above, he or she may still be in violation of the board's licensing rules for retired physicians – the board has specific licensing requirements for retired physicians ([link to the board's website below](#)). Therefore, as a reminder, it is important to consult with a physician's retained attorney to discuss the potential risks associated with providing volunteer health care services before taking action.

At this time, there are few state civil limited liability statutes for health care professionals who provide care for or in expectation of compensation. TMA has [advocated](#) to the governor for broad liability protection for all Texas physicians,

²¹ *Id.* at § 84.004(c).

²² *Id.* at § 84.004(f).

²³ *Id.* at § 84.007(a).

²⁴ *Id.* at § 84.004(d).

²⁵ *Id.* at § 84.004(e).



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regardless of compensation status, during the COVID-19 pandemic, including for those who have had to delay surgeries or procedures due to state and local orders and for those who have been assigned outside their regular practice areas.

On May 12, the governor [requested](#) federal intervention in the form of nationwide liability relief, and U.S. Sen. John Cornyn (R-Texas) has also asked for federal action. TMA will continue to monitor this situation and advocate for protections for Texas physicians. As of the date of this publication, the governor has not issued an executive order, and no federal legislation has been passed in response to these advocacy efforts.

Where Can I Find More Information?

TMB, [COVID-19 Disaster Response – Retired Physicians Returning to Active Status](#)

Governor Abbott, Press Release, [“Governor Abbott Fast-Tracks Licensing For Out-of-State Professionals \[And Certain Retired Professionals\]”](#)

TMLT Resource Hub, [TMLT offers malpractice insurance at no cost to retired physicians who volunteer during the COVID-19 crisis](#)

TMLT, [Volunteer coverage during COVID-19 pandemic](#)

American Medical Association, [Liability protections for health care professionals during COVID-19](#)

Congressional Research Service, [“Emergency Response: Civil Liability of Volunteer Health Professionals”](#)

TMA Office of the General Counsel’s White Paper, [“Limiting Liability for Volunteer Health Care Providers During a Disaster: A General Overview of SB 752”](#)

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