



April 3, 2020

The Honorable Greg Abbott
Office of the Governor
P.O. Box 12428
Austin, Texas 78711-2428

Re: Liability protection for physicians, health care providers, and health care facilities during declared COVID-19 disaster

Dear Governor Abbott,

As organizations that support Texas' physicians and health care facilities, the Texas Medical Association, Texas Alliance for Patient Access, Texas Hospital Association, Texas Osteopathic Medical Association, Texas Health Care Association, LeadingAge Texas, and Texas Organization of Rural and Community Hospitals (collectively, the "Health Care Organizations") hear the struggles affecting physicians and health care providers on the frontlines battling the devastating effects of the coronavirus ("COVID-19"). They are dealing with a pathogen that currently has no cure or vaccine, while putting themselves and their families at risk of contracting the virus by treating those who are in need.

In some situations, they are facing shortages of life-saving equipment while trying to render care to a patient population that exceeds their capacity. In other situations, to fill personnel shortages, they are being asked to provide health care services that, while within the scope of their licenses or other authorizations, are outside of their facility's historical credentialing policies or outside their chosen specialty practice. For example, some anesthesiologists are being asked to work as intensive care unit ("ICU") intensivists to provide care to critically ill patients, and some pediatricians have been assigned to work in adult ICUs. Although these individuals likely have had relevant training at some point in their medical careers, they may not have used these skills or may not be up to date on changes regarding those specific areas of care. They are also having to delay care for some patients to divert efforts to treating patients affected by COVID-19.

Despite the good intentions and exhaustive efforts of these physicians and health care providers to care for Texas' patients, many attorneys are already advertising for tort litigation involving health care in response to COVID-19. Texas' physicians and health care providers deserve better—thus, we are contacting you to request certain protections to lift some of their burden as they continue to devote their efforts towards treating Texas' patients affected by COVID-19. Accordingly, we ask you two things.

First, we ask that you exercise your authority as governor to issue an executive order providing temporary limited liability during the state's declared disaster for all men and women in health care risking their lives on the frontlines treating those who have been affected by COVID-19, including those physicians and health care providers who have been reassigned to provide necessary health care services outside of their specialty areas to try to close the personnel gap caused by COVID-19.

We already have certain statutory liability protections in place for volunteers during a declared disaster. For example, Texas Civil Practice and Remedies Code Chapter 79 protects volunteers responding to disasters under the standard of "reckless conduct, or intentional, wanton or willful misconduct." A formal request from your office that all physicians, health care

providers, and facilities are to assist in response to your disaster declaration would clarify that Chapter 79's provisions are in full effect.

We need all of our physicians and health care providers on deck. However, unlike for our volunteers, there is little to no limited liability protection for paid physicians, health care providers, or health care facilities during this novel time. They are facing a surge of incoming patients, that may or may not be infected with a virus that they may or may not be equipped to handle. They are running low on personal protective equipment necessary to protect themselves, but they are still there. They are having to delay care for nonCOVID-19 conditions to divert most efforts to combat the virus. They are being reassigned from their specialty areas to other areas of care where they may not have the most updated training. And now they are being threatened with litigation. This threat risks deterring our physicians and health care providers from providing needed, urgent patient care.

Thus, we ask you to take action now to remove the threat of litigation that risks delaying or hindering patient care needed to respond to this disaster. Pursuant to your powers under Section 418.016(a) of the Government Code, we ask you to temporarily expand the same limited liability standards in Chapter 79 to protect all physicians, health care providers, and health care facilities, who, during the declared state of disaster, provide health care services to patients affected by COVID-19.

Other states that are dealing with a significant surge of COVID-19 cases are issuing similar liability-protection orders. For example, New York's governor entered Executive Order 202.10, which expands New York's Good Samaritan laws to all physicians and health care providers.

[A]ll physicians, physician assistants, specialist assistants, nurse practitioners, licensed registered professional nurses and licensed practical nurses shall be immune from civil liability for any injury or death alleged to have been sustained directly as a result of an act or omission by such medical professional in the course of providing medical services in support of the State's response to the COVID-19 outbreak, unless it is established that such injury or death was caused by the gross negligence of such medical professional.

Texas' physicians, health care providers, and health care facilities battling COVID-19 deserve the same protection during this tumultuous time. Accordingly, we ask you to issue an order extending Chapter 79's limited liability protection during the declared disaster. We offer the following recommended language:

*"In accordance with Texas Civil Practice and Remedies Code Section 79.003, a request is hereby made for all physicians and health care providers licensed, registered, certified or otherwise authorized to practice in this state, and for licensed health care facilities that provide health care services in support of this state, to provide all available care, assistance, or advice in response to the COVID-19 pandemic during the declared state of disaster, including services provided in response to personnel shortages caused by COVID-19. In addition, Texas Civil Practice and Remedies Code Sections 79.003 and 79.0031 are modified to the extent necessary to ensure any physician or health care provider licensed, registered, certified or otherwise authorized to practice in this state, or licensed health care facility that provides health care services in support of this state, and responding to the COVID-19 pandemic during the declared state of disaster, is not liable for an injury sustained by a claimant by reason of those services, or lack of 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 reckless conduct, or intentional, willful, or wanton misconduct**, of such physician, health care provider or licensed health care facility. This protection is in addition to any other immunity or limitations of liability provided by law."*¹

¹ We encourage you to include this last sentence in your order. While there are very few statutes limiting liability for paid physicians and health care providers, the breadth of the order may unintentionally impact the few that do exist. For example, there are different limited liability standards for certain types of emergency care. See, e.g., Tex. Civil Prac. & Rem. Code §§ 74.151 & 74.153. The catchall at the end prevents unintended conflicts with existing Texas law.

Second, we request that any medical liability litigation resulting from the COVID-19 crisis be abated to September 1, 2020. As stated above, many lawyers are already advertising for these cases. No doubt there will be many of these suits filed. Physicians and health care providers should not have to deal with tort lawsuits during this time. Any energy wasted on litigation is dangerously wasted at the expense of necessary patient care.

Our organizations and our physicians and health care providers appreciate how your office has responded to this novel crisis and the mitigation efforts you have taken so far. In addition to those actions, we respectfully request that you issue orders in accordance with the protections requested herein to continue to help Texas physicians and health care providers effectively respond to this pandemic.

Sincerely,



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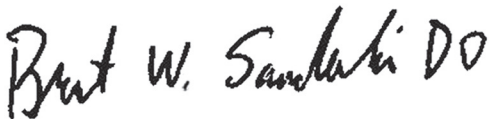
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