
The purpose of the Volunteer Protection Act of 1997 is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.1 Two types of organizations can qualify as nonprofit organizations. The first kind of nonprofit organization is an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of the Code and which does not practice any action which constitutes a hate crime.2 The other type of nonprofit organization is a not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime.3 A volunteer is an individual performing services for a nonprofit organization or a governmental entity who does not receive compensation (other than reasonable reimbursement for expenses) or any other thing of value in lieu of compensation in excess of $500 per year. This term includes those serving as director, officer, trustee, or direct service volunteer.4

This law provides that no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if the volunteer meets four requirements. First, the volunteer must have been acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission. Next, if it is required or appropriate, the volunteer must have been properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental agency. Third, the harm may not have been caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer. And finally, the harm may not have been caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle.

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1 42 U.S.C.A. §14501(b).
for which the State requires the operator or the owner of the vehicle, craft, or vessel to possess an operator's license or maintain insurance.\(^5\)

This law explicitly limits the punitive damages that may be awarded against a volunteer. Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a governmental agency or nonprofit organization unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.\(^6\) This law does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.\(^7\)

A further limitation of liability exists for noneconomic loss. Noneconomic losses are nonpecuniary losses of any kind or nature.\(^8\) In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a governmental entity or a nonprofit organization, the liability of the volunteer for noneconomic loss shall be determined as follows.\(^9\) Each defendant who is a volunteer shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant.\(^10\) For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.\(^11\) However, there are exceptions to the limitation for noneconomic losses. The limitation on the liability of a volunteer for noneconomic losses does not apply to any misconduct that constitutes a crime of violence or act of international terrorism for which the defendant has been convicted in any court. The limitation also does not apply to misconduct that constitutes a hate crime, or misconduct that involves a sexual offense for which the defendant has been convicted in any court. Also, misconduct for which the defendant has been found to have violated a Federal or State civil rights law is not subject to the liability limitation for noneconomic loss. Finally, the limitation does not apply to

\(^5\) 42 U.S.C.A. §14503(a).

\(^6\) 42 U.S.C.A. §14503(e)(1).

\(^7\) 42 U.S.C.A. §14503(e)(2).

\(^8\) 42 U.S.C.A §14505(3).


\(^10\) 42 U.S.C.A. §14504(b)(1).

misconduct where the defendant was under the influence of intoxicating alcohol or any drug at the time of the misconduct.\textsuperscript{12}

This law, however, does not affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.\textsuperscript{13} Furthermore, this law does not affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.\textsuperscript{14}

It is very important to note that this law preempts State laws to the extent that such laws are inconsistent with this law, except it shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.\textsuperscript{15} The state of Texas provides additional protection of this kind for volunteers providing services for nonprofit organizations.

\textbf{Texas Law: Charitable Immunity and Liability Act of 1987}

The purpose of the Charitable Immunity and Liability Act of 1987 is to encourage volunteer services and maximize the resources devoted to delivering these services by reducing the liability exposure and insurance costs of charitable organizations and their employees and volunteers.\textsuperscript{16} The Act provides physician volunteers immunity for performing non-emergency care for certain charitable organizations.

Three categories of organizations fall within the definition of a "charitable organization." The first class of charitable organizations are those that are exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4). Generally, these are organizations that are organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, educational purposes, or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community.\textsuperscript{17}

\begin{itemize}
\item \textsuperscript{12} 42 U.S.C.A. §14503(f)(1)(A)-(E).
\item \textsuperscript{13} 42 U.S.C.A §14503(b).
\item \textsuperscript{14} 42 U.S.C.A. §14503(c).
\item \textsuperscript{15} 42 U.S.C.A §14502(a).
\item \textsuperscript{16} Tex Civ Prac & Rem Code Ann §84.002.
\item \textsuperscript{17} Tex Civ Prac & Rem Code Ann §84.003(1)(A).
\end{itemize}
The second category includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth education organization, or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, so long as it meets six additional requirements. The additional requirements include: the organization is organized and operated exclusively for one or more of the above purposes, it does not engage in activities which are not in furtherance of the purpose or purposes, it does not participate or intervene in any political campaign of any candidate for public office, it dedicates its assets to achieving the stated purpose or purposes of the organization, the organization does not allow inurement to the benefit of any group, shareholder, or individual, and it normally receives more that one-third of its support in any year from private or public gifts, grants, contributions, or membership fees.\textsuperscript{18}

The last set of charitable organizations is made up of homeowners associations as defined by Section 528(c) of the Internal Revenue Code of 1986.\textsuperscript{19}

A volunteer is a person rendering services for a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred. This includes a person serving as a director, officer, trustee, or direct service volunteer, including a volunteer health care provider.\textsuperscript{20} A volunteer health care provider is an individual who voluntarily provides health care services without compensation or expectation of compensation and who meets one of the ten types of health care providers included in the law. The first option is that the volunteer health care provider is an individual licensed to practice medicine under the Medical Practice Act. A second alternative is that the volunteer health care provider is 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. Additionally, there are eight types of health care providers that may be volunteer health care providers, provided they are either licensed or retired and eligible to provide health care services under the law of this state. These include physician assistants, registered nurses (including advanced nurse practitioners), vocational nurses, pharmacists, podiatrists, dentists, dental hygienists, and optometrists or therapeutic optometrists.\textsuperscript{21}

A volunteer who is serving as an officer, director, or trustee of a charitable organization is immune from civil liability for any act or omission that results in death, damage, or injury if the volunteer was acting in the course and scope of his duties or

\textsuperscript{18} Tex Civ Prac & Rem Code Ann §84.003(1)(B).

\textsuperscript{19} Tex Civ Prac & Rem Code Ann §84.003(1)(C).

\textsuperscript{20} Tex Civ Prac & Rem Code Ann §84.003(2).

\textsuperscript{21} Tex Civ Prac & Rem Cod Ann §84.003(5).
functions as an officer, director, or trustee within the organization. Also, a direct service volunteer is immune from civil liability for any act or omission that results in death, damage, or injury if the volunteer was acting in good faith and in the course and scope of his duties or functions within the charitable organization. Protection is also provided for volunteer health care providers. A volunteer health care provider who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient if the volunteer meets four requirements. First, the volunteer was acting in good faith and in the course and scope of the volunteer's duties or functions within the organization. Second, the volunteer commits the act or omission in the course of providing health care services to the patient. Third, the services provided are within the scope of the license of the volunteer. And finally, before the volunteer provides the health care services, the patient, or if the patient is a minor or is otherwise legally incompetent, the patient's parent, managing conservator, legal guardian, or other person with legal responsibility for the care of the patient signs a written statement that acknowledges both that the volunteer is providing care that is not administered for or in expectation of compensation and the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services. However, a volunteer is liable to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment to the extent insurance coverage is required by Chapter 601 of the Transportation Code and to the extent of any existing insurance coverage applicable to the act or omission.

Also, the liability of nonhospital charitable organizations and their employees for damages based on an act or omission is limited to money damages to $500,000 for each person and $1,000,000 for each single occurrence of bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property. These liability limitations do not apply to health care providers unless the provider is a federally funded migrant or community health center, is a nonprofit health maintenance organization created and operated by a community center, or the provider usually provides discounted services at or below costs based on the ability of the beneficiary to pay. These limitations also do not apply if the charitable organization does not have liability insurance coverage in effect on any act or omission in the amount of at least $500,000 for

22 Tex Civ Prac & Rem Code Ann §84.004(a).
23 Tex Civ Prac & Rem Code Ann §84.004(b)
24 Tex Civ Prac & Rem Code Ann §84.004(c)
25 Tex Civ Prac & Rem Code Ann §84.004(d).
26 Tex Civ Prac & Rem Code Ann §§84.005 and 84.006.
27 Tex Civ Prac & Rem Code Ann §84.007(e).
each person and $1,000,000 for each single occurrence for death or bodily injury and $100,000 for each single occurrence for injury to or destruction of property.\footnote{Tex Civ Prac & Rem Code Ann §84.007(g).}

The limitations and immunities found in this Act do not apply in some situations. First, they do not apply to an act or omission that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others.\footnote{Tex Civ Prac & Rem Code Ann §84.007(a).} This Act also does not limit the liability of an organization or its employees or volunteers if the organization was formed substantially to limit its liability under this law.\footnote{Tex Civ Prac & Rem Code Ann §84.007(c).} Also, this law does not apply to organizations formed to dispose, remove, or store hazardous waste, industrial solid waste, radioactive waste, municipal solid waste, garbage, or sludge as defined under state and federal law.\footnote{Tex Civ Prac & Rem Code Ann §84.007(d)} Finally, this law does not apply to a governmental unit or employee of a governmental unit.\footnote{Tex Civ Prac & Rem Code Ann §84.007(f).}

**Good Samaritan Law: Liability for Emergency Care**

The Texas Good Samaritan Law limits the civil liability of persons administering emergency care in good faith at the scene of an emergency or in a health care facility. The law limits the civil liability of these persons unless their actions are wilfully and wantonly negligent. This protection does not apply to care administered for or in expectation of remuneration, or 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. Additionally, the civil liability limitation does not apply to care administered by a person who regularly administers care in a hospital emergency room unless such a person is at the scene of the emergency for reasons wholly unrelated to the person's work in administering health care. Also, the limitation of civil liability is inapplicable to care administered by an admitting or attending physician of the patient or a treating physician associated by the admitting or attending physician of the patient in question. The limited civil liability is also not available for a person whose negligence was a producing cause of the emergency for which care is being administered. Furthermore, a person who would normally receive or be entitled to receive compensation for administering care under the circumstances in question will be deemed to be acting for or in expectation of remuneration even if the person elects not to receive remuneration on the occasion in question, and therefore will not be immune.\footnote{Tex Civ Prac & Rem Code Ann §74.001.}
Emergency medical service personnel who are not licensed in the healing arts who administer emergency care in good faith are not liable in civil damages for an act performed in administering the care unless the act is wilfully or wantonly negligent. This limit in liability applies regardless of whether the care is provided for or in expectation of remuneration.\(^{34}\)

The limited civil liability provided by the Good Samaritan law is an affirmative defense. This means that after a lawsuit is filed, the physician must prove that the law provides protection. In a recent case (October 2001), the Texas Third Court of Appeals in Austin ruled this burden means that the physician must conclusively prove, as a matter of law, that he is not legally be entitled to remuneration.\(^{35}\) In other words, if there is a legal theory that would permit the physician to seek payment, then the physician can be found to be liable because the Good Samaritan law will not apply.

This decision, in effect, could render the Good Samaritan law useless because it creates a near impossible burden of proof. This decision impacts not only those counties served by the Third Court of Appeals\(^{36}\), but the entire state because other Courts of Appeals may follow the Third Court's rationale in deciding cases before them. TMA has filed a brief in this case in hopes of having it overturned by the Texas Supreme Court. An update will be provided in future publications.

\(^{34}\) Tex Civ Prac & Rem Code Ann §74.002.


\(^{36}\) Bastrop, Bell, Blanco, Burnet, Caldwell, Coke, Comal, Concho, Fayette, Hays, Irion, Lampasas, Lee, Llano, McCulloch, Milam, Mills, Runnels, San Saba, Schleicher, Sterling, Tom Green, Travis, Williamson Counties
Conclusion

Under the Charitable Immunity and Liability Act, physician volunteers may be immune from civil liability in providing non-emergency medical services as a volunteer health care provider. In order to assure that the immunity will apply, physicians should verify that they are working for a charitable organization, act in good faith within the scope of their employment, and obtain written consent from the patient.

Furthermore, a physician may be immune from civil liability in providing emergency medical services. The Good Samaritan Law was intended by the legislature to provide physicians broad immunity when administering uncompensated emergency care. One recent appeals court decision has put the future of this law in jeopardy. Action is needed by the Texas Supreme Court and the Texas legislature to clarify and reinforce this important statute.

Revised July 2002

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The following consent form is an example to be used for volunteer health care providers in non-hospital charitable organizations.

CONSENT FOR CHARITY CARE

I, ___________________________, acknowledge that Dr. __________________ is a volunteer health care provider, and is not administering care for or in expectation of compensation. I also understand that as a volunteer health care provider, the physician is immune from civil liability for any act or omission resulting in death, damage, or injury as long as the volunteer acts in good faith and in the scope of his or her duties within the organization in providing the health care services.

Furthermore, I realize that the civil liabilities of both the charitable organization and an employee of the charitable organization are limited to money damages of $500,000 for each person, $1,000,000 for each occurrence of bodily injury or death, and $100,000 for each occurrence of injury to property. These limits apply to the employee and the organization separately; they are not aggregate limits.

____________________________  ______________________________
Patient's signature                          Date

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