

Legal Brief

Volunteer Medical Services

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of April 1, 2013; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

Physicians, surgeons, and osteopaths licensed under the provisions of South Dakota Codified Law, who in good faith render emergency care at the scene of the emergency, are not be liable for any civil damages as a result of any acts or omissions in rendering emergency care.

Further, any physician, surgeon, and osteopath who volunteers services on behalf of a nonprofit organization, a nonprofit corporation, a free clinic, or hospital organized pursuant to SDCL chapters 34-8 (County Hospitals), 34-9 (Municipal Hospitals), or 34-10 (Public Hospital District), or a governmental entity shall be immune from civil liability in any action brought in any court in this state on the basis of any act or omission resulting in damage or injury if the individual was acting in good faith and within the scope of such individual's official functions and duties for the nonprofit organization and the damage or injury was not caused by gross negligence or willful and wanton misconduct by such individual.

Of note, South Dakota Codified Law is generally construed to not grant relief to any person causing damage as a result of willful, wanton, or reckless acts of commission or omission.

Discussion

Emergency

Individual

Under SDCL 20-9-3, physicians, surgeons, osteopaths, physician assistants, registered nurses, or licensed practical nurses, licensed under the provisions of SDCL chapters 36-4, 36-4A, and 36-9, who in good faith render emergency care at the scene of the emergency, shall not be held liable for any civil damages as a result of any acts or omissions.

Further, under SDCL 20-9-3, physicians, surgeons, and osteopaths duly licensed to practice their profession in another state of the United States who render emergency care at the scene of the emergency in this state, are not liable, and are not deemed to be practicing medicine within this state as contemplated by SDCL chapters 36-2, 36-4, and 36-9.

Medical Transfers

Pursuant to SDCL 36-4B-25, any physician, who in good faith arranges for, requests, recommends, or initiates the transfer of a patient from a hospital to a critical medical care facility in another hospital is not liable for any civil damages as a result of such transfer where sound medical judgment indicates that the patient's medical condition is beyond the care capability of the transferring hospital or the medical community in which that hospital is located, and where the physician has confirmed that the transferee facility possesses a more appropriate level of capability for treating the patient's medical needs, and where the physician has secured a prior agreement from the transferee facility to accept and give necessary treatment to the patient.

Supervised Physician Assistants

Under SDCL 36-4A-26.3, physician assistants licensed in this state or licensed or authorized to practice in other states of the United States who voluntarily and gratuitously, and other than in the ordinary course of employment or practice, render emergency medical assistance are not liable for civil damages for any personal injuries which result from acts or omissions in rendering emergency. However, this immunity does not apply to acts or omissions constituting willful or wanton negligence or if the medical assistance is rendered at any hospital, physician's office, or other health care delivery entity where those services are normally rendered.

No physician who supervises a physician assistant who voluntarily and gratuitously provides emergency care as described in SDCL 36-4A-26.3 is liable for civil damages for any personal injuries which result from acts or omissions by the physician assistant rendering emergency care.

Care Provided Under Serv SD

Under the auspices of Public Law 107-188, known as the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the state of South Dakota created the "Statewide Emergency Registry of Volunteers for South Dakota" or "SERV SD" for the purposes of creating a pool of voluntary emergency responders to provide emergency medical care in response to both state and federal emergencies.

As defined under SDCL 34-22-44.1, a "Volunteer" is any individual who, without the expectation of receiving compensation for services, responds to and acts in accordance with a call to service under the SERV SD program in response to a declared public health emergency as provided for in SDCL 34-22-41 to 34-22-44.

Any volunteer, as defined in SDCL 34-22-44.1, is immune from civil liability in any action brought in any court in this state on the basis of any act or omission resulting in damage or injury if:

1. The volunteer was acting in good faith and within the scope of the volunteer's official functions; and
2. The damage or injury was not caused by gross negligence or willful and wanton misconduct by the volunteer.

Volunteer Services

SDCL 47-23-29 states, any volunteer, including a licensed health care professional, providing services on behalf of a nonprofit organization, a nonprofit corporation, a free clinic, any hospital organized pursuant to chapter 34-8, 34-9, or 34-10, or a governmental entity shall be immune from civil liability in any action brought in any court in this state on the basis of any act or omission resulting in damage or injury if:

1. The individual was acting in good faith and within the scope of such individual's official functions and duties for the nonprofit organization, the nonprofit corporation, the free clinic, a hospital organized pursuant to chapter 34-8, 34-9, or 34-10, or a governmental entity; and
2. The damage or injury was not caused by gross negligence or willful and wanton misconduct by such individual.

Conclusion

Although the defenses and immunities described above are considered to be valid and enforceable, it is possible a lawsuit could arise against a physician requiring litigation of these issues. Accordingly, physicians with questions concerning the intricacies of the immunities and defenses described above are encouraged to confer with their own legal counsel.



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