

FLORIDA'S HEALTH CARE PROVIDERS AND FACILITIES
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

March 26, 2020

The Honorable Ron DeSantis
Governor, State of Florida
PL 05 Capitol
400 South Monroe Street
Tallahassee, Florida 32399

Re: Medical Professional Liability Protections

Dear Governor DeSantis:

The undersigned and listed organizations appreciate the recent actions you have taken to assist physicians, hospitals, and other health care providers on the frontlines of the COVID-19 pandemic. We understand the need to conserve the resources necessary to treat those infected with the virus while being able to continue care for those with other medical conditions, all balanced against the need to protect the health and safety of health care providers. Your recent Executive Order No. 20-72, which suspends the provision of non-essential elective medical procedures, will help to accomplish these objectives.

This order, however, will have unintended consequences. As a result of your directives in Executive Order No. 20-72, health care providers are required to make new and difficult decisions on which patients to see and treat immediately, and which patients can wait for care until the executive order is lifted. Those health care providers who decide to move forward with treatment may have to do so with inadequate resources, such as a lack of personal protective equipment. These providers risk exposing their staff, their patients, and themselves to infection from the virus.

It is not difficult to imagine the potential liability that health care providers will likely face based on the decisions they are forced to make during this crisis. The Governor of New York recently issued an executive order responding to a similar problem, suspending certain provisions of New York law to provide immunity to health care providers 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."

Something must be done to ensure Florida's health care providers are able to make the hard, necessary decisions required by Executive Order No. 20-72 without fear of later having to defend themselves against lawsuits as a result of those decisions. We offer three potential solutions below, but welcome the opportunity to discuss these and other potential solutions.

Suspend certain provisions of the Good Samaritan Act by executive order. You, or the Director of Emergency Management as your State Coordinating Officer, may issue an executive order or emergency order temporarily suspending the effect of the following provisions of statute as these provisions would "prevent, hinder, or delay any mitigation, response, or recovery action necessary to cope with this emergency," Executive Order No. 20-52,

Section 2. Specifically, we ask you to consider suspending the application of the following language in section 768.13(2)(a), Florida Statutes:

- the clause “gratuitously and”; and
- the clause “where the person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances,”

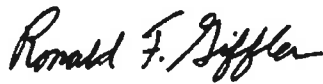
This would provide that any person, including those licensed to practice medicine, who in good faith render emergency care or treatment in direct response to a public health emergency, without objection of the injured party, would not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment. This will support the directives required by Executive Order No. 20-72 by encouraging health care providers to provide all necessary treatment and to postpone non-essential treatment without the fear of liability.

Limit liability by executive order. Another option would be to use your broad emergency management powers under section 252.36, Florida Statutes, and Executive Order No. 20-52 to provide that health care providers acting in compliance with Executive Order No. 20-72 are immune to civil liability for any injury or death alleged to have been sustained directly as a result of an act or omission by such health care provider.

Extend sovereign immunity to health care providers acting in compliance with Executive Order No. 20-72. Alternatively, we ask you to consider issuing an executive order deeming all health care providers providing service in compliance with Executive Order No. 20-72 as doing so under the auspices of and as agents of the Department of Health, such that this conduct is subject to the immunity extended by section 768.28, Florida Statutes. We acknowledge that this may require additional action by the Department of Health or another state agency to ensure such state agency has the requisite control over health care providers acting pursuant to Executive Order No. 20-72 to entitle them to sovereign immunity. We would note that you appear to have done something similar in Executive Order No. 20-52, by authorizing health care providers licensed by states other than Florida to render medical services in Florida during the emergency under the auspices of the American Red Cross or the Department.

Please contact us if we can provide additional information. Jeff Scott, General Counsel for the Florida Medical Association can be reached at 850.224.6496; and William Large, President of the Florida Justice Reform Institute can be reached at 850.222.0170.

Sincerely,



Ronald F. Giffler, MD
President
Florida Medical Association



Eric A. Goldsmith, DO, FACOS
President
Florida Osteopathic Medical Association



William W. Large
President
Florida Justice Reform Institute

Supporting Organizations:

Safety Net Hospital Alliance of Florida	Teaching Hospital Council of Florida
Florida Chamber of Commerce	Associated Industries of Florida
Florida Society of Anesthesiology	Florida Society of Ophthalmology
Florida Society of Pathology	Promise Fund of Florida
Florida Podiatric Medical Association	Florida Chapter, American College of Physicians
Florida Chapter, American College of Surgeons	Florida Society of Plastic Surgeons
National Lipid Association	Florida Neurosurgical Society
Florida Chapter of the American Academy of Pediatrics	Florida Orthopaedic Society
Florida Society of Nephrology	Florida College of Emergency Physicians
Florida Society of Rheumatology	Florida Radiological Society
Florida Academy of Family Physicians	The Doctors Company
US Anesthesia Partners	Medical Professional Liability Association
MagMutual Insurance Company	ProAssurance Corporation
Florida Chapter of American College of Cardiology	Florida Insurance Council
National Association of Mutual Insurance Companies	Florida Psychiatric Society
Florida Society of Physical Medicine and Rehabilitation	NORCAL Group
Florida Society of Thoracic and Cardiovascular Surgeons	
Florida Society of Dermatology and Dermatologic Surgery	
American Property and Casualty Insurance Association	