

Immunity of a Different Type



By Matthew Bauer, JD

No doubt physicians are familiar with the concept of immunity in the medical context. However, there is another type of immunity with which physicians may not be familiar. Namely, immunity from legal liability. State legislatures have passed statutes granting immunity for a variety of activities that are deemed beneficial to society and promote the public good provided specific requirements are met. The reason for these immunity statutes is that legislatures want to encourage individuals to engage in certain types of activities by removing the disincentive of potential liability exposure flowing from such activities. For instance, many states have passed legislation granting immunity to physicians for the treatment of COVID during the pandemic. If this sounds too good to be true, you may be right as COVID immunity laws have not been tested in the courts yet. It is unknown how the courts will apply such statutes, and what their efficacy in protecting physicians will be. However, as demonstrated by the closed claim below, SVMIC has had cases where immunity statutes have been used to defend insured physicians in lawsuits.

The sixty-year-old male patient presented to the emergency room due to chest pain and heart failure. During hospitalization, the patient was treated by insured cardiologist Dr.

Smith. Unfortunately, the patient suffered myocardial infarction and coded at the hospital. Resuscitation efforts were unsuccessful, and the patient expired. Pursuant to the Tennessee death certificate statute (T.C.A. § 68-3-502), “[t]he medical certification shall be completed, signed and returned... by the physician in charge of the patient’s care for the illness or condition that resulted in death within forty-eight (48) hours after death”. Additionally, the Tennessee Office of Vital Records has instituted a web-based, electronic system for the completion and registration of vital records called the Vital Records Information System Management (VRISM). Due to a systems issue, the death certificate for the patient was not available in the VRISM for Dr. Smith to review and complete the medical section of the death certificate for several days. Consequently, the patient’s death certificate was not certified within the 48-hour statutory time frame through no fault of Dr. Smith. However, once the systems issue was resolved and the patient’s death certificate became available for review in the VRISM, Dr. Smith reviewed, completed, and certified the relevant medical section within a few hours of its availability.

A lawsuit was subsequently filed against Dr. Smith alleging he negligently filled out the death certificate with undue delay causing economic injury and emotional distress to the patient’s surviving spouse. SVMIC hired defense counsel for Dr. Smith, and defense counsel filed a Motion to Dismiss (MTD) based upon the immunity statute found at T.C.A. § 68-3-513, which states “[a]ny physician who in good faith complies with [the requirements of the Tennessee death certificate statute] shall be immune from civil suit for damages.”

The MTD argued that the plaintiff failed to state a claim upon which relief could be granted because the plaintiff did not plead any facts in the Complaint that would establish Dr. Smith acted in bad faith or failed to act in good faith in the certification of the death record, and therefore, T.C.A. §68-3-513 applied to Dr. Smith making him immune from civil suit for damages. After a hearing, the Court granted Dr. Smith’s MTD and dismissed the lawsuit with prejudice.

In addition to the death certificate immunity statute discussed above, state legislatures have passed statutes granting legal immunity to physicians in a variety of other contexts to encourage certain health care activities. For instance, many states have immunity statutes covering volunteer and good Samaritan scenarios as well as quality review committees provided specific requirements are met. If only immunity from COVID infection could also be addressed by passing a statute!

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