



Emergency rooms and trauma centers should be treated fairly in our courts

FLORIDA LAW SHOULD PROTECT MEDICAL PROVIDERS WHO PROVIDE EMERGENCY CARE

Under state and federal law, hospitals and physicians providing emergency medical care in Florida trauma centers and emergency rooms are required to provide emergency care regardless of a patient's ability to pay or the type of injury or illness.

Providing this type of emergency care is a high-risk proposition for physicians and other providers, because patient outcomes are frequently unpredictable and beyond the control of the most conscientious treatments. In these situations, negative patient outcomes can sometimes subject medical providers to liability lawsuits, regardless of whether individual or action was responsible.

That's why section 768.28, Florida Statutes should be amended to shield emergency medical providers and physician who provide critical, emergency medical care as required by state law. In situations where these providers are acting under state and federal law, emergency medical providers and physicians are essentially acting as agents of the state. Accordingly, they should be extended sovereign immunity for any care they provide as required by the federal Emergency Medical Treatment and Active Labor Act and corresponding state laws.

EMERGENCY CARE PROVIDERS SERVE THE INTERESTS OF THE PUBLIC AND THE STATE

Emergency and trauma center facilities, as well as the physicians and staff that provide emergency transportation and care, are providing a necessary and critical public function of care for the most seriously ill or injured. These facilities, physicians and staff, as well as the services they provide should not be compromised by the threat of litigation for merely providing critical care and services that they are required to provide by state and federal laws.

The doctrine of sovereign immunity, as interpreted by the courts, holds that governments cannot be sued under the laws that it creates, since it would impede the orderly administration of government. Sovereign Immunity is absolute, except when the Legislature waives the immunity. Currently, under section 768.28 Florida Statutes, several types of medical providers are protected by sovereign immunity, including workers who provide healthcare to inmates at state correctional facilities, regional poison control centers, and publicly funded and incorporated hospitals, medical center and medical schools.

EMERGENCY CARE PROVIDERS ARE ACTING AS AGENTS OF THE STATE WHEN THEY PROVIDE CARE

In many cases, Florida courts have extended sovereign immunity to governmental and quasi-governmental entities, applying a test set forth in *Kluger v. White* that requires the state to show "an overpowering public necessity" for the immunity. Because state statutes require hospital emergency rooms and designated trauma centers to provide care to the critically ill and injured, there is a reasonable basis to support extending the state's sovereign immunity protections to emergency room and trauma care physicians.

Legislative protection for these entities would be accorded great deference in court and help reduce the number of lawsuits targeting the life-saving physicians and trauma staff who treat emergency and critical ill patients as they are required to do by the state.

The Florida Justice Reform Institute's mission is to fight wasteful civil litigation through legislation, promote fair and equitable legal practices, and provide information about the state of civil justice in Florida. To facilitate these goals, the Institute employs research and advocacy in support of meaningful tort reform legislation.