

Liability of Physicians Under Contract With State Government
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ISSUE: What legal provisions exist to protect physicians performing services under a contract with a state agency from lawsuits by people physically or financially injured by attempts to respond to an emergency?

ANSWER: Though no one law protects all responders in all circumstances, there are laws that cumulatively and individually provide coverage. They are summarized in a document on the DSHS Public Health Preparedness Legal Resources web page: <http://www.dshs.state.tx.us/comprep/ogc/default.shtm>. Keep in mind:

- This document or others provided to the public are not a substitute for legal advice. The summaries may omit provisions or exceptions that are relevant to your situation. You should consult a lawyer if you have any questions.
- The statutes often have exceptions and may not protect for behavior that is “willful misconduct”, “gross negligence”, “criminal” or violations of civil rights.
- The laws below protect individuals, not governmental or private entities. Laws to protect entities are not covered here.

DISCUSSION:

Contract Physicians. There is no law that protects a physician working under a contract with a state agency from being sued. If a physician were sued and were found liable for damages, the Civil Practice and Remedies Code, Chapter 108 caps the liability of “public servants” at \$100,000. “Public Servants” include Texas licensed physicians who performed services under a contract with any state agency. This means that such a physician would not be liable to pay more than \$100,000. This cap does not apply if the lawsuit arises under the U. S. Constitution or U. S. (federal) law.

Under Chapter 104 of the same Code, these physicians are indemnified up to \$100,000 by the state. This means that the state will pay or cover the damages up to \$100,000 – damages for which the physician is otherwise personally liable. The state will pay to the extent that damages are not recoverable under an insurance policy. Generally, this indemnification will not apply to instances where the physician committed a willful or wrongful act or act of gross negligence or a violation of civil rights when the physician acted in bad faith. The attorney general may also determine that “indemnification is in the interest of the state” and allow indemnification. This chapter also indemnifies for attorney’s fees in very limited criminal actions and provides for a defense by the attorney general in a civil action.

Persons providing emergency medical care may be protected under provisions of the Texas “Good Samaritan” law (Civil Practice and Remedies Code §§ 74.151).