



MYRON STEVES
HEALTHCARE



LONE STAR ASSOCIATION OF CHARITABLE CLINICS

MALPRACTICE & OTHER INSURANCE

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I. Professional, Regulatory and Other Liability Coverages

- **Medical Professional Liability**
- **Directors & Officers Liability**
- **Employment Practices Liability**
- **Fiduciary Liability**
- **Privacy & Security**
- **Billing E&O**





II. Package Policies

A. Property-Based Coverages

- **Building & Contents**
- **Business Income**
- **Accounts Receivable**
- **Boiler & Machinery**
- **EDP**
- **Inland Marine**





II Package Policies (continued)

B. Commercial General Liability including products and completed operations

- **Bodily Injury**
- **Property Damage**
- **Personal and Advertising Injury**
- **Non-Owned Auto**





III. Other Casualty Coverages

- **Bodily Injury / Property Damage**
- **Auto Liability & Physical Damage**
- **Umbrella Liability**
- **Workers Compensation**
- **Employers Liability**
- **Employers Indemnity (Non-Subscriber)**
- **Employee Dishonesty/Crime**





IV. Health, Life & Disability

- **Health Insurance**
- **Mini-Med Plans (lower cost option)**
- **Life, Accidental & Disability**





Directors & Officers Liability

Arises from the expectation that directors have:

- duty of care
- duty of loyalty
- and will act in good faith.

How to avoid liability:

- Avoid conflicts of interest.
- Pay strict attention to board matters, drawing an appropriate expertise including your own.





Directors & Officers Liability

(continued)

Presumption

- **Absent conflicts, each director is assumed to be independent and to have acted with due care, loyalty and in the honest belief that their actions are in the best interest of the corporation.**
- **Protected by the “business judgment” rule (courts may not second-guess actions)**





Directors & Officers Liability Insurance

Shifts liability by contract to an independent third party, the insurer, for a portion of the risks arising out of actions taken by the directors and officers.

Side A: Protects directors against certain losses against which the corporation does not or cannot indemnify them.

Side B: Compensates the corporation for the expenses that it incurs as a result of indemnifying directors and officers and that, in the absence of insurance, would be paid out of corporate funds.

Entity: Protects the corporation against claims brought directly against the corporation.





Directors & Officers Liability Insurance

(continued)

Covers “Wrongful Acts”, typically defined to include: any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted, by any Insured Person, individually or otherwise, in his Insured Capacity, or any matter claimed against him solely by reason of his serving in such Insured Capacity.

Does not generally cover intentional in contrast to merely negligent acts.





Directors & Officers Liability Insurance

(continued)

Common Exclusions:

- A. Exclusions pertaining to the conduct of the insured that the insurer has deemed to be uninsurable or inappropriate for coverage.**
- Criminal or fraudulent acts**
 - Personal profit and illegal remuneration**





Directors & Officers Liability Insurance

(continued)

Common Exclusions:

- B. Exclusions pertaining to matters that should be covered under other insurance policies:**
- **Bodily injury**
 - **Violations of the Employee Retirement Income Security Act of 1974**
 - **Environmental liabilities**
 - **Earlier D&O policies**
 - **Pending and prior litigation**
 - **Claims insured under other policies**





Directors & Officers Liability Insurance

(continued)

Common Exclusions:

- C. The “insured versus insured” exclusion. The purpose of this exclusion is to prevent corporations from cashing in on their D&O policies by suing officers and directors.**





Medical Professional Liability Insurance

- **Covers damages and the cost of defense for legal liability arising out of medical incidents or acts, errors or omission in the rendering or failure to render healthcare services.**
- **Broad coverage grant with a limited number of exclusions which may include liability assumed under a contract, services provided under the influence of drugs or alcohol, physical or sexual abuse, or services provided by an unlicensed healthcare provider.**





Medical Professional Liability Insurance (continued)

- **Supplemental payments (cost of defense) may be included in or in addition to the limits of liability. Defense coverage claims is a critical part of medical professional liability coverage.**
- **Coverage trigger is typically claims-made. The circumstances giving rise to the claim must occur after the policy's *retroactive* date and be reported to the insurer during the policy period or the extended reporting period (tail) if one is provided/purchased.**





Charitable Immunity & Liability Act (1987)

Charitable Organizations (Sec. 84.003)

- 501(c)(3) or 501(c)(4) of IRS code.
- Non-Profit Corporation, foundation or funds organized and operated exclusively for charitable ... or educational purposes.
- Not engaged in activities which are in furtherance of other purposes.
- Receives more than 1/3 of its support from private or public grants, contributions or membership fees.





Definitions

“Volunteer” means a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred. The term includes a person serving as a director, officer, trustee, or direct service volunteer, including a volunteer health care provider.

“Volunteer Healthcare Provider” means an individual who voluntarily provides health care services without compensation or expectation of compensation and who is a *licensed* physician, physician assistant, registered nurse, vocational nurse, nurse practitioner, pharmacist, podiatrist, dentist, dental hygienist, optometrist, physical and occupational therapist and their assistants.





Volunteer Immunity

Section 84.004. Except as provided by Subsection (d) and Section 84.007, a volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within the organization.





Volunteer Immunity

(continued)

A volunteer health care provider who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury to a patient *if*:

- **the volunteer commits the act or omission in the course of providing health care services to the patient;**
- **the services provided are within the scope of the license of the volunteer; and**





Volunteer Immunity

(continued)

- **before the volunteer provides health care services, the patient or, if the patient is a minor or is otherwise legally incompetent, the person responsible for the patient signs a written statement that acknowledges:**
 - **that the volunteer is providing care that is not administered for or in expectation of compensation; and**
 - **the limitations on the recovery of damages from the volunteer in exchange for receiving the health care services.**





Volunteer Immunity

(continued)

Exception: Motor Driven Equipment

A volunteer of a charitable organization is liable to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, including an airplane, to the extent insurance coverage is required by Chapter 601, Transportation Code, and to the extent of any existing insurance coverage applicable to the act or omission.





Employee Liability

Except as provided in Section 84.007 of this Act, in any civil action brought against an employee of a nonhospital charitable organization for damages based on an act or omission by the person in the course and scope of the person's employment, the liability of the employee is limited to money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.





Organization Liability

Except as provided in Section 84.007 of this Act, in any civil action brought against an employee of a nonhospital charitable organization for damages based on an act or omission by the organization or its employees or volunteers, the liability of the organization is limited to money damages in a maximum amount of \$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.





Organization Liability

(continued)

Applicability: This chapter does not:

- **apply to an act or omission that is intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others;**
- **limit or modify the duties or liabilities of a member of the board of directors or an officer to the organization or its members and shareholders;**
- **limit the liability of an organization or its employees or volunteers if the organization was formed substantially to limit its liability under this chapter.**





Organization Liability

(continued)

Sections 84.005 and 84.006 of this chapter do not apply to a health care provider as defined in Section 74.001, unless the provider is a federally funded migrant or community health center under the Public Health Service Act (42 U.S.C.A. Sections 254b and 254c) or is a nonprofit health maintenance organization created and operated by a community center under Section 534.101, Health and Safety Code, or unless the provider usually provides discounted services at or below costs based on the ability of the beneficiary to pay.

Sections 84.005 and 84.006 of this Act do not apply to any charitable organization that does not have liability insurance coverage in effect or any act or omission to which this chapter applies.

Nothing in this chapter shall limit liability of any insurer or insurance plan in an action under Chapter 21, Insurance Code, or in an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.





Unique Texas Advantages for Charity Clinics

- **2003 Tort Reform including the Constitutional Amendment limiting non-economic damages to \$250,000 in most cases.**
- **1987 Charitable Immunity & Liability Act**
 - **Immunity for volunteer healthcare professionals**
 - **Limited tort immunity charitable organizations to \$500,000 per person, \$1,000,000 per occurrence and \$100,000 all property damage**

If limits of at least \$500,000/\$1,000,000/\$100,000 are purchased, the immunity applies to all liability except for loss caused by automobile and other motorized equipment.





Clarification #1

“Required Insurance Limits for Charitable Immunity”

The immunity statute uses antiquated language with respect to the legal liability limits it requires, but:

- “per person” is equivalent to a medical incident or claim involving “all injuries to any one person”
- “per occurrence” is equivalent to liability arising from all medical incidents

The statute does not have an “aggregate” limit, but aggregates apply to virtually all medical professional and commercial general liability policies.





Clarification #2

Understanding Issues for Charity Clinics

- **Most medical professional liability policies cover the corporation and their non-physician employees and volunteers.**
- **Many insurers are reluctant to cover employed or volunteer physicians who are not separately insured and financially responsible for legal liability arising from their professional services.**





Clarification #2

Understanding Issues for Charity Clinics (continued)

- **The Charitable Immunity & Liability Act increases the exposure of the not-for-profit corporation for acts of its volunteers while it limits the total legal liability exposure to \$500,000 per person/\$1,000,000 per occurrence and \$100,000 in property damage.**
- **Most medical professional coverage is claims-made. So to be protected by the Act, the corporation must purchase continuous coverage or an unlimited extended reporting period endorsement (tail) if coverage or operations are terminated. Such a coverage may not be available from all insurers.**





The following consent form is an example to be used for volunteer health care providers in non-hospital charitable organizations.

CONSENT FOR CHARITY CARE

I, _____, acknowledge that Dr. _____ is a volunteer health care provider, and is not administering care for or in expectation of compensation. I also understand that as a volunteer health care provider, the physician is immune from civil liability for any act or omission resulting in death, damage, or injury as long as the volunteer acts in good faith and in the scope of his or her duties within the organization in providing the health care services.

Furthermore, I realize that the civil liabilities of both the charitable organization and an employee of the charitable organization are limited to money damages of \$500,000 for each person, \$1,000,000 for each occurrence of bodily injury or death, and \$100,000 for each occurrence of injury to property. These limits apply to the employee and the organization separately; they are not aggregate limits.

Patient's signature

Date





Web Assets

Providing Charity Care: A Primer on Liability Risk, by Howard B. Shapiro, PhD

<http://www.aafp.org/fpm/2003/0100/p52.html>

Texas Medical Association Guide to Charitable Immunities (incl Texas Immunities)

<http://www.texmed.org/Template.aspx?id=2107#Charitable>

Volunteer Protection Act of 1997 (Federal Immunities)

http://www.doi.ne.gov/shiip/volunteer/pl_105.19.pdf

Retired Physicians Forum, Incl Reduced License Fee and CME Requirements, Charitable Info

<http://www.texmed.org/Template.aspx?id=7214>

General Texas Department of Ins (TDI) Info for all providers

<http://www.tdi.state.tx.us/webinfo/08qhproviders.html>

TDI, Medmal Shopping Guide

<http://www.tdi.state.tx.us/commercial/pccmedmal.html>





Web Assets (continued)

TDI, Professional Liability and Medmal Admitted Carriers in Texas

<http://www.tdi.state.tx.us/commercial/admitcar.html>

TDI, Source of low-cost, Defense-Only, Medmal for Volunteer and Retired Providers

<http://www.tdi.state.tx.us/hprovider/proliabilityjua.html>

Workers compensation for Texas Businesses

<http://www.tdi.state.tx.us/wc/employer/index.html#need2know>

Contact the Texas Medical board for Info on the Retired Physician License fee discount.

<http://www.tmb.state.tx.us/>

Civil Practice Act and Remedies Code

D&O, Basic Duties of Directors





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