

# Legal Liability Protections for Wyoming Physicians

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The recent COVID-19 pandemic has created unprecedented need for physician services. While Wyoming has been spared the worst of the outbreak (at least at the time this article was written), many Wyoming physicians have proactively stepped up to volunteer their talents if and when they are needed. Some physicians have wondered whether they are protected from professional liability for providing such emergency medical care, particularly physicians who do not actively practice and no longer carry medical malpractice insurance, or who work for federal government agencies like the Indian Health Service or the Department of Veterans Affairs that generally do not provide insurance.

- Like most states, Wyoming has several statutes that provide protection for physicians rendering care in emergency situations, including during pandemics like COVID-19, including: Wyo. Stat. §1-1-120, providing broad immunity against liability for physicians rendering medical care at the scene of an emergency;
- Wyo. Stat. §1-1-129, providing immunity for health care professionals providing medical services in a low-income clinic setting without expectation of payment; and

- Wyo. Stat. §18-13-113, providing immunity for physicians acting as “homeland security workers” and providing services at the request of Wyoming’s state or local government.

Each of these laws are useful in providing liability protection to physicians seeking to provide medical assistance to those in need. However, physicians should be aware that there are conditions to being covered by the broad liability protections in these laws. Wyoming physicians must be sure they comply with these laws’ requirements, and don’t fall prey to the exceptions before providing volunteer medical services, even in a pandemic.

## I. Wyoming law offers broad liability protection to physicians acting as “homeland security workers.”

Wyoming’s “homeland security worker” statute, Wyo. Stat. §19-13-113, also provides broad protections to physicians providing services in an emergency situation. The statute provides that any “homeland security worker” performing an activity related to homeland security is not liable for the death of, or

injury to, persons as the result of the activity. “Homeland security” is likewise broadly defined to include “all emergency functions essential to the recovery and restoration of the economy.” The only exceptions to this broad immunity are “willful misconduct, gross negligence or bad faith;” physicians are not liable for ordinary negligence. “Medical and health services” are included in the definition of “homeland security” under Wyo. Stat. §19-102(a)(ii). “Homeland security workers” are “any full or part-time paid, volunteer or auxiliary employee of any state, territories or possessions of the United States, the District of Columbia, any neighboring country, any political subdivision thereof, or any agency or program performing homeland security services at any place in this state subject to the order or control of or pursuant to a request of the state government or any political subdivision thereof.”

Although the immunity provided by this statute is broad, there are some traps for the unwary. The most significant drawback is that, to be covered, the physician must be a “paid, volunteer or auxiliary employee” of one of the named governmental entities. Physicians who seek clinical privileges as “disaster practitioners” at their local hospital, for example, may be granted limited clinical privileges to practice at the hospital during the emergency, but likely wouldn’t be considered an “employee” of a governmental entity for purposes of being covered by this statute. Moreover, although most of Wyoming’s hospitals are governmental entities (so that a physician could establish a volunteer employment relationship with the hospital to be covered as a “homeland security worker”), there are counties in Wyoming that do not have governmental entity hospitals, such as Fremont County and Uinta County. Likewise, although the list of governmental agencies is broad, the United States federal government does not appear to be included (although neighboring countries are). It’s possible that certain federal agencies, such as FEMA, could be included in the catch-all “agency or program performing homeland security services,” but there are no court cases interpreting this language to be sure.

Finally, the physician would have to be “subject to the order or control of or [be acting] pursuant to a request” of a governmental entity, to be covered. Again, physicians volunteering as disaster practitioners at their local hospitals may not be considered sufficiently “subject to the order or control of,” or acting pursuant to the request of a governmental entity to be considered “homeland security workers.” Although Gov. Mark Gordon issued an executive order declaring a state of emergency and public health emergency in Wyoming on March 13, 2020 (Executive Order 2020-2), neither the executive order nor any subsequent executive orders, or any orders by Wyoming State

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Health Officer Dr. Alexia Harrist, have requested that physicians volunteer their services to respond to the pandemic. It is not clear, then, that physicians volunteering at this point to provide services in response to the pandemic would be considered “homeland security workers.” Interestingly, the Wyoming

Board of Medicine’s response to the potential need for additional physicians to respond to the COVID-19 pandemic seems to thread this “control” needle; the board has used the “consultation” exception in the Wyoming Medical Practice Act (which allows out-of-state physicians to practice in Wyoming at the request of and in consultation with a

Wyoming-licensed physician) to allow out-of-state physicians to gain temporary licensure in Wyoming. The board has, however, required that any physician using this licensure path establish a consultation relationship with Wyoming State Health Officer Dr. Alexia Harrist, and act in consultation with her. If Dr. Harrist chooses to terminate the consultation relationship with the out-of-state physician, the physician’s permission to practice in Wyoming under the “consultation” exception automatically terminates, giving Dr. Harrist “control” over the physician for purposes of the Homeland Security Act.

## II. Physicians are provided immunity for services provided at the “place of an emergency or accident.”

Wyoming, like virtually all states, broadly prohibits lawsuits against physicians providing emergency medical care at the scene of an emergency or accident. Under American common law, no one (physicians included) has a “duty to rescue” (subject to narrow exceptions); however, a physician assuming the duty to rescue can be held liable for his or her negligence in effecting the rescue. Understanding that the threat of litigation may prevent those in the best position to help in a medical emergency (physicians) from rendering assistance, Wyoming’s legislature passed Wyo. Stat. §1-1-120(a), protecting physicians from rendering medical care at the scene of an emergency. These protections are broad, requiring only that the emergency care or assistance be rendered without compensation.

The statute does not explicitly state that the physician must not expect compensation when rendering the assistance, leaving some question whether this protects physicians who render assistance with the expectation of payment but are ultimately not paid. However, a court would most likely interpret this as only protecting those who provide emergency care without expectation of payment.


In addition to the question regarding compensation, the immunity provided under this statute probably does not cover physicians providing medical services in response to the CO-

VID-19 pandemic. Although Gov. Gordon’s Executive Order 2020-2 declared a state of emergency in Wyoming, this statute is limited to providing services at the “place of an emergency or accident.” It could be argued that Wyoming itself is the “place of an emergency,” due to the Governor’s executive order, but the intent of the statute was likely to cover the immediate scene of a fast-moving disaster, rather than a pandemic lasting months, and it is likely to be interpreted as such by Wyoming’s courts.

**III. Physicians are immune from liability for volunteer medical services provided in a low-income clinic.**

The immunity provided to physicians providing services in low-income clinic settings, by way of contrast, is not limited to medical care rendered at the scene of an emergency. Instead, it prohibits claims against health care professionals (including physicians, physician assistants, nurses, pharmacists, dentists, dental hygienists, and optometrists) providing medical, dental, or other health care related diagnosis, care or treatment to low-income uninsured persons on a volunteer basis, unless the health care professional’s actions are willful and wanton.

The coverage provided by this statute is broad, but there are several caveats to this protection of which physicians should take note. First, the liability immunity only extends to those named medical professionals. Notably, chiropractors, podiatrists and psychologists are not included, nor are medical assistants that are not nurses. Thus, physicians that have col-

laborative practices with chiropractors, podiatrists, and psychologists, or use medical assistants extensively in their practices, should consider how those practitioners will be treated under this statute, so as not to unintentionally expose themselves (or those practitioners) to liability when providing services at a nonprofit health care facility. Second, the statute’s protections only apply to services rendered at a “nonprofit health care facility,” which only includes facilities that provide services solely to low income uninsured persons. Notably, this definition does not include hospitals, or any other facility licensed under Wyoming law. A low-income medical clinic organized by a hospital, and conducted on hospital property, would likely not qualify under this requirement. Similarly, rural health clinics and federally qualified health clinics (or FQHC “look-alikes”) may also not qualify, depending on how they are organized. Third, “low income uninsured person” is specifically defined under the statute to include only persons with an annual income of less than 200% of the federal poverty threshold, that are not covered by Medicare, Medicaid or any other governmental health care program, and do not have private insurance (or their private insurance has denied coverage). Thus, physicians seeking to take advantage of the statute’s protections (or the nonprofit health care facility at which the services are provided) must do some kind of “means testing” to ensure that they are truly treating “low income uninsured persons” to be covered by this statute’s liability protections. 



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