

**A PROPOSAL TO EXPAND LIABILITY PROTECTION FOR MEDICAL
VOLUNTEERS IN AN EMERGENCY/DISASTER
Hunts Point Mayor Fred McConkey**

Earlier this year a new bill, HB 1073, was passed in the State Legislature to address concerns limiting emergency worker volunteer immunity.

Hunts Point in its effort to recruit volunteer doctors in an emergency has found that HB 1073 doesn't go far enough. Many retired doctors in my community are still concerned of being sued as the current law is written.

Along with assistance from elected officials Nancy Whitten and George Hadley and the Washington State Medical Association (WSMA) I have come up with a proposal to beef up this new law to hopefully reassure emergency medical workers that they won't be targets of frivolous lawsuits.

I would like the Suburban Cities Association Public Issues Committee to recommend the following to the SCA Board of Directors:

As the law currently stands, medical professionals who choose to become registered as emergency workers do not have immunity from tort liability for willful misconduct, gross negligence and bad faith.

- 1. I propose eliminating gross negligence from immunity exception because this is a gray area.**
- 2. I would also increase the standard of proof from a simple preponderance of the evidence to clear, cogent and convincing evidence.**

These two proposals will make it easier for cities and counties to recruit doctors and other emergency workers to volunteer in emergencies.

Here is a synopsis of HB 1073 for your background:

A variety of statutes provide various forms of immunity or indemnity from liability for the actions of certain volunteers, government employees, so-called "good Samaritans," and others. The state's Emergency Management Act (EMA) also provides immunity and indemnity for emergency management workers.

The EMA is administered by the Military Department under the direction of the state's Adjutant General. The EMA requires the state to accept liability for harm caused by acts arising from good faith attempts to comply with the EMA. The state must also indemnify a worker who has been "appointed and regularly enrolled" as an emergency worker or who is an employee of the state or a local government. This indemnification covers both liability the worker may have incurred and injury or damage the worker may have suffered as a result of the worker's good faith compliance with the EMA. The indemnity does not cover acts of a worker that amount to willful misconduct, gross negligence, or bad faith.

In 2006 legislation was enacted that grants immunity from liability for the acts of registered volunteer emergency workers who are retired medical professionals. The immunity covers providing assistance or transportation during an emergency or during approved training. This immunity extends to:

- the volunteer medical worker;
- the volunteer's supervisor or employer;
- any health care facility;
- the owner of property where the volunteer acted;
- all governments; and
- any local entity that registered the volunteer.

The immunity covers acts of a medical volunteer that are:

- without compensation or the expectation of compensation;
- within the scope of the volunteer's duties; and
- under the direction of the volunteer's local registering agency.

Immunity does not extend to a volunteer's acts of gross negligence or willful or wanton misconduct.

Summary:

The indemnity provisions of the EMA are expanded to cover explicitly liability incurred while traveling to or from an emergency or while engaged in or traveling to or from a search and rescue operation or training exercise. The state provides no indemnity for liability that might arise out of actions by a volunteer for which the volunteer himself or herself has immunity.

The volunteer immunity from liability provisions are expanded to cover all volunteer emergency workers, not just medical volunteers. To be covered, a volunteer must be registered with the Military Department or a local emergency management organization. References in the immunity provision that are to medical personnel or facilities in particular are replaced with more general terms. For instance, "any" facility, not just a health care facility, is immune from liability for the negligence of a volunteer. The immunity provision is also expressly extended to cover search and rescue operations and authorized training exercises.

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