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RE: Extent of Liability of Volunteer and Paid Community Health Workers Under the Virginia “Good Samaritan” Statute and other Applicable Laws

There are a number of potential sources of immunity for community health workers and community health organizations under Virginia law. While the Virginia “Good Samaritan” statute covers liability for actions taken during emergency situations, the “charitable immunity” doctrine will, under most circumstances, preclude liability for regular treatment by a community health organization. If and when liability does apply, including when an employee or volunteer demonstrates gross negligence, the liability is generally shifted to the community health organization instead of being imposed on the volunteer. Therefore, it is important that the community health organization acquire malpractice insurance to preclude liability.

I. Immunity

A. Volunteer Community Health Workers

Volunteer community health workers, if properly trained, will generally be immune from liability for acts or omissions based on care performed in emergencies. § 8.01-225 of the Virginia Code sets out a series of types of instances in which people *voluntarily* performing certain types of care or assistance, in good faith, are immune from civil liability for acts or omissions resulting from the rendering of such care or assistance. These include:

1. Emergency care to any ill or injured person at the scene of an accident, fire, or any life-threatening emergency, or en route therefrom to any hospital, medical clinic or doctor’s office.
2. Emergency obstetrical care or assistance to a female in active labor who has not previously been cared for in connection with the pregnancy by such person or by another professionally associated with such person, and whose medical records are not reasonably available to such person, in the absence of gross negligence.
3. Administration of epinephrine to an individual for whom an insect sting treatment kit has been prescribed, if that provider has reason to believe that the individual receiving the injection is suffering or is about to suffer a life-threatening anaphylactic reaction.

4. Assistance rendered upon request of any police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission, or storage of liquefied petroleum gas, liquefied natural gas, hazardous material or hazardous waste.
5. Any emergency care or assistance rendered by an emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health to any injured or ill person, whether at the scene of an accident, fire or any other place, or while transporting such injured or ill person to, from or between any hospital, medical facility, medical clinic, doctor's office or other similar or related medical facility, even if the actions violate State Department of Health regulations or any other state regulations.
6. Emergency cardiopulmonary resuscitation, cardiac defibrillation, or other life-sustaining or resuscitative treatments or procedures which have been approved by the State Board of Health to any sick or injured person, by any person who has attended and successfully completed a course in CPR and approved by the State Board of Health, whether at the scene of a fire, an accident or any other place, or while transporting such person to or from any hospital, clinic, doctor's office or other medical facility.
7. Operation of a registered, or subsequently registered, automated external defibrillator at the scene of an emergency, where the person performing the defibrillation acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances, unless injury results from gross negligence or willful or wanton misconduct of the person rendering the care.

Va. Code Ann. § 8.01-225. Furthermore, the following individuals are immune from liability from acts or omissions that do not result from gross negligence or willful misconduct:

1. Any licensed physician serving, without compensation, as the operational medical director for a licensed emergency medical services agency for the acts or omissions resulting from the rendering of emergency medical services in good faith by the personnel of such licensed agency.
2. Any person serving, without compensation, as a dispatcher for any licensed public or nonprofit emergency services agency for any act or omission resulting from the rendering of emergency services by the personnel of such licensed agency.
3. Any individual, certified by the State Office of Emergency Medical Services as an emergency medical services instructor and pursuant to a written agreement with such office, who provides instruction to persons for certification or re-certification as a certified basic life support or advanced life support emergency medical services technician, for acts or omissions directly relating to the activities of such office.

4. Any licensed physician who directs the provision of emergency medical services through a communications device as authorized by the State Board of Health.
5. Any licensed physician serving without compensation as the supervisor of a registered automated external defibrillator

This immunity applies any time that volunteer health workers respond to an emergency situation. See, e.g., Bowen v. Scott County Lifesaving and First Aid Crew, Inc., 1997 WL 33121853 (Va. Cir. Ct. 1997). Therefore, volunteer medical workers, when responding to emergency medical situations, would not be liable, and neither would the organizations that hire them.

B. The “Charitable Immunity” Doctrine

The doctrine of “charitable immunity,” well established under Virginia law, also protects community health centers and their volunteers. This doctrine provides that a charity’s beneficiaries may not recover damages from the charity for the negligent acts of its servants or agents if the charitable organization exercises due care in the hiring and retention of those servants. See Bhatia v. Mehak, Inc., 262 Va. 544, 546 (2001). Not only the charity, but also volunteers engaged in the work of the charity, are immune from liability. Id. Therefore, even in cases that are not emergencies, a community health center and its volunteers will be immune from tort liability.

A number of requirements, both under Virginia common law and under state statute, must be fulfilled for tort liability to apply. Under Virginia State Statute § 8.01-38, the following two requirements must be met:

1. Such hospital must render exclusively charitable medical services for which service no bill for service is rendered to, nor any charge ever made to the patient, and
2. The party alleging such negligence or other tort must be accepted as a patient by such institution under an express written agreement executed by the hospital and delivered at the time of admission to the patient or the person admitting such patient providing that all medical services furnished such patient are to be supplied on a charitable basis without financial liability to the patient.

Va. Code Ann. § 8.01-38. If a community health organization does not charge for its services and enters into a written agreement with its patients, these requirements will be met. Two further common law requirements must be fulfilled for immunity to apply:

1. The injured party must be a beneficiary of the work of the charitable organization (for example, a patient coming in to a community health center); and
2. When the alleged injury occurred through the negligence of an employee or agent engaged in work *directly for the benefit of the charity*.

See Bhatia, 262 Va. at 546 (charitable immunity does not apply to business and owners acting directly for business and preparing and delivering business's charitable donation to religious organization); Moore v. Warren, 250 Va. 421, 423 (1995) (driver for charitable organization immune from liability, because acting in for benefit of charity). Generally, when medical volunteers are working for a community health center, providing medical services who come in seeking those services, they are immune from liability as long as the charity follows due care in hiring those agents. Although there are no recent Virginia cases allowing this immunity in a situation involving non-profit medical facilities, the Virginia Supreme Court has held that immunity may apply to such institutions, see Purcell v. Mary Washington Hospital Assoc., 217 Va. 776

II. Liability of Paid Employees or Volunteers of a Community Health Organization

A. Paid Employees

Under the doctrine of respondeat superior, long incorporated into Virginia law, an employer is liable for the negligent acts of an employee. See, e.g., Davis v. Merrill, 112 S.E. 628, 629-630 (Va. 1922). An employer is liable for the tortious acts of its employee if that employee was performing the employer's business and acting within the scope of the employment when the tortious acts were committed. Giant of Maryland, Inc. v. Enger, 515 S.E.2d 111, 112 (Va. 1999). Typically, when an employee (but not an independent contractor) of a hospital is negligent in his or her duties, the employer-hospital will be held responsible. See McDonald v. Hampton Training School for Nurses, 486 S.E.2d 299, 300-301 (Va. 1997) (issue of whether doctor is independent contractor or employee left to jury). Therefore, it is important for a community health center to have insurance, so as to avoid liability from negligence by its medical staff.

B. Volunteers

The issue of whether respondeat superior applies to make an organization liable for the actions of its volunteers has not been addressed in Virginia courts, primarily because the charitable immunity doctrine typically precludes tort-based liability for charitable organizations for volunteers. However, if any of the above requirements for the charitable immunity doctrine are somehow not met, the liability for negligent acts by a volunteer will generally be transferred to the organization for which that volunteer is working, as long as the court considers the charity to have sufficient control over the actions of the volunteer. See, e.g., Beul v. ASSE Intern., Inc., 223 F.3d 441, 444-5 (7th Cir. 2000) (holding that, if a volunteer host family for an exchange student is liable for sexual misconduct, the organization that directed the family to host the student may be held liable through respondeat superior, because the liability of a "master" for the acts of a "servant" may extend to situations where the servant is not an employee, provided that he is acting in a similar role), citing Restatement (Second) of Agency § 225 (1998). In Beul, the only direction that the family received was to host the family, so the standard of determining who is a "servant" is loose. See id. Therefore, if Virginia applied to rule commonly followed in other states, respondeat superior would also apply for volunteer community health workers.

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