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COMMUNITY BASED HEALTH CARE

Lewis & Kappes provides complete and comprehensive legal services to community based health care organizations, boards of directors, and medical and service providers.

FEDERAL VOLUNTEER PROTECTION ACT

Purpose

The Federal Volunteer Protection Act (Act) was enacted into law by the United States Congress on June 18, 1997. The purpose of the Act is to limit the liability of volunteers serving public and private nonprofit organizations and governmental agencies.

Preemption and Application to States

The Act preempts the laws of any State to the extent that a State's laws are inconsistent with the Act. The Act does not preempt the laws of a State where the State's laws afford volunteers more protection or if the State enacts a statute declaring that the Act will not apply in liability cases where both parties to a dispute are citizens of the State. Indiana has not enacted a statute declaring the Act void in actions between two State citizens.

Who is a Volunteer

For the purpose of the Act, a volunteer is anyone, including officers, directors, trustees and service volunteers, who performs services for a nonprofit organization and who does not receive compensation, or any other thing of value in lieu of compensation, in excess of \$500 per year.

Limitation on Liability for Volunteers

The Act generally provides a complete defense to a cause of action, meaning the volunteer would have no liability for harm caused by an act or omission, when the following four conditions are satisfied:

1. the volunteer was acting within the scope of the volunteer's responsibilities within the organization at the time of the act or omission;
2. the volunteer is properly licensed, certified, or authorized by the appropriate authorities of the State for the activities taken, if such authorization is appropriate or required;

3. the harm was not the result of the volunteer's willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the harmed individual; and
4. the harm was not caused by the volunteer's operation of a vehicle, vessel, or aircraft where the state has required an operator's license and insurance.

The Act does not protect volunteers from lawsuits filed against them by the organizations they volunteer for. In addition, the Act does not prohibit suits against an organization for harm caused by a volunteer.

The Act also discusses noneconomic losses, or losses involving physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, injury to one's reputation, etc., and punitive damages. A volunteer who does not meet the criteria for coverage under the Act but whose actions are still within the scope of his or her responsibilities is only liable for noneconomic damages to the extent of his or her percentage of fault for the harm. In addition, punitive damages may not be awarded against a volunteer unless the plaintiff has established by clear and convincing evidence that the harm was a result of the volunteer's willful or criminal misconduct, or a conscious indifference to the rights or safety of the individual harmed. The Act does not mention how economic losses are determined for volunteers who do not meet the criteria for coverage but whose actions are still within the scope of his or her responsibilities.

Actions Not Covered by the Act

The Act does not apply to any misconduct by a volunteer that:

1. constitutes a crime of violence or act of international terrorism for which the volunteer has been convicted;
2. constitutes a hate crime;
3. involves a sexual offense as defined by state law for which the volunteer has been convicted;
4. involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or
5. was committed while the volunteer was under the influence of drugs or alcohol.

Additional Considerations

It is important to consider the fact that the Act does not shield volunteers from the time and expense of defending a law suit even in cases where the Act ultimately bars a judgment against the volunteer.

If we can provide you or your organization with additional information or assistance, please contact one of our community based health care attorneys directly at:

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