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Ohio Sub.H.B. 606 – COVID-Related Qualified Immunity

Adam M. Galat, Partner | agalat@shumaker.com | 419.321.1385

After various versions of proposed COVID-related immunity bills circulated for months through the Ohio Statehouse, on September 14, 2020, Governor DeWine signed Ohio Sub.H.B. 606 into law. H.B. 606 provides expansive but qualified immunity to Ohio individual and institutional health care providers, for-profit businesses, nonprofits, schools, government entities, religious entities, state institutions of higher education, and others. Once the bill goes into effect, it will apply retroactively to March 9, 2020 – the date Governor DeWine declared a state of emergency due to COVID – and will continue through September 30, 2021, unless extended further.

The main components of H.B. 606 are contained within Sections 1 and 2. Section 1 covers health care providers, while Section 2 applies more broadly to Ohio businesses, schools, and others. The salient points of each section are described below.

For health care providers, Section 1 expands upon the pre-COVID immunity already conferred within existing R.C. 2305.2311. Those pre-COVID immunities were more limited in nature and scope and are superseded by H.B. 606.

Section 1 confers immunity from civil liability upon a broad array of health care providers, including hospitals, urgent care facilities, labs, adult daycare centers, developmental disability facilities, imaging centers, rehab facilities, federally qualified health clinics, temporary health care sites, and long-term care facilities (e.g., skilled nursing facilities, residential care facilities, and assisted living). The immunity covers the provision of these provider's health care services, first-aid treatment, and other emergency services that result from, or are provided in response to COVID, unless such provision of services constitutes a "reckless disregard for the consequences so as to affect the life or health of the patient or intentional misconduct or willful or wanton misconduct[.]" (Section 1, B(1)-(2)).

For health care providers, recklessness is defined as "conduct by which, with heedless indifference to the consequences, the health care provider disregards a substantial and unjustifiable risk that the health care provider's conduct is likely to cause, at the time those services or that treatment or care were rendered, an unreasonable risk of injury, death, or loss to person or property." (Section 1, A(42)).

Beyond that, Section 1 also confers immunity from professional disciplinary actions, except when a provider's conduct amounts to gross negligence. (Section 1, B(1), B(3)).

Section 1 also addresses potential adverse health care outcomes related to Ohio's temporary postponement of elective surgeries and other procedures by providing immunity from professional discipline and civil liability allegedly arising from such postponement. (Section 1, B(4)).

According to Section 1, providers are not afforded immunity for actions taken outside their "skills, education, and training," unless such actions are taken "in good faith and in response to a lack of resources caused by a disaster or emergency." (Section 1, C(3)).

Section 2 of H.B. 606 applies more broadly to other areas of Ohio's economy by conferring immunity from civil liability upon any "person," including, without limitation, a school, for-profit entity, nonprofit entity, government entity, religious entity, and/or state institution of higher education, for allegations concerning the exposure to, transmission of, or contraction of COVID, unless such exposure, transmission, or contraction was "by reckless conduct or intentional misconduct or willful or wanton misconduct[.]" (Section 2, A).

Section 2 states that government orders, recommendations, and guidelines do not create new duties of care, causes of action, or substantive rights. Section 2 even goes a step further by establishing that any such orders, recommendations, and guidelines are presumed inadmissible as evidence concerning such duties of care, causes of action, or substantive rights. (Section 2, B).

As it pertains to Section 2, the term "reckless conduct" means conduct taken "with heedless indifference to the consequences," where someone disregards a "substantial and unjustifiable risk" that is "likely to cause" or "likely to result in" exposure to, transmission of, or contraction of the COVID viruses or mutations thereof. (Section 2, D(3)).

H.B. 606 also prohibits class action lawsuits in circumstances where the immunities of Sections 1 and 2 do not apply. (Section 1(D), Section 2(C)).

The practical effects of H.B. 606 are already being seen. See *Lanzo v. Generations Behavioral Health*, Trumbull County Common Pleas Case No. 2020-CV-677. That case presented allegations of wrongful death by the surviving spouse of Raymond Lanzo, who had been employed as an LPN by Generations Behavioral Health during the COVID pandemic. In that case, the plaintiff alleged that the defendant failed to comply with Governor DeWine's order and thereby failed to keep Mr. Lanzo safe, resulting in his tragic death from COVID-19 Pneumonia. That case was recently dismissed without prejudice. While the terms surrounding the dismissal are not publicly available, it is reasonable to assume that H.B. 606 played some factor in the plaintiff's decision to dismiss.

While H.B. 606 will now be the law in the State of Ohio, it will be important to monitor the ways in which Ohio courts apply the legal standards of recklessness, intentional misconduct, and/or willful or wanton misconduct as it relates to the COVID pandemic.

If you have questions, please contact Adam Galat at 419.321.1385 or agalat@shumaker.com.

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