



TORT LIABILITY Issue Brief

Federal and Michigan Laws Protecting Individuals from Tort Liability

Tort Liability.

A "tort" is an injury to another person or to property, which is compensable under the law. Tort liability may arise from failure to exercise the care that a reasonably prudent person would exercise under like circumstances (negligence) or from intentional wrongdoing (intentional tort). Malpractice is a type of negligence, where a health care or other professional fails to follow generally accepted professional standards, causing injury. To recover, a plaintiff must prove that the defendant had a duty to the plaintiff, the defendant breached that duty by failing to conform to the required standard of conduct, the defendant's negligent conduct was the cause of the harm to the plaintiff, and the plaintiff was, in fact, harmed or damaged.

Protection from Tort Liability for Care Provided During an Emergency or Disaster.

During an emergency or disaster, health care may be provided under stressful conditions with potential shortages of resources. Both paid and volunteer health professionals involved in emergency response activities may be concerned about potential liability for their actions or omissions. Negligence claims consider the circumstances under which care was rendered. Additionally, several laws protect individuals from liability for negligence that results in harm to another. Which laws apply depend on several factors, including:

- Is the individual paid or an uncompensated volunteer?
- For whom does the individual volunteer or work?
- Is the individual a government employee or volunteer?
- Where (location) is the individual a volunteer or employee?
- What kind of services is the individual providing?
- What are the circumstances of the work or volunteering?
- Has an emergency or disaster been declared?



Below is a table of laws that might apply to protect individuals from liability for negligence, depending on the factors set out above. The table includes citations to enable individuals or their attorneys to review the actual laws. This list is not intended to be exhaustive; there may be additional laws that protect specific types of volunteers or apply to specific situations.

Federal Laws		
	CITATION	COVERAGE
Federal Volunteer Protection Act	42 USC §14501 et seq.	<p>Covers volunteers of nonprofit organizations and governmental entities. Pre-empts state law, which means state law cannot provide less protection for individuals covered by the Federal Volunteer Protection Act.</p> <p>Does not protect against harm caused by willful or criminal misconduct, gross negligence,¹ reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed. Does not cover acts committed by the volunteer while intoxicated or operating a motor vehicle. Does not cover organizational entities of any type or persons volunteering at private businesses. Does not require a declared emergency for its protections to apply.</p>
Public Readiness and Emergency Preparedness (PREP) Act	42 USC §247d-6d	<p>Provides broad and strong protection to individuals and entities that are engaged in activities related to the use of covered pharmaceutical countermeasures. This includes, for example, entities and individuals involved with manufacturing, labeling, distributing, packaging, marketing, selling, purchasing, donating, dispensing, prescribing, administering, licensing, or using of such countermeasures. Requires a PREP Act Declaration from the Secretary of the Department of Health & Human Services. To be protected from liability, would need to act consistent with the terms of the PREP Act Declaration. PREP Act Declarations to date can be found at http://www.phe.gov/Preparedness/legal/prepact/Pages/default.aspx.</p> <p>Protection under a PREP Act declaration pre-empts state law, which means state law cannot provide less protection for entities or individuals covered by a PREP Act declaration.</p> <p>Permits a lawsuit to be filed in the U.S. District Court for the District of Columbia for “willful misconduct”, which the plaintiff must prove by “clear and convincing evidence.”</p>

¹ Most laws do not protect against “gross negligence” that is the proximate cause of injury. “Gross negligence” is often defined in the specific law. Generally, it is conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Michigan Laws

	CITATION	COVERAGE
General governmental immunity	MCL 691.1407	Covers state and local government employees and volunteers when they are engaged in governmental functions and acting within the scope of their responsibility. Does not cover individuals providing medical care or treatment, with limited exceptions. However, other laws (such as the Federal Volunteer Protection Act, the PREP Act, Michigan's Emergency Management Act, or the Michigan Public Health Code) may provide protection from liability. Does not protect from "gross negligence."
Legal services & indemnity for governmental employees and volunteers	MCL 691.1408	A governmental agency may provide the services of an attorney to a governmental employee or volunteer who is sued for negligence for actions on behalf of the governmental agency while acting within the scope of their responsibility and may pay damages or indemnify the employee or volunteer for any award of damages.
Emergency care provided at scene of emergency	MCL 691.1501	Covers physicians, physician assistants, RNs, and LPNs who in good faith render uncompensated care at the scene of an emergency. Does not protect against gross negligence or willful or wanton misconduct.
Emergency care provided within a licensed medical care facility	MCL 691.1502	Covers the following health professionals who in good faith respond to a life threatening emergency or respond to a request for emergency assistance in a life threatening emergency within a hospital or other licensed medical care facility: physician, physician's assistant, dentist, podiatrist, intern, resident, RN, LPN, registered physical therapist, clinical laboratory technologist, inhalation therapist, certified registered nurse anesthetist, x-ray technician, and paramedic. Does not apply if an individual's actual hospital duty requires a response to the emergency situation or a physician-patient, physician assistant-patient, or nurse-patient relationship existed before the emergency. Does not protect against gross negligence or willful and wanton misconduct.
Immunity of persons rendering CPR	MCL 691.1504	Covers an individual who, having no duty to do so, in good faith renders cardiopulmonary resuscitation to another individual. Does not protect against gross negligence or willful and wanton misconduct.
Immunity of persons using defibrillator	MCL 691.1504	Covers an individual who, having no duty to do so, in good faith voluntarily renders emergency services to another individual using an automated external defibrillator. Does not protect against gross negligence or willful and wanton misconduct.
Immunity of public health representatives	MCL 333.2228 ; MCL 333.2465	This section of the Public Health Code covers employees and representatives of the Michigan Department of Community Health or a local health department for damages sustained in the performance of departmental functions. Includes unpaid representatives. Does not protect against wanton or willful misconduct.



	CITATION	COVERAGE
Immunity of participants in mass immunization program	MCL 333.9203	When the Department of Community Health approves a mass immunization program, this section of the Public Health Code protects health personnel employed by a governmental entity who are required to participate in the program, or any other individual authorized by the director or a local health officer to participate in the program without compensation, from liability for damages resulting from an act or omission causing illness, reaction, or adverse effect from the use of a drug or vaccine in the program. Does not protect against gross negligence or willful and wanton misconduct. Does not exempt a drug manufacturer from liability for a drug or vaccine used in the program.
Immunity of medical first responders	MCL 333.20965	This section of the Public Health Code protects EMTs, paramedics, other first responders, medical control directors and others from liability for injuries resulting from an act or omission while providing services to a patient outside a hospital. See statute for full list of covered persons and activities. Does not protect against gross negligence or willful misconduct.
Immunity of volunteer health care professionals	MCL 333.16277	This section of the Public Health Code covers uncompensated volunteer health professionals who provide patient nonemergency care through facilities that treat uninsured/underinsured. Does not protect against gross negligence, willful and wanton misconduct, or acts or omissions intended to injure the patient.
Immunity of disaster relief workers	MCL 30.411	This section of the Emergency Management Act covers both governmental and nongovernmental workers and volunteers who are authorized disaster relief workers. Applies only if the Governor has declared a state of disaster or emergency. Does not protect against willful or gross negligence.
Immunity of disaster relief workers deployed to other states	MCL 3.1001	Under the Interstate Emergency Management Assistance Compact (EMAC), state government employees who are deployed by the state to another state under EMAC, are considered agents of the requesting state for tort liability and immunity purposes. Because EMAC only applies to officers and employees of a state, immunity protections will not automatically extend to volunteers who provide services outside of EMAC. Volunteers would have to be made temporary state government employees to be assured of coverage under EMAC.

(Updated February 2015)

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.

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