



On March 21, Governor J.B. Pritzker requested that retired physicians consider returning to work to assist with the rising number of COVID-19 cases in Illinois. While some physicians maintain an active license when they retire, others do not. For those who need to reapply for an active license, Governor Pritzker has stated that their processing will be expedited. Additionally, any medical license that is normally due to expire in July will be automatically extended through the end of September.

On March 23, the [Illinois Department of Financial and Professional Regulation clarified](#) that physicians

whose license is expired or inactive, for less than three years, can restore their license at a reduced fee of \$0.00 and the continuing medical education requirements will be waived. Once restored, they can work under the direction of the Illinois Emergency Management Agency (IEMA) and the Illinois Department of Public Health (IDPH), or in a long-term care facility, hospital, or federally qualified health center. Those interested in volunteering can register with [Illinois Helps](#).

**This raises related questions regarding liability for those physicians coming back into practice. There are a few scenarios to consider:**

### Executive Order 2020-19

- Issued by Governor Pritzker on April 1, the order states that certain health care facilities, health care professionals, and health care volunteers are immune from civil liability for any injury or death alleged to have been caused by an act or omission by the facility, professional, or volunteer while they were engaged in the course of rendering assistance to the State in response to the COVID-19 outbreak, unless the injury was caused by gross negligence or willful misconduct. For a detailed summary of the Executive Order, please [click here](#)

### Working under the direction of the IEMA or IDPH

- The Illinois Emergency Management Agency Act states that volunteers who are working under the direction of an emergency services and disaster agency accredited by the Illinois Emergency Management Agency, pursuant to a plan approved by the Illinois Emergency Management Agency (i) during a disaster declared by the Governor, or (ii) in circumstances otherwise expressly approved by the Illinois Emergency Management Agency, shall be deemed exclusively employees of the State for purposes of the Court of Claims Act. (20 ILCS 3305/10(k))
- Additionally, such employees engaged in any emergency management response or recovery activities, while complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act, are not liable for the death of or any injury to persons, or damage to property, as a result of such activity (20 ILCS 3305/15)

### Working in a free medical clinic

- The Illinois Good Samaritan Act provides that when a health care professional provides care or services **without fee or compensation** to an indigent patient of a free medical clinic, then that health care professional “shall not be liable for civil damages as a result of his or her acts or omissions in providing that medical treatment, except for willful or wanton misconduct.” Free medical clinics include organized, community-based programs providing medical care to individuals unable to pay for it and where the care provided does not include the use of general anesthesia or an overnight stay. Clinics without walls, also known as alternative medical clinics, are considered free medical clinics (745 ILCS 49/30; 745 ILCS 49/30.5).



## Providing emergency care

- Any licensed physician who, in good faith, provides emergency care without fee to a person shall not, as a result of his or her acts or omissions, except willful or wanton misconduct on the part of the person, be liable for civil damages (745 ILCS 49/25)

## Volunteering to provide disaster relief health care services

- A physician who provides health care services as a disaster relief volunteer – in good faith and without fee or compensation – shall not be liable to the recipient for civil damages (745 ILCS 49/68)
  - > This immunity applies to those volunteers who provide health care services in relief of an epidemic, pandemic, earthquake, hurricane, tornado, nuclear attack, or terrorist attack.
  - > The immunity applies to health care services provided during the disaster or within 10 days after the end of it.
  - > This immunity does not apply to health care facilities, including hospitals, nor to any health care practitioner who is not a disaster relief volunteer providing services in a health care facility.

## Volunteering for a nonprofit organization or government entity

- Individuals who perform services for a nonprofit organization or government entity, and who do not receive compensation or anything of value in lieu of compensation in excess of \$500 per year are immune from liability for common negligence (42 USC 14503)

## Using countermeasures against diseases

- The Secretary of Health and Human Services, as authorized by the Public Readiness and Emergency Preparedness Act (PREP Act) issued a declaration providing liability immunity to covered persons, including physicians, against any claim of loss arising out of or relating to the manufacture, distribution or use of certain medical countermeasures due to a health emergency. To qualify for immunity you need to be:
  - > A “qualified person,” which includes individuals who prescribe, administer, deliver, distribute or dispense a covered countermeasure, and their officials, agents, employees, contractors and volunteers;
  - > Engaged in a “recommended activity,” which includes the manufacture, testing, development, distribution, administration, and use of a covered countermeasure;
    - “Covered countermeasures” include any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom, or any device used in the administration of any such product, and all components and constituent materials of any such product.
  - > Acting pursuant to an agreement, such as a federal contract, cooperative agreement, or memorandum of understanding, or as directed in accordance with the response of a public health agency or other applicable government agency (42 USC 247d-6d; 42 USC 247d-6e).

## Working in a medical practice for a fee

- Unless an exception applies, physicians who receive compensation for working in a medical practice should obtain medical professional liability coverage for their potential exposure to claims

Although the above good faith protections and immunities exist, they will be applied depending on the exact circumstances. Should physicians providing services above have questions, they should contact their professional liability carrier to discuss whether there is coverage available for professional services provided as a volunteer. This type of coverage, where available, is generally offered at a nominal cost. Similarly, practices that are adding physician volunteers to their workforce should contact their professional liability carrier to inform them of the changes.