

## MAY 8, 2020 EXECUTIVE ORDER

On May 8, 2020, Governor Ivey signed a supplemental Executive Order providing liability protections for health care providers for certain health care services that are affected by the COVID-19 pandemic or the State's response to the pandemic and from other COVID-19 related claims. To summarize, the Executive Order:

- Provides immunity for treatment that resulted from, was negatively affected by, or was done in response to the COVID-19 pandemic or the State's response to the pandemic unless proven by clear and convincing evidence that a provider acted with wanton, reckless, willful, or intentional misconduct—i.e. a standard higher than simple negligence.
- Provides immunity for COVID-19 related claims, including, but not limited to, the contraction or alleged exposure to COVID-19 on the premises of a health care provider and claims from a provider's efforts to prevent or delay the spread of COVID-19 unless proven by clear and convincing evidence that the provider acted with wanton, reckless, willful, or intentional misconduct.
- Provides immunity to any university or public institution of higher education in the State of Alabama for the "design, manufacture, distribution, allowance, use, or nonuse" of PPE and the "design or manufacture of testing materials done under the direction of ADPH and in accordance with ADPH's specifications unless proven by clear and convincing evidence that such act was done with wanton, reckless, willful, or intentional misconduct.
- Prohibits claims for mental anguish, emotional distress or punitive damages in a personal injury case where there is no "serious physical injury"—i.e. a death or injury that requires either in-patient hospitalization of at least 48 hours, permanent impairment of a bodily function, or permanent damage to a body structure. Therefore, in situations where liability could attach and there is no "serious physical injury," the provider would only be liable for economic, compensatory damages in a personal injury case.
- Allows claims for punitive damages in a wrongful death case where liability could attach.
- Operates in conjunction with any other applicable Alabama Executive Orders and State or Federal laws pertinent to the COVID-19 pandemic.
- Does not affect the right of any person to receive or claim benefits otherwise available under the Workers' Compensation Act.

- Applies retroactively to March 13, 2020—the date the Governor declared the State public health emergency—and would last until the State COVID-19 public health emergency is terminated.
- Applies retroactively for COVID-19 related negligence, premises liability, or any non-wanton, non-willful or non-intentional civil claims predating March 13, 2020 unless proven by clear and convincing evidence that the provider did not reasonably attempt to comply with the then applicable public health guidance.

\*No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.