WEST VIRGINIA CODE: §55-7H-1

§55-7H-1. Findings and declaration of public purpose.

The Legislature finds and declares:

That the citizens of this state have been and should continue to be well served by physicians and dentists educated and trained at the Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia University School of Medicine and the West Virginia University School of Dentistry;

That the state's medical and dental schools play a vital role in ensuring an adequate supply of qualified and trained physicians throughout the state;

That the education, training and research provided at the state's medical and dental schools and state medical school are an essential governmental function in which the state has a substantial and compelling interest;

That the provision of clinical services to patients by faculty members,, residents, fellows and students of the state's medical and dental schools and state medical school, is an inseparable component of the aforementioned education, training and research;

That the provision of the clinical services significantly contributes to the ongoing quality, effectiveness and scope of the state's health care delivery system;

That the provision of the clinical services also raises the public profile and reputation of the respective institutions both regionally and nationally, thereby facilitating the recruitment of talented faculty, residents, fellows and students to their programs of study;

That the provision of the clinical services generates additional revenues needed to fund faculty salaries and other costs associated with the overall operation of the state medical school and state's medical and dental schools;

That the continued availability of the revenues to the state medical school and state's medical and dental schools is necessary to their ongoing operation and delivery of the benefits described above;

That the continued availability of the revenues is compromised by the cost of medical professional liability insurance, the cost of defending medical professional liability claims, and the cost of compensating patients who suffer medical injury or death;

That the state concurrently has an interest in providing a system that makes available adequate and fair compensation to those individual patients who suffer medical injury or death;

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That it is the duty and responsibility of the Legislature to balance the rights of individual patients to obtain adequate and fair compensation, with the substantial and compelling state interests set forth herein supporting the need for a financially viable system of medical and dental schools;

That, in balancing these important state interests, the Legislature acknowledges the sovereign immunity set forth in the West Virginia Constitution under Article VI, Section 35, to prevent the diversion of state moneys from legislatively appropriated purposes;

That, in conjunction with the provision of clinical services to patients by faculty members, , residents, fellows and students of the state's medical and dental schools, or state medical school, it is a common practice both here and in other states to create one or more clinical practice plans as nonprofit corporations;

That the clinical practice plans, among other things, administratively support clinical activities by holding real and personal property, offering personnel and financial management, providing billing and collection for services rendered, and disbursing excess revenues back to the respective medical and dental schools;

That the clinical practice plans become integrated with their respective state medical school and state's medical and dental schools and exclusively serve the interests of these schools and their faculty;

That any moneys the clinical practice plans expend for the defense, settlement, and satisfaction of medical professional liability claims inevitably result in a shortfall of funds available to the medical and dental schools for faculty compensation and other operational purposes, thereby undermining the sovereign immunity otherwise granted to state institutions by the West Virginia Constitution;

That it is therefore reasonable and appropriate for the Legislature to provide immunity from civil liability to clinical practice plans and their respective directors, officers, employees and agents given the substantial and compelling state interests being served; and

That it is further reasonable and appropriate to require the state's medical and dental schools to maintain a level of medical professional liability insurance to adequately and fairly compensate patients who suffer medical injuries or death.

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