

From: LSMS Public Affairs <chris@lsms.org>
Sent: Tuesday, March 24, 2020 4:43 PM
Subject: LSMS - COVID-19 (3/24/2020) Bulletin #5



LSMS and Other Groups Urge Congress to Support Healthcare Providers

LSMS has continued to work with national organizations and Congressional leaders to have physician and medical practice sustaining provisions included in additional stimulus packages being considered in Congress. We've specifically asked that legislation include support that will sustain physicians and their practices during this unprecedented national emergency through tax relief, no-interest loans, direct payments, payment for virtual visits including phone calls, and other measures.

To read the full letter, please [click here](#)

Louisiana Department of Health (LDH) Emergency Telemedicine

[Click here](#) to view the Justification of Promulgation of Emergency Rule LAC 50:XXVII.505 Emergency Telemedicine.

Louisiana State Board of Medical Examiners (LSBME) Update

Drs. Roderick Clark and Vincent Culotta sent a notice to all Louisiana licensee's re: orders from Dr James Guidry, State Health Officer, ordering the halt to elective procedures last week and again this past Sunday. Drs. Clark and Culotta state "This was done to not only to free up hospital beds, but was primarily to improve the availability of limited resources which include PPE and ventilators as well as preventing the well patient's in our waiting rooms from contracting covid19 infections. The LSBME will have a zero tolerance of licensees violating these LDH, State Health Officer, orders. Complaints of violation of Dr Guidry's orders will be investigated and physicians will subject to possible disciplinary action."

[Click here](#) to read the notice.

Alternate Standard of Care for Healthcare Providers

During Declared Emergencies

The 2003 Louisiana Health Emergency Powers Act specifically provides that, "during a statewide public health emergency," such as that [declared](#) by Governor John Bel Edwards on March 11 in response to the novel coronavirus, "any health care providers shall not be civilly liable for causing the death of, or injury to, any person...except in the case of gross negligence or willful misconduct." [La. R.S. 29:771\(B\)\(2\)\(c\)](#). Although a 2014 case held that this alternate standard of care was applicable during a declared statewide public health emergency even if the healthcare services rendered were in no way related to, or necessitated by, the declared emergency (see *Lejeune v. Steck*, 13-1017 (La. App. 5 Cir. 5/21/14), 138 So.3d 1280), the Louisiana Good Samaritan law includes a 2008 statute titled "[m]edical services during declared state of emergency; limitation of liability," which provides:

- Medical personnel (including physicians and surgeons licensed to practice in Louisiana) who, in good faith and regardless of compensation, render or fail to render emergency care, health care services or first aid during a declared state of emergency **when the state of emergency affects the rendering of medical care** shall not be liable for any civil damages or injury as a result of any act or omission related to the rendering of or failure to render services, unless the damages or injury was caused by gross negligence or willful and wanton misconduct.

[La. R.S. 37:1731.1](#). In any event, it is clear that during a declared statewide public health emergency, at a minimum, healthcare providers who render (or fail to render) healthcare services related to, or necessitated by, the declared emergency are immune from liability in providing (or failing to provide) such healthcare services except in the case of gross negligence or willful and wanton misconduct. In addressing what constitutes "gross negligence" and "willful and wanton misconduct," the Louisiana Supreme Court has noted that "gross negligence" has been defined as the "want of even slight care and diligence," the "want of that diligence which even careless men are accustomed to exercise," the "entire absence of care," and an "extreme departure from ordinary care or the want of even scant care." The Louisiana Supreme Court has also noted that "[t]here is often no clear distinction between...[willful, wanton, or reckless] conduct and 'gross' negligence, and the two have tended to merge and take on the same meaning." *Rabalais v. Nash*, 06-0999 (La. 3/9/07), 952 So.2d 653, 658.

Resources for Pediatric Physicians and Providers from Children's Hospital New Orleans LCMC Health

Amanda B. Jackson, MD, FAAP, FABPM Vice President Ambulatory Services and Medical Director Primary Care at Children's Hospital New Orleans LCMC Health reached out to the LSMS to share valuable resources for providers in the state dealing with these unprecedented times healing the citizens of Louisiana. Resources are available below and also included on the LSMS resource center for physicians located [here](#).

- One-pager: Resources for Parents & Families - [click here](#)
 - One-pager: Exposure Guidelines for Children - [click here](#)
 - One-pager: Talking to Children When Their World is Upside Down - [click here](#)
 - One-pager: Resources for Pediatricians - [click here](#)
-

Louisiana Board of Pharmacy Emergency Rule for

Chloroquine and Hydroxychloroquine Rescinded

The Board issued an Emergency Rule on March 22 to limit the dispensing of chloroquine and hydroxychloroquine by pharmacists when those drugs were prescribed for the COVID-19 outbreak. The rule was issued in response to reports from multiple hospitals unable to obtain adequate supplies of those two drugs to treat their patients suffering from confirmed cases. The Board had also received reports of hoarding and inappropriate use.

While the drug manufacturers had reported their increased manufacturing, they also estimated relief of the shortage in about six to eight weeks. The Board determined it appropriate to limit the dispensing of those two drugs when prescribed for the COVID-19 outbreak for a limited period of time until the supply chain could be replenished.

With new information about a significant donation and distribution of those drugs from the manufacturer, along with the removal of the drug from FDA's drug shortage list, it appears the supply chain issue for those drugs has been resolved.

Since the basis for the rule appears to be resolved, the Board has determined it appropriate to **rescind the Emergency Rule, effective immediately**.

As each pharmacy may experience limited allocations from their distributor, we encourage each pharmacy to exercise their professional discretion to dispense limited quantities of the drugs as may be appropriate.

[Click here](#) to view the official memo from the Board.



President Signs Family First Coronavirus Response Act

In an effort to provide our members with timely and accurate information concerning federal, state and local laws relative to COVID-19, your LSMS has partnered with Butler Snow LLP, including [W. Scott Keaty](#), [Jennifer A. Hataway](#), and [Joshua G. McDiarmid](#), attorneys in Butler Snow LLP's health law, employment law, and commercial litigation practice groups.

Recently, President Trump signed into law an [economic stimulus bill](#) aimed at curbing the impact of COVID-19 on businesses and individuals. Last week, the U.S. House of Representatives unanimously passed a [corrected version](#) of this COVID-19 response bill, [H.R. 6201](#), referred to as the Families First Coronavirus Response Act. On March 18, the U.S. Senate overwhelmingly passed the [same bill](#). The Act will go into effect no later than 15 days after the date of enactment.

The Act addresses five distinct areas of relief – 1) Free Coronavirus Testing; 2) Food Assistance; 3) Medicaid FMAP rates; 4) Unemployment Aid; and 5) Paid Medical and Sick Leave. The Paid Medical and Sick Leave provisions are further described herein.

[Click here](#) to read the full alert from Butler Snow LLP for LSMS members.

**To all of those who continue to walk fearlessly forward,
doing everything possible to keep Louisiana safe and
healthy, we thank you.**

LSMS Resources

The LSMS COVID-19 resources are not behind a members-only firewall and we encourage our members to share our information, newsletter, and links with your peers as it is to everyone's advantage to have all pertinent details.

LSMS has made a comprehensive list of information available on its website, [click here](#).

Please recognize it's a work in progress that we will continue to update as information becomes available. Again, at the bottom is a form for you to share information with us or ask questions to which we can help get answers.