

# CHICAGO LAWYER

CLIFFORD'S NOTES

## COVID CHAOS STILL LINGERING IN THE COURTS

Illinois high court holds Pritzker's executive order inclusive of all types of suits

By **BOB CLIFFORD**

**C**COVID-19 continues to rear its ugly head in the courts. The latest Illinois Supreme Court decision is being questioned as an overly broad interpretation of an executive order signed by Gov. J.B. Pritzker, which should have provided only limited immunity for some negligence claims regarding those who died from COVID.

The families of several residents at Geneva Nursing and Rehabilitation Center LLC brought wrongful death suits against the facility. They alleged the facility negligently and willfully failed to control the spread of COVID-19 within the facility, and this failure caused the deaths of their family members living there. Specifically, they argued the defendant proximately caused the deaths of the residents when it allegedly failed to properly quarantine symptomatic staff members and residents. They also alleged Geneva failed to implement effective procedures for maintaining the hygiene and equipment.

The parties presented a certified question on appeal whether the executive order provides "blanket immunity," which Kane County Circuit Judge Susan Clancy Boles certified for interlocutory review by the Second District Appellate Court. Plaintiff lawyers argued the immunity was intended to apply only in the moment a nursing home was providing the state-specific COVID support (i.e., adding beds, acquiring personal protective equipment) and only for COVID-related deaths.

Pritzker clearly carved out immunity exceptions for any provider's blatant or gross misconduct, as did several other governors who issued similar orders across the country at that time. However, the Illinois high court held the remainder of the language in the executive order was to be inclusive of all kinds of suits.

Defendant Bria Health Services, which owns 15 nursing homes in Illinois and has the seventh-largest nursing home population in the U.S., argued it was immune from liability

for negligence. Bria cited Pritzker's April 2020 Executive Order No. 2020-19, which provided tort immunity to nursing homes and health care facilities under certain circumstances. The order expired May 12, 2020. The next day, Pritzker clarified the scope of the immunity in Executive Order 2020-37, making it clear the immunity for negligence was applicable only if it was an act that occurred in connection with the diagnosis, transmission or treatment of COVID-19. The second order expired June 27, 2020.

The Second District Appellate Court agreed with the defendant. The high court then delivered a broad interpretation of a state-level COVID negligence immunity for health-care facilities. It found that a nursing home does not have to face negligence claims if it was "rendering assistance to the state."

The court found the April 2020 executive order made it clear that providers should face civil suits only for willful misconduct during the pandemic's earliest days. "The executive order explicitly invokes the statutory immunity [derived from the Illinois Emergency Management Agency Act] to make clear that, during the Governor's disaster proclamation, except for willful misconduct, a health care facility is immune from ordinary negligence that occurred while the facility was 'rendering assistance' to the State in response to the COVID-19 pandemic," Justice Lisa Holder White wrote in a 6-1 majority opinion. *James v. Geneva Nursing and Rehabilitation Center, LLC*, 2024 IL 130042 (Oct. 18, 2024).

Holder White reiterated the appellate court's finding that the circuit court's certified question inappropriately used the phrase "blanket immunity," which could be taken to "erroneously suggest that Bria could be immune from *both* negligence claims and claims of willful misconduct." The court leaned heavily on the plain language in Pritzker's order, which plaintiffs had argued was ambiguous as to when providers could claim immunity for negligence in civil cases.



Justice Joy Cunningham strongly dissented, stating the high court was faced with a narrow legal question of whether health care facilities are immunized for negligent conduct related to the act of providing COVID-19 assistance to the state. Instead, she wrote, "the majority bars recovery for any number of deserving plaintiffs throughout the State, for reasons that have nothing to do with the COVID-19 disaster declaration." Cunningham said that to accept Bria's argument on immunity, the high court would have to read section 21(c) of the Nursing Home Care Act (20 ILCS 3305/21(c)), as meaning that any negligent act that occurs during a disaster is immunized so long as the defendant was rendering assistance to the state at the time.

Cunningham noted the majority was clearly concerned about potential liability for health-care facilities in relation to COVID-19 but cautioned that whether Bria or other health care facilities should ultimately be held liable for any COVID-19 injuries or deaths "is not at issue in this case." In short, Cunningham disagreed with this result "because it cannot be reconciled with the plain meaning of either section 21(c) of the act or Executive Order 2020-19."

The court remanded the combined wrongful death suits back to the state Circuit Court to determine whether Bria was rendering the state COVID assistance at the time the residents became ill and died. [CL](#)

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