

**PROFESSIONAL IMMUNITY VS MALPRACTICE PROTECTION
UNIVERSITY EMPLOYEE PROTECTIONS AGAINST LIABILITY (MALPRACTICE)
STATEMENT ISSUED BY
THE OFFICE OF THE VICE PRESIDENT AND GENERAL COUNSEL**

Definition of Employee

For the purpose of this statement on University employee protections against liability, the term “employee” means any person who is employed in the service of The University of Tennessee and whose compensation is paid by the University through its payroll system.

State Law Claims

State law provides that state employees, including employees of The University of Tennessee, have absolute immunity from liability for acts or omissions within the scope of their employment, unless the acts or omissions are willful, malicious, criminal, or done for personal gain. This immunity means that no state or federal court in Tennessee may enter a judgment against the personal assets of a University employee on state law claims arising out of acts or omissions by the employee unless (1) the acts or omissions were outside the scope of the employee’s employment or (2) the acts or omissions were willful, malicious, criminal, or done for personal gain. Types of state law claims to which this immunity applies include claims for personal injury (including professional malpractice), property loss or damage, and libel and slander (defamation).

This is the language we use when verifying professional immunity for Graduate Medical Education (GME) Residents*:

As a University of Tennessee Resident employee of the State of Tennessee, professional liability coverage for Residents at the University of Tennessee College of Medicine Chattanooga was provided by the Tennessee Claims Commission Act (TCA 9-8-301 et seq.). This Act provides immunity from personal liability for all employees of the State of Tennessee for acts or omissions within the scope of their employment. The effect of this for all Residents for the period of the Act is to shift liability from the State employee to the State itself. Thus, claims arising against the State for acts or omissions by the employee will be handled according to the provisions of the Act (TCA 9-8-301 et seq.). No judgment made by the Claims Commission can exceed the limits of \$300,000 per claimant and \$1,000,000 per incident. There is no insurance company or policy number.

The immunity of state employees under Tennessee law has no mandatory effect in the courts of other states. Whether courts in other states will apply Tennessee’s immunity doctrine is entirely dependent on their willingness to do so as a matter of comity. Generally speaking, if a state has granted immunity to its own employees, the courts of that state will be inclined to recognize the immunity granted by another state.

Federal Law Claims

The immunity of state employees under Tennessee law has no effect in state or federal court actions for violation of the federal constitution or federal statutes. The United States Supreme Court has ruled that states cannot immunize their employees against liability under federal law. Therefore, University employees are subject to personal liability for both compensatory and punitive damages in certain kinds of federal civil rights actions. The most common federal civil rights actions against state employees in their personal capacities are based on alleged violations of the free speech clause of the First Amendment and the equal protection clause (class-based discrimination) and due process clause of the Fourteenth Amendment.

Reimbursement of Judgments and Settlements

In recognition of the fact that state employees may be subject to personal liability in some cases, state law provides that the State Board of Claims will reimburse state employees for actual damages, costs, and attorney fees, up to \$300,000 per plaintiff and \$1,000,000 per occurrence, awarded by judgment or settlement in any case in which the employee's immunity is not sustained. This includes all federal law actions (in which the employee's state law immunity has no effect) and any given state law action in which the employee's immunity is not sustained. In its discretion, the Board of Claims may reimburse the employee for amounts beyond the limits stated in the statute. The Board, however, will make no reimbursement for punitive damages. Prior to any reimbursement, the Board must make an independent determination that the employee was acting within the scope of his or her employment. Even if the Board finds that the employee was acting within the scope of his or her employment, the Board may reduce the reimbursement for any circumstance it finds warranting a reduction (for example, failure of the employee to cooperate fully in defense of the litigation). In addition, the Board may deny reimbursement if the employee or counsel for the employee did not make reasonable efforts to defend the action or if the employee's actions were grossly negligent, willful, malicious, criminal, or done for personal gain.

Representation in Civil Cases

Office of the Vice President and General Counsel

The Office of the Vice President and General Counsel represents the University and University employees sued in their official capacities for acts or omissions within the scope of their employment. In addition, the Attorney General for the State of Tennessee, pursuant to requirements of state law, designates the Office of the Vice President and General Counsel to represent a University employee in his or her personal capacity if the alleged acts or omissions were done within the scope of the employee's employment with the University and if there is no conflict between the positions of the University and the employee.

Before undertaking representation of an employee in his or her personal capacity, the Office of the Vice President and General Counsel, in consultation with the Attorney General, will make an initial assessment of whether any allegations of willful, malicious, or criminal acts or omissions, or acts or omissions done for personal gain, are sufficiently well-founded to warrant declining representation of an employee in his or her personal capacity. In addition, the Office of the Vice President and General Counsel may decline to represent an employee in his or her personal capacity if the employee has acted contrary to advice given by the office.

Private Counsel

If the Office of the Vice President and General Counsel, in consultation with the Attorney General, determines that it cannot represent a University employee in his or her personal capacity in a civil case for acts or omissions within the scope of the employee's employment, state law makes other provisions for representation, except for willful, malicious, or criminal acts or omissions and acts or omissions done for personal gain. The Attorney General has discretion to determine that representation will be provided by (1) attorneys appointed by the Attorney General or (2) by payment of reasonable compensation to private counsel approved by the Attorney General.

Representation in Criminal Cases

State law prohibits the Vice President and General Counsel and the Attorney General from representing or providing representation for a University employee in a criminal action arising out of an act done in the scope of the employee's official duties. If the criminal charge is dismissed with prejudice or if the employee is acquitted at trial or on appeal, the Attorney General will pay all reasonable compensation for the employee's private counsel in the criminal action, as well as court costs or necessary incidental expenses, as determined in the sole discretion of the Attorney General. If the criminal charge is not prosecuted for any other reason, the Attorney General, in his discretion, may pay the reasonable fees of private counsel and necessary incidental expenses and court costs if the Attorney General finds that the employee was acting in the scope of his or her assigned duties under apparent lawful orders or authority.

Instructions to Follow if you receive a summons, are contacted to speak with a -UT attorney, or if you are named in a suit

If you receive a summons and complaint naming you or the University as a defendant in a civil lawsuit arising out of your employment with the University, please follow these instructions:

1. Call the Office of the Vice President and General Counsel immediately.
2. Do not discuss the suit with anyone other than University attorneys, including other defendants who may be named in the suit.
3. Do not talk to the plaintiff about the suit.
4. Do not talk to the plaintiff's attorney.
5. Refer all requests for documents to the University attorney handling the case.
6. Respond to media questions by saying you cannot discuss the suit while it is pending.

Request for Expert Testimony

Residents are not permitted to testify as experts under any circumstances. Requests for expert testimony should be referred either to the Graduate Medical Education Department (for the Chattanooga Campus call 423.778.7442) or directly to the Office of the UT General Counsel Office located in Knoxville.

Contact Information

For verification of immunity via the State Claims Commission and an official claims history during residency or fellowship, contact the Office of the General Counsel, University of Tennessee, in Knoxville (Diana Jo Garner, Paralegal) at 865-974-6583 and she will get you in touch with one of the attorneys in Knoxville or Memphis to advise you.

Mailing address:

University of Tennessee
Office of the General Counsel
Diana Jo Garner, Paralegal
719 Andy Holt Tower
1331 Circle Park
Knoxville, TN 37996-0174

*The term “Resident” refers to both Resident and Fellow trainees.

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