No. 130042

In the
Supreme Court of Illinois

DONALD JAMES, as Executor of the Estate of LUCILLE HELEN JAMES, Deceased,

MARK R. DONESKE, as Executor of the Estate of ROSE H. DONESKE, Deceased,

FRANCES G. DeFRANCESCO, as Executor of the Estate of JACK DeFRANCESCO, Deceased,

PATRICIA VELCICH, as Executor of the Estate of MARION MAY HEOTIS, Deceased,

FAITH HEIMBRODT, as Independent Administrator of the Estate of CAROL ORLANDO, Deceased,

Plaintiffs-Appellants,

v.

GENEVA NURSING AND REHABILITATION CENTER, LLC d/b/a BRIA HEALTH SERVICES OF GENEVA,

Defendant-Appellee.

On Appeal from the Appellate Court of Illinois, Second District, No. 2-22-0180.
There Heard on Appeal from the Circuit Court of the Sixteenth Judicial Circuit,
Kane County, Illinois, Nos. 2020 L 247, 2020 L 259, 2020 L 260, 2020 L 264 & 2020 L 273.
The Honorable **Susan Boles**, Judge Presiding.

AMICUS CURIAE BRIEF OF THE ILLINOIS TRIAL LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFFS-APPELLANTS

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E-FILED
1/16/2024 12:51
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INTEREST OF AMICUS CURIAE

The Illinois Trial Lawyers Association (ITLA) is an organization comprised of more than 2,000 lawyers dedicated to representing persons such as Plaintiffs-Appellees who are injured by medical negligence in Illinois. ITLA's members and their clients, especially those who received negligent medical care during the COVID-19 pandemic, have a vested interest in the outcome of this case and in the precedential impact of this Court's opinion on future medical negligence and personal injury cases involving statutory and/or Executive Order interpretation.

FACTUAL BACKGROUND

On March 9, 2020, Governor J.B. Pritzker declared all counties in the State of Illinois a disaster area in response to the worldwide outbreak of COVID-19. On April 1, 2020, Governor Pritzker issued Executive Order (EO) 2020-19 "in response to the exponential spread of COVID-19" intending to facilitate "preservation of public health and safety throughout the entire state of Illinois" and to ensure that "the Illinois healthcare system ha[d] adequate capacity to provide care to all who need[ed] it."[1] EO 2020-19, at 1. EO 2020-19, entitled "**EXECUTIVE ORDER IN RESPONSE TO COVID-19**" was executed to ensure that "our health care delivery system [was] capable of serving those who [we]re sick" and to eliminate "obstacles or barriers to the provision of supplies and health care services." EO 2020-19, at 1.

EO 2020-19 both referred to and relied upon the authority given to the Governor pursuant to the Illinois Emergency Management Act, (IEMA), 20 ILCS 3305/6, and reiterated the intent to provide immunity for negligent conduct that resulted in death or

[1] https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-19.pdf

injury to a person where the negligent party was rendering "assistance or advice at the request of the State *** during an actual or impending disaster ***except in the event of willful misconduct." EO 2020-19, at 2, quoting 20 ILCS 3305/21(c). "Rendering assistance" was defined in EO 2020-19 to include "increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients with COVID-19." EO 2020-19, at 2. EO 2020-19 also explicitly limited immunity to health care facilities engaged in providing health care services "***in response to the COVID-19 outbreak***." EO 2020-19, at 1.

EO 2020-19 recognized that the IEMA provided that "[a]ny private ***corporation, and any employee or agent of such ***corporation, who renders assistance or advice at the request of the State, or any political subdivision of the State under this Act during an actual or impending disaster, shall not be civilly liable for causing the death of, or injury to, any person***except in the event of willful misconduct." EO 2020-19, at 2, quoting 20 ILCS 3305/21(c). EO 2020-19 also relied on the Good Samaritan Act, 745 ILCS 49, in directing health care professionals, facilities, and volunteers in rendering assistance to the State. EO 2020-19, at 3.

The instant cause of action arose after multiple residents of Defendant, Geneva Nursing and Rehabilitation Center, LLC, also known as Bria Health Services of Geneva (Bria), contracted COVID-19 and died from respiratory complications or respiratory failure (acute hypoxia) while residing in the nursing home between March and May of 2020. As the appellate court noted:

> "[t]he complaints generally alleged that the decedents contracted COVID-19 from Bria's failure to quarantine symptomatic staff members and residents adequately and its failure to implement effective procedures for maintaining hygiene and equipment, including personal protective

> equipment (PPE) such as masks and gowns, thereby exposing decedents to the virus during this period. The complaints alleged that this was a breach of the nursing home's duty of care, which proximately caused the decedents' deaths." *James v. Geneva Nursing & Rehab. Ctr., LLC*, 2023 IL App (2d) 220180, ¶ 5.

Bria filed motions to dismiss Plaintiffs' ordinary negligence claims with prejudice. It asserted that it was entitled to immunity for any negligent care and treatment of its residents during the early months of the pandemic because it was "rendering assistance" to the State by taking "steps to address the pandemic," including preserving personal protective equipment, keeping beds available, and preparing to treat patients suffering from COVID-19. (*James*, *supra*, at ¶ 8; S.R. C2547-54). The trial court denied Bria's motions for dismissal of the negligence counts of Plaintiffs' complaints, and certified an Illinois Supreme Court Rule 308 question to the appellate court asking whether EO 2020-19 provided "blanket immunity for ordinary negligence to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic." (S.R. C4509-13).

The appellate court granted Bria's Rule 308 petition for leave to appeal. The Court took issue with the certified question submitted by the circuit court, and reframed it to ask:

> "Does Executive Order No. 2020-19, which triggered the immunity provided in 20 ILCS 3305/21(c), grant immunity for ordinary negligence claims to healthcare facilities that rendered assistance to the State during the COVID-19 pandemic?"

The appellate court determined that Bria would be entitled to partial immunity pursuant to Executive Order (EO) 2020-19 and the immunity protections of the IEMA, 20 ILCS 3305/21(c), for ordinary negligence claims if the evidence demonstrated that it rendered assistance to the state during the COVID-19 pandemic. *Id*., at ¶ 22. The appellate court concluded that whether Bria was rendering assistance to the State during the pandemic "is apt to be a fact-bound question not easily disposed of through preliminary

pleadings" that the trial court "would be in the best position to assess." *Id*. The court then remanded the matter to the circuit court. *Id*., at ¶ 25.

Plaintiffs petitioned for leave to appeal, and this Court allowed their petition on November 29, 2023.

ARGUMENT

The appellate court declined the invitation extended by the parties and the trial court to determine whether even partial immunity[2] should be extended to Health Care Facilities like Bria that engaged in negligent conduct that resulted in death or injury to a person "at a time" when the negligent party was "rendering assistance" to the State by "increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients with COVID-19" during the period of the COVID-19 disaster proclamation. EO 2020-19, at 2, quoting 20 ILCS 3305/21(c). However, the plain language of both the Executive Order and the IEMA, when read individually or in conjunction with the other, clearly demonstrate that both the Governor and the legislature intended to provide partial immunity to Health Care Facilities that were providing COVID-19 related **health care services**. Neither the Governor nor the legislature intended to provide partial immunity for negligent conduct that occurred while a Health Care Facility was rendering assistance to the State by performing administrative tasks that do not involve actual patient care and did not involve COVID-19. Clearly, COVID-19 was the reason for the disaster proclamation that triggered both the IEMA and the Governor's authority.

[2] The appellate court stated that the immunity contemplated by the parties in this case should be considered "*partial*" immunity. (Emphasis in original); *James*, *supra*, at ¶ 16.

This interpretation of EO2020-19 and the IEMA is supported by *Brady for Smith v. SSC Westchester Operating Company LLC*, 533 F. Supp. 3d 667, 675 (N.D. Ill. April 9, 2021). There, the plaintiff alleged that the defendant nursing home "failed to protect its residents from infected nursing staff spreading the virus." The court considered whether the defendant nursing home was entitled to immunity based on EO 2020-19 read in conjunction with Section 21 of the IEMA. The federal district court astutely interpreted the intent of the immunities contemplated by both the executive and legislative branches as follows: "[t]here's a difference between allowing the virus to spread by taking no preventative measures and spreading the virus **while affirmatively treating it or trying to prevent spread. Only the latter is immunized*****." (Emphasis added); *Id*.

The *Brady* court's statement underscores the lynchpin of the immunity analysis: whether the negligence occurred while the health care provider or facility was (a) "affirmatively treating" a patient or (b)"trying to prevent spread" of COVID-19. This Court should follow the lead of the *Brady* court and declare that a Health Care Facility can only enjoy partial immunity under EO 2020-19 and the IEMA when facts and evidence establish that the Health Care Facility was actually and affirmatively providing COVID-19 related health care services. Stockpiling protective equipment, ensuring the availability of beds, or preparing to treat patients are acts that constitute "rendering assistance," but they are not intended to trigger the immunity contemplated in EO 2020-19 or the IEMA.

I. THE PLAIN LANGUAGE OF EO 2020-19, READ IN CONJUNCTION WITH THE IEMA AND THE GOOD SAMARITAN ACT, DEMONSTRATES THAT NEITHER THE GOVERNOR NOR THE LEGISLATURE INTENDED TO PROVIDE PARTIAL IMMUNITY TO HEALTH CARE FACILITIES FOR NEGLIGENT CONDUCT THAT IS WHOLLY UNRELATED TO THE CARE AND TREATMENT OF COVID 19.

Amicus urges this Court to interpret EO 2020-19 and the IEMA in the same manner as the *Brady* court and declare that the immunities contemplated in the executive order and the IEMA statute are only intended to protect the actual and affirmative treatment of COVID-19 patients or conduct intended to prevent its spread. Bria's assertion that it is entitled to immunity simply because it took what amounts to administrative steps to address the pandemic, such as storing PPE, ensuring beds were available, and taking other preparatory measures, is overbroad, self-serving, and contrary to the intent of both the legislature and the Governor, which was 1) to provide health care services during the pandemic; and 2) to provide partial immunity to protect health care workers who were on the front lines risking their lives to care for sick and prevent further spread of the virus.

Illinois law prohibits this Court from interpreting the IEMA and EO 2020-19 to immunize health care facilities like Bria for conduct that is wholly unrelated to the actual care of patients or prevention of the spread of COVID-19. When interpreting statutory language (or an executive order), a court's primary objective is to ascertain and give effect to the legislature's intent, and that is best accomplished by interpreting the words and phrases contained in the statute by their plain, ordinary, and popularly understood meaning, rendering no word, clause, or sentence superfluous. *In re D.F.*, 208 Ill. 2d 223, 229 (2003); *Chicago Teachers Union, Local No. 1 v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15. Words and phrases should not be construed in isolation or in a

vacuum and must be construed in light of the statute as a whole. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009).

Where the language of a statute is ambiguous, courts are permitted to consider extrinsic aids to discern legislative intent and are free to consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. *Chicago Teachers Union*, *supra* at ¶15. This Court has long held that Illinois statutes should not be interpreted to be "absurd," "palpably unjust," or "contrary to imperative public exigency." *County Board of Union County v. Short*, 77 Ill. App. 448, 453 (4th Dist. 1898); see also *Hernandez v. Lifeline Ambulance*, LLC, 2018 IL App (1st) 180696, ¶11 ("we presume that the legislature did not intend to create absurd, inconvenient, or unjust results"). On the contrary, a "statute should be so construed as to give a sensible and intelligent meaning to every part and to avoid absurd and unjust consequences." *People v. Sholom*, 238 Ill. 203, 208 (1909).

These principles of statutory construction should apply equally to the language of an executive order. See *Landers v. Pritzker*, 2020 IL App (4th) 200356-U, at ¶53 (where the court considered the language of EO 2020-50 by considering its plain language) (Order filed under Supreme Court Rule 23; not precedent except in the limited circumstances allowed under Rule 23(e)(1)); see also *United States v. Abu Marzook*, 412 F. Supp. 2d 913, 922 (N.D. Ill. 2006), citing *Bassidji v. Goe*, 413 F.3d 928, 934 (9th Cir. 2005) ("As is true of interpretation of statutes, the interpretation of an Executive Order begins with its text."); *United States v. New Orleans Public Serv., Inc.*, 553 F.2d 459, 476 (5th Cir. 1977) (canons of statutory construction apply equally to interpreting executive orders).

Interpreting EO 2020-19 to provide immunity to a Health Care Facility like Bria for any act of negligent conduct occurring during the COVID-19 pandemic would undoubtedly create an unintended consequence which would be manifestly unjust.

A. The Plain Language Of EO 2020-19 Demonstrates That The Immunity Contemplated Was Intended For COVID-Related Health Care Services.

EO 2020-19 provides in relevant part:

> "Section 3. Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c), I direct that during the pendency of the Gubernatorial Disaster Proclamation, Health Care Facilities, as defined in Section 1 of this Executive Order, shall be immune from civil liability for any injury or death alleged to have been caused by any act or omission by the Health Care Facility, which injury or death occurred at a time when a Health Care Facility was engaged **in the course of rendering assistance to the State by providing health care services in response to the COVID-19 outbreak**, unless it is established that such injury or death was caused by gross negligence or willful misconduct of such Health Care Facility, if 20 ILCS 3305/15 is applicable, or by willful misconduct, if 20 ILCS 3305/21 is applicable." (Emphasis added); EO 2020-19, at 3.

The appellate court concluded that "what it means to 'render assistance' to the State during the pandemic is apt to be a fact-bound question" (*James*, *supra*, at ¶22), but the court's conclusion was erroneous. The meaning of "render assistance to the State" constitutes a legal question because it involves an issue of statutory construction. See *Hernandez*, supra, at ¶10. This Court must construe the executive order to give the words and phrases used their plain and ordinary meaning, a task made uncomplicated by the Governor, who made his meaning explicit in the very paragraph where the phrase was used. The plain language of EO 2020-19 defines "render assistance" as "providing health care services in response to the COVID-19 outbreak."

"Health care services" are ordinarily understood to be acts of actual care and treatment by a health care professional. However, to the extent that this term is ambiguous,

extrinsic aides can be consulted. Miriam Webster Dictionary defines "health care" as "efforts made to maintain, restore, or promote someone's physical, mental or emotional well-being especially when performed by trained and licensed professionals" and defines service as "the occupation or function or serving" or a "contribution to the welfare of others."[3]

The Health Care Reimbursement Reform Act of 1985 defined "health care services" as including, but not limited to, "hospital, medical, surgical, dental, vision, and pharmaceutical services and products." 215 ILC 5/370(g)(a). 42 USC §234(d)(2) defines "health care services" as "any services provided by a health care professional, or by any individual working under the supervision of a health care professional, that relate to— (A) the diagnosis, prevention, or treatment of any human disease or impairment; or (B) the assessment or care of the health of human beings."

Each of these definitions makes it clear that the phrase "health care services" is commonly understood to encompass actual acts of medical care or treatment. The phrase is not commonly understood to include administrative tasks, such as storing protective equipment, ensuring the availability of beds, or preparing for future care of patients. This Court must construe EO 2020-19 as intending to provide immunity to health care facilities who may have engaged in negligent conduct in the course of rendering assistance to the State by providing actual medical care and treatment to patients "in response to the COVID-19 outbreak."

[3] https://www.merriam-webster.com/dictionary/health%20care; https://www.merriam-webster.com/dictionary/services.

Reading Section 3 in the manner advanced by Bria, to provide immunity for **any** act of negligence provided that a health care facility rendered assistance by ensuring the availability of additional beds, protective equipment, or prepared to care for COVID patients, wholly ignores the intent of the Executive Order as manifested by its plain language. In construing the immunity provided, this must consider the EO 2020-19 in its entirety, and is not at liberty to depart from the plain language of an executive order by reading into it conditions that the Governor did not express. Had the Governor intended to provide immunity for the administrative acts detailed above, he could have said just that. Instead, the language of the executive order specifically qualified the assistance it intended to immunize by specifically referring to "health care services in response to the COVID-19 outbreak."

Notably, this reading of Section 3 does not render any of the other language that defines "rendering assistance to the State" superfluous. The Governor was indeed directing health care facilities to provide specific assistance that included cancelling elective surgeries, and other tasks related to beds, protective equipment, and preparations, but made clear by reference to "health care services" that those activities did not trigger an immunity.

Additionally, Bria's broad interpretation of the immunity afforded by EO 2020-19 fails to contemplate the reason the executive order, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. *Chicago Teachers Union, supra* at ¶ 15. The executive order was enacted "**IN RESPONSE TO COVID-19**" and is actually entitled "**EXECUTIVE ORDER IN RESPONSE TO COVID-19**." (Emphasis in original); EO 2020-19, at 1. In light of the title, it defies logic to interpret this executive order to intend to provide immunity protection

for negligent conduct that could be wholly unrelated to COVID-19, such as performing the wrong surgery, providing the wrong medication, or, as the court contemplated in *Brady*, failing to take any precautions whatsoever to prevent the spread of COVID-19 in a nursing home or other location with a compromised population, as long as the tortfeasor kept an extra box of masks or an extra cot and bedding on hand. This Court is simply not required to read the executive order or the relevant statutes to advance such an absurd purpose.

B. The IEMA, Appropriately Read In Conjunction With EO 2020-19, Supports The Position That The Immunity Contemplated in EO 2020-19 Was Intended For COVID-Related Health Care Services.

EO2020-19 directly references Section 21(b) and (c) of the IEMA. Relevant to the issue before this Court is Section 21(c) which provides:

> (c) Any private person, firm or corporation, and any employee or agent of such person, firm or corporation, who renders assistance or advice at the request of the State, or any political subdivision of the State under this Act during an actual or impending disaster, shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of willful misconduct.

The appellate court emphasized that the language of the IEMA, not the executive order, should control the application of any immunity provided to health care facilities as a result of the Governor's disaster proclamation. The appellate court stated, "the question is not what the executive order says but rather what the relevant statute that the executive order invoked says." *James, supra,* at ¶ 19. The appellate court found that the statutory authority in Section 21(c) of the IEMA "is clear that, except for willful misconduct, any 'private person, firm or corporation' who renders 'assistance or advice at the request of the State ***_during_ [a] ***disaster [] shall not be civilly liable for causing the death of, or injury to, _any_ person'." (Emphasis in original); *Id*., at ¶20.

The appellate court erred in interpreting the IEMA to provide the broadest immunity possible, subject to a factual determination of "rendering assistance" that would not necessarily limit immunity to COVID-related care and treatment of patients. This interpretation is contrary to the well-settled precedent of this court.

When construing statutes in derogation of the common law, courts are not permitted to "presume that an innovation thereon was intended further than the innovation which the statute specifies or clearly implies." *Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 69 (2004). Thus, "Illinois courts have limited all manner of statutes in derogation of the common law to their express language, in order to effect the least—rather than the most—change in the common law." *Adams*, 211 Ill.2d at 69–70 (citing cases). Courts should not presume an intent to abrogate the common law absent clear statutory language that is plainly expressed, as the repeal or preemption of a common law remedy should not be by implication. *Callahan v. Edgewater Care & Rehabilitation Center, Inc.*, 374 Ill.App.3d 630, 634 (1st Dist. 2007). A statute that appears to be in derogation of the common law will be strictly construed in favor of the person sought to be subjected to the statute's operation. *Van Meter v. Darien Park District*, 207 Ill.2d 359, 380 (2003) (stating that, because the Local Governmental and Governmental Employees Tort Immunity Act was in derogation of the common law, "it must be strictly construed against the public entities involved").

The IEMA's immunity provision is in derogation of the common law which contemplates a plaintiff's right to pursue claims for medical negligence. The appellate court found that the IEMA is "clear" regarding the application of the immunity provision related to medical care provided during the disaster proclamation. But the appellate court's judgment seeks to effect the greatest, rather than the least, change in the common law to

the detriment of those injured by negligent medical care in clear defiance of Illinois law. Furthermore, the appellate court's judgment ignores the fact that, when standing alone, the IEMA is wholly unclear because it does not define what constitutes "assistance" that would trigger the immunity protections contemplated in the IEMA.

The IEMA actually leaves it entirely to the State to define what constitutes "rendering assistance." Accordingly, contrary to the appellate court's decision, the scope of immunity that should be afforded in negligence cases impacted by the pandemic necessarily requires interpretation of the Governor's "assistance" directive that is set forth in EO 2020-19.

Notably, the Governor, on behalf of the State, specifically articulated the assistance that was being requested in the preamble of EO 2020-19. Governor Pritzker made clear that he was requesting assistance intended to ensure that Illinois' "healthcare delivery system is capable of **serving those who are sick**," by increasing the number of beds, preserving personal protective equipment, or preparing for the treatment of COVID patients. (Emphasis added); EO 2020-19, at 1-3. The Governor also made clear that the ultimate goal of his request for assistance was providing actual health care services "**to treat patients afflicted with COVID-19**, as well as patients afflicted with other maladies." (Emphasis added); EO 2020-19, at 1. To accomplish this, the Governor noted that the Department of Public Health "continues to take measures to enable hospitals to increase bed capacity and provide **levels of care necessary to respond to the COVID-19 outbreak**." (Emphasis added). EO 2020-19, at 1.

In Section 2 of EO 2020-19, the Governor defined certain conduct that must be included in the rendering of assistance to the state by a health care facility. Notably,

Section 2 articulated that the State was seeking assistance to be rendered directly "**in support of the State's response to the disaster ***(COVID-19 outbreak)**" and provided:

> "Section 2. Pursuant to Sections 15 and 21(b)-(c) of the IEMA Act, 20 ILCS 3305/15 and 21(b)-(c) and the Good Samaritan Act, 745 ILCS 49, 1 direct all Health Care Facilities, Health Care Professionals, and Health Care Volunteers, as defined in Section 1 of this Executive Order, to render assistance in support of the State's response to the disaster recognized by the Gubernatorial Disaster Proclamations (COVID-19 outbreak). For Health Care Facilities, "rendering assistance" in support of the State's response must include cancelling or postponing elective surgeries and procedures, as defined in DPH's COVID-19- Elective Surgical Procedure Guidance, if elective surgeries or procedures are performed at the Health Care Facility. In addition, for Health Care Facilities, "rendering assistance" in support of the State's response must include measures such as increasing the number of beds, preserving personal protective equipment, or taking necessary steps to prepare to treat patients with COVID-19. For Health Care Professionals, "rendering assistance" in support of the State's response means providing health care services at a Health Care Facility in response to the COVID-19 outbreak, or working under the direction of IEMA or DPH in response to the Gubernatorial Disaster Proclamations." EO 2020-19, at 3.

Further, in Section 2, the Governor directed Health Care Professionals and Health Care Facilities to take steps that would make it possible to care for COVID-19 patients and prevent spread of the disease by cancelling elective surgeries, increasing the number of beds available, preserving protective equipment, and preparing to treat patients **with COVID-19**. These were steps the Governor mandated for all Health Care facilities, but the assistance the Governor sought was not limited to those administrative Acts. The Governor sought to ensure that health care professionals could provide "**health care services at a Health Care Facility in response to the COVID-19 outbreak**."

Significantly, in Section 3 of EO 2020-19, the Governor leveraged the authority of the IEMA, but the IEMA references immunity for assistance provided "**during an actual**

or impending disaster." The IEMA clearly intends for the immunity to be related to the disaster—not the normal day-to-day operations of a private corporation. The legislative and executive intent of the IEMA and EO 2020-19, when read together, demonstrates that the immunities at issue were intended to apply when a health care facility rendered assistance to the state by providing actual medical care and treatment related to the COVID-19 pandemic.

C. The Good Samaritan Act Supports The Position That The Immunity Contemplated in EO 2020-19 Was Intended For COVID-Related Health Care Services.

EO 2020-19 also referenced the Good Samaritan Act as a source of authority for providing immunity from civil liability for health care professionals that volunteer their time and talents to help other." EO 2020-19, at 2. The Governor's reference to the Good Samaritan Act provides valuable insight into his executive intent and supports the conclusion that the liability afforded to health care facilities that rendered assistance to the state was intended to apply only where negligent conduct arose from actual COVID-19 related health care.

Notably, the Good Samaritan Act, referenced specifically in EO 2020-19 Section 2, which defined "rendering assistance," particularly provides for immunity for actual acts of medical care provided by medical personnel either free of charge or during an emergency. 745 ILCS 49 *et al*. Specifically, in the event that medical care is provided in response to a disaster, the Good Samaritan Act provides immunity from negligent conduct for "a disaster relief volunteer who provides **health care services** in relief of an ***epidemic, or pandemic without fee or compensation for providing the volunteer health care services." (Emphasis added); 745 ILCS 49/68. Although the Good Samaritan Act

does not define "health care services," none of the services contemplated by the Act involve administrative or ministerial functions such as ensuring bed availability, stocking protective equipment, or otherwise engaging in preparatory acts. All of the "health care services" at issue addressed in the Good Samaritan Act involve trained professionals providing actual care to patients.

Interpreting the language of EO 2020-19 in conjunction with the Good Samaritan Act, and in accordance with the well-settled rules of statutory construction long-established in Illinois jurisprudence, mandates the conclusion that the legislative/executive intent was to provide immunity for COVID-19 related health care services related to the disaster, not the stockpiling of masks, the availability of a bed, or preparations for future care.

II. EXECUTIVE ORDER 2020-19 AND THE IEMA SHOULD NOT BE ABSURDLY INTERPRETED TO CREATE GREAT INJUSTICE OR UNINTENDED NEGATIVE CONSEQUENCES THAT ARE DETRIMENTAL TO THOSE HARMED BY MEDICAL NEGLIGENCE.

Bria's assertion that it is entitled to immunity merely because it complied with the administrative requirements set forth in Section 2 of EO 2020-19 ignores the executive order's articulated goal of ensuring that health care professionals were put in position to provide health care services at health care facilities in response to COVID-19 pandemic. Bria's absurd interpretation of both legislative and executive intent simply cannot carry the day because this Court is still required to construe the statute in a manner that will carry out its purpose (*Harvel v. City of Johnston*, 146 Ill. 2d 277, 284 (1992)) and must "consider the consequences that would result from construing the statute one way or the other." (*Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 12 (2009)).

The Governor made clear that the executive order was being issued as a result of the COVID-19 pandemic and its plain language demonstrates that it was intended to protect

medical professionals and medical facilities who were risking their lives, and the potential for liability, by treating COVID-19 patients. Protecting health care providers and facilities that were taking that risk to provide COVID-related treatment with partial immunity made sense given that in April 2020, COVID-19 was a new phenomenon, methods for treatment and care had not been vetted or substantiated, and people were dying rapidly.

EO2020-19 was intended to preserve public safety and ensure that the sick would be cared for by medical professionals in appropriate health care facilities. It was certainly not the intent of the Governor, or the legislature in enacting the IEMA, to turn a blind but protective eye when medical professionals or facilities engaged in medical negligence unrelated or incidental to COVID-19 care.

The consequences of leaving people who were injured by a negligent doctor during treatments that were not impacted by COVID-19 would be serious and unintended, as they would create an impediment to the public health and safety that was sought by both the executive and legislative branches of government. If immunity were provided to health care facilities simply because they ensured that beds and protective equipment were available during the COVID-19 pandemic, health care providers would be immune from suit if they administered the wrong medicine or too much of it, transfused the wrong blood, or performed the wrong surgery, all to the detriment of vulnerable patients. Or the scenario presently before this Court could arise: individuals living in nursing homes who were required to shelter in place due to an order of the Governor are confined to a facility that does not appropriately socially distance patients, require the use of protective equipment, or ensure that staff caring for vulnerable patients are not sick and infecting them with a life-threatening virus.

It would be absurd for this Court to conclude that the Governor, tasked with ensuring public safety and empowered by the legislature through the IEMA to do so, would utilize his authority to absolve medical professionals from responsibility for any negligent conduct, at the great expense of patients, while simultaneously abdicating all responsibility for ensuring accountability in the health care profession, creating even a greater threat to public safety.

This Court should heed its long-settled precedent which wisely counsels that:

> "When the literal enforcement of a statute would result in great inconvenience, and cause great injustice, and lead to consequences which are absurd, and which the legislature could not have contemplated, the courts are bound to presume that such consequences were not intended, and adopt a construction which will promote the ends of justice and avoid the absurdity." *People ex rel. Keeney v. City of Chicago*, 152 Ill. 546, 552 (1894).

CONCLUSION

This *amicus curiae*, the Illinois Trial Lawyers Association, respectfully requests that this Court declare that Executive Order 2020-19, read in conjunction with the relevant statutory authority, does not provide even partial immunity for ordinary negligence committed by health care facilities that did not involve actual COVID-related care and treatment of patients. *Amicus curiae* asks this Court to follow the well-settled precedent of the Illinois Supreme Court and decline to interpret and apply the Governor's Executive Order in a manner that would create absurd and unjust results for Illinois citizens severely injured or killed due to medical negligence.

Respectfully submitted,

/s/ Yvette C. Loizon
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b), Rule 315(h) and 345. The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), contains 19 pages.

/s/ Yvette C. Loizon
Yvette C. Loizon

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

Donald James, as Executor of the Estate of Lucille Helen James, Deceased, Mark R. Doneske, as Executor of the Estate of Rose H. Doneske, Deceased, Frances G. DeFrancesco, as Executor of the Estate of Jack P. DeFrancesco, Deceased, Patricia Velcich, as Executor of the Estate of Marion May Heotis, Deceased, Faith Heimbrodt, as Independent Administrator of the Estate Of Carol Orlando, Deceased	)	
Plaintiffs-Appellants,	)	No. 130042
v.	)	
Geneva Nursing and Rehabilitation Center, LLC d/b/a Bria Health Services of Geneva,	)	
Defendant-Appellee.	)	

The undersigned, being first duly sworn, deposes and states that on January 5, 2024, the *Amicus Curiae* Brief of the Illinois Trial Lawyers Association was electronically filed and served upon the Clerk of the above court. On January 5, 2024, service of the Brief will be accomplished through email as well as the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Yvette C. Loizon
Yvette C. Loizon

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Yvette C. Loizon
Yvette C. Loizon