

Summary of *2015 Wisconsin Act 238* Body Cavity Searches

The Wisconsin Chapter of the American College of Emergency Physicians recognizes that emergency physicians have a duty to protect the autonomy of, and act with beneficence and nonmaleficence toward, their patients as it pertains to body cavity searches. Each provider must view each patient encounter as an individual set of circumstances, taking into consideration our duties as physicians, as well as the duty to follow valid directions from law enforcement officers. We are happy to summarize this recent legislation, which will bring legal protections to providers who do perform body cavity searches.

Wisconsin recently enacted legislation that offers legal protections to providers who perform body cavity searches. The legislation creates civil and criminal immunity for healthcare providers who conduct body cavity searches of suspects at the direction of law enforcement.

The legislation, *2015 Wisconsin Act 238*, created a new statute granting the immunity and amended the existing statute on body cavity searches to be in conformance with the immunity section. The new statute is:

895.535 Civil and criminal liability exemption; body cavity search. (1) Any physician, physician assistant, or registered nurse licensed to practice in this state conducting a body cavity search pursuant to s. 968.255 is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

(2) Any employer of the person under sub. (1) or any health care facility where the search is conducted by that person has the same immunity from liability under sub. (1).

As with any new law, there are potential questions. Normally, questions of statutory interpretation have to be decided by Courts to be “final.” Still there are some recurring questions that folks may have regarding this law where the answers seems fairly clear from the language of the statute itself and the history behind its enactment. We try to address some of those questions here in general terms, but as always, with any questions regarding legal rights, the reader is advised to consult their own counsel before taking any action.

What does it mean to be immune?

Immunity is one of the strongest concepts in the law. Typically, if a person is sued they have to defend the substance of their conduct. When they are immune, however, it precludes a lawsuit from ever getting to the substance of the claim. It provides an relatively easy and inexpensive way of addressing such claims.

Are there exceptions to immunity?

Yes and no. The exception is for civil liability for negligence. The performance of a body cavity search is a form of medical procedure and like all medical procedures must be executed with the care skill and judgment that all reasonable providers exercise. A provider could still be sued for performing the search wrong. The provider, however, will never have criminal liability for performing a body cavity search at the direction of law enforcement.

To whom does the new law apply?

The law grants immunity to physicians, physician assistants and registered nurses licensed in Wisconsin. It also provides immunity to their employers and any facility where the search is performed. The law is silent as to other providers and healthcare personnel who might be called upon to assist in the performance of a search.

Does the law require health care professionals to perform the searches?

No, there is nothing in this law that requires providers to perform searches. The general area of the law surrounding body cavity searches is complicated. Generally, all citizens have a duty to follow valid directions from law enforcement officers as long as doing so does not unnecessarily endanger their safety or the safety of others. Those who might be subject to body cavity searches also enjoy Constitutional protections and can require a validly issued warrant before having to submit to a search. The law does not place the burden on health care providers to determine if a suspect's Constitutional protections have been honored, though a validly issued warrant from a Court will suffice. Still, the provider can make their own assessment of the circumstances and determine if a search can be conducted without endangering their safety, the safety of others or harm to the suspect.

What should I do if someone on whom I have performed a body cavity search files a complaint against me?

With all such situations, your employer will generally have protocols for reporting claims, usually to a risk manager. By all means, you should follow those protocols. Because the law is new, we suggest mentioning that you are aware of this recent change and bringing it to their attention. The teams that handle matters such as this have many different legal concepts to keep on top of and it takes some time for new legislation to be recognized.