

TN Legislative and Caselaw Review 2020

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1

New 2020 Law Highlights

2

EMPLOYMENT OF PHYSICIANS

- PC 574
- Amended TCA 63-6-204(e).
- Allows FQHCs and rural health centers to employ certain physicians except:
 - Anesthesiologist
 - Emergency physician
 - Pathologist
 - Radiologist
- Requires in writing that independent medical judgement is not restricted.
- Effective March 19, 2020

3

SURRENDERING CUSTODY OF INFANT

PC 684

- Amends TCA 36-1-142(a), 68-11-255(a)(3), 68-11-255(B)(1).
- Extends time period during which a mother may surrender custody of an infant at a medical facility without incurring criminal liability.
- Extends time from 72 hours after birth to two weeks after birth.
- Effective June 15, 2020

4

ALTERNATIVE TREATMENTS

- PC 573.
- Amends TCA § 63-1-164 definition of “alternative treatments.”
- Current law requires a prescriber to discuss with a patient reasonable alternatives to opioids along with the risks and benefits of the alternative treatment if the prescriber contemplates prescribing opioids.
- Examples of alternative treatments:
 - Chiropractic
 - Physical therapy
 - Acupuncture
 - Other such treatments that relieve pain w/out the use of opioids.
- The amendment adds “interventional procedures or treatment.”
- Effective March 19, 2020.

5

Health Care Empowerment

- PC 739
- Effective July 1, 2020
- Expands the 2016 "Health Care Empowerment Act"
- The 2016 Health Care Empowerment Act established requirements for direct primary care membership agreements
- Essentially, a direct primary care agreement allows providers the ability to provide primary care services to patients for an agreed fee over an agreed period of time. If a patient and provider opt into an agreement, the provider will not bill third parties on a fee-for-service basis.

6

Health Care Empowerment Continued

- The new law clarifies and expands the 2016 legislation in these primary ways:
 - Clarifies that these agreements are not insurance plans and will not be regulated by the Department of Commerce and Insurance.
 - Defines "**direct medical care provider**" as an individual or legal entity that is licensed, registered, or otherwise authorized to provide medical care services in this state and who chooses to enter into a direct medical care agreement. The term includes an individual medical care provider or other legal entity, alone or with others professionally associated with the provider or other legal entity.

7

ABORTION

PC 764

- Adds new sections to Chapter 39 of the criminal code pertaining to abortions.
- This is known as the "heartbeat law."
- The new law provides it is a Class C Felony to perform an abortion if the gestational age is 6 weeks or older without first determining if there is a detectable fetal heartbeat. If there is a fetal heartbeat, the abortion cannot be performed.
- Specifies the process and procedures to be followed to determine whether there is a heartbeat.
- Effective date is July 13, 2020, but enforcement is enjoined.

8

TELEHEALTH

- PC 4 EOS
- Amends TCA 56-7-1002, 1003, and 63-1-155.
- Adopts CMS' originating site fee for hosting a patient as part of a telehealth visit.
- Payment parity with in-person visits for established patients until April 1, 2022.
- Standard of care parity.
- Remote patient monitoring paid at negotiated rates.
- Effective August 20, 2020.

9

COVID-19 Liability Protection

- PC1-EOS
- Effective August 17, 2020
- Purpose: Administration bill with significant support from the business and nonprofit communities. The Governor sought to provide legal clarity and certainty for health care providers, businesses, schools, non-profits and others operating during the pandemic.
- The original bill failed to pass during the 111th General Assembly, primarily due to disagreement in the House over a retroactivity clause that would have applied these limitations to claims beginning on March 6, 2020. With support from the Governor, Lt. Governor and Speaker, the bill was revived during an extraordinary session.
- The bill limits the types of legal claims arising from COVID-19 that may be asserted and raises pleading standards for those claims that are permitted.

10

COVID-19 Liability Protection Continued

- The Act broadly protects “persons”—individuals and legal entities, including businesses, hospitals, schools, non-profits, and religious institutions—from claims “arising from COVID-19” unless the claimant can prove **by clear and convincing evidence** the defendant-person’s gross negligence or willful misconduct.
- Other notable provisions of the bill include:
 - Applies to all claims arising from COVID-19 without any express time limitations, except where any of the following occurred, “on or before August 3, 2020,” and continues until July 1, 2022, but continues to apply to any loss, illness, injury, or death occurring before then.
 - Covers claims that include those not specifically arising from exposure to the virus. Such claims could include, for example, where a hospital changes protocols (say, pre-operation procedures) based upon COVID-19 and that change results in injury to a patient.
 - Clarifies that a claimant’s failure to satisfy any of the heightened pleading standards and expert requirements subjects the legal action to dismissal with prejudice.

11

Association Health Plans

- PC 515
- Effective July 1, 2020
- Purpose: Sought to align state law with a 2017 Trump Administration Executive Order. The order authorized the U.S. Department of Labor (DOL) to write rules to encourage the growth of Association Health Plans (AHP)s with small businesses.
- Tennessee’s law does the following:
 - Expands the definition of group accident and health insurance to include policies issued by an organization qualified to establish a self-insured liability pool as a Multiple Employer Welfare Arrangement (MEWA).
- When the DOL rules were published in 2018, 11 states and D.C. sued alleging an overreach and misinterpretation of law as it relates to:
 - definition of “employer”
 - the criteria qualifying entities as bona fide associations
 - the working owner provisions

12

Association Health Plans Continued

- District Court struck down these provisions saying they were part of an unlawful effort to bypass the Affordable Care Act. The case is *State of New York et al. v. United States Department of Labor, et al.*, No. 1:18-cv-01747 (D.C. Dist. Ct., Mar. 28, 2019).
- For businesses and associations caught in limbo because of the court battle, DOL issued guidance, essentially providing safe harbor to parties who began operating within these rules before the court's decision.
- The DOL filed an appeal on April 26, 2019 (Docket No. 19-5125). The decision was expected in early Spring, but is still pending.
- Tennessee joined with 15 other states and governors on an amicus brief in support of the Trump Administration's rules.

13

BUPRENORPHINE PRESCRIBING

- PC 761 and 771.
- Amends TCA 53-11-311.
- Allows APRNs and PAs with DEA-X certificates to prescribe buprenorphine under multiple restrictions in certain facilities.
 - Community mental health centers
 - FQHCs
 - OBOTs
- Type of payment restrictions for the prescriber and facility.

14

DISCIPLINARY ACTION AGAINST LICENSE

• PC 594

- Amends TCA 4-5-320, 63-1-120, 63-1-139.
- Extends professional license disciplinary authority
- Extends to all health-related boards, among others.
- Authorizes summary “actions” by boards -- beyond summary “suspensions.”
- A board can satisfy requirement to give notice of new regulations by posting on its website.
- Effective March 20, 2020.

15

NURSING HOME INTERVENTION IN TENNCARE APPEAL

PC 750

- Amends TCA 71-5-1424
- A nursing home has the right to intervene in a patient’s TennCare appeal of initial determination of ineligibility
- Applies to determination of financial or medical ineligibility
- Exception if a party shows it would cause undue burden or expense
- Effective June 22, 2020 – applies to appeals filed after this date

16

Workers' Compensation Increased Benefits

- PC 731
- Effective June 22, 2020
- Purpose: The bill was brought by the Bureau of Workers' Compensation and to clarify 2013 legislation prompted by recent litigation.
- The bill does the following:
 - Establishes a minimum period of 180 days for an injured worker to request additional benefits following such worker reaching maximum medical improvement.
 - Deletes requirement that a full and final hearing of the Court of Workers' Compensation be provided to an employee who has filed a claim against an employer for workers' compensation benefits no more than 60 days after the notice of hearing has been filed.

17

TN State Case Highlights

18

Amy Angell Tucker, et al v. Sandra Jackson Iveson et al

FACTS:

- Plaintiff brought health care liability action based on alleged negligent prescribing by N.P.
- Also alleged negligent hiring and supervision by the supervising physician.
- Initially sued the wrong physician, and when the correct party was substituted the 3-year statute of repose had run.
- TC granted summary judgment for Defendant.

ISSUES & RULINGS:

- Was the negligent hiring and supervision claim covered by the Health Care Liability Act? YES - claim is substantially related to medical treatment and expertise, and a duty to a patient.
- 3 year statute of repose applies and plaintiff's action against physician is time-barred. . . Unless:
- Was fraudulent concealment present to toll the statute of repose? NO – defendant physician had no knowledge of the facts giving rise to the action.

19

Heaton v. Mathes

- Facts: Plaintiffs sued several defendants for damage caused by medical providers' failure to appropriately "prescribe, counsel, provide, utilize, and/or discontinue [Victoza]." The theories of recovery were strict liability and simple negligence against Victoza's manufacturer, and health care liability claims against the remaining defendants. At issue are defendant pharmacies and pharmacist. FDA had issued a Risk Evaluation and Mitigation Strategy ("REMS") for Victoza to warn of the risk of acute pancreatitis with the medication's use. Plaintiff asserted that he was not informed of this risk by any of the Defendants. Defendants filed a motion to dismiss based on the seller shield defense. The trial court denied the motion and Defendants were granted an interlocutory appeal.
- Issue: Whether the seller shield defense should be applied to bar a claim under the THCLA.

20

Heaton v. Mathes

- What is the seller shield defense? This provides that a products liability action cannot be maintained against a product's seller, other than the manufacturer, except in certain enumerated circumstances. TCA § 29-28-106 of the Tennessee Products Liability Act ("TPLA").
- Trial court ruling: Motion to dismiss denied.
 - Relied on *In re New England Compounding Pharmacy, Inc. Prods. Liab. Litig.*
 - Determined that the seller shield statute contained within the TPLA would not shield the CHDP Defendants from a THCLA claim.
 - The case should proceed as a health care liability case.

21

Heaton v. Mathes

Defendants' - TPLA Case

- Complaint mislabeled claims as health care liability; gravamen is products liability.
- TPLA applies to failure-to-warn claims against pharmacists as sellers of drugs, and according to complaint, their role was sellers.
- No duty to warn plaintiff other than manufacturer's warnings.

Plaintiffs' – THCLA Case

- TN precedence that pharmacist must comply with standard of care to patients.
- "Regardless of theory of liability" in THCLA.
- *New England Compounding II* decision. Pick **one**.
- Statutory interpretation. TPLA only applies to products liability; THCLA applies to all health care providers.

22

Heaton v. Mathes

- Holding: Affirmed.
 - The seller shield defense found in the Tennessee Products Liability Act is inapplicable to claims made under the THCLA.
 - Pharmacy and pharmacist defendants could not assert the defense since the complaint was a THCLA complaint.

23

Martin v. Rolling Hills Hospital

- Supreme Court of Tennessee, April 29, 2020
- Re: Tenn. Code Ann. § 29-26-121 non-compliant HIPAA release case

24

- **Facts**

- Plaintiffs filed healthcare liability suit after death of daughter during in-patient psychiatric care at Rolling Hills Hospital
- Plaintiffs attempted to comply with Tenn. Code Ann. § 29-26-121 by sending a letter a year in advance of the suit but several pieces of required information were left out of the letter. They also failed to send the Hospital Defendants a medical authorization permitting them to obtain the decedent's medical records
- After the Plaintiffs filed their lawsuit in October 2014, the Defendants objected that the Plaintiffs had failed to provide pre-suit notice in compliance with Tenn. Code Ann. § 29-26-121
- However, before the trial court ruled on the matter, the Plaintiffs voluntarily nonsuited their lawsuit. On January 27, 2015, the trial court entered an order dismissing the lawsuit without prejudice.
- Less than a year later, on January 7, 2016, the Plaintiffs filed a second lawsuit alleging the same health care liability claims against the Defendants.

25

- **Defendants filed motion to dismiss and the trial court granted**

- Trial court based its decision solely on the Plaintiffs' failure to provide the Defendants with HIPAA-compliant medical authorizations as required by Tenn. Code Ann. § 29-26-121.

- **Court of Appeals reversed the decision**

- Held the trial court failed to ask the question of whether Defendants were prejudiced by Plaintiffs' errors
- Reversed based on its conclusions that the Plaintiffs had substantially complied with Tenn. Code Ann. § 29-26-121 and the Defendants had failed to show prejudice from the Plaintiffs' noncompliance
- Concluded that the Plaintiffs' first lawsuit was timely filed and that the savings statute applied to their second lawsuit.

26

- **Issues Before the Supreme Court**

- Clarify the role of prejudice in a court's determination of whether a plaintiff in a health care liability action has substantially complied with Tenn. Code Ann. § 29-26-121
- Determine the burdens each party bears when seeking to establish or to challenge compliance with Tenn. Code Ann. § 29-26-121

- **Decision**

- Prejudice is relevant to the determination of whether a plaintiff substantially complied with Tenn. Code Ann. § 29-26-121, but it is not a separate and independent analytical element.
- A plaintiff bears the initial burden of either attaching documents to her health care liability complaint demonstrating compliance with Tenn. Code Ann. § 29-26-121 or of alleging facts in the complaint demonstrating extraordinary cause sufficient to excuse any noncompliance with Tenn. Code Ann. § 29-26-121.
- Court of Appeals judgment reversed and judgment of the trial court reinstated dismissing this lawsuit as time-barred.

27

Yebuah v. Center for Urological Treatment

- Facts: A device was left in a patient following a surgical procedure. Plaintiff filed a health care liability claim against multiple health care defendants. Defendants admitted fault so the trial involved the amount of damages. The jury returned a verdict for \$4 million in non-economic damages to the patient and \$500,000 in non-economic damages for the husband. The trial court entered a judgement of \$750,000 for the patient applying the statutory cap and \$500,000 for the husband. The trial court did not address Plaintiffs' constitutional challenge to the cap, finding it waived, and denied Defendant's motion for a new trial or for remittitur. Both sides appealed.
- Issue: Whether the trial court should have addressed Plaintiffs' constitutional challenge before entering judgment.

28

Yebuah v. Center for Urological Treatment

- Considerations:
 - Plaintiffs raised their constitutional challenge originally *before* trial in a proposed amended complaint.
 - Arguments or evidence relating to the constitutionality of the cap were precluded during the trial.
 - After the verdict, Plaintiff noticed the Attorney General.
 - Before judgement was entered, Plaintiffs requested a hearing on their constitutional challenge pursuant to Rule 59.04.
- Holdings:
 - The trial court erred in not addressing the constitutional challenge.
 - Plaintiff did not establish the cap is unconstitutional on its face, so no error in not applying the cap.
 - Cap is constitutional and was properly applied (separate defendants).
 - Denial of new trial/remittitur affirmed.

29

Benjamin Shea Cotton, as personal, etc. v. Jerry Scott Wilson

- Wrongful death action arising from a suicide.
- Defendant was Decedent's paramour and he happened to be a psychiatrist.
- Decedent had a history of depression, anxiety and suicidal ideations, resulting in an admission to a mental health treatment facility.
- Decedent's estate alleged Defendant was negligent in allowing access to a handgun in his home in light of her mental health history.
- Tennessee Supreme Court upheld the TC grant of summary judgment for the defendant.
- Insufficient facts to establish Decedent's death was reasonably foreseeable so as to constitute a superseding intervening event to Decedent's willful, calculated, and deliberate act of committing suicide.

30

Bridges v. Lancaster

- Court of Appeals Tennessee, Nashville
- 12/27/2019
- Health care liability action
- **Facts**
 - The trial court determined that Plaintiff's evidence did not establish that any act or omission of Defendant caused Plaintiff to suffer an injury that would not have otherwise occurred.
 - The trial court awarded summary judgment to Defendant physician.
 - Court of Appeals Affirms.
 - Plaintiff's expert witness stated that Dr. Lancaster performed within the standard of care during the surgery, but he fell below the standard of care when he failed to perform either an arteriogram or a CT angiogram despite complaints of pain in the plaintiff's hand.
 - He argued these violations of the standard of care caused the plaintiff to lose two full fingers, part of another, and a large portion of the palm of her left hand, as well as a significant decrease in functionality in what remained of her hand.

31

Issue Presented

- **Trial Court granted defendant's motion for summary judgment**
 - Court concluded that Plaintiff had failed to demonstrate that any act or omission by Dr. Lancaster caused her any injury that would not have otherwise occurred and that, accordingly, no genuine issue of material fact remained with respect to causation.
- **Issue**
 - Did the Appellant offer sufficient expert proof of causation to sustain a Healthcare Liability Action under Tennessee Law?

32

- **Holding**

- Expert witness's testimony was ambiguous and inconclusive with respect to whether additional testing would have revealed a condition that could have been treated, thereby preventing the injury.
- Expert testified that an arteriogram or CT angiogram may or may not have revealed a reversible condition. He did not testify that the failure of Dr. Lancaster to perform an arteriogram or CT angiogram resulted in a condition or injury that could have been corrected or that would not have otherwise occurred.
- Plaintiff failed to produce evidence to establish, with the requisite degree of medical certainty, that an allegedly negligent act or omission by Dr. Lancaster caused an injury that would not otherwise have occurred
- Summary Judgment Affirmed

33

Rhonda Willeford, et al v. Timothy Klepper, MD et al

- Defendant moved for a protective order to allow *ex parte* interviews of non-party health care providers under TCA 29-26-1219(f).
- Plaintiff took interlocutory appeal challenging the constitutionality of the statute, which mandated the protective order.
- SCOT ruled the statute as written violates separation of powers between the Legislative and Judicial branches under the state constitution because it encroaches on pre-trial procedure which is exclusive to the Judicial branch.
- Relying on the general severability statute the Court utilized its power of elision to re-write the statute to bring it into compliance with the state constitution.
- As interpreted and applied, the statute allows the trial court discretion to grant the protective order, and as such the statute is constitutional.

34

Dora Nesbitt Jones et al v. Allenbrooke Nursing and Rehabilitation Center, LLC

- Facts: Mrs. Nesbitt gave her daughter a POA over her property, excluding health care decisions. Mrs. N became incompetent in 2013. Daughter signed Mrs. N into a nursing home. Admission included an arbitration agreement. Mrs. N was injured from a fall in 2016. She sued and the nursing home filed a motion to compel arbitration. The motion was denied because POA given to daughter did not bind Mrs. N to arbitration agreement. Nursing home appealed.
- Issues:
 - Whether the FAA required that the issue of enforceability should have been decided by the arbitrator.
 - Whether the trial court erred in determining daughter could not bind Mrs. N to arbitration clause.
 - Whether the arbitration clause should have been enforced against daughter as a third-party beneficiary.

35

Dora Nesbitt Jones et al v. Allenbrooke Nursing and Rehabilitation Center, LLC

- Considerations:
 - FAA
 - Allenbrooke – 9 U.S.C. §§ 1-16 governs enforceability
 - Jones – issue is not enforceability but proper formation
 - Binding Agreement
 - Allenbrooke – POA was adequate authority
 - Jones – *expression unius est exclusion alterius* and health
 - Apparent Authority
 - Allenbrooke – Mrs. N clothed daughter with apparent authority
 - Jones – Parties did not dispute Mrs. N was incompetent
 - Third Party Beneficiary
 - Allenbrooke – Mrs. N was a reasonable party to contract between nursing home and daughter
 - Jones – Third party beneficiary should not circumvent requirement there be a valid contract.

36

Dora Nesbitt Jones et al v. Allenbrooke Nursing and Rehabilitation Center, LLC

- Decision: Affirmed. No contract was formed. Daughter had no authority to bind Mrs. N to arbitration.
- Take Homes
 - The FAA does not apply if the issue is whether the arbitration agreement was properly formed in the first place.
 - Execution of admissions documents to a health care facility is a healthcare decision.

37

McClay v. Airport Management Services

- Supreme Court of Tennessee
- February 26, 2020
- Questions of constitutionality regarding Tennessee's statutory cap on noneconomic damages

38

- **Issues**

- Does the noneconomic damages cap in civil cases violate a plaintiff's right to a trial by jury, as guaranteed in Article I, section 6, of the Tennessee Constitution?
- Does the noneconomic damages cap in civil cases violate Tennessee's constitutional doctrine of separation of powers between the legislative branch and the judicial branch?
- Does the noneconomic damages cap in civil cases violate the Tennessee Constitution by discriminating disproportionately against women?"

- **Holding**

- Supreme Court Answered in the Negative to All Three Questions. Statutory Cap is upheld.

39

1. Right to a Jury Trial Rationale

- The right to a jury trial mandates that all contested factual issues be decided by an unbiased and impartial jury. However, the right to a jury trial under the Tennessee Constitution does not entitle a plaintiff to any particular cause of action or any particular remedy.
- Instead, what causes of action a plaintiff may bring, or what remedies a plaintiff may seek, are matters of law subject to determination by the legislature.
- **The statutory cap on noneconomic damages is not disclosed to the jury, but is instead applied by the trial court to any award of noneconomic damages.**
- Thus, a jury determines, as a question of fact, the amount of any noneconomic damages sustained by a plaintiff. The trial judge then applies, as a matter of law determined by the legislature, the statutory cap on noneconomic damages in entering the final judgment.
- This application of law by the trial judge does not violate the plaintiff's right to have a jury determine the underlying facts of the case.

40

2. Separation of Powers Doctrine Rationale

- The Court previously has held that the General Assembly oversteps constitutional boundaries in violation of the separation of powers when it exercises its legislative power in a way that directly contradicts existing procedural rules of the courts.
- However, the separation of powers doctrine in our constitution does not prevent the General Assembly from enacting substantive law.
- The statutory cap on noneconomic damages is a substantive change in the law that was within the General Assembly's legislative authority to enact. The statutory cap does not interfere with the judicial power of the courts to interpret and apply law.

41

3. Equal Protection Clause Rationale

- Plaintiff acknowledges that the statutory cap on noneconomic damages is facially neutral, and makes no allegation that the General Assembly had a discriminatory intent or purpose in enacting the statute.
- Instead, Plaintiff simply argues that the statutory cap on noneconomic damages has a disparate impact on women.
- The United States Supreme Court has held repeatedly that the Equal Protection Clause of the Federal Constitution does not provide for disparate impact claims.

42

Franks v. Sykes

- **Facts**: Plaintiffs were injured in car accidents and received treatment at hospitals. The hospitals did not bill Plaintiffs' health insurance companies. Instead, they filed hospital liens against Plaintiffs' claims for damages arising from the accidents. The hospital liens were for the full amount of the hospital bills with no reduction for Plaintiffs' health insurance benefits. Plaintiffs sued the hospitals, asserting the filing of undiscounted hospital liens was an unlawful practice under the Tennessee Consumer Protection Act of 1977. Defendants filed motions to dismiss. The trial court granted the motions to dismissed, ruling that Plaintiffs had failed to state a cause of action. Plaintiffs appealed. The Court of Appeals affirmed.
- **Issue**: Whether the Consumer Protection Act applies to the business aspects of a health care provider's practice

43

Franks v. Sykes

- TN Supreme Court reversed and remanded.
 - Learned professionals engage in both business and professional roles. U.S. Supreme Court case.
 - Case turned on whether the health care providers were acting in a business or professional capacity. Determination: business capacity.
 - No medical care was involved in the controversy
 - The controversy was a hospital lien which is a debt collection.
 - Money, commerce

44

Earle J. Fisher, et al v. Tre Hargett, et al.

- Trial Court enjoined the State from enforcing its interpretation of the absentee ballot eligibility statute so as to not allow such voting by persons: (1) who have special vulnerabilities or are caretakers of those with special vulnerabilities to COVID-19; and (2) those with no special vulnerabilities or caretaker vulnerability but who want to minimize possible exposure.
- On expedited review by permission to appeal the SCOT ruled that those with “special vulnerabilities” qualify for absentee ballot voting under the statute, but those without “special vulnerabilities” do not qualify.

45

Earle J. Fisher, et al v. Tre Hargett, et al.
(Con’t.)

T.C.A. 2-6-201(5)(C) and (D):

- (5) Persons Over 60--Persons Hospitalized, Ill or Disabled. . . .
- (C) The person is hospitalized, ill or physically disabled, and because of such condition, the person is unable to appear at the person’s polling place on election day; or
- (D) The person is a caretaker of a hospitalized, ill or disabled person

46

Tennessee Attorney General Opinions

Mask Mandates - Ag. Op. No. 20-14
July 24, 2020

- **Question**

- Is a governmental mandate that requires the general population to wear face coverings in public during a state of emergency caused by COVID-19 constitutionally permissible?

- **Answer**

- As a general proposition, a governmental mandate that requires the general population to wear face coverings in public due to the health emergency caused by COVID-19 would be constitutionally defensible.

47

- During an epidemic, the traditional tiers of judicial scrutiny do not apply.
- For more than a century, the United States Supreme Court has recognized that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” *Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905).
- In these narrow circumstances, courts are to overturn only those orders that (1) have no “real or substantial relation” to protecting public health or (2) are “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.”
- A governmental mandate that requires the general population to wear face coverings in public due to the health emergency caused by COVID-19 satisfies this two-prong Jacobson test.

48

- Even if traditional constitutional scrutiny applied, the governmental mandate would not impermissibly infringe on a person’s constitutional right to liberty or freedom of speech.
- The Constitution does not recognize an absolute and uncontrollable liberty
- While a governmental mandate to wear face coverings in public does not regulate speech on its face, it does regulate conduct. The free speech protected by the First Amendment includes not just speech but also “expressive conduct.”
- Wearing a face covering does not qualify as “expressive conduct” because wearing it during the COVID-19 pandemic is first and foremost understood as a means of preventing the spread of the virus.

49

Brief Mention

- Being permitted to practice medicine in Tennessee under a statutory license exemption and not licensed to practice medicine in Tennessee or a contiguous state in the year before the alleged injury or wrongful act does not qualified one as an expert witness pursuant to TCA § 29-26-115(b). *Young, ... v. Frist Cardiology, PLLC et al.*
- Health care records constitute an aspect of a patient’s care for purposes of the THCLA. *Josh Cathey v. William Beyer et al.*
- Violation of OSHA workplace violence guidelines do not constitute “illegal activity” under TPPA. *Jeffrey Clay Davis v. Vanderbilt University Medical Center.*

50

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