



# Garcia v. Welltower OpCo Group LLC (9th Cir.)

Topics Covered: COVID-19, Abusive Litigation Against Physicians

## Issue

The issue in this case is whether and to what extent the Public Readiness and Emergency Preparedness Act (the “PREP Act”) bars claims of negligence stemming from care provided during the COVID-19 pandemic.

## AMA Interest

The AMA supports efforts to curb lawsuit abuse against physicians.

## Case Summary

Passed in 2005, the PREP Act authorizes the Secretary of Health and Human Services (HHS) to issue a declaration determining that “a disease or other health condition or other threat to health constitutes a public health emergency.” With certain exceptions, the PREP Act prohibits liability for “all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure.”

If immunity applies, the injured persons or their survivors may seek compensation from the Countermeasures Injury Compensation Program—a regulatory program that provides reimbursement for some losses associated with the use of covered countermeasures. An exception to PREP Act immunity arises for injuries occurring through willful misconduct.

On March 10, 2020, the HHS Secretary declared the COVID-19 pandemic a public health emergency. On January 8, 2021, the HHS General Counsel issued an advisory opinion to the effect that, with narrow exceptions, the PREP Act “completely preempts” negligence claims against health care providers based on failure to institute proper COVID-19 preventative procedures. Complete preemption means that state laws that would otherwise apply to a particular class of claims are without force for those claims. It also means that if those claims are brought in a state court, they can be transferred (or “removed”) to a federal court for adjudication.

The instant case involves a negligence claim by a nursing home resident against the nursing home. The nursing home allegedly failed to take sufficient measures to protect the patient, who died from the virus.

The case was filed in a California state court, and the defendants then removed it to the federal Central District of California. The district court, relying largely on the January 2021 HHS advisory opinion, denied the plaintiff’s motion for remand and dismissed the lawsuit. The court concluded that the PREP Act completely preempted the negligence claims.

The plaintiff is now appealing to the Ninth Circuit Court of Appeals.

### **Litigation Center Involvement**

The Litigation Center and California Medical Association joined an *amicus* brief supporting the defendants.

Ninth Circuit Court of Appeals Brief