MEMORANDUM OF LAW

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“Why do I need a physician’s permission to exercise my right to informed consent, but you don’t need any physician to violate it?”

No Duty of Care

There is n**o duty of care** for the owner or operator of a public accommodation to prevent a health risk when it is widely known in the community.

How do you know there is no liability? A**sk the business to provide a copy of its insurance binder** that insures the business against injuries or losses related to the risk under which it claims to have a duty of care. You will discover that the business is not insurable for a risk that it does not have, so the insurance carrier will not be able to provide evidence of financial responsibility (such an insurance binder) from the risk it claims to be protecting everyone.

How do we know that this type of risk, one that is widely known in the community, is **not insurable**? We know this because of the doctrine of **“assumption of risk”**. Each person assumes a risk of which everyone in the community is aware. Additionally, we know that there is **no liability or risk** for which insurance can be obtained because **there is no actuarial data** on which such as risk could be **underwritten by any insurance carrier**. Likewise, such a non-risk is not insurable under any re-insurance agreements, again, as there are **no actuarial data on which such a risk could be calculated or underwritten**.

The so-called “pandemic insurance” is just a fraudulent scheme to trick people into paying for something that they are not getting, and it’s also a way for governments to inflate the currency and move money around the world to run the fake pandemic racketeering operation (money laundering).

Premises liability regarding the duty of care is considered regarding trespassers, licensees and invitees. In this argument, the subject pertains to the invitee in a public accommodation.

Injury victims invited to enter the property by the owner can be either “public invitees” or “business invitees.” As Invitees, visitors are granted the most legal protection under the state’s premises liability law for injuries they sustain while on the site. These are the criteria:

A Public Invitee is “… a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.”

A Business Invitee is “… a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.”

A public accommodation is a private business that is open to the public. This includes a membership retailer because nearly anyone with fifty dollars and a photo identification can join the membership. This is contrary to a private membership club such as a secret society.

A property owner has the highest duty of protection and care to those he or she invites upon the property for either personal or business reasons.

Under premises liability law, a property owner owes two duties to an invitee: (1) to use reasonable care in maintaining the premises in a reasonably safe condition, and (2) to give the invitee warning of concealed perils which are or should be known to the landowner, and

which are unknown to the invitee and cannot be discovered by him through the exercise of due care.

A purported “pandemic” which is the subject of this argument, whether real or not, is widely known to the public and therefore, no individual public accommodation has a duty of care regarding this example purported health risk.

Property owners don’t have a duty to warn customers, guests (or trespassers) about open and obvious dangers. Only concealed dangers require warning. Likewise, if the injured party (e.g. a plaintiff) owner knew the risks involved in entering the premises, then the property owner might not be liable.

Additionally, assuming a customer complies with the unproven medical intervention of wearing a face mask on the premises of a retail business, and subsequently takes a test for the so-called “coronavirus”. Assume then that the test shows that he is positive for the so-called “contagious virus”. **What if he accuses his local grocery store of being responsible for his contracting the “disease”? It is certain that the retailer’s first defense would to be ask for dismissal of the claim stating that there is no way to prove that this individual contracted any disease at its premises.**

Retailers claiming that they are protecting others or their employees from a disease are ignorant or lying. The ability to prove or disprove such a claim is not likely and while the retailer claims it is concerned with everyone’s health, it **would be the first to deny any responsibility**.

Likewise, private businesses and their employees have insurance to indemnify the business for activities that are related to performing the functions of the business. When the employees begin to engage in activities outside of the purposes for which the business was established and beyond their competence, they cannot thereby be indemnified for the reason that no underwriting exists for this type of scenario. The risks cannot be calculated within any reasonable certainty.

The employees of a private business lack the delegation of authority from the public health official, and lack the legal duty under the statutory scheme for the public health official, to act in the same capacity as a public health official. The business and its employees are not competent, qualified, insured or insurable, or equipped with sufficient supplies and funding to serve in the same capacity as a public health official.

No Direct Threat

There is no “direct threat” that someone is a risk to himself or others without a judicial determination by a preponderance of the evidence. The U.S. Court of Appeals for the Ninth Circuit ruled on July 23, 2003, that an employer must use the best available medical information when making an individualized assessment under the Americans with Disabilities Act (ADA) of whether an applicant poses a “direct threat” to himself or others. In a case familiar to workplace law and human resources professionals, the Ninth Circuit ruled in Echazabal v Chevron U.S.A. Inc., F2d (9th Cir (2003) that the ADA required more than “the advice of a generalist and an expert in preventive medicine” to conclude that the individual’s medical condition met the “direct threat” requirements. “Before terminating an individual’s livelihood, the ADA requires more,” the court concluded.

See also 29 CFR §§1630.15(b)(2) and (r):

(2) Direct threat as a qualification standard. The term “qualification standard” may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace. (See § 1630.2(r) defining direct threat.)

Specifically, the following criteria must be proven by a preponderance of the evidence in a court of competent jurisdiction:

“(r) Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a “direct threat” shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.”

In School Board of Nassau County v. Arline, 480 U.S. 273 (1987), the Supreme Court laid out risk factors that should be applied by federal courts to determine whether a disabled individual poses a direct threat and is therefore not an otherwise qualified individual within the meaning of Title II. The factors indicative of direct threat are: “(a) nature of the risk (how the disease is transmitted), (b) duration of the risk (how long is the carrier infectious), (c) the severity of the risk (what is the potential harm to third parties) and (d) the probabilities the disease will be transmitted and will cause varying degrees of harm.”

The level of risk needed to satisfy the Arline standard is one that is not remote, speculative, theoretical, Bragdon v. Abbott, 524 U.S. at 649, or even “elevated.” City of Newark v. J.S., 279 N.J. Super. 178, 198, 652 A.2d 265, 275 (Law Div. 1993).

Again, while there is no evidence of a direct threat in any single situation over the entire year of 2020, no such determination could be made in the first place by any court simply because absolutely no contagious pathogen has ever been isolated, contrary to what we’re being told in the news. The falsely claimed “direct threat” phrase that everyone is tossing around without any factual basis or evidence is purely remote, speculative and theoretical. Keep in mind that these determinations were made regarding actual contagious bacteria. The so-called “Covid-19” has never been proven to exist, that is, has never been isolated by any scientific standard, and there is no science supporting the “Hollywood drama” that viruses are contagious pathogens. This presumption is completely false.

In Bragdon, the dentist refused to do dental work, including drilling, on an HIV-infected person in his office. The dentist claimed that he was concerned that he could not provide adequate infection control in his office and offered to do the work at no extra charge at the hospital. (There was no discussion of whether there would be a charge by the hospital, but it is assumed there would be.) The patient refused and sued, alleging that the dentist violated the ADA. The dentist asserted the direct threat defense. He lost in the lower courts, but the U.S. Supreme Court ruled that he should be allowed to present evidence that HIV posed a

threat to him or others unless he did the procedure at the hospital. This is an important precedent, although not necessarily the best facts. The case was remanded and **the court of appeals found that the dentist had not made a sufficient showing of evidence of risk to justify his differential treatment of the patient.**