

Sovereign Immunity ***Frequently Asked Questions***

What is sovereign immunity?

Sovereign immunity is the legal doctrine that a state or state entity cannot commit a wrong and therefore cannot be sued. The University of South Florida, a state university, is considered a state entity.

Can the university be sued for medical malpractice and, if so, what are the allowed damages?

The State of Florida has allowed lawsuits against the state under certain circumstances and has set forth this limited waiver of sovereign immunity in § 768.28, *Florida Statutes*. Damages recoverable in a claim for personal injury or death caused by negligence of the state (which includes claims for medical malpractice) are limited, however, to \$200,000 per claim and \$300,000 per occurrence. § 768.28 (5), Fla. Stat. This means that the damages recoverable against a state entity for an act of medical negligence cannot exceed \$300,000.

As an employee of a state university, can I be named in a lawsuit?

The Florida Statutes provide: “No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.” § 768.28 (9)(a), Fla. Stat. Thus, under most circumstances, a USF employee should not be named as a defendant in a lawsuit. Please note there are some circumstances (bad faith, willful and wanton behavior) where an employee might be named as a defendant.

In the event of a medical malpractice lawsuit arising out of a USF employee’s care, who is the proper defendant?

Under Florida law, the proper defendant is the University of South Florida Board of Trustees, rather than the USF employee. § 768.28 (1), Fla. Stat.