



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

January 9, 2003

Dick Davidson
President
American Hospital Association
325 Seventh Street, NW
Seventh Floor
Washington, DC 20004

Dear Dick:

This is in response to your question regarding the liability protection offered by Section 304 of the Homeland Security Act. Section 304 is intended to alleviate liability concerns and ensure that vaccine is available and can be administered, particularly in the event of an actual or potential smallpox-related public health emergency.

Under Section 304, a "covered person" when used with respect to the administration of a covered countermeasure includes "a health care entity under whose auspices such countermeasure was administered." Section 304 is triggered in the event a smallpox countermeasure is administered pursuant to a declaration of the Secretary of the Department of Health and Human Services. The effective date of the Act, as established in Section 4 of the Homeland Security Act, is January 24, 2003.

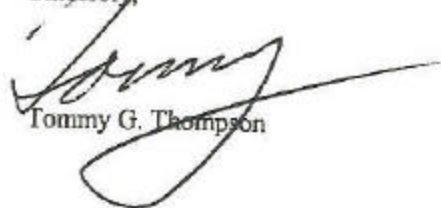
You asked whether liability protection is available under the following scenario:

Healthcare worker from Hospital A is vaccinated at Hospital B
and then sheds vaccinia to a patient at Hospital A while working
within the scope of employment.

It is our intention to word the Section 304 Declaration to include the Secretary's determination that hospitals that designate employees to receive smallpox countermeasures under the state's smallpox vaccination plan are participants in the program and thus are healthcare entities under whose auspices the countermeasure is administered. After consulting with the U.S. Department of Justice, we believe that under this scenario Hospital A would be deemed a covered person under the Act.

If you or members of your staff have any further questions about this matter, please feel free to contact Stewart Simonson, Deputy General Counsel, at (202) 690-7741.

Sincerely,



Tommy G. Thompson