The Centers for Law and the Public’s Health: A Collaborative at Johns Hopkins and Georgetown Universities

CDC Collaborating Center Promoting Health Through Law

WHO/PAHO Collaborating Center on Public Health Law and Human Rights

Legal & Regulatory Issues Concerning Volunteer Health Professionals in Emergencies

Advanced Tool Kit

April 2007

www.publichealthlaw.net/Research/Affprojects.htm
Re: Legal and Regulatory Issues Concerning Volunteer Health Professionals in Emergencies - 
Advanced Tool Kit

Dear Colleague:

We are pleased to present you with a current copy of our Advanced Tool Kit concerning the legal and regulatory issues affecting volunteer health professionals during emergencies.

As you may know, a number of registration systems nationwide are being developed to facilitate the use of volunteers in response to an emergency. At the federal level, for example, the Health Resources and Services Administration (HRSA) is coordinating the development of a state-based Emergency System for Advance Registration of Volunteer Healthcare Professionals (“ESAR-VHP”). These systems will facilitate the creation of volunteer healthcare professional databases for use in emergency response situations.

The purpose of this Advanced Tool Kit (and our Center’s online web resources available at http://www.publichealthlaw.net/Research/Affprojects.htm) is to provide you with information and resources to help in your assessment of many of the legal issues that may arise in your state’s or territory’s implementation of a volunteer registration system. A brief explanation of the materials in this Tool Kit, consistent with the Table of Contents, follows:

1. Legal and Regulatory Issues Concerning Volunteer Health Professionals in Emergencies: An Overview – this PowerPoint Presentation is provided in paper and electronic formats (at the website mentioned above) for you to adapt and use to examine, train, or disseminate information on the major legal issues that underlie development and implementation of a registration system in your jurisdiction.

2. Universal Checklist – this Checklist, reprinted from Section 4.0 of the ESAR-VHP Legal and Regulatory Issues Report (available online at http://www.hrsa.gov/esarvhp/legregissues/default.htm), provides a quick tool for identifying, assessing, and clarifying relevant legal and regulatory issues. Users may find this document extraordinarily helpful for organizing their reviews of key legal issues.

3. Model Documents – as part of its research and work with its partners, the Center has developed three draft model documents that may be instrumental in the implementation of a registration system. These include (a) Center’s Best Practices Memo, (b) a Notice of Rights and Responsibilities of Volunteer
Health Professionals, and (c) a Volunteer Agreement. Additionally, we provide a brief overview of the Uniform Emergency Volunteer Health Practitioners Act (UEVHPA), which seeks to facilitate the deployment of volunteer health professionals. These documents are also available electronically at the website mentioned above.

4. Case Studies – The Center has prepared 4 case studies that explain anticipated legal issues in response to fictional emergency scenarios. These include Case Study 1: Licensure Reciprocity for Volunteer Health Professionals in Connecticut; Case Study 2: Hospital Liability for Volunteer Negligence in Pennsylvania; Case Study 3: Emergency Declaration Laws in Oregon; and Case Study 4: Workers Compensation Coverage for Volunteers in Minnesota.

5. Other References – this section includes references to two additional documents, available online, that might also help some users of this Tool Kit: (a) the Center’s Civil Legal Liability and Public Health Emergencies Checklist prepared pursuant to funding through the CDC’s Public Health Law Program; (b) CDC Public Health Emergency Response Guide for State, Local, and Tribal Public Health Directors; (c) American Bar Association Section of State and Local Government Law Task Force on Emergency Management and Homeland Security, Checklist for State and Local Government Attorneys to Prepare for Possible Disasters; and (d) U.S. Government Accountability Office, GAO’s Preliminary Observations Regarding Preparedness, Response, and Recovery.

We hope you find these materials helpful as your state or territory works to develop its own system. We look forward to hearing from you with your questions, comments, and updates.

With best wishes,

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Disclaimer. Nothing within this document is meant to provide specific legal guidance or advice to any user of these documents. Legal advice on the issues discussed is necessarily fact-specific and may vary depending upon state or local law, and the specific circumstances involved. For specific requests for legal advice, individuals should contact their state's Office of the Attorney General or their institution’s legal counsel.
Advanced Tool Kit

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5. Other References

A. *Center’s Civil Legal Liability and Public Health Emergencies Checklist*

B. CDC Public Health Emergency Response Guide for State, Local, and Tribal Public Health Directors


1. Legal and Regulatory Issues Concerning Volunteer Health Professionals in Emergencies: An Overview – PowerPoint Presentation

For an electronic copy of the Power Point Presentation, see the Center’s website at:
www.publichealthlaw.net/Research/Affprojects.htm
Legal and Regulatory Issues Concerning Volunteer Health Professionals in Emergencies—An Overview

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Executive Director, Center for Law and the Public’s Health: A Collaborative at Johns Hopkins and Georgetown Universities

Major Resources

- Center’s Advanced Tool Kit – February 2007
- Hurricanes Katrina and Rita: Legal Issues Concerning VHPs Compendium – October 2005
- Numerous scholarly articles and other memos
- HRSA ESAR-VHP Legal Project Advisory Group
- publichealthlaw.net/Research/Affprojects.htm#HRSA

Assessing the Legal Environment in Emergencies

Emergency Declarations

Before 9/11: After 9/11:
- Focus of existing state legal infrastructures on general emergency responses
- “All hazards” or “disasters” approach
- Based in part on the Center’s Model State Emergency Health Powers Act (MSEHPA)

Major Topical Areas

1) Declaration of State of Emergency or Public Health Emergency
2) Regulation of Professionals - Licensing, Credentialing, and Privileging
3) Civil Liability, Immunity, and Indemnification
4) Workers’ Compensation
5) Criminal Liability

“Public health emergency”: An occurrence or imminent threat of an illness or health condition that (1) is believed to be caused by any of the following:

- Bioterrorism
- Natural disaster
- Appearance of a novel or previously controlled or eradicated infectious agent or biological toxin
- Chemical attack or accidental release
- Nuclear attack or accident, and
Emergency Declarations

(2) poses a high probability of any of the following harms occurring in a large number of the affected population:

- Death
- Serious or long-term disability
- Widespread exposure to infectious or toxic agent posing significant risk of substantial future harm

While every state (and the federal government) can declare a general emergency or disaster, the powers and protections that arise from such declarations vary.

- Some states authorize declarations for “public health emergencies” and “general emergencies.”
- Emergency powers, legal protections, and operational definitions may be inconsistent in “dual declaration” states.

Once an emergency has been declared, the legal landscape changes.

States That Define “Emergency”

States That Define “Disaster”

Individuals are bestowed special protections

Government is vested with specific powers to facilitate emergency responses

State licensure requirements may be waived

Responders may be protected from civil liability

“Emergency” or similar term defined in state statutes

“Disaster” or similar term defined in state statutes
States That Define “Public Health Emergency”

- “Public health emergency” or similar term defined in state statutes

States That Define “Public Health Emergency” and “Emergency” or “Disaster”

- “Emergency”, “disaster”, and “public health emergency” (or similar terms) defined in state statutes

Emergency Declarations

- Dilemmas of Dual Declarations:
  - Triggering of distinct powers and responsibilities based on declaration
  - Assignments of powers to different state agencies (e.g., public health agency vs. emergency management agency)
  - Potential for overlapping priorities in governmental responses or lack of liability or other protections for VHPs

Multiple Levels of Emergency Declarations

- VHP deployment, uses, authorities, liabilities, immunities, protections from harm vary (and those with the answers) depend on the declared emergency

Major Topical Areas

1) Declaration of State of Emergency or Public Health Emergency

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4) Workers’ Compensation

5) Criminal Liability

Regulation of Professionals

Two essential questions of portability

1. When can volunteer health professionals practice across state lines?

2. When can hospitals and other health care entities utilize out-of-state volunteers?
Regulation of Professionals

- Licensing, Credentialing, and Privileging:
  - Allow for evaluation and certification of the skills, education, experience, and training of health care professionals.
  - May limit the ability of health care professionals to volunteer in other jurisdictions or health care facilities during an emergency.

Regulation of Professionals

- State professional licensing requirements:
  - Establish a set of minimum competencies and prerequisites for entry into each health care profession
  - Create mechanisms to grant licenses to appropriately qualified professionals
  - Establish the scope of practice for the professions
  - Provide disciplinary actions for violations

Regulation of Professionals

- When can volunteer health professionals practice across state lines?
  - Emergency Declarations and other laws often provide for portability of licensure, certification, and credentialing for some volunteer responders
  - ESAR-VHP registrants may have increased portability under state-level agreements like EMAC
  - Other non-emergency reciprocity agreements may apply

Regulation of Professionals

- Emergency Declarations and other laws allow the state to waive its normal laws for professional licensure, certification, and permitting during a declared emergency and to recognize professionals licensed, certified, or permitted in other states.
  - Some states have enacted reciprocity agreements for certain professions even when there is not a declared emergency (e.g. Nurse Licensure Compact)

Regulation of Professionals

- Emergency Management Assistance Compact (EMAC)
  - Mutual Aid Agreement
  - Passed into law by 50 states
  - Formalized emergency request framework
  - Provides broad license reciprocity

Regulation of Professionals

- EMAC provides:
  "Whenever any person holds a license, certificate, or other permit issued by any state party... evidencing the meeting of qualifications for professional, mechanical, or other skills... [that person] shall be deemed licensed, certified, or permitted by the state requesting assistance... subject to such limitations and conditions as the governor of the requesting state may prescribe."
Major Topical Areas

1) Declaration of State of Emergency or Public Health Emergency
2) Regulation of Professionals . . .
3) Civil Liability, Immunity, and Indemnification
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Civil Liability

• Major questions:
  ➢ What is civil liability?
  ➢ Who may face civil liability?
  ➢ What types of actions are subject to civil liability?
  ➢ How does civil liability affect ESAR-VHP?
  ➢ What legal protections from civil liability are in place?

Civil Liability

• Legal theories:
  ➢ Negligence
  ➢ Intentional torts
  ➢ Privacy
  ➢ Misrepresentation
  ➢ Discrimination

Civil Liability – Health Care Entities

• Theories of Liability:
  ➢ Respondeat Superior
  ➢ Ostensible Agency
  ➢ Corporate Liability

Civil Liability

• What is civil liability?

Civil liability is the potential responsibility that a person or institution may owe for their actions, or failures to act, that result in injuries or losses to others.
Civil Liability

Liability Risks to Volunteers and Hospitals

Civil Liability - Volunteers

- **Legal provisions that may grant immunity to volunteers:**
  - Volunteer Protection statutes
  - Governmental (sovereign) immunity
  - Good Samaritan laws
  - Emergency statutes
  - EMAC

Civil Liability Protections

- **Umbrella of Liability Coverage:**
  - Volunteer Protection Acts
  - No emergency required
  - Apply to volunteers for nonprofit and governmental entities only
  - Do not apply to organizations
  - No compensation allowed

Civil Liability - Volunteers

- **Volunteer Protection statutes:**
  - Federal and state Volunteer Protection Acts
  - No emergency required
  - Apply to volunteers for nonprofit and governmental entities only
  - Do not apply to organizations
  - No compensation allowed

Civil Liability

- **Legal protection from civil liability:**
  - Immunity provisions
  - Indemnification provisions
  - Risk management policies and practices

State Legislative Definitions of “Volunteer”

- “Volunteer” or similar term defined in state statutes
Civil Liability - Volunteers

• Governmental (sovereign) immunity:
  - Scope of immunity determined by Tort Claims Acts
  - May cover all government employees, including volunteers
  - No emergency required
  - Not absolute for egregious conduct
  - Volunteers in non-government settings are not covered

• Good Samaritan laws:
  - Reduction in standard of care
  - Codified in state statutes
  - Criteria vary across states
  - Emergency situation must exist, but need for declaration
  - Do not typically apply to health care employees
  - May not apply for pre-arranged or compensated volunteers
  - Not absolute for egregious conduct

Good Samaritan Statutes

Civil Liability - Volunteers

• Emergency statutes:
  - Provide immunity during declared emergencies explicitly or by converting responders into state employees
  - Provisions can be broad, redundant, or vague
  - Not absolute for egregious conduct

Center’s Model State Emergency Health Powers Act (MSEHPA)

Out-of-state emergency health care providers “shall not be held liable for any civil damages as a result of medical care or treatment related to the response to the public health emergency”
Civil Liability - Volunteers

• Emergency statutes:

Connecticut statute grants immunity to volunteers in specific organizations: DMAT, MRC, Urban Search and Rescue Team, Behavioral Health Regional Crisis Response Team.

Civil Liability – Health Care Entities

• Health care entities that provide volunteers:
  ➢ Unlikely to be liable for acts by its employees in other facilities or jurisdictions.

• Health care entities that accept volunteers:
  ➢ May be liable for actions that take place under their supervision - depends on relationship between volunteer and entity.

Civil Liability - Volunteers

• EMAC issues:
  ➢ Interpretation of statutory language - “officers or employees of the state” may only include certain volunteers.
  ➢ Some states were able to expand the EMAC workforce during Hurricane Katrina emergency responses.
  ➢ IEMAC features more expansive coverage. Any “person or entity” who is part of a state response will benefit from immunity.

Civil Liability – ESAR-VHP System

• State-operated ESAR-VHP System:
  ➢ Likely to have sovereign immunity.

• ESAR-VHP System operated by non-governmental organizations:
  ➢ May have sovereign immunity as a contractor, but assumption is otherwise.
  ➢ May have contractual indemnity via government.

Civil Liability – Health Care Entities

• Immunity for health care entities:
  ➢ Less immunity options than volunteers.
  ➢ Some health care entities may qualify for sovereign immunity.

Major Topical Areas

1) Declaration of State of Emergency or Public Health Emergency
2) Regulation of Professionals . . .
3) Civil Liability, Immunity, and Indemnification
4) Workers’ Compensation
5) Criminal Liability
Workers’ Compensation

Key Questions:

- Who is an employee for the purposes of workers’ compensation?
- Who is the employer of volunteers?
- When is a volunteer acting within the scope of her employment?
- When is a volunteer “injured” in the course of emergency responses?

Who is an employee for the purposes of worker’s compensation?

- Absent a state law extending workers’ compensation to volunteers, unpaid individuals who respond to emergencies are not covered because they are not “employees”
- Narrowly written laws that appear to cover VHPs may not apply if the (1) employer has option and decides to not cover volunteers or (2) volunteer has not appropriately registered.

Who is the employer of volunteers?

- The employer from the “home” state is not likely to be responsible for injuries to volunteers because they are acting outside the course of employment (unless the employer offers to provide coverage)
- Temporary “host” employer may be the state or municipal government.
- If not, the “host” institution may be responsible.

Workers Comp Coverage

Key Questions:

- When is a volunteer acting within the scope of her employment? – A critical question even if coverage exists b/c such coverage only extends to acts within the scope of employment.
- When is a volunteer “injured” in the course of emergency responses? – Workers compensation only pertains to injuries that occur at work. Questions as to the timing of injuries may arise, especially among states that lack comprehensive occupational health provisions.

Major Topical Areas

1) Declaration of State of Emergency or Public Health Emergency
2) Regulation of Professionals . . .
3) Civil Liability, Immunity, and Indemnification
4) Workers’ Compensation
5) Criminal Liability
Criminal Liability

- Volunteer criminal responsibility varies under federal or state laws
- Statutory provisions that protect individuals from civil liability do not typically protect persons from criminal liability
- Employer may face vicarious criminal liability for criminal acts of employees/volunteers, though the risk is minimal

UEVHPA Legislative Activity

- Enacted
- Introduced in 2007
- Planned Introduction in 2008
- Enacted (Puerto Rico)
- Introduced in U.S. Virgin Islands

Conclusions

- For more information, please contact us or visit our website:
  www.publichealthlaw.net/Research/Affprojects.htm
- James G. Hodge, Jr., Executive Director - jhodge@jhsph.edu
- Thank you!
2. Universal Checklist

Purpose. This Checklist serves as a tool for identifying, assessing, and clarifying relevant legal and regulatory issues related to the implementation and organization of a volunteer registration system.

Organization. This Checklist presents a series of questions within five broad subject categories that encompass the primary legal issues related to the establishment of a registration system: I. Emergency Declarations; II. Licensing, Credentialing, and Privileging; III. Civil Liability, Immunity, and Indemnification; IV. Workers’ Compensation; and V. Criminal Liability. Each of these categories is indicated in the first column of the Checklist. The second column, Checklist Questions, presents core questions organized within each subject matter area and other subcategories.

Suggestions for Use. This Checklist is designed for use by government officials at the state and local levels, their public and private sector partners, and others who are responsible for, or interested in, assessing legal preparedness concerning volunteer registration systems.

Users should view the questions as guides to the key legal issues within each topical area. Specific, additional questions may arise from the exploration of these issues within each jurisdiction. Users may benefit from a deliberative, committee-oriented process to respond to each of the various questions. This process may provide greater opportunities for information sharing, relationship building, and comprehension.

Disclaimer. Nothing within this Checklist is meant to provide specific legal guidance or advice to any user of these documents. Rather, as noted above, this Checklist is meant to serve as a helpful tool for assessing these legal issues within the user’s specific jurisdiction. Legal advice on the issues discussed is necessarily fact-specific and may vary depending upon state or local
law, and the specific circumstances involved. For specific requests for legal advice, individuals should contact their state’s Office of the Attorney General or their assigned legal counsel.

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<td>1. Has the state or local government adopted a statutory or regulatory definition of a “public health emergency” or other similar terms (e.g., public health crisis or catastrophe)?</td>
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<td>2. Does the state or local government have procedures that must be followed for the governor or other primary political authority to declare a public health emergency?</td>
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<td>3. Do the procedures to declare a public health emergency require specificity as to the type, nature, location, and duration of the emergency?</td>
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<td>4. Once a public health emergency has been declared, is there statutory or regulatory authority to grant specific emergency powers to state or local public health agencies and other relevant entities to facilitate emergency response efforts?</td>
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<td>5. Do public health emergency powers granted include immunity or indemnification for volunteer health professionals who are assisting in emergency response efforts?</td>
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<td>6. Does the state statutorily define the term “volunteer” (or other similar terms) to include health professionals within an emergency management context?</td>
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<td>7. Is there statutory or regulatory authority that permits the governor or other political authority to terminate the public health emergency or which provides for automatic termination once certain conditions are met?</td>
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<td>10. Does the state’s or local government’s general emergency provision also cover emergencies that affect public health?</td>
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<td>12. Do state or local laws and regulations grant authority to different agencies based upon a declaration of “public health emergency” or “general emergency”?</td>
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<td>13. Does the statutory or regulatory scheme require or provide for coordination of emergency response efforts among the various state and local agencies involved in the emergency response efforts?</td>
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<td>14. What type of professionals are required to have state licensure or certification to practice in the state?</td>
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<td>15. Does state law provide for civil and/or criminal penalties for health care professionals who practice without a license?</td>
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<td>16.</td>
<td>Has the state adopted provisions for reciprocity of state licensure and/or certification requirements for health professionals acting in response to an emergency, including physicians, nurses, and behavioral health professionals, who are licensed in another state (e.g., MSEHPA, MNPA, EMAC)?</td>
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<td>Has the state entered into reciprocity agreements or compacts providing for the recognition of out-of-state licenses and/or certifications for health professionals (e.g., NLC, CPQ)?</td>
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<td>21.</td>
<td>Are civil liability protections explicit in the state or local public health emergency statutes and regulations or other relevant laws?</td>
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<td>22.</td>
<td>Has the state entered into any intrastate or interstate mutual aid agreements that address civil liability (e.g., EMAC, IEMAC, MIMAL)?</td>
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<td>23.</td>
<td>Does the state tort claims act abrogate sovereign immunity for state actors related to emergency response activities?</td>
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<tr>
<td>24.</td>
<td>Does the state tort claims act provide civil liability protection for “discretionary acts” by state actors (e.g., government public health agencies, responders and volunteers working on behalf of the state, private sector entities working under contract with the state) during emergencies?</td>
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<td>25.</td>
<td>Do conflicts of laws rules address which state’s law will apply when an out-of-state health care volunteer commits an act giving rise to liability in another state?</td>
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<td><strong>A. Volunteer Health Professionals</strong></td>
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<td>26.</td>
<td>Does state law explicitly provide volunteer health professionals with immunity from civil liability (e.g., Volunteer Protection Acts, Good Samaritan Laws, State Emergency Statutes and Compacts) when responding to an emergency?</td>
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<td>Does the state Volunteer Protection Act provide volunteers with liability protections that exceed protections provided by the Federal Volunteer Protection Act?</td>
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<td>28.</td>
<td>Do state sovereign immunity protections apply to the actions of volunteer health professionals that are employees of the state?</td>
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<td>29.</td>
<td>Does the state Good Samaritan law apply to the actions of volunteer health professionals, and, if so, under what circumstances?</td>
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<td>30.</td>
<td>Do state emergency statutes or compacts (e.g. MSEHPA, MIMAL, EMAC) provide civil liability protection for volunteer health professionals?</td>
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<td>31.</td>
<td>Do state laws that provide volunteer health professionals with immunity from civil liability apply to compensated and uncompensated volunteers?</td>
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<td>32.</td>
<td>Are there exceptions to civil liability protections for volunteer health professionals for acts that rise to the level of gross negligence, recklessness, or willful or wanton misconduct?</td>
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<td>33.</td>
<td>Are entities employing volunteer health professionals, including governmental agencies, required to defend and indemnify volunteers for tortious acts committed within the scope of their duties?</td>
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<td><strong>B. Health Care Entities</strong></td>
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<td>34. Do health care entities face potential civil liability for their own tortious acts committed in association with the use and application of a registration system?</td>
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<td>35. Do health care entities face potential civil liability for the tortious acts of their employees, agents, and volunteers?</td>
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<td>36. Does state law immunize health care entities utilizing volunteers who engage in negligent acts (e.g., Volunteer Protection Acts, Good Samaritan Laws, State Emergency Statutes and Compacts)?</td>
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<td>37. Does state law immunize health care entities for negligent acts associated with the use and/or administration of the registration system?</td>
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<td>C. Administrators of a VHP registration System</td>
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<td>38. Do state sovereign immunity protections apply to governmental agencies administering a registration system?</td>
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<td>39. Do state sovereign immunity protections apply to private contractors associated with the administration of a registration system?</td>
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<td>IV. Workers’ Compensation</td>
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<td>40. Is a volunteer health professional recognized by state law as an employee of the state or health care entity for whom he/she is providing emergency health care services?</td>
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<td>41. Are volunteer health professionals required to register with the state or other political subdivision in order to qualify for workers’ compensation benefits for injuries sustained in the performance of their duties?</td>
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<td>42. Are existing “home” employers of volunteer health professionals required to provide workers’ compensation coverage for injuries sustained in the course of performing their duties as a volunteer?</td>
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<td>43. Do conflicts of laws rules provide guidance as to whether the workers’ compensation laws of the home or host state apply to an out-of-state volunteer health professional’s claims for injuries sustained in the course of his/her duties?</td>
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<td>44. Do the applicable workers’ compensation laws provide for the coverage of occupational diseases contracted in the course of the performance of volunteer activities (e.g., outbreaks of infectious diseases, bioterrorist attacks)?</td>
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<td>V. Criminal Liability</td>
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<td>45. Does state law provide for criminal penalties for health professionals practicing their trade without a license?</td>
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<td>46. Are criminal actions exempted from the immunity protections granted to health care volunteers under Volunteer Protection Acts, Good Samaritan Laws, and State Emergency Statutes and Compacts?</td>
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<tr>
<td>47. Do sovereign immunity protections apply to criminal actions engaged in by employees or agents of the state?</td>
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Legal and Regulatory Issues Concerning Volunteer Health Professionals

**Legal Best Practices**

**Purpose.** These Best Practices allow states to examine how other states have dealt with the legal and regulatory issues related to implementation and organization of a volunteer healthcare registration system.

**Organization.** These Best Practices present a series of examples of state law treatment of six broad subject categories that encompass the primary legal issues related to the establishment of a volunteer registration system: I. Emergency Health Powers Laws; II. Licensure and Credentialing Laws; III. Civil Liability Protections; IV. Workers’ Compensation Protections; and V. Right to Reemployment Protections. Each of these categories includes a definition of the objectives of the state laws and the relevant statutory language. The toolkit is applicable to any registration system that facilitates the deployment of volunteer health professionals. Additional provisions of a model nature, which have been enacted in several states, are provided in the Model State Emergency Health Powers Act (MSEHPA). Relevant provisions of MSEHPA can be found online at [http://www.publichealthlaw.net/MSEHPA/MSEHPA2.pdf](http://www.publichealthlaw.net/MSEHPA/MSEHPA2.pdf), and are discussed in sections 3.1, 3.2.1.4, and 3.3.1.4. of the ESAR-VHP Legal and Regulatory Issues Report, which can be found at [http://www.hrsa.gov/bioterrorism/esarvhp/legalissues.htm](http://www.hrsa.gov/bioterrorism/esarvhp/legalissues.htm).

**Suggestions for Use.** This document is designed for use by government officials at the state and local levels, their public and private sector partners, and others who are responsible for, or interested in, assessing legal preparedness concerning a registration system. Users should view the Best Practices as guides to the key legal issues within each topical area.

**Disclaimer.** Nothing within this document is meant to provide specific legal guidance or advice to any user of these documents. Rather, as noted above, the Best Practices are meant to serve as a helpful tool for assessing these legal issues within the user’s specific jurisdiction. Legal advice on the issues discussed is necessarily fact-specific and may vary depending upon state or local law, and the specific circumstances involved. For specific requests for legal advice, individuals should contact their state's Office of the Attorney General or their institution’s legal counsel.
I. EMERGENCY HEALTH POWERS LAWS

Objectives:

- To define the roles of the state Emergency Management Agency and other government actors in disaster and public health emergency response efforts.
- To clearly define the circumstances under which the state can declare a public health emergency or disaster.
- To define the roles volunteers in public health emergencies and disasters.
- To provide civil liability, workers’ compensation, and licensure reciprocity protections for individuals providing assistance during a disaster or public health emergency.

**STATUTORY ORGANIZATION**

**20 ILL. COMP. STAT. 3305/1, ET SEQ. (2005) – ILLINOIS EMERGENCY MANAGEMENT AGENCY ACT**

3305/1. Short Title
3305/2. Policy and Purposes
3305/3. Limitations
3305/4. Definitions
3305/5. Illinois Emergency Management Agency
3305/7. Emergency Powers of the Governor
3305/8. Mobile Support Teams
3305/9. Financing
3305/10. Emergency Services and Disaster Agencies
3305/11. Local Disaster Declarations
3305/12. Testing of Disaster Warning Devices
3305/13. Mutual aid arrangements between political subdivisions and taxing districts
3305/14. Communications
3305/15. Immunity
3305/16. Professions, Trades and Occupations
3305/17. Authority to Accept Services, Gifts, Grants or Loans
3305/18. Orders, Rules and Regulations
3305/20. Emergency Management Agency; personnel; oath
3305/21. No Private Liability
3305/22. Political activities prohibited

**KEY PROVISIONS**

**20 ILL. COMP. STAT. 3305/4 – DEFINITIONS**

"Disaster" means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism.
"Public health emergency" means an occurrence or imminent threat of an illness or health condition that: (a) is believed to be caused by any of the following: (i) bioterrorism; (ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; (iii) a natural disaster, (iv) a chemical attack or accidental release; or (v) a nuclear attack or accident; and (b) poses a high probability of any of the following harms: (i) a large number of deaths in the affected population; (ii) a large number of serious or long-term disabilities in the affected population; or (iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

20 ILL. COMP. STAT. 3305/5(f) - ILLINOIS EMERGENCY MANAGEMENT AGENCY
The Illinois Emergency Management Agency shall:
(1) Coordinate the overall emergency management program of the State.
(2) Cooperate with local governments, the federal government and any public or private agency or entity in achieving any purpose of this Act and in implementing emergency management programs for mitigation, preparedness, response, and recovery.

(2.6) Coordinate with the Department of Public Health with respect to planning for and responding to public health emergencies.

(6) Determine requirements of the State and its political subdivisions for food, clothing, and other necessities in event of a disaster.
(7) Establish a register of persons with types of emergency management training and skills in mitigation, preparedness, response, and recovery.
(8) Establish a register of government and private response resources available for use in a disaster.

(11) Develop agreements, if feasible, with medical supply and equipment firms to supply resources as are necessary to respond to an earthquake or any other disaster as defined in this Act. These resources will be made available upon notifying the vendor of the disaster. Payment for the resources will be in accordance with Section 7 of this Act. The Illinois Department of Public Health shall determine which resources will be required and requested.

(12) Out of funds appropriated for these purposes, award capital and non-capital grants to Illinois hospitals or health care facilities located outside of a city with a population in excess of 1,000,000 to be used for purposes that include, but are not limited to, preparing to respond to mass casualties and disasters, maintaining and improving patient safety and quality of care, and protecting the confidentiality of patient information. No single grant for a capital expenditure shall exceed $300,000. No single grant for a non-capital expenditure shall exceed $100,000. In awarding such grants, preference shall be given to hospitals that serve a significant number of Medicaid recipients, but do not qualify for disproportionate share hospital adjustment payments under the Illinois Public Aid Code. To receive such a grant, a hospital or health care facility must provide funding of at least 50% of the cost of the project for which the grant is being requested. In awarding such grants the Illinois Emergency Management Agency shall consider the recommendations of the Illinois Hospital Association.
II. LICENSURE AND CREDENTIALING LAWS

Objectives:
- To facilitate the participation of medical professionals properly licensed in other jurisdictions in emergency response efforts by waiving in state licensure requirements.
- To permit registered nurses and student nurses to provide a broader scope of medical care, outside the supervision of a physician during emergencies.
- To apply waivers of licensure requirements to volunteer health professionals.


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II. Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing his or her duties as such, practice such professional, mechanical, or other skill during an emergency.

III. As used in this section the term "emergency management worker" includes any full or part-time paid, volunteer, or auxiliary employee of this state, other states, territories, possessions, the District of Columbia, the federal government, any neighboring country, or of any political subdivision of such entities, or of any corporation, agency or organization, public or private, performing emergency management services at any place in this state subject to the order or control of, or pursuant to a request of, the state government or any of its political subdivisions.

IV. Dentists licensed in this state, nurses registered in this state, student nurses undergoing training at a licensed hospital in this state, or emergency medical care providers licensed under RSA 153-A, during any emergency, shall be regarded as authorized emergency management workers and while so engaged may practice, in addition to the authority granted them by other statutes, administration of anesthetics; minor surgery; intravenous, subcutaneous, and intramuscular procedures; and oral and topical medication under the general but not necessarily direct supervision of a member of the medical staff of a legally incorporated and licensed hospital of this state, and to assist such staff members in other medical and surgical procedures.

V. Any emergency management worker, performing emergency management services at any place in this state pursuant to agreements, compacts or arrangements for mutual aid and assistance, to which the state or one of its political subdivisions is a party, shall possess the same powers, duties, immunities, and privileges the worker would ordinarily possess if performing his or her duties in the state or political subdivision in which normally employed or rendering services.

Objectives:
- To provide broad licensure reciprocity to professionals holding out-of-state licenses assisting in emergency response efforts.
- To facilitate the use of out-of-state volunteers in emergency response efforts to increase emergency management capacity.

MINN. STAT. § 12.42 (2005) - OUT-OF-STATE LICENSE HOLDERS; POWERS, DUTIES

During an emergency or disaster, a person who holds a license, certificate, or other permit issued by a state of the United States, evidencing the meeting of qualifications for professional,
mechanical, or other skills, may render aid involving those skills in this state. The license, certificate, or other permit of the person, while rendering aid, has the same force and effect as if issued in this state.

Objectives:
- To utilize home state professional resources for emergency response efforts.
- To facilitate the use of professional resources from other jurisdictions, when the home state resources have been exhausted, by granting licensure reciprocity.

### 20 ILL. COMP. STAT. 3305/16 (2005) - PROFESSIONS, TRADES AND OCCUPATIONS.

If such disaster as is described in Section 4 occurs in this State and the services of persons who are competent to practice any profession, trade or occupation are required in this State to cope with the disaster and it appears that the number of persons licensed or registered in this State to practice such profession, trade or occupation may be insufficient for such purpose, then any persons who are licensed elsewhere to practice any such profession, trade or occupation may, if a member of a mobile support team or unit of another state rendering aid in this State pursuant to the order of the Governor of their home state and upon the request of the Governor of this State, or if otherwise requested so to do by the Governor or the Director of this State, during the time the disaster continues, practice such profession, trade or occupation in this State without being licensed or registered in this State.

### III. CIVIL LIABILITY PROTECTIONS

#### A. Liability Protections for Volunteer Health Professionals Housed in Emergency Management Laws

Objectives:
- To provide volunteer health professionals with protection from civil liability for actions related to the performance of their volunteer duties.
- To provide individuals injured by a volunteer’s actions, which amount willful misconduct, with recourse for their injuries.


A person licensed to practice medicine or osteopathic medicine and surgery, or a licensed hospital, registered nurse, practical nurse, dentist, veterinarian, or paramedical person, whether licensed in this or another state or by the federal government or a branch of the armed forces of the United States, or a student nurse undergoing training in a licensed hospital in this or another state, that renders services during a state of disaster declared by the governor and at the express or implied request of a state official or agency or county or local coordinator or executive body, is considered an authorized disaster relief worker or facility and is not liable for an injury sustained by a person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained. The immunity granted by this subsection does not apply in the event of a willful act or omission. If a civil action for malpractice is filed alleging a willful act or omission resulting in injuries, the services rendered that resulted in those injuries shall be judged according to the standards required of persons licensed in this state to perform those services.
B. Liability Protections for Volunteer’s Housed in Good Samaritan Laws

Objectives:
- To provide broad based civil liability protections to individuals who provide emergency medical care in order to encourage individuals to provide this type of care.
- To provide patients injured by egregious misconduct, which amounts to willful or wanton negligence, with a measure of recourse.

TEX. CIVIL PRACTICE & REMEDIES CODE ANN. § 74.151 (VERNON 2005) – LIABILITY FOR EMERGENCY CARE

(a) A person who in good faith administers emergency care, including using an automated external defibrillator, is not liable in civil damages for an act performed during the emergency unless the act is wilfully or wantonly negligent.

(b) This section does not apply to care administered:

(1) for or in expectation of remuneration, provided that being legally entitled to receive remuneration for the emergency care rendered shall not determine whether or not the care was administered for or in anticipation of remuneration; or

(2) by a person who was at the scene of the emergency because he or a person he represents as an agent was soliciting business or seeking to perform a service for remuneration.

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(e) This section does not apply to a person whose negligent act or omission was a producing cause of the emergency for which care is being administered.

C. Liability Protection for Volunteers Through the Extension of State Sovereign Immunity

Objectives:
- To provide volunteers, including health professionals, emergency responders, and members of the Medical Reserve Corps, with immunity from liability for actions related to the performance of their volunteer duties.
- To provide for liability protection which is limited to the breadth of state sovereign immunity.

VA. CODE ANN. § 2.2-3605(D) (2005) – VOLUNTEER BENEFITS

... Volunteers in state and local service, including, but not limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT), shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff.
Virginia case law, *Friday-Spivey v. Collier*, 268 Va. 384, 601 S.E.2d 591 (2004), interprets these sovereign immunity protections with a four part test. Volunteers will be protected under sovereign immunity if they meet the following:

1. The nature of the function performed by the employee is clearly defined and directed by a state agency;
2. The extent of the state’s interest and involvement in that function is clearly defined;
3. Roles are clearly defined in terms of the use of judgment and discretion, and
4. The degree of control and direction exercised by the state over the employee must be clear.

**IV. WORKERS’ COMPENSATION PROTECTIONS**

**Objectives:**
- To provide volunteer health professionals with workers’ compensation protection for injuries sustained while providing assistance during an emergency or disaster.
- To define the party considered as the “employer” for purposes of workers’ compensation protections.

**MINN. STAT. ANN. 12.22, SUBD. 2A. VOLUNTEER PROTECTIONS.**

(a) Individuals who volunteer to assist a local political subdivision during an emergency or disaster, who register with that subdivision, and who are under the direction and control of that subdivision, are considered an employee of that subdivision for purposes of workers’ compensation and tort claim defense and indemnification.

(b) Individuals who volunteer to assist the state during an emergency or disaster, who register with a state agency, and who are under the direction and control of the state agency are considered an employee of the state for purposes of workers’ compensation and tort claim defense and indemnification.

**V. RIGHT TO REEMPLOYMENT FOR VOLUNTEERS**

**Objectives:**
- To provide volunteers broad reemployment and wage protection for participating in disaster response efforts.
- To provide reemployment and wage protection to a broad range of types of volunteers.
- To facilitate multi-jurisdictional emergency response efforts by providing reemployment and wage protection to volunteers providing disaster assistance outside the state of Illinois.

**5 ILL. COMP. STAT. 335/3 (WEST 2005) - DISASTER SERVICE VOLUNTEER LEAVE.**

An employee of a State agency who is a certified disaster service volunteer of the American Red Cross or assigned to the Illinois Emergency Management Agency in accordance with the Illinois Emergency Management Agency Act, the Emergency Management Assistance Compact Act, or other applicable administrative rules may be granted leave from his work with pay for not more than 20 working days in any 12-month period to participate in specialized disaster relief services for the American Red Cross or for the Illinois Emergency Management Agency, as the case may be, upon the request of the American Red Cross or the Illinois Emergency Management Agency.
for the services of that employee and upon the approval of that employee's agency, without loss of seniority, pay, vacation time, compensatory time, personal days, sick time or earned overtime accumulation. The agency shall compensate an employee granted leave under this Section at his regular rate of pay for those regular work hours during which the employee is absent from his work. For purposes of assessing State disaster response needs, requests made pursuant to this Act for services out-of-state shall be coordinated by the American Red Cross and the Illinois Emergency Management Agency through the Illinois State Emergency Operations Center. The Illinois Emergency Management Agency may consult with the Department of Central Management Services on leave issues that could impact the operations of State agencies under the Governor's jurisdiction. Leave under this Act shall not be unreasonably denied for services related to a disaster within the United States or its territories.
VOLUNTEER AGREEMENT

I, _________________________, offer to serve as a volunteer to participate in the _________________________, and hereafter deployed under __________________________,

Name of Registration System                                            State Agency Administering the Program
to provide emergency medical care, public health services, or other service as needed.

My services will be those of a ________________________________.

Occupation

In making this offer of my services, I understand and agree to:

1. Perform my volunteer services and activities under the terms, conditions, and general direction of the sponsoring government entity or health care organization, and approved or supervised by an appropriate public official.

2. Be subject to the __________________________ regulations

   State Agency Administering Program
   concerning Standards of Conduct and Conflict of Interest. Copies of the regulations are available from the state agency’s program coordinator.

3. Be eligible under the __________________________ Workers’ Compensation Act,

   State Name
   _____________, to file for benefits for work related injuries and/or illnesses that may
Citation
arise and are directly related to the performance of my volunteer assignment.

4. Be eligible for coverage under the ________________________________,
Applicable Immunity Statute
for any damages or injuries that may arise from the performance of my volunteer assignment.

5. Be responsible for any actions that are not directly related to the performance of my
volunteer assignment.

6. Maintain current health professional licensure, certification or registration, as applicable.

7. Notify the system coordinator of any changes in personal contact information or
licensure, certification, or registration status within 72 hours of the change.

8. Provide the necessary health and identification information as required for my
participation in the response, which may be disclosed by the __________________________
State Agency
___________________________to other localities, regions or states as necessary for the
Administering Program
administration of the program.

9. Abide by the policies and procedures set forth in the Volunteer Manual and those set forth
by the state agency administering the response.

I understand that my volunteer assignment may be terminated at any time by either party to
this agreement.

_____________________________________             ____________________
Signature of Volunteer          Date

_____________________________________    ____________________
Signature of System Coordinator    Date
NOTICE OF RIGHTS AND RESPONSIBILITIES OF VOLUNTEER HEALTH PROFESSIONALS UNDER THE REGISTRATION SYSTEM

As a volunteer health professional (VHP), you have certain rights and responsibilities associated with your volunteer duties under the [name of registration system]. This notice describes those rights and responsibilities, which may differ based on the laws and regulations of the state in which you are registered. Please contact your state or territorial administrator for more specific information.

Disclaimer. This Notice is not meant to provide specific legal guidance or advice to any volunteer. Rather, this Notice serves as a helpful tool for assessing your rights and responsibilities within your specific jurisdiction. Legal advice on the issues discussed varies depending on state or local laws, the nature of the grantee, and specific circumstances involved. Please contact your state or territorial program legal advisor or your attorney for specific legal guidance.

Emergency Declarations. State laws empower government officials to declare an emergency in response to disasters and public health crises. Once an emergency is declared, the legal obligations and protections available to a VHP may change. The program may be activated by the declaration of a general state of emergency (or disaster) or a public health emergency, or both, depending on your specific jurisdiction.

The legal obligations and protections applicable to a VHP may differ depending on whether a general emergency, disaster, or public health emergency has been declared. The program may also be activated under additional emergency situations or in response to disasters that do not involve a government declaration of emergency.

Licensure, Credentialing and Privileging. Each state has its own system of professional regulation that requires health professionals to obtain a license or certification to practice within the state. Many states laws and health care entity policies require VHPs to obtain credentials and privileges prior to practicing. As a VHP, you are responsible for maintaining current licensure, certification, registration, credentialing, and privileging status and to promptly advise your program administrator of any changes in your status or contact information.

During an emergency, a VHP may be asked to provide volunteer health services in a state other than the one in which he or she is licensed, credentialed, or privileged. In these circumstances, the VHP will be able to provide professional health services if the law in the other state recognizes the VHP’s out-of-state license or credential (reciprocity) or temporarily suspends the licensure, credentialing, or
privileging requirements for VHPs (waiver). Various laws, compacts, agreements, and policies allow for waiver or reciprocity of licensure, credentialing, and privileging for VHPs assisting across state lines. Some states also authorize limited license reciprocity for certain health professions even when an emergency has not been declared.

**Civil Liability.** Civil liability refers to the ability of patients to seek compensation for wrongful or accidental harms resulting from the delivery of medical services or care. While VHPs may potentially face civil liability for negligently providing medical care and treatment during an emergency, many laws offer protection from potential liability.

Federal, state, and local laws offer VHPs various degrees of protection, or immunity, from civil liability. Limits on civil liability for volunteers may be found in (1) volunteer protection statutes or (2) governmental immunity provisions (if the volunteer is a government employee or agent). During emergency situations, additional laws may authorize immunity for volunteers, including (3) Good Samaritan statutes; (4) emergency statutes; and (5) mutual aid compacts. Your state or territorial program legal advisor may have additional, specific legal guidance on liability issues.

**Criminal Liability.** Responsibility for the criminal acts of volunteers is based on specific elements of the crime as defined by state or federal law. Under state and federal laws, immunity from criminal liability is more limited than civil liability. State laws do not explicitly offer immunity from criminal acts. Most state statutes that provide for immunity from civil liability do not extend this immunity to criminal acts or to conduct that is willful, malicious, reckless, wanton, or intentional. Many acts that would trigger criminal liability may fall within these criteria.

**Workers’ Compensation.** Workers’ compensation is a government administered system that provides limited benefits to victims of work-related injuries or death, regardless of fault. Each state (and the federal government) has workers’ compensation systems that require work-related injuries to be reported and compensated in accordance within specific legal rules. The application of workers’ compensation benefits to VHPs (who may be injured in response to emergencies) depends on the laws of the jurisdiction where the injury occurs. Workers’ compensation laws only cover “employees” and thus typically would exclude unpaid volunteers or gratuitous workers. Some states may legislatively extend explicit coverage to certain volunteer workers. Absent such provisions, volunteers are likely excluded from coverage.

**Right to Reemployment.** Through the program, VHPs may be asked to vacate temporarily their regular employment to respond to emergency needs in another facility or jurisdiction. Some states have enacted laws that provide reemployment protection to individuals providing emergency response services. For example, individuals who are members of federal governmental emergency response teams, such as a Disaster Management Assistance Team or Disaster Assistance and Response Team composed of civilian medical personnel, are given job, seniority and wage protection in accordance with federal law when they are deployed for disaster responses. The Uniformed Services Employment and Reemployment Rights Act (USERRA) also provides reemployment protection to non-career members of the uniformed service who are called up for duty.

The employer’s obligations to provide a VHP with reemployment upon the VHP’s return to work differ depending on the amount of time that the VHP is absent, whether doing so would impose an undue hardship on the employer, and whether the employer’s circumstances have changed so as to make reemployment impossible or unreasonable. Likewise, the VHP may be obligated to notify the employer of the length of the VHP’s absence and the VHP’s intention to return to work.
UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT (UEVHPA): AN OVERVIEW

Introduction. As of August, 2007, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has approved the Uniform Emergency Volunteer Health Practitioners Act (UEVHPA).\(^1\) The Act facilitates the deployment and use of volunteer health practitioners to provide health and veterinary services in response to a declared disaster or emergency. The primary purposes of the Act are to:

- establish a system for the use of volunteer health practitioners capable of functioning autonomously even when routine methods of communication are disrupted;
- provide reasonable safeguards to assure that volunteer health practitioners are appropriately licensed and regulated to protect the public’s health; and
- allow states to regulate, direct and restrict the scope and extent of services provided by volunteer health practitioners to promote disaster recovery operations.

Unlike many mutual aid agreements and interstate compacts, the Act offers a number of unique provisions to facilitate an organized and efficient response effort. These include:

- defining ‘volunteers’ to include compensated and uncompensated individuals, recognizing that the provision of monetary compensation is

not a dispositive factor to negate an individual’s contributions;  
• requiring pre-deployment registration in a recognized system to facilitate 
  subsequent deployment and streamlining of volunteers to a disaster site;  
• enabling public- and private sector volunteers to avail themselves of its 
  benefits and protections; and  
• regulating the provision of services, subject to the modifications that may 
  be proffered by the state administrator of an emergency response program.

As of January 2008, state officials in numerous jurisdictions have introduced or 
enacted the Act, or portions thereof, in subsequent legislative sessions. Additional 
legislative enactment efforts of UEHVPA, which includes the added uniform provisions 
on civil liability and workers compensation coverage continue in 2008.

The following summary is intended to provide a brief overview of the Act and its 
relevant portions, consistent with the information provided above.

UEVHPA – A Brief Overview

Section 1: Title – The Uniform Emergency Volunteer Health Practitioners Act

Section 2: Definitions and Legislative Notes

  o “Volunteer health practitioner” means a health practitioner who provides 
    health or veterinary services, whether or not the practitioner receives 
    compensation for those services. The term does not include a practitioner 
    who receives compensation pursuant to a preexisting employment 
    relationship with a host entity or affiliate which requires the practitioner to 
    provide health services in this state, unless the practitioner is not a resident 
    of this state and is employed by a disaster relief organization providing 
    services in this state while an emergency declaration is in effect.

Section 3: Applicability to Volunteer Health Practitioners

  o The Act applies to all volunteer health practitioners (VHPs) who provide 
    health or veterinary services for a host entity during a declared emergency. 
    All VHPs must be registered with a recognized registration system. This 
    section authorizes VHPs to provide services for the duration of the 
    emergency so long as all registration and compliance requirements are 
    met.

Section 4: Regulation of Services during Emergency

2 Comprehensive updates are available at 
While an emergency is in effect, appropriate government agencies may restrict or limit the duration of service, as well as the area in which VHPs may practice. The government agencies may also place restrictions on the types of VHPs used.

A host entity shall consult with the agency responsible for managing the emergency response to ensure that VHPs are being utilized in the most effective and efficient way. The laws of the host state shall govern management of all VHPs that provide healthcare or veterinary services.

Section 5: Volunteer Health Practitioner Registration Systems

A qualified registration system must: 1) accept volunteer applications before or during an emergency; 2) have information about the good standing of health practitioners which can be accessed by authorized personnel; and 3) be capable of confirming information about the good standing of health practitioners.

The registration system must also either: 1) be an emergency system for advance registration of volunteer health practitioners established by a state and funded through the Health Resources Services Administration; 2) be a local unit of trained and equipped emergency response, medical, or public health personnel; 3) be operated by a licensing board, governmental entity, health facility, or disaster relief organization; or 4) be designated as a registration system by an appropriate governmental agency.

The Act does not require or authorize a state to designate or approve registration systems.

Section 6: Recognition of Volunteer Health Practitioners Licensed in Other States

A VHP who is registered with a recognized registration system may practice in the host state as if he were licensed in that state. Although a practitioner may retain licenses among multiple states, the laws of the host state govern the provisions of services within the host state.

Section 7: No Effect on Credentialing and Privileging

The Act does not affect the credentialing or privileging standards of a health facility, nor does it preclude the facility from waiving or modifying standards during a declared emergency.

Section 8: Provision of Volunteer Health or Veterinary Services; Administrative Sanctions
VHPs must adhere to the scope of practice for similarly licensed practitioners from the host state. Also, a host entity may restrict or modify the activities of VHPs for the duration of the declared emergency. A licensing board may impose administrative sanctions where a VHP consciously engages in unauthorized practice.

Section 9: Relation to Other Laws – this Act does not limit the rights, privileges, or immunities provided to volunteer health practitioners by other laws.

Section 10: Regulatory Authority – this section authorizes States to adopt regulations that are reasonably necessary to implement the provisions of this Act. Additionally, States may utilize regulatory authority to establish standards to promote the interoperability of registration systems.

Section 11: Civil Liability for Volunteer Health Practitioners; Vicarious Liability – this section provides two alternative schemes for limiting liability of VHPs and those individuals or entities who could potentially be liable for the actions and omissions of VHPs.

Alternative A:

- Under this alternative, VHPs are not liable for their actions or omissions while providing services during an emergency. This provision does not apply to VHPs engaged in willful, wanton, or grossly negligent acts. Nor does it apply to criminal conduct, intentional torts, breach of contract, or acts and omissions relating to the operation of vehicles.
- A second notable element of this alternative concerns vicarious liability. In some instances, individuals or entities other than the VHP can be secondarily liable for the actions and omissions of the volunteers themselves. Under this alternative, when a VHP is protected from liability under the act, no individual or entity can be held liable for the actions or omissions of that VHP.

Alternative B:

- This alternative provides the same type of protection for VHPs against liability for actions or omissions, but only extends that protection to VHPs who receive compensation of $500 or less per year for providing health or veterinary services pursuant to the act. Reimbursement for reasonable expenses and continuation of salary while on leave are not considered compensation.
- As with Alternative A, this alternative does not apply to VHPs engaged in willful, wanton, or grossly negligent acts. Nor does it apply to criminal conduct, intentional torts, breach of contract, or acts and omissions relating to the operation of vehicles.
- This alternative also differs significantly with respect to vicarious liability because it does not extend liability protection to those that use and employ VHPs. Thus, under this alternative, even if a VHP is protected from liability by the act,
another person or institution could be held liable for the VHPs’ actions or omissions.

Section 12: Workers’ Compensation

- A VHP who dies or is injured as the result of providing health or veterinary services in a particular state may not have access to worker’s compensation benefits because of his volunteer status. As a result, this section allows a VHP to choose to be deemed an employee of the state in which he provides services for the purpose of receiving workers’ compensation benefits. Injury is defined in accordance with how the host state defines it under that state’s workers’ compensation laws.

Section 13: Uniformity of Application and Construction

Consideration must be given to the need to promote uniformity of the law among states that enact this Act.
Case Study 1: Licensure Reciprocity for Volunteer Health Professionals in Connecticut and Massachusetts

Factual Statements. Several dirty bombs have been set off near the state Capitol Building and in the central business district in Hartford, CT. Hartford has a population of over 120,000 people. The blasts cause extensive physical damage to the surrounding roads and buildings and spread radiation throughout the downtown area of Hartford. There are an estimated 2,000 victims, and thousands more are injured. Given the magnitude of the incident, Connecticut’s Governor has declared a state of emergency. Hartford’s main hospital facilities are operational. However, those closest to the blast site may be shut down due to exposure to high levels of radiation.

Emergency response will require the provision of trauma care, burn care, and treatment for radiation exposure. Many health professionals in the area have been exposed to radiation or injured in the blast, limiting the number of health professionals available to respond to the incident. Additional medical personnel are needed to increase surge capacity of local hospitals. Volunteer health professionals licensed in Connecticut were initially recruited through the state’s Emergency Credentialing System. Properly qualified volunteers registered under that system have been fully utilized. The Connecticut Department of Public Health seeks assistance from neighboring states, including Massachusetts, for additional medical personnel. These facts present the question of whether medical personnel licensed in neighboring states will be granted licensure reciprocity in Connecticut in order to provide medical services in response to this emergency.

Focused Legal Analysis. Connecticut’s Emergency Credentialing System (ECS) permits the state to call up volunteer health professionals to assist in the emergency medical response to the dirty bomb blasts in Hartford. To activate the system, Hartford area hospitals must contact the Connecticut Department of Public Health and request the assistance of certain types of
volunteer health professionals. ECS is administered by the Yale New Haven Health System (YNHHS). Under ECS, YNHHS will contact volunteers with verified credentials and expertise in the types of health services needed to mount an effective response. Volunteers are asked whether they wish to participate in the response. If so, they are matched to a medical facility that requires their expertise.

Additional qualified health professionals from the neighboring states are needed to supplement Connecticut’s resources. Connecticut law waives the state licensure requirement for health care practitioners who are providing medical care in response to an emergency.¹ The waiver broadly applies to any person providing medical or surgical assistance during an emergency.² Thus, any health care provider from neighboring states are eligible to provide medical assistance in response to the terrorist attacks in Hartford without fear of liability for practicing without a license.

Connecticut is also a party to the Emergency Management Assistance Compact (EMAC), an agreement between states that provides for mutual assistance in responding to and training for emergency situations.³ EMAC provides licensure reciprocity for health care professionals who are activated in response to a government-declared emergency or the commencement of organized drills or training exercises.⁴ To activate EMAC, Connecticut must request assistance from another member state (Massachusetts). Health professionals crossing state borders through an EMAC request will have their professional licenses, certificates, and permits recognized as valid in the requesting state for the duration of the emergency “subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.”⁵ For example, the governor may limit the licensure reciprocity provisions to those trained in counterterrorism response or emergency medicine.

To increase the number of health professionals available to assist in the medical and public health response to the terrorist attacks, Connecticut’s Governor may invoke EMAC and request assistance from Massachusetts. Massachusetts could then solicit volunteers through its ESAR-VHP program to provide medical assistance in Hartford’s hospitals. These volunteers, though probably not licensed in Connecticut, would be permitted to practice in Connecticut under the licensure reciprocity provisions of EMAC as well as licensure waivers for medical assistance provided under emergency statutes.

² Id.
⁴ Conn. Gen. Stat. § 28-23a, Art. IV; EMAC, Art. IV.
⁵ Id.
Case Study 2: Hospital Liability for Volunteer Negligence in Pennsylvania

Factual Statements. The nerve agent sarin is released in the concession area of Beaver Stadium, during a Penn State Football game, in State College, Pennsylvania with attendance of 100,000 people. Approximately 6,000 individuals were likely exposed to the sarin gas. Mount Nittany Medical Center (MNMC) is the nearest local hospital. MNMC has an emergency department, but is not an accredited trauma center. Approximately 1000 individuals present at MNMC for care.

Dr. John Avery is a physician, specializing in emergency medicine, who works in Philadelphia, PA and is registered as a volunteer through Pennsylvania’s ESAR-VHP. Dr. Avery has privileges at two hospitals in the Philadelphia area and is a member of a regional counterterrorism response team that is called to provide assistance in the response to the sarin attack at Beaver Stadium. Dr. Avery was at the Penn State football game during the sarin release. He was not exposed to the gas and immediately reported to MNMC to provide emergency medical assistance. MNMC verified Dr. Avery’s credentials through the ESAR-VHP and granted him emergency privileges.

One patient presents with severe symptoms of sarin exposure, including sweating, secretions, bradycardia and pronounced miosis with pin-point pupils. Dr. Avery administered atropine to treat the patient. However, he improperly determined the proper dosage of the drug based on the patient’s pupil size, resulting in atropine poisoning that led to the patient’s death. The atropine was administered by a nurse on the hospital staff, who had prior training in the treatment of patients exposed to nerve agents, including sarin. According to the proper standard of care for the treatment of sarin exposure, Dr. Avery should not have used pupil size as the determinant of proper administration of systemic atropine to treat the exposure because some
patients may be experiencing hallucinations. These circumstances raise the issue of whether Dr. Avery and MNMC can be held civilly liable for the patient’s death.

**Focused Legal Analysis.** Despite the potential for claims of medical malpractice, Dr. Avery is protected from personal liability for the patient’s death under Pennsylvania’s Volunteer Health Services Act. This act provides licensed health care volunteers with immunity from liability damages resulting from the provision of volunteer health services. Volunteers are not immune from liability for acts that fall substantially below the professional standards practiced and generally accepted in the community or acts which were knowingly calculated to create a substantial risk of harm to the patient. In this case, although Dr. Avery’s acts were negligent, they did not amount to gross negligence and were not intended to cause additional harm to the patient.

Dr. Avery may also qualify for immunity from liability under Pennsylvania’s Counterterrorism Planning, Preparedness and Response Act. This act extends the protections of Pennsylvania’s Good Samaritan Act to members of counterterrorism response teams. The Good Samaritan Act provides liability protection to health professionals providing medical assistance as part of an emergency response. Since Dr. Avery is a member of these teams and he provided medical services in accordance with the team’s response to the sarin attack, he is immune from liability for damages resulting from those duties.

Although Dr. Avery may receive immunity from liability, MNMC nevertheless may be liable for his negligence. The immunity provisions that protect Dr. Avery do not apply to hospitals. MNMC may potentially be exposed to liability under the theories of ostensible agency or corporate negligence.

Under the doctrine of ostensible agency, a hospital may be liable for a physician’s actions when (1) the patient looks to the hospital rather than the individual physician to provide him with care, and (2) the hospital holds the physician out as its employee. In this case, the patient is in a position where he is looking to MNMC to provide him with emergency care to treat his exposure to sarin. Additionally, the patient is unlikely to have any knowledge that Dr. Avery is providing care at that facility as a volunteer. Thus, MNMC is potentially exposed to liability for Dr. Avery’s acts.

Additionally, MNMC may be exposed to liability under the doctrine of corporate negligence. Corporate negligence may subject a hospital to civil liability for the acts of negligent health professionals and for its own failures to adopt appropriate policies and procedures to protect patients. Under the theory of corporate negligence, a hospital generally has four duties: (1) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) a duty to select and retain only competent physicians; (3) a duty to oversee all persons who practice medicine within its walls as to patient care; and (4) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients. A finding of corporate negligence typically requires a demonstration that the hospital deviated from the standard of care, had actual or constructive notice of the defects or procedures that caused the harm, and the conduct was a substantial factor in bringing about the harm.

Corporate negligence theory may also be used to hold a hospital civilly liable for the acts of Dr. Avery. In Pennsylvania, hospital staff members must ensure the quality of patient care by reporting abnormalities in the treatment of patients. If any staff member believes that a health professional is failing to act within the proper standard of care, she is obligated to advise hospital authorities accordingly. In this case, a trained nurse employed by the hospital witnessed Dr.
Avery’s negligence. The hospital, it may be found, had constructive notice of Dr. Avery’s negligence. Because the nurse failed to act, MNMC may be liable for Dr. Avery’s acts for the failure to provide adequate supervision of its staff.

2 Id.
3 Id.
5 42 Pa. C.S. § 8331.
9 Rauch, 783 A.2d at 828.
10 Id.
Case Study 3: Emergency Declaration Laws in Oregon

Factual Statements. A terrorist related pneumonic plague outbreak occurs in Corvallis, Oregon. Fifty patients have a confirmed diagnosis of pneumonic plague and 300 more present with symptoms. Pneumonic plague can be transmitted from person to person and has an incubation period of 2-3 days. Transmission occurs when an individual breathes in the aerosolized bacteria \( Y. pestis \). The first signs of illness are fever, headache, weakness, and rapidly developing pneumonia with shortness of breath, chest pain, cough, and sometimes bloody or watery sputum. The pneumonia progresses for 2 to 4 days and may cause respiratory failure and shock. Without early treatment, patients may die. Antibiotic treatment will reduce the chance of death. Optimal results occur when treatment is administered within 24 hours of the first symptoms.

Proper response requires the expertise of infectious disease physicians, properly trained nurses, and decontamination personnel. Additionally, a large number of public health personnel will be required to carry out a massive prophylactic campaign to prevent further spread in the city and into surrounding areas. Many of the affected patients will have to be isolated in order to prevent the further spread of the disease.

Good Samaritan Regional Hospital is the only hospital located in Corvallis, OR. It is a 188 bed facility with over 1500 employees. Good Samaritan Hospital will be central to the response efforts as the treatment site for the most severely affected patients. Emergency management personnel are also planning to set up mobile clinics to screen and isolate patients initially presenting with less severe symptoms. Volunteer health professionals registered through ESAR-VHP are needed to provide treatment in the mobile clinics or at Good Samaritan Hospital.
Focused Legal Analysis. Oregon law empowers the Governor to declare an emergency when a man-made or natural event threatens or causes the loss of life, injury or human suffering resulting from various circumstances, including the spread of disease. In this case, the large-scale spread of pneumonic plague, believed to have been caused by a terrorist release of the bacteria, and the potential for spread beyond Corvallis if containment measures are not immediately carried out, justify an emergency declaration.

Oregon law assigns broad powers to the Governor during a declared emergency. The Governor is vested with the power to exercise complete authority over all executive agencies to focus on emergency response. These powers include the ability to suspend the provisions of state regulations, if compliance with those regulations would hinder emergency responses. The Governor can also direct state agencies to utilize or employ additional personnel to prevent further damage resulting from the emergency and to provide supplemental health services when necessary to protect the public’s health. Thus, the Governor may authorize the Oregon Department of Human Services and local public health agencies to set up mobile health clinics to provide care to symptomatic individuals and carry out prophylactic measures. Furthermore, the Governor may direct these entities to utilize volunteer health professionals as emergency service workers.

Under Oregon law, emergency service workers include members of the state civil defense forces and registered volunteers that provide emergency services under the direction of an emergency service or management agency. Oregon maintains a registry of emergency health care providers who are available to act as emergency service workers. The registry includes information regarding the health care provider’s identity, licensure, certifications, and usual area of practice. This registry is a primary source of information to credential volunteers who are registered and spontaneously respond to assist in an emergency. Additionally, the registry will assist state health officials seeking to mobilize volunteer physicians and nurses with infectious disease credentials, and public health workers to provide prophylactic treatment.

During a declared emergency, the state Department of Human Services may designate a health care facility as an emergency health care center. A designated emergency health care center may be used to evaluate and treat individuals affected by the emergency. These emergency health centers have pre-planned for the use and credentialing of registered emergency health care providers who volunteer to provide emergency medical services. The Department of Human Services may designate Good Samaritan Hospital as an emergency health care facility to treat severe cases of pneumonic plague. The hospital will be directed to utilize the registry of volunteer health professionals to ensure proper credentialing, as part of the emergency privileging process.

2 Id.
5 Id.
6 Id.
10 Id.
Legal and Regulatory Issue Concerning Volunteer Health Professionals in Emergencies

James G. Hodge, Jr., JD, LLM
Executive Director

Case Study 4: Workers’ Compensation Coverage for Volunteers in Minnesota

Factual Statements. A February ice storm led to an 86 car pile-up on Route 61, in Hastings, a small town in Dakota County, Minnesota. The accident resulted in 10 fatalities and 159 injuries. Regina Medical Center is the only hospital in the immediate area. Regina Medical Center is a JCAHO accredited hospital, with 54 acute care beds and an emergency department. The hospital has 30 physicians on staff. The ice storm has also damaged the power lines in Hastings, causing many to lose electricity. Lacking heat, dozens of elderly residents and individuals with special health care needs require medical treatment for hypothermia and other illnesses related to prolonged exposure to extremely cold temperatures. Minnesota’s Governor declares an emergency in Dakota County to mobilize greater state resources in the response efforts.

Sharon Wyatt, RN is a registered as volunteer in the Minnesota Responds! Program. She is asked to provide assistance at Regina Medical Center to deal with the large numbers of trauma patients presenting in the emergency department. Nurse Wyatt is a registered nurse who works in the emergency department of University of Minnesota Medical Center’s Riverside Campus, Minneapolis, MN. Nurse Wyatt injures her back while helping to move a large male patient from a stretcher during her volunteer shift in the emergency department of Regina Medical Center. She is immediately treated with anti-inflammatory and pain medications in the emergency room, but needs 6 months of physical therapy to fully recover. Her injuries render her completely unable to return to work for 3 months.

James Smith, MD is a trauma surgeon at Regions Hospital, St. Paul, MN. He is also registered as a volunteer under Minnesota Responds! Because of the ice storm, Dr. Smith decides to stop at his elderly mother’s house to confirm that she still has heat and electricity. Although, he was not specifically requested to provide assistance in response to this emergency, during his
drive to his mother’s house, he spontaneously decides to go to Regina Medical Center to provide medical assistance to treat the trauma patients. He is involved in a car accident prior to reaching his mother’s house which occurred when his vehicle skidded out of control after hitting a patch of ice. He experienced severe injuries to his right arm and hand, leading to permanent disability. Recovery will involve extensive physical and occupational therapy. These facts raise the issue of whether Nurse Wyatt and Dr. Smith will be entitled to workers’ compensation coverage for their injuries, and if so, what benefits will be available to them under Minnesota law.

Focused Legal Analysis. In June 2005, Minnesota amended its Emergency Management Act to provide workers compensation coverage for volunteer health professionals assisting in the response to a government declared emergency. Specifically, the law provides that volunteers are considered employees of the government subdivision to which they are providing assistance for purposes of determining workers’ compensation coverage. Volunteers must be registered with a specific government entity providing assistance in the emergency response to be entitled to workers’ compensation coverage. Volunteers are covered for personal injuries arising out of or experienced in the course of performing their volunteer duties. Covered injuries are those which occur while the volunteer was engaged in, on, or about the premises of the host hospital, and during the hours when the volunteer was providing medical services in accordance with the government’s request for medical assistance. Injuries that have a direct causal connection with the work environment are compensable, which include injuries (1) associated with a hazard or risk connected with the employment; (2) that flow directly from an exposure occasioned by the nature of the work; or (3) are sustained while traveling to and from work.

In this case, Nurse Wyatt is eligible for workers’ compensation coverage for her back injury. She experienced the injury while assisting in the care of a patient injured in the accident on Route 61. Thus, the injury was one that resulted directly from the provision of medical services at Regina Medical Center in accordance with her volunteer duties. Workers’ compensation benefits for Nurse Wyatt include compensation for the costs of reasonable and necessary medical treatment related to the injuries and prescription medications. Additionally, they are entitled to compensation for disability benefits related to their lost wages. For purposes of calculating loss wage benefits, their daily wage will be determined by “the usual going wage paid for similar services” in the locality where the services are performed. Nurse Wyatt may receive temporary total disability benefits for the three months that she is unable to return to work because of her injuries. Once she has returned to work and is working under limited duties, Nurse Wyatt will be entitled to temporary partial disability benefits if her wages during that period are reduced because of her limited work capacity.

Dr. Smith is not eligible for workers’ compensation coverage from the state. Under Minnesota law, “[I]f the injury can be seen to have followed as a natural incident to the work and as a result of the exposure occasioned by the nature of the employment, then it arises out of the employment.” Accordingly, Minnesota provides workers’ compensation coverage for injuries sustained while an individual is traveling to and from their place of employment. However, coverage does not extend to trips made solely out of personal necessity. Under the dual purpose rule, if a trip involving a personal errand would not have been made absent a work related necessity, then any resulting injuries would be covered. In this case, Dr. Smith was injured while traveling to his mother’s home and he did not decide to go to the hospital until after he began his trip to his mother’s home. Since the personal errand to his mother’s home was the original intent of the trip, he is not entitled to workers compensation coverage for the resulting injuries. Furthermore, Dr. Smith was not responding to the government’s request for medical assistance when he was injured. Thus, he will not be entitled to workers’ compensation coverage for his injuries.
2 Id.
4 Id.
6 Id.
7 Id. at 546, 119 N.W.2d at 829.
11 See Minn. Stat. § 176.010, Subd. 2.
12 Johannsen, 264 Minn. at 549, 119 N.W.2d at 832.
13 See Blattner v. Loyal Order of Moose, Moose Lodge No. 1400, 264 Minn. 79, 81, 117 N.W.2d 570, 572 (1962).
15 Id.
5. Other References

A. Center’s Civil Legal Liability and Public Health Emergencies Checklist: www.publichealthlaw.net/Resources/BTlaw.htm

This checklist was prepared by the Center for voluntary use by county, city, state, and federal public health agencies to assess their legal preparedness for public health emergencies, including bioterrorism, emerging infectious disease epidemics, natural disasters, and other events with potentially catastrophic impacts on human health.

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