



The Center for Law & the Public's Health at Georgetown & Johns Hopkins Universities

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MEMORANDUM

Hurricanes Katrina and Rita Response Legal Protections for VHPs in Texas and Oklahoma

In response to the current and impending use of volunteer health professionals (VHPs) in the Gulf states region impacted most significantly by Hurricanes Katrina and Rita, the *Center for Law and the Public's Health* has prepared a brief summary table of key legal data and statutory citations concerning protections for VHPs in Texas and Oklahoma. Additional analyses for Louisiana, Mississippi, Alabama, Arkansas, Kentucky, and South Carolina are available in Tables 1 and 2 at the *Center's* "Katrina" website: <http://www.publichealthlaw.net/Research/Katrina.htm>.

Disclaimer - This information does not represent the official legal positions of any federal, state, or local government nor is it meant to provide specific legal guidance or advice. Rather, this information serves as a tool for assessing the legal interests of VHPs within a specific jurisdiction. Legal advice on the issues discussed varies depending on state or local laws, the nature of the grantee, and specific circumstances involved. VHPs and their coordinators should contact their local, state, or territorial legal advisors for specific legal guidance.

<i>Legal Issue</i>	Texas	Oklahoma
<i>Is the state a signatory to the Emergency Management Assistance Compact (EMAC)?¹</i>	Yes	Yes
<i>Is the state a signatory to the Southern Regional Emergency Management Assistance Compact?²</i>	Yes	Yes

¹ EMAC provides for mutual assistance between member states during emergency or disaster situations. EMAC dictates the procedures for sharing assets between states to provide mutual assistance, outlines protections for these assets, and provides for reimbursement for the use of persons and other assets during a response. Under EMAC, officers or employees of party states are entitled to waivers of professional licensure requirements, liability protection, and workers' compensation coverage. Currently, EMAC has been executed by 48 states (CA and HI have not executed it to date), the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

² SREMAC provides for mutual assistance and legal protections to volunteers in a similar fashion as EMAC. Eighteen states, which are members of the Southern Governors Association, are party members to SREMAC.

Legal Issue	Texas	Oklahoma
<i>Does the state legally define emergency or disaster?</i>	Yes, disaster. A “disaster” includes the occurrence or threat of widespread damage, injury or loss of life resulting from a natural cause, including wind, storms, wave action, or any public calamity requiring emergency action (Tex. Gov’t Code Ann. § 418.004(1)).	Yes, emergency and disaster. An “emergency” must be declared by the governor or the president when assistance is needed to supplement efforts to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe in the state (63 Okl. St. Ann. § 683.3). A “natural disaster” includes severe storms, high water, flood waters, and wind-driven water which causes severe damage, warranting the use of federal or state resources to alleviate the damage, loss, hardship, or suffering caused thereby (63 Okl. St. Ann. § 683.3).
<i>Does the state legally define public health emergency (PHE) or other like terms?</i>	Yes, public health disaster. Requires an immediate threat from a communicable disease (Tex. Health & Safety Code § 81.003).	Yes, catastrophic health emergency. Requires an occurrence of an imminent threat of illness or health caused by a nuclear attack, bioterrorism, or chemical attack (63 Okl. St. Ann. § 6104).
<i>Has the state legally declared an emergency, disaster, or public health emergency? If so, when was it declared and when does it expire?</i>	A State of Disaster in response to Hurricane Katrina was declared on 9/1/05. A State of Disaster in response to Hurricane Rita was declared on 9/20/05. No information is available about when these proclamations expire.	A State of Emergency in response to Hurricane Katrina was declared on 9/2/05 via Executive Order 2005-19. Its expiration is governed by statute.
<i>Does the state statutorily define “volunteer” or other like terms?</i>	No. There is no relevant statutory definition of volunteer.	Yes. “Volunteer medical professional” is defined in the Volunteer Medical Professional Immunity Act, which provides qualifying volunteer medical professionals with immunity from liability (76 Okl. St. Ann. §32).
<i>Does the state offer some liability protections for health care providers during emergencies?</i>	Yes. State officers or employees and volunteers are immune from liability for performing homeland security activities at the state’s request. In order to receive immunity, the actions of the officer, employee, or volunteer must have been within the scope of the individuals duties and not wilfully or wantonly negligent or done with conscious indifference or reckless disregard for the safety of persons (Tex. Gov’t Code § 421.061). Homeland security activities include activities related to the response to	Yes. Volunteer medical professionals are immune from liability for medical services provided at a free clinic provided an injury was not caused by gross negligence or willful and wanton misconduct. The recipient of the services must have signed an acknowledgement that the medical services were provided for free and that the medical professional is immune from liability (76 Okl. St. Ann. § 32).

Legal Issue	Texas	Oklahoma
	natural disasters (Tex. Gov't Code. § 421.001).	Volunteers providing services to the state and state employees are immune from liability for injury or damage resulting from the provision of services for the state, provided that the injury or damage was not the result of gross negligence or any willful, unnecessary or wanton act. (63 Okl. St. Ann. § 683.14).
<i>Does the state offer some liability protection for hospitals or other health care entities during emergencies?</i>	No.	No.
<i>Does the state offer some workers' compensation coverage for VHPs or other volunteers during emergencies?</i>	Volunteers providing services for the state in a disaster or emergency are entitled to medical benefits if the person seeks medical treatment for the injury within 48 hours after its discovery (Tex. Lab. Code Ann. § 501.026).	Emergency management workers, including volunteers, are entitled to workers' compensation benefits as state employees (85 Okl. St. Ann. § 3).
<i>Does the state authorize waivers of licensure requirements during emergencies?</i>	Yes, under EMAC and SREMAC. Waivers are also available for individuals rendering aid in response to an emergency or disaster (Tex. Gov't Code § 418.171).*	Yes, under EMAC and SREMAC. Waivers of licensure requirements are also available for authorized emergency management workers, including volunteers, from other states providing mutual aid (63 Okl. St. Ann. 683.13).*
<i>Does the state offer any statutory reemployment protections?</i>	Reemployment protection is available for members of the state military services (Tex. Gov't Code § 431.006).	Reemployment protection is available for individuals called into active military service (72 Okl. St. Ann. § 47).

* The availability of waivers of licensure requirements varies from profession to profession. A full authorization of waivers of licensure requirements may be dependant on the credentials of the individual health professional and a determination by the State licensure board. For more information on the availability of waivers for particular licensed health professions, please contact your state licensing board.