

**Date and Time:** May 8, 2007: 9:30 am – 3:15 pm

**Location:** American Red Cross Headquarters  
2025 E Street, NW  
Washington, DC 20006

**Sponsors:** American Medical Association; American Nurses Association; American Red Cross; and the North Carolina Institute for Public Health at the University of North Carolina School of Public Health

## Invited Participants

Approximately 50 representatives of organizations and stakeholders who have common interests in:

1. The development of the Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) currently being considered by the National Conference of Commissioners on Uniform State Laws (NCCUSL); and,
2. The development of a new network of stakeholders who share a mutual interest in liability protections for emergency situations.

## Morning Presentations: UEVPHA Context

### Overview of the UEVPHA Development Process

*James G. Hodge, Center for Law and the Public's Health*

- An APHA survey of health care professionals found that 69.4% of respondents regard immunity from civil liability important or essential when deciding whether to volunteer in emergencies.
- The same survey found that 74.1% of respondents considered protection from harm to be important or essential when volunteering.
- Who is covered by the various existing state and federal laws depends on several factors, including the level and type of emergency declared, credentials of the volunteer, where they assist, what actions they perform, etc.
- There is no current “umbrella” coverage for health care workers assisting in emergency situations.

### Identification of Related Emergency Liability Protection Activities

*Gene W. Matthews, North Carolina Institute for Public Health, UNC*

- There is an opportunity for law and policy change following a public health emergency.
- The Good Samaritan Liability Initiative of the North Carolina Institute for Public Health is focused on extending liability coverage to private and non-profit entities that assist government agencies in emergency response.

- Current government plans for the distribution of the Strategic National Stockpile (SNS) provide an example of how individual volunteers, businesses, and non-profits that participate in emergency response are exposed to civil liability and are concerned about workers' compensation coverage.

## American Red Cross

*William F. Causey, Assistant General Counsel*

- The American Red Cross is extremely concerned about volunteer and entity liability in emergency response.
- The Red Cross Board of Governors Disaster Services Subcommittee determined that, in an influenza pandemic, the Red Cross will not be able to commit Red Cross workers to local public health overflow facilities without appropriate worker protections, including liability coverage and worker safety measures.

## American Medical Association

*Debra Cohn, Washington Counsel*

- The AMA is concerned about the lack of a single vehicle for liability coverage for health care professionals who volunteer in public health emergencies.

## American Nurses Association

*Cheryl Peterson, Senior Policy Fellow*

- The ANA informs nurses who wish to volunteer in emergencies that they are open to risks related to licensure and liability. Further, any insurance coverage they currently have will likely not extend to their actions as an emergency volunteer.
- Workers' compensation is an equally important issue among nurses.

## American College of Emergency Physicians / National Association of State EMS Officials

*Richard Alcorta, Maryland EMS Medical Director*

- ACEP and NASEMSO strongly support Option A for Section 11 of UEVPHA, as described below.

## Liability Differences Among Options A, B, and C of Section 11 of UEVPHA

*James G. Hodge, Center for Law and the Public's Health*

- Option A of the current draft provides pure immunity. A health professional volunteer is "not liable for damages...." Option A is that preferred by volunteers, and would appear to be "totally constitutionally acceptable."
- Option B states that health care volunteers are "not liable for the payment of a judgment..."; however, they can still be implicated (though not named as a defendant) in a lawsuit. Under Option B, the host entity is not subject to vicarious liability; however, the state can be named as a defendant.

Accordingly, state governmental tort claims funds may be used, under Option B, to compensate persons injured by volunteers during an emergency recovery effort.

- Option C provides the same coverage as the Federal Volunteer Protection Act. Under Option C, a volunteer who does not receive “compensation that exceeds [\$500] per year for providing health or veterinary services pursuant to this [act] is not liable for damages....” Option C does not provide vicarious liability protection to host entities.

### **Open Discussion: Strategy for UEVPHA Implementation**

- We need to explain why excluding recourse to injured parties is justified. The main justification is that the alternative – failing to get an organized, pre-vetted, cadre of health practitioners to an emergency - would be horrific.
- Plaintiff lawyers are focused on the rights of the individual; we need to make the public health case for a policy that allows for the best possible response to an injured *population*.
- We cannot define the issues at the level of individual rights or we will lose. We need to frame the discussion in terms of promoting the common good.
- UEVPHA is not tort reform. We need to highlight that we are focusing only on emergency situations.
- Opponents are also making the case that UEVPHA is not something that needs to be dealt with ahead of time – after Katrina, the DHHS offered federal immunity. We need to make the argument that volunteers need to be vetted and organized well in advance of an emergency for the response to be effective – as evidenced by Katrina. Further, we need to highlight that volunteers are very concerned about liability when deciding whether or not to volunteer (see APHA survey data).
- If Option A is not endorsed by NCCUSL in July, we need to be careful about Options B and C, as they may result in a step backward in some states. Further, if Option B is endorsed, the likelihood of states adopting it is slim, given the potential impact of additional liability on state governments.
- Option B could be viewed as containing the “poison pill” that will kill the act. State liability could be increased (with a corresponding impact on state budgets) and there will not be support from the executive branches or the legislative appropriations committees.

### **Afternoon Presentations: Other Stakeholder Perspectives and Coalition Building**

#### Business Executives for National Security

*John Turner, Director and Program Manager, Georgia Business Force*

- Business participation in emergency response has largely been ad hoc, despite the fact that recent events (e.g., Katrina) have shown that government cannot do it alone.
- BENS is developing models and processes for inclusion of businesses in emergency response, which it sees as an extension of business continuity planning.
- BENS is concerned about the liability implications of joining in emergency response.

## Public Entity Risk Institute: The Citizen Corps Assessment of Liability Risks

*Claire Lee Reiss, Deputy Executive Officer and General Counsel*

- Citizen Corps, though a part of the Department of Homeland Security, is largely focused at the grassroots level. PERI has been developing tools for Citizen Corps to identify gaps in liability coverage so that they can advocate for coverage. PERI is also examining best practices among existing legislative approaches to gaining immunity.
- PERI is interested in being part of an emergency liability coalition for three reasons:
  - Citizen Corps includes the Medical Reserve Corps that will be impacted by UEVPHA;
  - Successful legislation to protect one category of volunteers can be helpful for other categories seeking protection; and
  - Citizen Corp is interested in the liability status of any of its potential partners.

## American Institute of Architects and the National Society of Professional Engineers

*Billie Kaumaya, Manager, State and Local Issues and Programs, AIA*

*Arthur Schwartz, Deputy Executive Director and General Counsel, NSPE*

- AIA and NSPE have been successful in getting language passed in 17 states that specifically provides coverage to architects and engineers who respond to emergencies. Seven additional states cover architects and engineers under the broader category of “professionals”.
- Greatest successes have been immediately post-disaster, and a coalition approach (four associations of design professionals) has been effective.
- Materials on model architect and engineer liability laws have been distributed to workshop participants.

## International Federation of Red Cross and Red Crescent Societies

*Elyse Mosquini, Senior Legal Officer, Geneva*

- IFRC’s International Disaster Response Laws, Rules and Principles Programme (IDRL) largely focuses on:
  - entry of goods and personnel;
  - coordination of emergency management; and
  - accountability, quality and credentialing standards.
- The IDRL has not yet addressed these liability considerations.

## Open Discussion: Development of an Emergency Liability Protection Network

- The goals of the network are:
  - Developing mutually supportive strategies regarding liability protection issues;
  - Establishing internal lines of communication among stakeholders;
  - Sharing lessons-learned and success stories;
  - Increasing the development of laws and policies that encourage public/private cooperation in emergency situations; and
  - Communicating to the public.
- We need to be persistent – bills that failed to pass in several attempts can eventually get through.
- Advocacy tools and talking points are essential.
- The coalition approach is key – we should consider state level coalitions as well as a national coalition. Coalitions give credibility to an issue and takes it out of the realm of self-interest.
- Public awareness campaigns can be useful – we need the public to understand what they can and should expect from the government in an emergency.
- We are working under a new paradigm – effective disaster response requires the government to partner with business and non-profit organizations to create a surge workforce. The private and non-profit sectors must in turn step outside of their traditional roles.
- We need to rethink how we frame the argument – “liability coverage” and “rewarding volunteers” do not have appeal. Instead, we need to emphasize the creation of policy that engenders the “best possible response” to an emergency.
- We need to stress the importance of community economic recovery. There can be no economic recovery without immediate medical care and a speedy rebuilding of critical infrastructure. Such activities benefit all levels of the community.
- Additional groups we need to reach out to:
  - AHA
  - AARP
  - Business Roundtable
  - Chain drug stores
  - Citizen Corps Councils
  - Dentists
  - Homeland Security Consortium
  - Institute of Medicine
  - Insurers
  - Judiciary
  - National Academies of Science and Engineering
  - NEMA
  - NCSL
  - Pharmacists
  - Risk and Insurance Management Society
  - State level professional organizations

## **Next Steps**

Bill Causey at the American Red Cross will continue to coordinate the ongoing efforts to communicate with NCCUSL regarding our position on the Uniform Emergency Volunteers Health Practitioners Act.

Gene Matthews will continue to coordinate the development of the larger network of stakeholders interested in emergency liability protection efforts.