
PUBLIC/PRIVATE LEADERSHIP WORKSHOP ON LIABILITY IN EMERGENCY SITUATIONS

*Convening key public health, business, and non-profit leaders
for the purpose of expanding efforts to improve emergency preparedness and response by removing
the legal barriers that hinder effective and timely collaboration between the private, non-profit, and public sectors.*

WORKSHOP REPORT

*March 2007
Chapel Hill, North Carolina*

NORTH CAROLINA INSTITUTE FOR PUBLIC HEALTH
CAMPUS BOX 8165, UNIVERSITY OF NORTH CAROLINA
CHAPEL HILL, NC 27599



Funded by the Alfred P. Sloan Foundation, the North Carolina Institute for Public Health at the University of North Carolina launched the Public/Private Legal Preparedness Initiative in June 2006. The initiative is designed to encourage public/private/non-profit health partnerships by addressing common legal concerns that arise in community emergency situations.

One component of the project now underway is the Good Samaritan Liability Preparedness Initiative, which focuses on removing disincentives and increasing motivation for public/private collaboration by revising state Good Samaritan laws to extend liability protection to businesses and non-profit entities that assist government agencies during emergencies.

A workshop was held from March 5 - 7, 2007 in Chapel Hill, NC to: (1) develop a practical template for states to use in revising their Good Samaritan laws to encourage public/private collaboration during community emergencies; and, (2) examine strategies for using the law as a tool to further expand these much-needed public/private collaborations.

WORKSHOP PARTICIPANTS

Ernie Abbot
Disaster Law Relief Specialist
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University of North Carolina

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Executive Director
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North Carolina Commissioner
National Conference of Commissioners on
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Donna Folkemer
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Leadership
National Conference of State Legislatures

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Assoc. VP for Community Relations
Duke University

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Assoc. Dean and Professor of Global Health
Georgetown University

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ABA Science and Technology Section

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Assistant General Counsel
American Red Cross

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Senior Director, State Relations
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Healthcare Georgia Foundation

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Legal Research Associate
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MEETING AGENDA: MARCH 6-7, 2007

March 6, 2007

8:30 – 10:00 am

Welcome

Dr. Ed Baker, Director, NCIPH
Dr. Georges Benjamin, Director, APHA

Overview & Introductions

Gene Matthews, Senior Fellow
North Carolina Institute of Public Health (NCIPH)

Good Samaritan Liability Initiative

Gene Matthews
Anna Wood, Legal Research Associate, NCIPH

10:30 – 12:00 pm

State Experiences and Discussion

North Carolina: Chris Hoke
Chief, Regulatory and Legal Affairs, NCDPH

Georgia: Chris Miller

Labor Relations, Southern Company

New Mexico: Cliff Rees

New Mexico Senate Public Affairs Committee Analyst

1:00 – 3:00 pm

National and Global Perspectives

Red Cross Initiatives: Bill Causey
Assistant General Counsel, American Red Cross

Uniform Emergency Volunteers Health Practitioners Act: Rhoda Billings,
National Conference of Commissioners on Uniform State Laws

Health Law Perspectives: Larry Gostin

Associate Dean, Georgetown University

3:30 – 4:15 pm

Template Development & Marketing Strategy

Gene Matthews

March 7, 2007

9:00 – 10:00 am

Coalition Building

Business Perspectives:

Jim Johnson, Professor, Kenan-Flagler School of Business, UNC
Patrick Hannah, VP for Government Affairs, Greater Durham Chamber of
Commerce

ABA Activity:

Ernie Abbott, FEMA Law Associates
Sam Byassee, ABA Science and Technology Section

Non-Profit Perspectives:

Martha Katz, Director of Health Policy, Healthcare Georgia Foundation
Alice Hockenbury, Senior Director, State Relations, American Red Cross

10:30 – 12:00 pm

Ongoing Strategy & Next Steps – Open Discussion

BACKGROUND

Gene Matthews and Anna Wood provided an overview of the Good Samaritan Liability Initiative as well as a review of current state Good Samaritan laws and other related state and federal laws.

The Good Samaritan Liability Initiative proposals contain the following four elements:

1. Extend Good Samaritan protection to business & non-profit entities acting in good faith during an emergency.
2. Coverage triggered by a Governor's emergency declaration.
3. Applies to those emergency activities conducted in coordination with the state agency.
4. Includes pre-event planning and training activities that take place prior to the declared emergency.

Background materials on state Good Samaritan laws were provided to participants in advance of the workshop and are available at <http://nciph.sph.unc.edu/law/resources.htm>.

STATE EXPERIENCES

Two states are currently piloting the Good Samaritan Liability Initiative - North Carolina and Georgia. Following a roll-out of the initiative by the Association of State and Territorial Health Officials (ASTHO), New Mexico and Iowa joined the pilot. A summary of each state's experience to-date is described below.

NORTH CAROLINA

In fall 2006, the NC Division of Public Health (DPH) of the Department of Health and Human Services initiated a revision of the liability provisions contained in the emergency management chapter of the North Carolina General Statutes. The Division of Emergency Management (DEM), as a key stakeholder, quickly became a partner. Working together, DPH and DEM revised the current law and identified a legislative sponsor on the Joint Committee on Emergency Preparedness and Disaster Management Recovery. The business community, particularly the North Carolina Citizens for Business and Industry and the Greater Durham Chamber of Commerce, have been supportive of the initiative. However, in February 2007, the bill sponsor decided not to move forward with the initiative in the current session.

The main opposition to the proposed legislation has been voiced by representatives of plaintiff's attorneys who seek clarity around five issues: 1) handling of motor vehicle accidents, 2) availability of business insurance, 3) residual responsibility of the state, 4) length of time of a declared Governor's emergency, and 5) whether or not assistance provided by the business community is gratuitous.

GEORGIA

In Georgia, concern over business liability in emergency response was raised by a law firm that represents a large utility company. In 2006, two of the firm's summer interns researched the status of state Good Samaritan laws. In fall 2006, law students at Georgia State University worked with the Georgia Division of Public Health to develop a proposed revision of the state's Good Samaritan law. As in North Carolina, the Georgia Division of Emergency Management has been very supportive, as has the state Chamber of Commerce. A high level of support has also come from Business Executives for National Security (BENS), a nonpartisan, non-profit organization with offices in Atlanta.

The Governor's office has not yet determined if it will include the Good Samaritan Initiative as part of its legislative package this session. The main opposition in Georgia, as in North Carolina, has been the trial lawyers. The Georgia chapters of both the Business Executives for National Security and the Chamber of Commerce have been very supportive of this proposal.

NEW MEXICO

State Senator Steve Komadina, MD came forward as an enthusiastic sponsor of the Good Samaritan Initiative after ASTHO informed its members of the initiative in November 2006. Senate Bill 16 was subsequently drafted and introduced on the opening day of the 2007 session.

At the Senate Judiciary Committee hearing, the plaintiff's attorneys opposed the bill. The bill was tabled for that legislative session on a straight party vote – Democrats for tabling, Republicans opposed.

IOWA

In Iowa, Senate Study Bill 1195 was drafted and is part of the legislative agenda of executive branch. Much of the North Carolina legislative proposal was used in drafting the Iowa bill. [The bill was ultimately passed and signed into law. See http://nciph.sph.unc.edu/law/ud_052107.htm.]

LESSONS LEARNED

Partner with Emergency Management. Public Health and Emergency Management are the two key stakeholders in the Executive Branch - any initiative addressing emergency preparedness and response must have the support of both.

Bring the Executive Branch into discussions early.

Build broad support. Gaining support from groups such as local and state Chamber of Commerce, BENS, specific area businesses, and non-profit organizations is important in taking the initiative forward.

Use anecdotes and war stories to illustrate need. Government is crisis-oriented and interested in solving immediate problems. Gather stories that illustrate the liability problem in both large and small public health emergencies.

Have a strategy for addressing the concerns of plaintiff's attorneys.

This is a marathon, not a sprint. The issue is complex, and building a coalition will take time. It will also take time to get bills passed. Most successful legislative changes do not pass on the first try.

NATIONAL AND GLOBAL PERSPECTIVES

National and global perspectives on liability in emergency situations were offered by representatives from the American Red Cross, the National Conference of Commissioners on Uniform State Law (NCCUSL), and Georgetown University.

Several important questions were raised and discussed:

Without liability protection, can the American public be assured that the volunteer force necessary to deal with an influenza pandemic or an event of bioterrorism will be available? Volunteers have responded in great numbers to past public health emergencies such as hurricanes and earthquakes. However, the risks posed by a pandemic influenza or bioterrorist event are greater. Currently, no mechanism is in place to protect these volunteers should they become ill

themselves. Similarly, without liability protection, organizations that traditionally commit and manage volunteers will be open to greater liability in an influenza pandemic or bioterrorist event should their volunteers fall ill, or inadvertently spread illness.

Who pays? Liability protection discussions ultimately lead to the issue of compensation.

Who will compensate injured volunteers? Who will compensate those injured by volunteers? What role does business insurance play? States do not feel they can take on an additional tax burden by assuming another compensation component, yet the cost to the state may be much higher if it cannot adequately respond to an emergency due to a lack of volunteers or hesitance on the part of non-profits and businesses to assist.

...and how much? Reasonable limitations on compensation are needed. A cost/benefit analysis is needed to compare the cost of a preparing (i.e., putting compensation mechanisms in place) and the cost of not preparing. Such an analysis will require examining reasonable limitations on compensation and prioritizing who will be compensated for what.

Given the compensation issue, how comprehensive a solution are we hoping for? For practical purposes, should we focus on a strategy to push through specific, narrow, legislative “carve-outs” that are more likely to be approved? For example, should we focus on liability protection for those organizations, industries, and professionals that are most critical in emergency response? Similarly, should we focus on liability protection in “big/rare” disasters as opposed to “everyday/small” disasters?

On the other hand, a less comprehensive solution will not build the overall capacity of the health system. Since 9-11-01, the government has focused on the politically-driven “disease du jour”, paying far less attention to improving coordination between different levels of government, different agencies, and the public, private and non-profit sectors. It is these partnerships that will both improve emergency preparedness *and* expand the overall capacity of the health care system. With carve-out liability protection, fewer partnerships will be developed. If liability protection only applies to big/rare disasters the opportunity to *practice* partnership responses in everyday/small disasters and truly build the system’s overall capacity will be lost. At the end of the day, a complex “social justice” equation will have to be balanced at many levels.

TEMPLATE DEVELOPMENT AND MARKETING STRATEGY

The first day of the workshop concluded with a discussion of how to move the initiative forward in the immediate future. The following suggestions were put forth:

Conduct a thorough stakeholder’s analysis.

Develop a package of materials for groups/states interested in moving forward. The package could include:

- A white paper that addresses the questions raised by potential opponents
- A sample letter of support

- Bulleted talking points
- Sample testimony

Tailor communications for different groups. Consider focus group testing of communication materials tailored to businesses, non-profits, public health, state legislators, the media, trial lawyers, and tort reform groups.

Reach out to lobbying groups. Many businesses and professions have state level professional associations that might be interested in supporting the initiative, such as the Retail Merchants Association and the American Hospital Association.

Create a coalition. Many groups are working on similar initiatives – the Uniform Emergency Volunteer Health Practitioners Act (UEVPHA) , American Red Cross, International Red Cross, ABA, and Citizen Corps, among others. There is an opportunity to bring these groups together for mutual support and resource sharing. (See report of the May 8 Emergency Liability Workshop at http://nciph.sph.unc.edu/law/Emerg_Liab_Report5-11-07.pdf.)

COALITION BUILDING

On the second day of the workshop, representatives from business, the American Bar Association, and non-profit organizations discussed how each group might fit into a coalition.

BUSINESS PERSPECTIVES

It is challenging to find common ground among the many different businesses in any given state, and the Good Samaritan Initiative is one. In addition, the initiative is tangible and practical, which is a good fit for business. In approaching businesses, the following suggestions were offered:

Make the message personal to business. Good health is good business. Similarly, involvement in emergency preparedness strengthens businesses' community relations.

Target businesses most affected. Identify the corporate interests most affected by types of events/disasters, and also identify those business spokespeople who have good relationships with legislators.

Reach out to trade associations. In many states, these groups are not active members of the Chamber of Commerce and therefore require special outreach.

Take tabletop exercises to the point where liability becomes evident. In most exercises, the focus is on a specific and immediate response; however, liability issues will likely arise later on in the recovery effort.

Offer training on continuity of operations planning.

ABA PERSPECTIVES

ABA is the largest voluntary professional organization in the United States. However, it is not a monolithic organization. Since 9-11, the different sections and committees within the ABA have been looking at homeland security issues relating to their area of specialty. Sections are also examining the policy lessons that arose following Hurricane Katrina, such as “failure to prepare” tort, and issues surrounding lawyers as volunteers.

NON-PROFIT PERSPECTIVES

The non-profit sector is extremely diverse. The types of community-serving organizations most impacted by the liability issues include health non-profits, including volunteer clinics, churches, and those that serve the elderly, disabled, and/or children. A special group of non-profits to consider are the private philanthropy foundations. These groups are interested in partnerships and long-term solutions to community problems.

Build relationships with non-profits. In addition to major disasters, non-profits are involved in response to everyday, recurrent emergencies such as floods, fires, etc. These smaller events are a good avenue to reach out to non-profits for communication and relationship-building now, instead of waiting for the next Katrina.

Reach out to umbrella organizations. Two key organizations to reach out to are the National Council of Non-Profit Associations (NCNA) and the National Voluntary Organizations Active in Disasters (NVOAD). Both of these organizations have state level agencies.

Offer legal preparedness training. When the initiative is further along, there is an opportunity to work through the national and state non-profit associations mentioned above to train non-profit staff on legal preparedness.

NEXT STEPS AND WRAP-UP

Moving the initiative forward will require a systematic, comprehensive effort. In addition to suggestions made in previous sessions, the following approaches and strategies were reiterated by participants as key areas upon which to focus:

Develop a set of tools. A package of tools that includes drafting examples, model language, case studies from states that successfully pass bills, talking points, targeted communication for different stakeholders, etc., would be extremely useful.

Get the numbers. Complete a cost/benefit analysis to determine what the added liability to states is likely to be, and what the cost of “failure to prepare” might alternatively cost a state in the event of a major disaster.

Highlight the positive. The Good Samaritan Liability Initiative benefits states by allowing them to develop partnerships across sectors and increase the cadre of potential volunteers.

Consider separate strategies for outreach to the business and non-profit sectors. Selling points for these two sectors are likely to be different. In addition, while non-profits may respond to all levels of disaster, business may only respond to the large/rare event.

Identify local expertise. Target states that historically have been most susceptible to natural disasters and see what can be learned from them – cases studies, partnership models, technical assistance, etc.

Get the word out to states. Many states may be interested in the Good Samaritan Liability Initiative and can be reached through the National Conference of State Legislatures.

Build the coalition now. There are many different initiatives looking at legal preparedness and liability in emergency situations. There is an excellent opportunity to create a coalition that brings all these initiatives together to establish lines of communication, develop mutually supportive strategies, share lessons-learned and success stories, encourage the enactment of laws, and communicate important policy issues to the public. (See report of the May 8 Emergency Liability Workshop at http://nciph.sph.unc.edu/law/Emerg_Liab_Report5-11-07.pdf.)