This month's Member Forum comes to us from AHLA member Nicholas Romanello, Florida Commissioner to the Uniform Law Commission and Member of the Drafting Committee for the Uniform Emergency Volunteer Health Practitioners Act. His letter is in response to the February 2010 feature article by Jennifer Ray, "New Developments in Liability Protections for Providers During a Disaster: National Guidance for Establishing Crisis Standards of Care."

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Re: New Developments in Liability Protections for Providers During a Disaster: National Guidance for Establishing Crisis Standards of Care

Dear Ms. Bishop:

I read with great interest Jennifer Ray's February 2010 [feature] article: *New Developments in Liability Protections for Providers During a Disaster: National Guidance for Establishing Crisis Standards of Care*. While we can all agree to the general proposition that healthcare professionals face uncertainty if not consternation concerning liability exposures that may arise out of care provided in a catastrophic emergency such as pandemic influenza, natural disaster, or a terror related incident, I believe a proposed mechanism exists to appropriately address such concerns.

The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA), promulgated by the Uniform Law Commission (ULC) in 2006 and amended in 2007, responds to the serious problem caused by a lack of uniformity in state laws that was revealed during the horrific hurricane season of 2005. Doctors, nurses, EMTs, mental health professionals, veterinarians, coroners, and other health professionals providing needed individual and public health services from outside the affected Gulf Coast states who volunteered to provide desperately needed assistance to disaster victims were seriously delayed, and in some cases prevented, from providing services because they were unable to quickly and clearly obtain authorization to practice within the affected states.

Although all 50 states have adopted the Emergency Management Assistance Compact (EMAC) that provides for the interstate recognition of licenses held by professionals responding to disasters and emergencies, the Compact cannot be efficiently used to supply the "surge capacity" required to deliver health services during emergencies. This occurs because, aside from its application to state government employees, EMAC only extends its benefits to other emergency responders who go through a complicated process of entering into agreements with their home jurisdictions to be deployed to other states pursuant to mutual aid agreements. As a result, very few private sector volunteers were able to be deployed to the Gulf Coast through the Compact and the capacity of state and federal government agencies to immediately provide needed assistance was overwhelmed.

Because of the limited ability of EMAC and federal agencies to quickly supply needed healthcare personnel, states attempted to facilitate the flow of private sector volunteer practitioners into disaster areas through executive orders and directives issued pursuant to other emergency management laws. Unfortunately, the reliance of states on an *ad hoc* and non-uniform mechanism of executive orders and directives created a system whose parameters and requirements were poorly communicated and not well understood by either volunteers or emergency relief organizations. This lack of coordination seriously delayed the delivery of needed services and left volunteers confused and justifiably anxious about their status. Furthermore, virtually no states were able to provide guidance regarding how in emergency circumstances to address complex and serious legal issues arising due to differences in the scope of practice authorized for many types of health professionals that exist between states. In addition, no rules were established to clarify the jurisdiction of "source state" or "host state" licensing boards and emergency management agencies over volunteer health practitioners.

The objective of the UEVHPA, therefore, is to fill the tragic gap so that in future years health practitioners will be able to be quickly deployed to healthcare facilities and disaster relief organizations pursuant to clear and well-understood rules that will both meet the needs of volunteers and relief agencies and provide an effective framework to ensure the delivery of high quality care to disaster victims.

UEVHPA establishes a system whereby health professionals may register either in advance of or during an emergency to provide volunteer services in an enacting state. Registration may occur in any state using either governmentally established registration systems, such as the federally funded "ESAR VHP" or Medical Reserve Corps programs, or with registration systems established by disaster relief organizations, licensing boards, or national or multi-state systems established by associations of licensing boards or health professionals.

UEVHPA authorizes healthcare facilities and disaster relief organizations in affected states (working in cooperation with local emergency response agencies) to use professionals registered with these systems and to rely on the registration systems

to confirm that registrants are appropriately licensed and in good-standing. Properly registered professionals will have their licenses recognized in affected states for the duration of emergency declarations, subject to any limitations or restrictions that host states determine may be necessary.

UEVHPA also authorizes, but does not require, states affected by disasters to utilize these registration systems to confirm that any professionals practicing during emergencies are licensed and in good-standing. In addition, licensing boards in host states are given jurisdiction over out-of-state volunteers practicing within their boundaries, and are mandated to report any disciplinary actions undertaken to each professional's home jurisdiction. The use of registration systems to confirm registration and of licensing boards to oversee the delivery of services, however, differs from the establishment of individualized credentialing systems that might create a potentially dangerous non-uniform service delivery bottleneck. Instead, the goal of UEVHPA is to establish a robust system with redundant alternatives for the deployment of volunteers that can function even during the most severe disasters in which communication systems are disrupted and government officials are unavailable to provide direction and supervision.

Under UEVHPA, a health professional licensed in another state is subject to the scope of practice for practitioners licensed in the state with the emergency. In addition, out-of-state professionals may not exceed the scope of practices as established by their licensing jurisdiction, unless expressly authorized to do so by host states. Host states are expressly authorized, however, to modify practice limits if necessary to respond to emergency conditions. Similarly, healthcare facilities and relief organizations in host states are authorized to regulate, limit, or restrict the nature, scope, and type of services provided by volunteers. All volunteers practicing within a state and organizations using these volunteers are further subject to management and control to the extent provided by other state emergency management laws.

In August 2007, the ULC approved amendments to the UEVHPA to complete previously reserved sections addressing the civil liability of disaster volunteers and the care of volunteers who are injured, become ill, or die while delivering emergency services. With regard to civil liability, the Act provides two options. In Alternative "A," a volunteer health practitioner is not liable for acts or omissions, nor can any party be held vicariously liable for a volunteer practitioner's acts or omissions, unless the conduct in question rises to the level of willful misconduct, or wanton, grossly negligent, reckless, or criminal conduct; represents an intentional tort; involves a breach of contract; is a claim by a host or deploying entity; or is an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle. Alternative "B" utilizes the same basic exclusions, but caps the compensation a volunteer can receive in connection with the emergency (not including reimbursement of reasonable expenses) at $500 per year, and does not include the limitation on vicarious liability. It is anticipated that enacting states will choose the alternative that most closely tracks their existing state provisions regarding "Good Samaritan" liability protection and/or each state's implementation of federal law on this subject. The 2007 Amendments also provide that a volunteer health practitioner who is not otherwise covered by the workers' compensation laws of the host or deploying state may elect to be deemed an employee of the host state for purposes of making a claim under the host state's workers' compensation system. The Act directs enacting states to coordinate implementation of this coverage with other enacting states.

The objective of the Act is to open the door for volunteers, with appropriate skills and expertise, to volunteer services in a state with an emergency as if they are licensed in the state with the emergency. This should mean better, faster services to the victims of disasters such as hurricanes and earthquakes. It would mean more lives saved, more victims treated, and more relief to disaster-affected areas, clearly in the interests of the citizens of states that enact the UEVHPA.

The Act has been enacted into law in 10 states and endorsed by, among many, the American Red Cross, American Medical Association, American Nurses Association, American Public Health Association, American College of Emergency Physicians, and the National Association of State Emergency Medical Services Officials.

Finally, the opinions and interpretations of law set forth in this correspondence are those of the author and not necessarily those of the Health Care District of Palm Beach County, its Board of Commissioners, executive management, or staff.

Very truly yours,

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AHLA Connections is a forum not only for the Association to communicate information to members, but also for members to share their opinions, thoughts, and feedback. We welcome Letters to the Editor, typically no longer than 250 words in length. Longer responses may be submitted to editorial@healthlawyers.org and will be considered for publication on a space available basis, after review by our Editorial staff.