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Volunteering in Response to a Healthcare Crisis Caused by a Catastrophe

Executive Summary

Natural disasters such as hurricanes, earthquakes, and floods, or acts of terror can wreak havoc on a disaster zone's infrastructure creating the need for the federal government or other governments and organizations to respond with emergency aid including food, water, shelter and lots of volunteers to provide many services including healthcare. The volunteer, healthcare or otherwise, is to be applauded. But their action could put them and possibly their employer at significant risk.

This article summarizes those risks specific to healthcare and raises questions that any volunteer must ask in order to understand the exposures that they face. Each situation will vary and this article can only raise general issues. But the message is clear. Volunteering of any kind in response to a disaster is a notable venture but it is not without its risks.

Detailed Analysis

Hospitals or healthcare systems, unlike most other industries, are required to be prepared to respond to both internal and external disasters or crises. But what happens when a natural disaster occurs 1,000 miles away and devastates the local healthcare infrastructure, which was the case with Katrina? Healthcare providers (physicians, nurses, and other allied healthcare professionals) that volunteer must travel to the disaster zone, which may under normal circumstances be an environment unknown to the volunteer. The volunteer's services can be provided through their employers' actions; or as temporary volunteers responding to the request of various agencies such as the Department of Health and Human Services (HHS), FEMA, The Red Cross, The Salvation Army, or the Medical Reserve Corps. But whether these volunteers are responding within the course and scope of their employment, or as temporary volunteers on their own time, a risk assessment must be done to ensure that the volunteer has not ignored or made worse an already risky situation by ignoring some basic risk management measures.

For the healthcare volunteer's employer there is the risk of being understaffed at home if too many employees volunteer at the same time, which can give rise to both liability, and financial risks. Operating understaffed may increase

the risk of medical errors; or cause the healthcare employer to have to shut down units or reduce services during the staff shortage adversely impacting its revenue stream—maybe permanently if patients migrate to another facility and do not return once the hospital is back to normal capacity.

The healthcare provider may volunteer for a few weeks or less with his/her employer's permission or support. Or the volunteer may be taking vacation time in order to fulfill their service. Regardless, the volunteer must do a risk assessment prior to traveling to a disaster zone. To this end, the volunteer must have the following questions answered and issues resolved before departing for service:

1. Will the employer continue to pay the volunteer's salary or will the volunteer take paid vacation leave;
2. Will the employee be covered under healthcare benefits, workers' compensation, and other benefits such as disability and life insurance while volunteering;
3. Will the employer's travel accident insurance program cover this activity;
4. What are the potential health risks arising from being at the disaster site and what precautions need to be taken;
5. What are the potential security risks and what precautions can be taken;
6. What are the legal issues arising from not having the appropriate medical license from the state wherein the volunteer service will be provided; and
7. Who will provide the volunteer with general and professional liability insurance coverage for this activity (and automobile liability insurance coverage, if warranted)?

The answers to these questions will, of course, depend upon the nature of the volunteer's service. Is the volunteer acting alone or through a federal, state or other disaster relief agency? Addressing these questions will be an arduous but necessary task often requiring follow-up and searching for alternative solutions if the answer to the question leaves the volunteer exposed. Different mechanisms for volunteering provide different protection for the volunteer.

A. Licensure, Credentialing, and Privileging Issues.

Each state imposes by law requirements regarding licensure for healthcare providers, and failure to comply with these provisions may result in criminal or civil penalties. Licensure becomes an issue when a healthcare provider licensed in one state wants to volunteer to provide healthcare services in a disaster located in another state. Another issue may arise when a provider's home state does not require licensure for a given profession, but the affected state does.

States have adopted varying approaches to address licensure issues in emergency situations. This article will briefly discuss several different provisions which grant reciprocity or waive licensure requirements; however, it is important that health professionals interested in volunteering research the

law in operation at the site of the volunteer operation.

1. "Federalized" Volunteer Health Professionals. Health Professionals who are members of a Disaster Medical Assistance Team or certain other federally-sponsored response teams are granted licensure reciprocity as federal workers.

2. The Model State Emergency Health Powers Act (MSEHPA) was drafted to provide model legislation which effectively addressed changing public health needs and update existing public health laws. Among its provisions, the MSEHPA authorizes license reciprocity during periods of declared emergencies.

3. The Interstate Civil Defense and Disaster Compact (ICDDC) authorizes volunteers who are licensed in one state to practice in another state during emergencies, as well as during drills and exercises. Recognition of licenses is not limited to health professions, but extends to other professional and mechanical skills as well.

4. The Nurse Licensure Compact (NLC) is model legislation which has been adopted by 21 states which grants broad license reciprocity across state lines. Under the NLC, a nursing license granted by one state is recognized by the other participating states. The nurse must practice under the laws of the state in which the patient is, and is subject to the jurisdiction of that state. Member states may revoke the multistate license of a nurse, but only the state which grants the license may act against the base license of the nurse. The reciprocity granted by the NLC is not limited to disaster or emergency situations.

5. The Model Nurse Practice Act (MNPA) is model legislation which sets forth license and scope of practice requirements. The MNPA establishes a broad scope of practice for nurses, and authorizes a nurse licensed in one state to engage in limited nursing practice in another state, in the certain situations, including during an emergency or disaster. Each state's law should be reviewed to assure no relevant variations from the draft model language were enacted.

6. Other State Laws/Regulatory Actions. Other states have adopted laws which grant limited reciprocity in certain situations, which may include emergency and disaster response. Some states also participate in regional compacts, which address licensure issues. When health professionals were needed to respond to Katrina, state regulatory agencies issued regulations or other determinations waiving licensure requirements. Because there is little consistency, volunteer health professionals should carefully consider which statutory schemes offer the most protection before volunteering to assist in another state.

B. Liability Protection.

Just as is the case with licensure issues, liability protection varies depending

on the status of the volunteer health professional. Summarized below are the liability protection characteristics of several of the most common volunteer options:

1. National Disaster Medical System/Disaster Medical Assistance Teams

One option for healthcare volunteers is to become member of a Disaster Medical Assistance Team¹ ("DMAT"), through the National Disaster Medical System² ("NDMS") which operationally is a section within the U.S. Department of Homeland Security, Federal Emergency Management Agency ("FEMA"). The role of the NDMS is to support management and coordination of the Federal medical response to major emergencies or Federally-declared disasters. DMATs are response teams which are established before any emergency need is identified. DMAT team members are licensed and credentialed, and train together for emergency response. When activated, DMAT members are Federal employees and their state licensure and certification will be accepted by each state. Additionally, DMAT members are paid while serving as part-time federal employees and have the protection of the Federal Tort Claims Act, which means that the Federal Government becomes the defendant in the event of a malpractice claim. DMAT members are protected by workers' compensation, and re-employment after response is protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

2. Deployment Through Department of Health and Human Services under the National Response Plan.

The Department of Health and Human Services is empowered to recruit volunteer health care professionals and relief personnel to assist in emergency response efforts, under the National Response Plan. Under this program, volunteer health personnel ("VHPs") are considered non-paid temporary federal employees under Schedule A of the Excepted Service.³ As temporary employees, time of service is limited by regulation. VHPs volunteering through this program are entitled to liability protection under the Federal Tort Claims Act and workers' compensation under the Federal Employees Compensation Act, but re-employment after response is not protected under USERRA. DHHS solicited VHPs for response to Katrina through this program, and additional information is available at <https://volunteer.ccrf.hhs.gov/>.

3. Temporary Volunteers to Public Health Service under 41 U.S.C. § 217b.

VHPs can also become temporary volunteers through the Public Health Service ("PHS") pursuant to 42 U.S.C. § 217b. Under implementing

¹ There are several different types of response teams organized, including DMORT (Disaster Mortuary Operational Response Team); VMAT (Veterinary Medical Assistance Team); NNRT (National Nurse Response Team) and NPRT (National Pharmacy Response Team). Each of these response teams have the same legal protections as the DMAT.

² 42 U.S.C. § 300hh-11.

³ The Excepted Service is a special federal employment category; Schedule A is intended to permit employment appointments when it is impractical to examine (i.e., test) applicants for a position.

regulations, volunteer services must be offered under a formal agreement with the government. No compensation may be paid, and volunteers must be used in the operation of health care facilities or provision of health care. The phrase "provision of health care" is defined to mean "services to patients in [Public Health Service] facilities, beneficiaries of the Federal Government, or individuals or groups for whom health services are authorized under [Public Health Service programs]." Legal protections may be provided, but are not mandated. Among the protections which may be extended are protection from liability under the Federal Tort Claims Act, workers' compensation under the Federal Employees Compensation Act, reimbursement of travel and transportation expenses, and other benefits granted by law or administrative action of the Secretary. The impact of reimbursing travel and transportation expenses under this provision is unclear. Although the provision governing PHS temporary volunteers requires service without compensation, the term "compensation" is not defined, and federal statutes applicable to other situations suggest that reimbursement of such expenses does not change the "volunteer" status of the responder.

4. Volunteering at the State Level

a. Through EMAC. The Emergency Management Assistance Compact ("EMAC") is an agreement at the state level which governs mutual aid between states during emergencies. The EMAC establishes procedures for sharing assets, reimbursement for use of assets, and otherwise governs emergency response across state lines. Most, but not all, states participate in the EMAC. When activated, volunteers under the EMAC are granted certain statutory protections: professional licenses for volunteers from one member state are recognized in the state seeking assistance; volunteers have immunity from civil liability for actions taken in "good faith"; volunteers are protected by the workers' compensation program in the volunteer's home state; and the state requesting assistance automatically grants to EMAC volunteers the same powers, duties, rights and privileges as are granted to the impacted states' forces. However, to gain the protections granted by the EMAC, VHPs must enter into volunteer services agreements or memoranda of understanding with their home state. Further information regarding the EMAC can be found at <http://www.emacweb.org/>.

b. As a Civil Defense Volunteer. The Interstate Civil Defense and Disaster Compact (ICDDC) offers immunity from liability for the state or its officers or employees when rendering aid in good faith in another state under the ICDDC. Volunteers who qualify as civil defense forces are also provided compensation and death benefits for injuries or death while providing emergency aid under the ICDDC, "in the same manner and on the same terms as if the injury or death were sustained within such [member] state."

5. Medical Reserve Corps.

The Medical Reserve Corps is a special branch of the Citizen Corps, a national network of volunteers dedicated to ensuring hometown security. Headquartered in the U.S. Office of the Surgeon General, it is a community-based volunteer health initiative. Volunteers are health professionals, such as

practicing and retired physicians, nurses, and paramedics who donate their time and expertise to prepare for and respond to emergencies, and promote healthy living throughout the year. MRC members are identified, credentialed, and trained in advance of emergencies, so that they are prepared to make an immediate positive impact. MRC units were activated to assist with Hurricane Katrina response. Liability for MRC volunteers will be governed by state law and the Volunteer Protection Act of 1997, discussed below.

6. Metropolitan Medical Strike Team.

Some major metropolitan areas have Metropolitan Medical Strike Teams (MMST). MMSTs are a component of the Metropolitan Medical Response System (MMRS), a federally-supported program that directly supports enhancement of existing local first responder, medical, public health and emergency management by increasing systematic, integrated capabilities to manage mass casualty incidents until significant external resources arrive and are operational (typically 48-72 hours). Metropolitan Medical Response System programs have been established in many, but not all, states; however, not all MMRS have a MMST component. MMSTs are organized as a rapid response unit, intended to report to the Incident Commander of a major incident and provide medical support services. MMSTs may also offer emergency consultation and technical advice and support. MMST members are identified, credentialed, and trained in principles of disaster/mass casualty medicine prior to an incident.

7. Deployment Through Non-Governmental Organizations

Certain non-governmental organizations (NGOs), such as the Red Cross, Salvation Army and Medecins Sans Frontieres (Doctors Without Borders), have as part of their mission response to disasters and emergency situations. Many, but not all, of these organizations work through National Voluntary Organizations Active In Disaster, which coordinates planning efforts by voluntary organizations responding to disaster situations. These organizations offer training and support for voluntary response to disasters, and respond to emergencies in a coordinated way.

The Volunteer Protection Act of 1997 responded to concerns regarding legal protection for volunteers through NGOs by granting some protection against liability. Unless a state expressly rejects the protection offered by this law, volunteers of nonprofit or governmental entities are protected from liability for "harm caused by an act or omission of the volunteer on behalf of the organization or entity if (1) the volunteer was acting within the scope of the volunteer's responsibilities...(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred...(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the [harmed] individual...and (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle..." This federal law preempts state law which is inconsistent with its provisions, other than

state laws which offer greater protection; however, certain types of state laws which limit the protection are saved from preemption. Liability for punitive damages and non-economic damages is also limited.

State Good Samaritan laws may provide additional protection from liability for emergency response by those with no obligation to assist victims; however, the scope of the protection varies from state to state and therefore it is critical to understand the applicable law before volunteering. It is also important to remember that it will be the law of the state in which you are volunteering which will apply. Typically, workers' compensation coverage will not be available, and the volunteer will not have any re-employment rights after deployment is completed.

Some State Emergency Management Acts ("EMAs") include provisions which waive certain licensure requirements during declared emergencies or disasters, and grant liability protection to volunteers. However, these provisions vary widely among the states, and the volunteer should carefully consider the applicable provisions before volunteering.

8. Self-Deployment.

In recent major disasters, healthcare personnel have selflessly offered their time and skills to assist their fellow man. As discussed above, there are several different avenues for VHPs who wish to assist in emergency response. Each of the response options has different benefits and disadvantages. One response option which is not encouraged is self-deployment. Emergency situations are chaotic by nature. Coordination is critical, and insertion of resources without organization only increases the confusion. Conditions can be hazardous, and resources scarce. Failure to coordinate resources through a centralized incident command destabilizes the control necessary to ensure that resources are directed where they are most needed. Well-meaning volunteers, lacking training to recognize risks, may be injured and thus add to the recovery burden. Self-deployed volunteers also present security risks.

9. Future Options

Options for identifying, training and deploying VHPs continue to expand as awareness of the need for trained response personnel grows. One developing system is the Emergency System for Advance Registration of Volunteer Health Professionals ("ESAR-VHP"). This federally-supported, state-based initiative was created by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, to facilitate the effective use of qualified volunteer health professionals in the event of a public health emergency. This program is currently in development. Once operational, the ESAR-VHP will permit each state and territory to maintain a registry of volunteers, including credentialing information, to permit rapid activation and effective use of VHPs.

So You Want To Volunteer...

1. Prepare Now for Deployment.

The desire of healthcare professionals to volunteer in disaster situations is laudable, and demonstrates the commitment of the industry to the health of the community. However, volunteers must be prepared to respond safely. Prepare before the emergency arises:

a. Maintain your health. Deployment into disaster areas is physically and mentally strenuous. Be prepared for 12 to 16 hour days, working in primitive conditions. Accommodations for disaster personnel are often tents and sleeping bags; hot showers may be few and far between; meals are often soggy sandwiches, and the mental stress of disaster response should not be underestimated.

b. Get training. Learn what the National Response Plan is, and become familiar with the National Incident Management System. Learn how the Incident Command System functions, and understand the integration of local, state and federal authorities in an emergency. Become familiar with the basics of disaster response, and learn to recognize and respect hazards presented by the disaster environment. The Federal Emergency Management Agency ("FEMA") sponsors the Emergency Management Institute, which has many training programs on emergency response available. See <http://training.fema.gov/EMIWeb/EMICourses/>.

c. Refresh your professional skills. Reduce reliance on technological solutions; review low-tech diagnosis and treatment approaches. If you don't already know it, learn the START triage system. Refresh your medication math - it is not at all unusual to have to calculate drug concentrations and drip rates by hand in disaster and emergency response settings. Consider obtaining Advanced Trauma Life Support (ATLS) qualifications, as well as other pre-hospital training. Learn the common injury and illness patterns associated with various disasters - the CDC has great information for clinicians at <http://www.bt.cdc.gov/>.

d. Register with an entity for disaster response. Through pre-registration and credentialing, your skills can be deployed in a manner which is most beneficial to the disaster response.

2. When you are deployed.

a. Be prepared. Be self-reliant. As a VHP, you are being deployed into an environment which is out-of-control. Don't become a victim yourself. Take into account the location, the type of disaster, the purpose of your deployment, and the anticipated length of deployment. Don't assume that you will be able to obtain anything at the disaster site. Take anything you might need with you.

b. Learn about the disaster and the risks posed to VHPs. There are often significant travel, health and security risks associated with disaster relief efforts. The Centers for Disease Control and Prevention (CDC) is quite helpful with identification of risks and appropriate measures to counter those

risks. For example, see the CDC's guidance for hurricane recovery volunteers, at http://www.cdc.gov/travel/other/hurricane/hurricane_relief_workers.htm. Through this site, volunteers were informed about the need for certain vaccinations such as Hepatitis B, Tetanus and Diphtheria. Other issues raised by the CDC include awareness of security measures such as curfews; recommendations regarding what food supplies to pack; suggested contents of a travel health kit, such as insect repellent, alcohol based hand sanitizer as well as other daily toiletries needs; the type of clothing needed for the environment; and security items to pack such as a cell phone and money belt. The CDC site also addresses risks such as tetanus, electrocution, managing the risks arising from contaminated food and water, insect bites, and snake bites as well as the risks arising from swimming in polluted water. Other web sites that provide volunteer risk management advice include <http://www.fema.gov>, <http://www.redcross.org>, <http://salvationarmyusa.org>, and <http://www.medicalreservecorps.gov>. The Occupational Safety and Health Administration ("OSHA") has extensive materials available regarding safety for emergency responders, at <http://www.osha.gov/SLTC/emergencypreparedness/responder.html>.

c. Understand and respect concepts of command and control. The Incident Commander has overall operational responsibility for disaster response, and is responsible for deployment of all assets and resources. There may be times when the services that Incident Command most requires are "fetch and carry" services. Although these services lack the glamour of being a medical first responder, they are often just as important to the success of the disaster response. Disaster volunteers are characterized by their flexibility and willingness to serve in the manner most beneficial to the overall success of the effort. Through your willingness to sacrifice, you offer relief and support to the victims, in the best tradition of healthcare.

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