The Value of the Uniform Emergency Volunteer Health Practitioners Act Model Bill: Encouraging Volunteer Response

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You would think that health care professionals volunteering in emergencies would be welcome. In the case of Dr. Anna Maria Pou, her dedication to helping others during Hurricane Katrina led to charges of second-degree murder.

The sad and well-known story of Dr. Anna Maria Pou is indicative of the uncertainties and challenges facing health care professionals who want to volunteer in emergencies. Dr. Pou was working at Memorial Medical Center in New Orleans when Hurricane Katrina devastated the city. After the storm, it was difficult to provide medical care under the circumstances. The hospital lacked electrical power, there was no fresh water, the first floor was flooded, the sanitation system was nonfunctional, and the temperature inside the building was above 100 degrees. At least 34 of the hospital’s patients died due to these poor conditions.

Nevertheless, Dr. Pou stayed in the hospital to look after the sickest patients who could not be evacuated. In July 2006, Dr. Pou and two nurses were arrested and charged with four counts of second-degree murder because of the deaths of four elderly patients to whom they had administered morphine and midazolam. Dr. Pou maintained her innocence and insisted that she was caring for the patients by easing their discomfort as best she could. The grand jury ultimately declined to indict Dr. Pou – the charges against the nurses were dropped earlier in exchange for their testimony against Dr. Pou – yet she still faces civil proceedings filed against her by family members of the patients who died.

In addition to Dr. Pou, the country saw an overwhelming response from other volunteers who wanted to help the people affected by the hurricane. Individuals and organizations from all over the U.S. flocked to New Orleans to help in any way they could. Unfortunately, not everyone who wanted to help was able to do so. Uncertainties about licensing and liability issues delayed and, in some cases, even prevented many from engaging in the aid that the city desperately needed. At the time, some observed that “volunteer physicians [were] pouring in to care for the sick, but red tape [was] keeping hundreds of others from caring for Hurricane Katrina survivors.” As a result, many qualified health care workers “provided other forms of assistance, such as general labor, which failed to utilize their desperately needed health skills, or [they] chose not to volunteer at all because of concerns over liability. Others proceeded to treat victims at the risk of violating existing state statutes and potentially facing criminal or administrative penalties or civil liability. Out-of-state practitioners providing medical treatment also faced the real possibility of non-coverage under their medical malpractice policies.”

It is evident that there are many good-intentioned heath care professionals who want to volunteer their services during emergencies. Yet, the examples above exhibit the need for legal reform. The bureaucratic frustrations and legal risks faced by volunteers restrict any emergency response. Some have already proclaimed that “the effort to prosecute Pou and the nurses ... will have a chilling effect on the willingness of medical professionals to volunteer during disasters.”
With this picture in mind, the Uniform Law Commission drafted the Uniform Emergency Volunteer Health Practitioners Act (“Act”). The Act “seeks to remedy defects in current state laws to effectively utilize private sector volunteers.” States benefit from the Act because it enables them to quickly confirm that a volunteer is properly licensed and in good standing through a registration system. Questions about licensing issues will therefore no longer delay the deployment of volunteers. What is more, the Act benefits individual volunteers because it provides clear and straightforward liability protections to them. Volunteers will no longer be deterred from responding due to the fear of being sued.

The Uniform Law Commission recognized that some liability protections already existed. The Emergency Management Assistance Compact (EMAC), “Good Samaritan” laws, and the Volunteer Protection Act, for example, all afford some degree of immunity from civil liability. However, analyses have shown that these laws are not adequate to fully protect volunteer health practitioners. Indeed, “US immunity law constitutes a patchwork with many gaps and inconsistencies. No source of law comprehensively addresses liability and immunity issues.”

Most notably, EMAC provides immunity to state “officers or employees” deployed to offer assistance in another state pursuant to the Compact. Yet, the Compact is unclear on who may be deemed an “officer or employee” of the state. Other sorts of volunteers are not covered by the Compact and are therefore afforded no immunity from civil liability. Good Samaritan laws generally only protect volunteers from liability for ordinary negligence and are restricted in application to spontaneous volunteers at the scene of a local emergency. Entities such as hospitals and businesses are excluded from protection. Lastly, the federal Volunteer Protection Act, as well as state volunteer protection statutes, generally only apply to volunteers who receive no compensation and do not extend to the entities with which the volunteers may be associated. It is questionable whether a volunteer is provided liability protection when he or she continues to receive a salary from his or her regular employer, while the volunteer is on leave to provide emergency assistance.

Section 11 of the Uniform Emergency Volunteer Health Practitioners Act seeks to fill these gaps in the existing laws and puts forth two alternative rules that states may adopt to protect volunteer health practitioners.

Alternative A states that “a volunteer health practitioner who provides health or veterinary services pursuant to this [act] is not liable for damages for an act or omission of the practitioner in providing those services.” Additionally, entities that deploy volunteers cannot be held vicariously liable for damages resulting from the volunteer’s acts or omissions. Alternative A does not afford immunity in cases of willful misconduct, or wanton, grossly negligent, reckless, or criminal conduct, intentional torts, breach of contracts, claims brought by a host state, or the volunteer’s acts or omissions relating to the operation of a vehicle. As the Uniform Law Commission explains in its prefatory note, “Alternative A is based upon the rationale that private sector volunteer health practitioners and entities providing vital health or veterinary services during emergencies deserve the same protections and privileges as states and public employees whose resources and efforts they supplement and complement. Nongovernmental volunteer health practitioners undertake essentially the same risks and provide the same services as their governmental counterparts.” Thus, Alternative A fills a legal gap by plainly extending the liability protections contained
within EMAC to private sector health practitioner volunteers. Moreover, any entity associated with the volunteer is protected as well.

Alternative B proclaims that the immunities afforded under the federal Volunteer Protection Act extend to all uncompensated health care practitioners. Furthermore, subsection (a) continues by clearly stating that “reimbursement of ... reasonable expenses, or continuation of salary ... while on leave [to provide volunteer assistance], is not compensation under this subsection.” Alternative B defers to state law to address the question of vicarious liability. Immunity for volunteers is revoked in the same instances as listed in Alternative A.

When considering the Act, a state must choose between the two alternatives provided by it. Alternative A is expansive in its liability protections, while Alternative B relies more on existing state law. The Commission does not make a recommendation as to which alternative states should adopt. The choice between the alternatives is a policy decision left to each state.iii

The Uniform Emergency Volunteer Health Practitioners Act offers a new framework for increased efficiency in emergency response. More importantly, if adopted by states, volunteers like Dr. Pou will no longer face the legal uncertainties that exist. The Act will encourage volunteerism from health practitioners as it provides clear and straightforward protections from civil liability. Presently, 11 states, the District of Columbia, and the US Virgin Islands have adopted the Act.iii The Act’s effectiveness will only increase as more states continue to adopt it. Volunteers will be encouraged to offer their services knowing they are protected regardless of the jurisdiction in which they are providing those services.

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ii Prefatory Note.


iv Prefatory Note.

v Perspective, James Aiken, Medical Director for emergency preparedness at LSU University Hospital.


vii Prefatory Note.


ix Hoffman, et. al., p. 121-122.

x Hoffman, et. al., p. 122.

xi Prefatory Note.

xii Uniform Emergency Volunteer Health Practitioners Act, Comment to Section 11.