



March 5, 2007

National Conference of Commissioners on Uniform State Laws
211 East Ontario Street, Suite 1300
Chicago, Illinois 60611

RE: Draft Immunity and Workers' Compensation Sections of the Uniform Emergency
Volunteer Health Practitioners Act

Dear Members of the Drafting Committee:

It was a pleasure to meet with several of you at our convention in Miami on February 10, 2007. We appreciate your willingness to travel to Florida and listen to our concerns about the two additional provisions you are drafting to the current Uniform Emergency Volunteer Health Practitioners Act.

The American Association for Justice (AAJ) supports the overall goal of the Act to facilitate the quick and efficient deployment of healthcare volunteers in emergency situations. However, we have serious concerns with the proposed immunity and workers' compensation sections.

Immunity from Civil Liability

Section 11 provides immunity from civil liability for volunteer healthcare practitioners who are negligent and from vicarious liability for entities which host, coordinate, or deploy such practitioners. These broad protections from civil liability and other disciplinary sanctions are unnecessary and, in many instances, unconstitutional. Encouraging healthcare practitioners to volunteer is a laudable goal, but not at the expense of civil and constitutional rights.

This section is premised on the presumption that healthcare practitioners will not be covered by insurance policies, either individual or carried by employers or entities deploying them, or will not otherwise be protected from liability, when providing volunteer healthcare services. These presumptions are false. Many volunteers are covered under their employers' liability insurance policies or their own, and many more are covered under State Tort Claims Acts, or through agencies such that they are covered under the Federal Tort Claims Act.

In addition, there is virtually no empirical evidence to support this section because history has shown that individuals tend to volunteer despite potential liability and much-feared tort claims generally are not – and have not been – brought against volunteer healthcare practitioners. Tort claims are rare in a natural disaster and other such situations precisely because of their emergency nature, with the exception of certain human-caused disasters. NCCUSL's own comments throughout the model act state that there have been plenty of volunteers to assist in such instances, but that a reciprocal state licensing process and coordination of the volunteers is what is most needed, rather than immunity from liability.

While AAJ remains completely opposed to the inclusion of any immunity section, if the Commissioners believe that the Act should explicitly address liability, we support adoption of a provision that would mirror that of the federal Volunteer Protection Act of 1997 (VPA), 42 U.S.C. § 14503(a).

Enacted after a lengthy and thorough Congressional debate, the VPA carefully balances the need to protect volunteers from liability for ordinary negligence, while also protecting those needing assistance by not shielding

volunteers from immunity for reckless or intentional misconduct and by not shielding the entities who deploy these volunteers. Thus, uncompensated volunteer healthcare practitioners rendering healthcare services as volunteers for a nonprofit or government entity would be protected under this proposal, while paid providers and the entities themselves would not be protected. It is our position that extending immunity from liability to paid providers and entities is bad policy and could lead to inconsistent rulings by the courts.

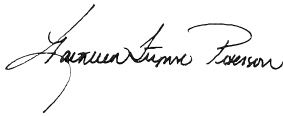
Workers' Compensation Coverage

Section 12 provides for alternative funding mechanisms to provide workers' compensation insurance coverage to volunteers. Again, AAJ strongly encourages this goal, but believes the suggested provisions could prove difficult to enact in the states.

Requiring host states to finance workers' compensation insurance for volunteers will make the bill difficult to pass in states where accuracy in projecting costs for future emergency situations is important. In addition, it will overburden those states, which during emergencies will be confronting significant casualties, damage to both economic and physical infrastructure, environmental damage, and other post-event costs. While the costs would be distributed more fairly and evenly, if the source states, which are providing a small percentage of the overall volunteers, covered workers' compensation, AAJ is opposed to either option due to the inconsistency of benefits among the state workers' compensation laws and the difficulty for states to assess potential future costs when enacting this bill.

Thank you for your time and consideration of our views. We look forward to working with you on these provisions at the drafting meeting this week in Washington, DC. Unfortunately, I will not be able to attend this meeting but remain committed to work with you to address these issues. Please feel free to contact me directly at my office 612-349-8219 or my cell 612-840-6629.

Sincerely,

A handwritten signature in cursive script, reading "Kathleen Flynn Peterson".

Kathleen Flynn Peterson, R.N., J.D.
President-Elect
American Association for Justice