

June 5, 2007

BY E-MAIL AND U.S. MAIL

Raymond R. Pepe, Esq.
Chair, UEVHPA Drafting Committee
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17 North Second, 18th Floor
Harrisburg, PA 17101-1507

Re: National Organizations that Support a Strong and Necessary
Uniform Emergency Volunteer Health Practitioners Act

Dear Mr. Pepe:

The organizations represented below thank the Drafting Committee of the National Conference of Commissioners of Uniform State Laws for the excellent and important work that has been done in connection with the Uniform Emergency Volunteer Health Practitioners Act (UEVHPA). A part of this Act was adopted by the National Law Commissioners at the meeting last July in Hilton Head, South Carolina. This vote was an important first step in making sure that the country has an adequate supply of skilled, registered volunteers in the next catastrophic disaster.

However, this fine work is only half finished. The Commissioners will consider important new sections of UEVHPA at the annual meeting in Pasadena, California in July, 2007. For the reasons discussed below, it is imperative that the Commissioners approve proposed Alternative A of Section 11 and proposed Section 12. Together, they provide strong and necessary protections for volunteer health practitioners and their host and source entities when responding to disasters. Failure to approve these measures will leave the work of the Commissioners on this important legislative initiative only partially successful.

The events surrounding Hurricane Katrina vividly demonstrated the need for a complete legislative package in this important area of public health care law. Sadly, many of our citizens were injured or died because volunteer health practitioners from assisting states were unable to respond quickly because they were hindered by licensing and registration problems. The portion of UEVHPA adopted last summer will significantly resolve these licensing and registration problems. Even so, without also providing these volunteers with (1) protection from civil liability for their volunteer efforts, and (2) some level of compensation benefits in the event of injury or death during the course of volunteer service, the Act will not provide the full panoply of necessary

incentives to encourage volunteer participation in serious disaster response situations, particularly in emergencies that involve infectious agents such as pandemic influenza or a biological or chemical event.

There is strong support for the view that a large number of individuals may not volunteer in a serious disaster without some form of civil liability protection and injury or death benefits. As mentioned in the Prefatory Note to UEVHPA, a survey conducted in the fall of 2006 by the American Public Health Association found that almost 70% of respondents indicated that civil liability protection was “important” or “essential” in deciding whether to volunteer during an emergency. In addition, over 74% of respondents indicated that some form of compensation protection was “important” or “essential” in making the decision to volunteer. This informal survey, and similar studies conducted over the past several years, demonstrates that these protections are important factors that skilled volunteers consider when offering their services.

Equally important is the need for the host and source entities to be protected from liability. The unique medical and logistical issues involved in a response to pandemic flu or biological or chemical event will create significant new and increased exposures for organizations that provide volunteers to serve in catastrophic emergency situations. These entities may think twice about offering volunteers for service if they are not afforded some level of protection. The experiences from Hurricane Katrina only reinforce this view.

At the drafting session conducted on March 9-10, 2007, in Washington, D.C., the UEVHPA Drafting Committee decided to offer three Alternatives for proposed Section 11 dealing with civil liability protection. Only Alternative A provides the comprehensive protection that will best serve the interests of skilled healthcare volunteers and their host or sponsoring entities. Alternative A provides:

- (a) Subject to section (c), a volunteer health practitioner is not liable for damages for an act or omission of the practitioner while performing health or veterinary services pursuant to this [act].
- (b) No person is vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under section (a).
- (c) No person is liable for damages for an act or omission relating to the operation or use of, or reliance upon information provided by, a volunteer health practitioner registration system unless the act or omission constitutes an intentional tort or is willful, wanton, grossly negligent, reckless, or criminal in nature.

This language is balanced, fair, and necessary to accomplish the goals of UEVHPA. Alternative A would not place unnecessary financial hardships on the states, and would be easy to implement in a disaster. In comparison, Alternatives B and C would provide limited protection to volunteers, would effectively limit the pool of volunteers to the detriment of the public good, would place greater financial burdens on the states, and would be more complicated to interpret and administer. In fact, Alternatives B and C would provide less protection than offered by some recently enacted state laws. Accordingly, we ask the Commissioners to adopt Alternative A of proposed Section 11.

We also urge adoption of proposed Section 12 for workers' compensation coverage. Protection will be complete only when skilled healthcare volunteers also receive a reasonable comprehensive benefits package. We believe proposed Section 12 is carefully drafted to minimize any financial burdens on the states while at the same time providing the protections needed for volunteers who may develop their own health problems associated with providing health care services.

These recommendations are made with the full knowledge of the concern of other organizations. There has been lengthy and healthy debate on these issues before the UEVHPA Drafting Committee, and at the end of the day, these concerns fall far short of defeating the strong case for full and complete protections for volunteers and host and source entities. Indeed, the groups and organizations that followed this debate overwhelmingly support proposed Alternative A of Section 11 and proposed Section 12. As was sadly learned during Katrina, it was the lack of effective volunteer services that contributed to more injuries, suffering, and death in the affected populations. We cannot afford to ignore this public policy lesson as the country prepares for other catastrophic events in the future.

Without question, the greater public interest would be served by taking legislative measures to encourage an adequate supply of registered, skilled volunteers in emergency situations. The Commissioners took a major step forward in this area last summer. They can complete this task at the annual meeting in Pasadena in July by adopting the sound provisions in proposed Alternative A of Section 11 and proposed Section 12 of UEVHPA.

THIS LETTER HAS BEEN APPROVED BY:

American Academy of Dermatology Association

American Association for Marriage and Family Therapy

American College of Emergency Physicians

American College of Nurse-Midwives

American College of Obstetricians and Gynecologists

American Humane Association

American Medical Association

American Nurses Association

American Public Health Association

American Red Cross

American Society for the Prevention of Cruelty to Animals

Association of State and Territorial Health Officials

The Center for Biosecurity of the University of Pittsburgh Medical Center

Code 3 Associates, Inc.

The Humane Society of the United States

National Association of County & City Health Officials

National Association of Emergency Medical Technicians

National Association of State Emergency Medical Services Officials

National Funeral Directors Association

Public Entity Risk Institute

United Way of America

cc: Howard Swibel
President, NCCUSL

The Honorable Martha Walters
Chair, Executive Committee

John Sebert
Executive Director, NCCUSL

James G. Hodge
Reporter, Drafting Committee