

**Testimony of  
Eric M. Fish, Legal Counsel and Sr. Legislative Counsel  
In Support of HB2120  
The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA)**

**August 29, 2012**

Mr. Chairman and members of the Committee, I am Eric M. Fish, Legal Counsel and Senior Legislative Counsel at the Uniform Law Commission. Thank you for the opportunity to be here today to discuss proposed improvements to the state's emergency management services.

On behalf of the ULC, I commend Chairman Barrar, and Minority Chairman Sainato, the PA Emergency Management Agency, and the co-sponsors of HB 2562 for recommending comprehensive improvements to the PA Emergency Management Code, and would like to endorse a recommendation of Rep. Sheryl Delozier to amend into HB 2662, the provisions of HB 2120, the Uniform Emergency Volunteer Health Practitioners Act. It is my understanding that these amendments have been prepared with the assistance of PEMA and the Health Department in a manner that complements, and enhances to objectives of HB 2562.

The Uniform Law Commission

The Uniform Law Commission is a state government organization in operation since 1892 that utilizes the services of unpaid volunteer commissioners from all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands, to develop and recommend uniform laws for consideration by state legislatures. Uniform Law Commissioners are legislators, attorneys in private practice, state and federal judges, law professors, and legislative drafting attorneys. Commissioners are appointed by state governors or state legislators. The only membership requirement, aside from an appointment, is that members must be licensed lawyers.

The Uniform Law Commission provides states with nonpartisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of the law and which supports the federal system and facilitates the movement of individuals, business, and resources from state to state. The ULC is best known for its work on the Uniform Commercial Code. However, the ULC has also drafted bulwarks of state statutory including the Uniform Probate Code, the Uniform Partnership Act, and the Uniform Anatomical Gift Act.

The Commission's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws. During the drafting of the UEVHPA, observers from the American Hospital Association, American College of Emergency Physicians, American Red Cross, American Medical Association, National Emergency Management Association, and other national organizations contributed greatly to the development of the Act.

## The Goals and Objectives of the UEVHPA

The UEVHPA addresses one of the problems encountered by health care practitioners responding to Hurricane Katrina and Rita. During these disasters, out of state volunteers deployed to aid local first responders experienced significant difficulties due to issues with temporary recognition of professional licenses and could not be utilized. Even more troublesome, the State of Louisiana promptly issued an Executive Order allowing health practitioners from other states to practice in Louisiana for the duration of the emergency, but it took many relief organizations ten days to two weeks to confirm that appropriate Executive Orders were in place allowing for the deployment of health practitioners from other states. The UEVHPA proactively implements a system of preregistration and deployment that supplements existing state plans and provides for a broad base of volunteers that can mitigate public health disasters.

The rationale for the UEVHPA is very simple and straightforward. Disaster relief efforts are likely to employ non-governmental organizations from across the nation to provide first aid, nursing, and mental health care to residents of emergency shelters. These organizations include charitable disaster relief organizations, such as state chapters of the Red Cross, and play a vital role in this nation's emergency response system. In more severe incidents, these volunteers are needed to distribute medicines, care for individuals displaced from long-term care facilities, supplement the staff available to local healthcare facilities, and operate emergency clinics.

Under current law, issues related to out of state volunteers are addressed in all 50 states by the provisions of the Emergency Management Assistance Compact ("EMAC") which facilitates the interstate utilization of state and local employees in emergency response efforts. Among its other provisions, EMAC provides that (1) health care practitioners deployed from one state to another in response to an emergency will have their professional licenses recognized outside of the jurisdiction in which they are licensed; (2) emergency response workers deployed to respond to emergencies, including health care practitioners, will be afforded protection for civil liability for alleged acts of negligence; and (3) all emergency response workers will be enjoy the benefits of workers' compensation.

As valuable as EMAC has proven to be, it is limited in its application. Only "state forces," *i.e.*, state government employees deployed from one state to another are covered by the provisions of EMAC. Although efforts have been made by a small number of jurisdictions to also incorporate volunteers associated with non-governmental organizations into state forces, the approach has proven to be inadequate and excessively cumbersome to reach the vast majority of non-governmental disaster volunteers.

The UEVHPA does not replace EMAC, nor does it supplant existing state law. Instead, the UEVHPA supplements EMAC and other existing state statutes in order to promote and facilitate the use of volunteer health practitioners deployed by non-governmental organizations. Supplementation of EMAC is particularly important to ensure that a state has the "surge capacity" needed to respond both manmade and natural disasters.

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.

#### National Perspective

Understanding the importance of a robust system to manage, license, and deploy out of state volunteers, 15 jurisdictions have enacted the UEVHPA: Arkansas, Colorado, District of Columbia, Illinois, Indiana, Kentucky, Louisiana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Tennessee, U.S. Virgin Islands, and Utah.

Nationally, the UEVHPA has been endorsed by a diverse group of healthcare, public health and disaster relief organizations, including the American Red Cross, the American Public Health Association, United Way of America, the American College of Emergency Physicians, the American Nurses Association, the American College of Surgeons, the ASPCA, National Association of County & City Health Officials, the National Association of County & City Health Officials, the Public Entry Risk Institute, the Trust for America's Health, the American Association for Marriage and Family Therapy, the American College of Nurse-Midwives, National Association of Emergency Medical Technicians, the National Association of State EMS Officials, the American Veterinary Medicine Association and the National Funeral Directors Association.

I thank you for the opportunity to testify and urge the enactment of the UEVHPA. Passage of this legislation would ensure that the state could use a full complement of volunteers to provide relief to disaster affected areas.

## **UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT**

### **Summary**

The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA), promulgated by the Uniform Law Commission (ULC) in 2006 and amended in 2007, responds to a 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 health care 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 health care 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"<sup>1</sup> 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

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<sup>1</sup> The acronym "ESAR-VHP" refers to Emergency Systems for the Advance Registration Systems of Volunteer Health Professionals financed by the U.S. Department of Health and Human Services.

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 regard "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 which enact the UEVHPA.