I. State and Uniform Laws for Licensure of Healthcare Professionals in Emergencies and Disasters

A. State Laws

Traditionally, licensure of healthcare professionals is conducted at the state level without interference from or coordination with the federal government. State medical boards control medical examination and licensing decisions for their respective states, but coordination amongst such entities is necessary in a disaster to ensure individuals affected by the event are able to receive appropriate and sufficient medical care. While there are a variety of uniform laws for emergency licensing that will be discussed later, many states still rely on medical board rules or state statutes for guidance.

Texas, for example, has a medical board rule that allows for a physician who holds a valid license in another jurisdiction to apply for a temporary permit with a ten-day duration in order to practice in Texas for charity purposes. The rule imposes many obstacles for a visiting physician, however, such as requiring the physician to be supervised by a physician holding a Texas license, requiring written verification of the purpose for the license, and prohibiting the physician from receiving compensation for his services. California approaches health professional licensure differently by incorporating license reciprocity into a specific statute. The statute is conditioned on the occurrence of an emergency as defined in a complimentary statute, and a request by the Director of the Emergency Medical Services Authority for the aid of healthcare practitioners. Physicians, surgeons, nurses, dentists, and pharmacists may take advantage of the California provision in an appropriate situation. The Director may also request proof of licensing and dictate where a practitioner is allowed to render aid.

Many state licensure rules require the President of the United States or the state governor to declare a public emergency before visiting healthcare professionals may avail themselves of the special provisions. An entity that desires to recruit assistance from professionals licensed in other states should urge its government to declare an emergency or disaster as required by state law.

Many states have retained state statutes and adopted uniform legislation or become party to multi-state compacts. The interplay that such statutes have with one another is dependent on the language of the statute as enacted by each state.

1 Texas Medical Board Rules § 172.5 (29 Tex Reg. 10111).
4 Considering that all fifty states have ratified the Emergency Management Assistance Compact, many states have incorporated multiple state laws and uniform laws.
For example, the increasingly popular Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) includes language to insure that it complements other compacts and does not supplant liability protections contained in state Good Samaritan laws.

B. Uniform Laws

The Emergency Management Assistance Compact (EMAC) is an organization ratified by Congress to facilitate interstate mutual aid and manage reimbursement and liability issues when a disaster arises. A professional association of emergency management directors from all fifty states and eight territories form the National Emergency Management Association (NEMA), which administers the compact. EMAC's strength is that it inextricably links the states and federal government together. At the same time, it has been criticized for not having a broad enough scope to encompass private parties in its mission. EMAC is adopted by each state on an individual basis, but there are thirteen Articles of Agreement in the sample legislation. Article V is most pertinent to this discussion because it stipulates that licenses, certifications, and permits recognized by the assisting state will be recognized by the receiving state. The receiving state may limit or condition licensing by an executive order issued by the governor. Article IV states that the governor of the state in need of aid must declare a state of emergency and ask for help from other member states in order for EMAC to come into effect. EMAC has been activated eighty times since 1999, including to aid in such notable crises as the 9/11 terrorist attacks and Hurricane Katrina. The licensure and immunity provisions in EMAC were designed to apply to state employees, not those in the private sector! Some states have chosen to expand the effectiveness of EMAC to private citizens by enacting legislation that grants private sector employees temporary state employee status during the EMAC emergency. While EMAC is a good option for healthcare entities facing disasters, additional provisions for mutual aid are often necessary to easily facilitate private sector licensure.

The National Conference of Commissioners on Uniform State Laws (NCCUSL) created the Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) which was first enacted by a state legislature in 2006. It was modified in 2007 to include workers compensation and civil liability coverage. It has since been enacted in nine states, and proposed in several more. The legislation is popular, and for good reason. The UEVHPA was initially a response to the devastating hurricanes of 2005, as the drafters intended to mend the patchwork state law system that prevented health professionals from quickly and legally providing much needed aid to decimated states. The UEVHPA is activated when an authorized state or local official issues an emergency declaration, continues to be in effect for the duration of the emergency unless modified by the host state, and applies to all licensed volunteer practitioners who provide health or veterinary services. Interested volunteers may either register in advance of or during an

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5 H.J. Res. 193, 104th Cong. (1996) (enacted); EMAC.
6 Bruce R. Lindsay, CRS Report for Congress Emergency Management Assistance Compact CEMAC: An Overview.
7 Beverly Bell, NEMA Senior Policy Analyst, Making the Most of EMAC.
8 Department of Health and Human Services, Medical Surge Capacity and Capability: A Management System for Integrating Medical and Health Resources During Large-Scale Emergencies, Chapter 6.3.
9 See EMAC: A Model for Regional Coordination, pp. 6-11.
10 See UEVHPA Development Process.
11 See UEVHPA Enactment Information.
13 See Summary of the UEVHPA.
emergency to provide services in an affected state that has enacted the legislation.\textsuperscript{14} There are many registration methods available, such as federally funded registration services like the Emergency Systems for the Advance Registration of Volunteer Health Professionals (ESAR-VHP) and systems established by disaster relief organizations or state licensing boards. Healthcare facilities are authorized to rely on these registration systems to confirm an individual's license and good-standing in his home state. Practitioners should be aware that they are limited to the scope of practice allowed by their license in the licensing state, or the scope of practice allowed under a similar license in the host state, whichever scope is narrower.\textsuperscript{15} Of course, government entities, healthcare entities, and relief organizations may limit the volunteers' scope of practice if necessary to respond to emergency.\textsuperscript{16}

UEVHPA is a great resource for practitioners and healthcare entities alike as it provides a reliable system for licensure verification and access to a diverse group of potential volunteers. Providers and physicians alike should consider the issue and encourage their state legislatures to enact UEVHPA.

Although uniform laws like UEVHPA and EMAC apply to nurses as well as physicians, the popular Nurse Licensure Compact (NLC) has been enacted in twenty-three states.\textsuperscript{17} The NLC was first passed into law by four states in 2000 and covers registered nurses (RNs) and licensed practical or vocational nurses (LPN/NNs). The NLC requires a nurse to obtain a license in the state of permanent residence, and if that state is a party to the multistate compact, she or he may practice in other party states.\textsuperscript{18} NLC was designed to aid in the use of increasingly popular telenursing or nursing across state lines, but it is also helpful in times of disaster.\textsuperscript{19}

II. Impact of Emergencies and Disasters on Liability of Health Professionals

Each state has its own law addressing liability of health professionals or lay citizens in emergency conditions, and these are often known as the Good Samaritan laws. The American Medical Association (AMA) maintains an in-depth survey of the state laws on point and publishes it on the AMA website.\textsuperscript{20} For example, California law grants licensees immunity from any injury sustained after a medical disaster has occurred, so long as the injury is not a result of a willful act or omission.\textsuperscript{21} In general, state laws condition the immunity on the actor's expectation of remuneration for the services such that a physician who expected to be compensated for the action may not also shield liability.\textsuperscript{22}

Under EMAC, where officers or employees of an assisting state render aid to the requesting state, they are treated as agents of the requesting state for tort and immunity purposes.\textsuperscript{23}

\textsuperscript{14} \textit{Id.}
\textsuperscript{15} See UEVHPA § 8.
\textsuperscript{16} \textit{Id.}
\textsuperscript{17} Participating states in the NLC.
\textsuperscript{18} Texas Board of Nursing, FAQ's about the Nursing Licensure Compact.
\textsuperscript{19} See Nurse Licensure Compact Administrators, NLC FAQ.
\textsuperscript{20} See Good Samaritan and Immunity.
\textsuperscript{21} Cal. Bus. & Prof. Code §§ 900 and 2395.
\textsuperscript{23} Bruce R. Lindsay, \textit{CRS Report for Congress, Emergency Management Assistance Compact (EMAC): An Overview, CRS-5.}
This often means that actions constituting ordinary negligence do not give rise to a cause of action for an injured person because sovereign immunity bars recovery. UEVHPA goes further than EMAC and offers enacting states two choices for civil liability provision. Alternative A provides immunity from liability for ordinary negligence to all volunteer health professionals and immunity from vicarious liability to the entities that deploy or use them. Alternative B provides immunity from liability for ordinary negligence only to health professionals who are nominally compensated in a manner comparable to the federal Volunteer Protection Act and leaves the vicarious liability issue to other state laws. Alternative A is seen as an expansion of the common federal immunity, but each state must make a policy choice about whether it should make such an expansion. Immunity under UEVHPA is limited to the scope of providing emergency healthcare, and does not expand such immunity to the operation of non-emergency vehicles, the provision of administrative services, or services that are beyond the scope of practice as defined by the host state.

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24 4 UEVHPA § 11 (alternatives A & B).
25 Id.