



Perspectives on Legal Protections for MRC Units and Volunteers: A General Overview of Liability Concerns for VHPs

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Major Resources

- ESAR-VHP Legal and Regulatory Issues Report (May 2006); **upcoming edition this fall**
- *Center's* Advanced Tool Kit (April 2007)
- *Center's* Hurricanes Katrina and Rita Tool Kit (February 2006)
- NCCUSL Uniform Emergency Volunteer Health Practitioners Act of 2007

Available at www.publichealthlaw.net/Projects/AffiliatedProjects.php

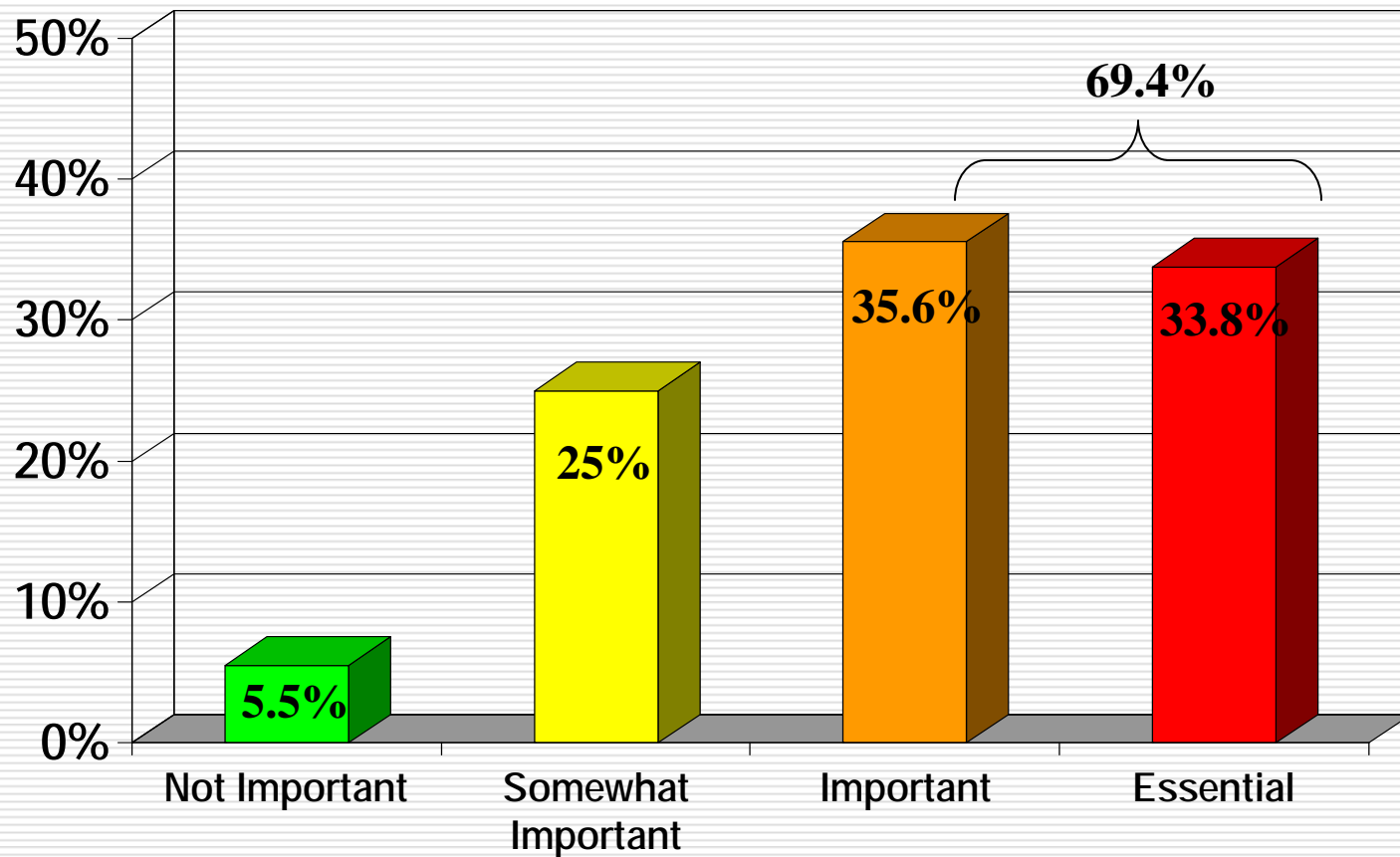
Civil Liability

- **Major questions:**

- What is civil liability?
- Who may face civil liability?
- How does civil liability arise?
- What legal protections from civil liability are in place?

APHA Survey on Volunteer Health Practitioner Legal Issues

Civil Liability – As a potential volunteer, how important to you is your immunity from civil lawsuits whether to volunteer during emergencies?



Civil Liability

- **What is civil liability?**

Civil liability refers to the potential responsibility that a person or institution may owe for their actions, or failures to act, that result in injuries or losses to others.

Civil Liability

- **Who may face civil liability?**
 - Volunteers (e.g., doctors)
 - Health care entities that provide volunteers
 - Health care entities that accept volunteers
 - Persons or entities responsible for registration systems

Civil Liability

- **On what grounds?**
 - Negligence
 - Intentional torts
 - Privacy
 - Misrepresentation
 - Discrimination



Civil Liability

- **Negligence occurs when:**

a person acts or fails to act in a way that deviates from accepted standards of care, and by so doing, causes injury to another.

Civil Liability

- **Medical malpractice lawsuits are based on a special type of negligence, professional negligence.**
- **Professional negligence occurs when:**
 - a professional (e.g., a doctor or nurse) acts or fails to act in a way that deviates from accepted standards of practice in that profession's community, and by so doing, causes injury to the patient.

Civil Liability

• **To win a medical malpractice lawsuit, the patient (or plaintiff) has to prove four things:**

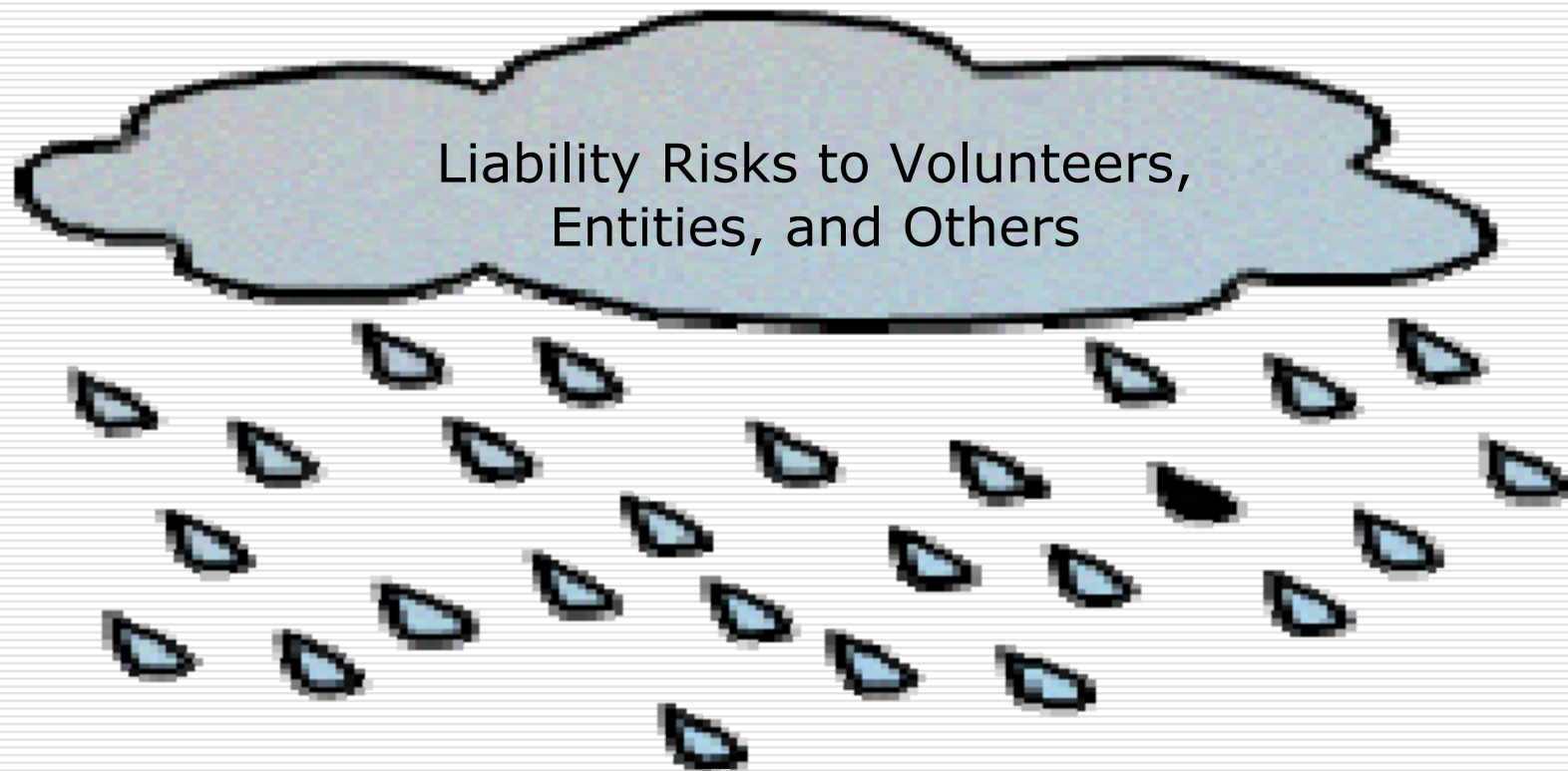
1. Duty – an obligation to act or not act
2. Breach – a failure to satisfy that obligation
3. Harm – actual harm to another (e.g., a patient)
4. Causation – the breach must cause the harm

Civil Liability

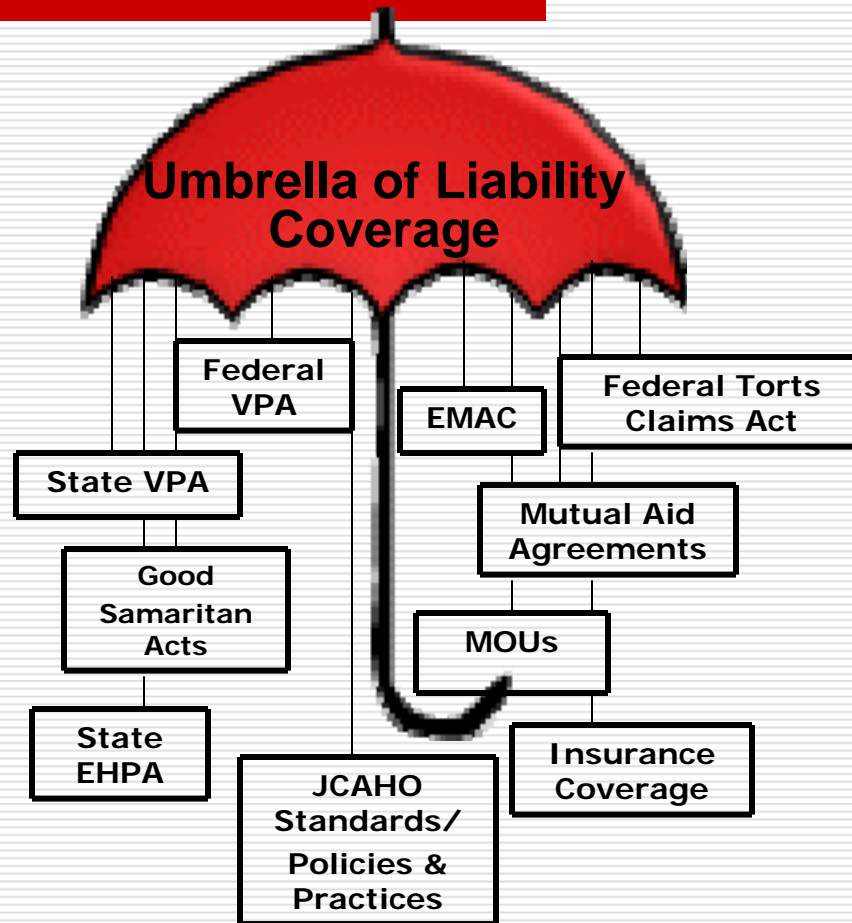
- **On what grounds?**
 - Negligence
 - Medical Malpractice
 - Intentional torts
 - Privacy
 - Misrepresentation
 - Discrimination



Civil Liability



Civil Liability – Protections



Civil Liability – Protections

- **Legal provisions that may grant immunity to volunteers:**
 - Emergency Statutes and EMAC
 - Volunteer Protection statutes
 - Governmental (sovereign) immunity
 - Good Samaritan laws

Civil Liability – Protections

- **Volunteer Protection statutes:**

- Federal and state Volunteer Protection Acts
- No emergency required
- Typically apply only to volunteers for nonprofit and governmental entities
- No compensation allowed



Civil Liability – Protections

- **Governmental (sovereign) immunity:**
 - May cover all government employees and volunteers
 - No emergency required
 - Volunteers in non-government settings are not covered

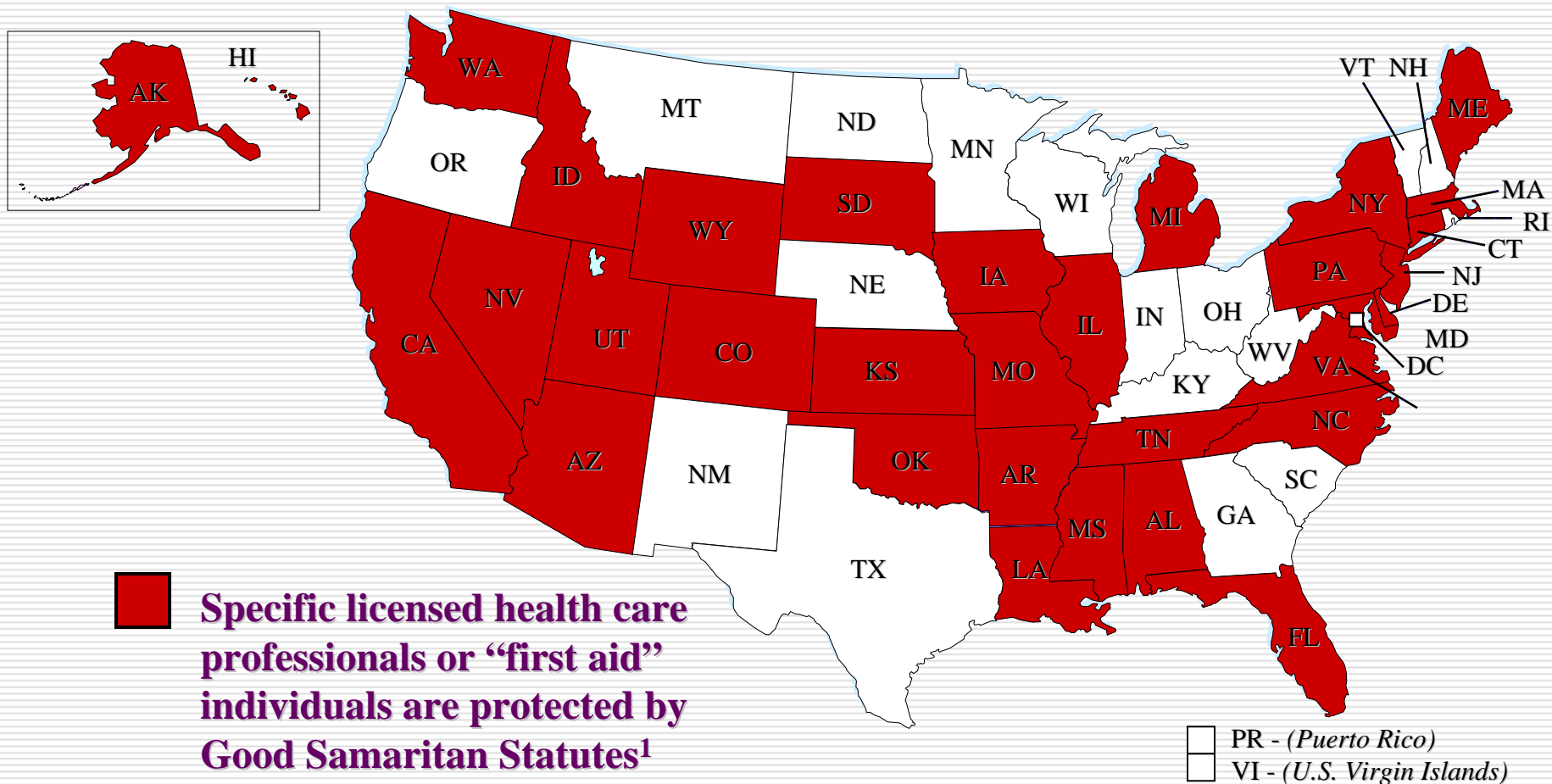
Civil Liability – Protections

- **Good Samaritan laws:**

- Codified in state statutes
- Criteria vary across states
- Emergency situation must exist, but there is no need for declaration
- May not apply for pre-arranged or compensated volunteers



Good Samaritan Statutes



¹May apply in limited emergency circumstances, as provided by statute.

Uniform Emergency Volunteer Health Practitioners Act (UEVHPA)

- Developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) – completed in August, 2007
- Provides state legislative provisions relating to the deployment and use of VHPS during declared states of emergency
- Current version is available at www.uevhpa.org

UEVHPA – Major Issues

- **Liability** – offers 2 alternatives for protecting VHPs during emergencies
 - **Alternative A** – individual and entity liability protection for VHPs
 - **Alternative B** – individual liability protection for uncompensated VHPs

Civil Liability – Indemnification

- Indemnification occurs when one party agrees to pay the costs of another.
- Some states have chosen to indemnify volunteers by promising to provide legal representation throughout the litigation process and to pay any resulting damages claims.

Conclusion

- Questions, comments, thoughts?
- For more information about these issues please contact me or visit our website at:
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- *Thank you!*