



Perspectives on Legal Protections for MRC Units and Volunteers

Federal Roundtable
September 11, 2008
Sacramento, CA



Overview

This session is designed to provide information on the state, local, and federal perspectives on the legal protections for MRC units.

Rob Tosatto, Office of the Surgeon General

Evan Anderson, Johns Hopkins Bloomberg School of Public Health

Steve Wagner, Ohio Department of Health

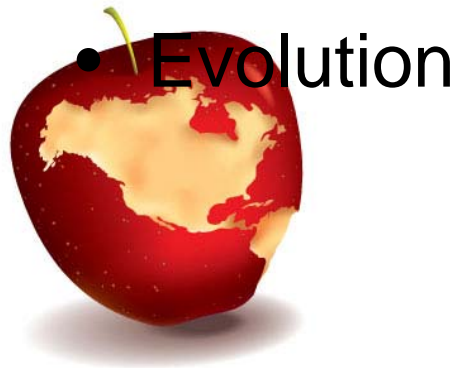
Martin Thone, Natrona County MRC





MRC Concept

- Original
 - o Improve the health and safety of communities across the country by organizing and utilizing public health, medical and other volunteers
 - o Key Points:
 - o Organize/utilize locally
 - o Affiliate/integrate with existing programs and resources
 - o Volunteer management - identify, screen/verify credentials, train
 - o Foster community resiliency



- Evolution



Medical Reserve Corps Units



Alaska	Hawaii	Puerto Rico / Virgin Islands	Guam	Federated States of Micronesia	America Samoa	Northern Mariana Islands	Palau	Marshall Islands



The Medical Reserve Corps is a component of Citizen Corps and the USA Freedom Corps.



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MRC Activities

Public Health

Health Screening and Education
Sedgwick County (KS) MRC



Blood pressure screening
Upper Merrimack Valley (MA)
MRC



Emergency Preparedness and Response



POD/Dispensing Site
Bergen County (NJ) MRC

Evacuee Shelter
Omaha (NE) MRC





Challenges

- Time
- Sustainability
- Legal Protections





How are legal protections offered to your MRC members?

- 677 responses

Not offered	45	6.65%
Local Agency	131	19.35%
State Agency	94	13.88%
State Good Samaritan Laws	390	57.61%
Other State Legislation	347	51.26%
Federal Volunteer Protection Act	261	38.55%
Other	88	13%





When are legal protections in effect?

- 639 responses

All MRC-related activities	303	47.42%
During emergencies	413	64.63%
During training activities	137	21.44%
During local public health activities	102	15.96%





The Centers for Law & the Public's Health:
A Collaborative at Johns Hopkins and Georgetown Universities

*CDC Collaborating Center for Public Health Legal Preparedness
WHO/PAHO Collaborating Center on Public Health Law and Human Rights*

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

Evan D. Anderson, J.D.

Research Associate, Johns Hopkins Bloomberg School of Public Health
Fellow, *Center for Law & the Public's Health: A Collaborative at
Johns Hopkins and Georgetown Universities*



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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

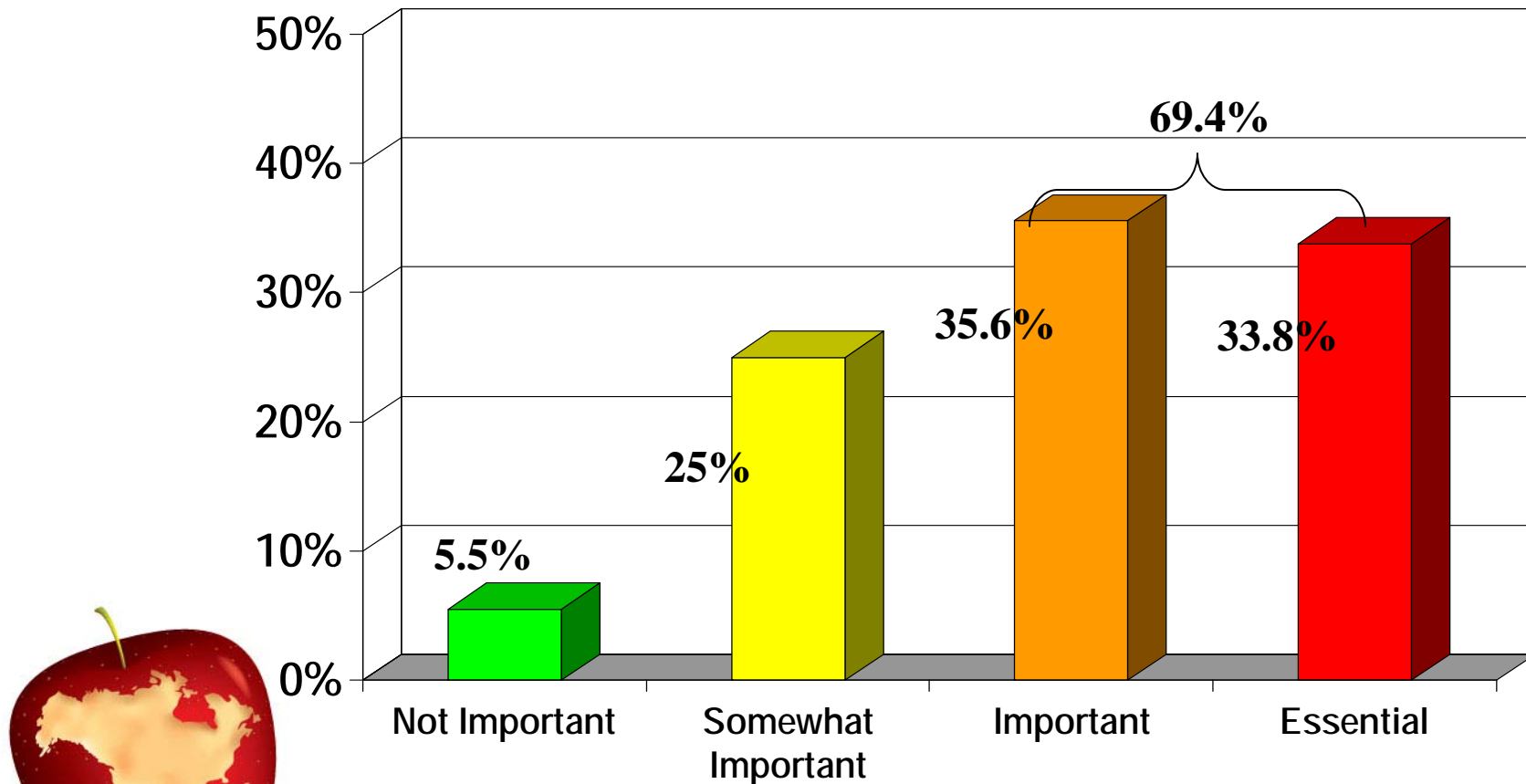
- **Major questions:**

- 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



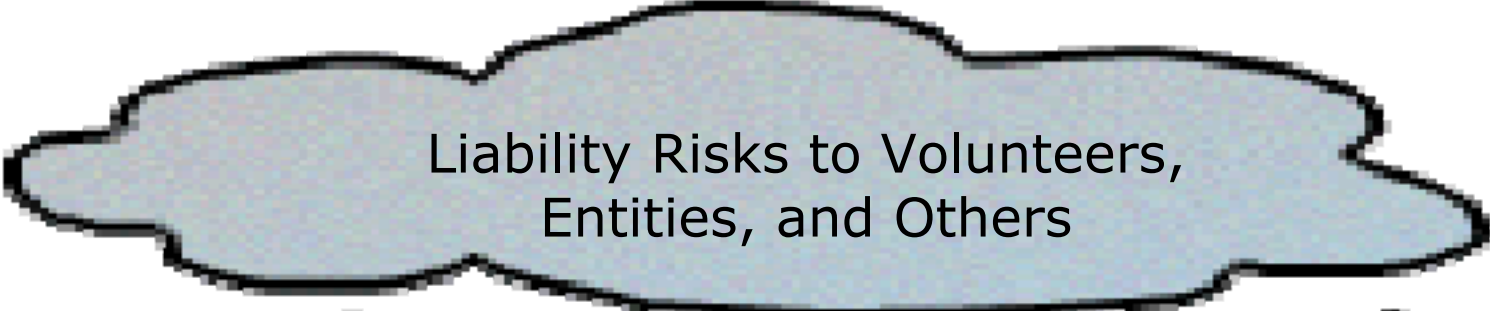
Civil Liability

- **On what grounds?**

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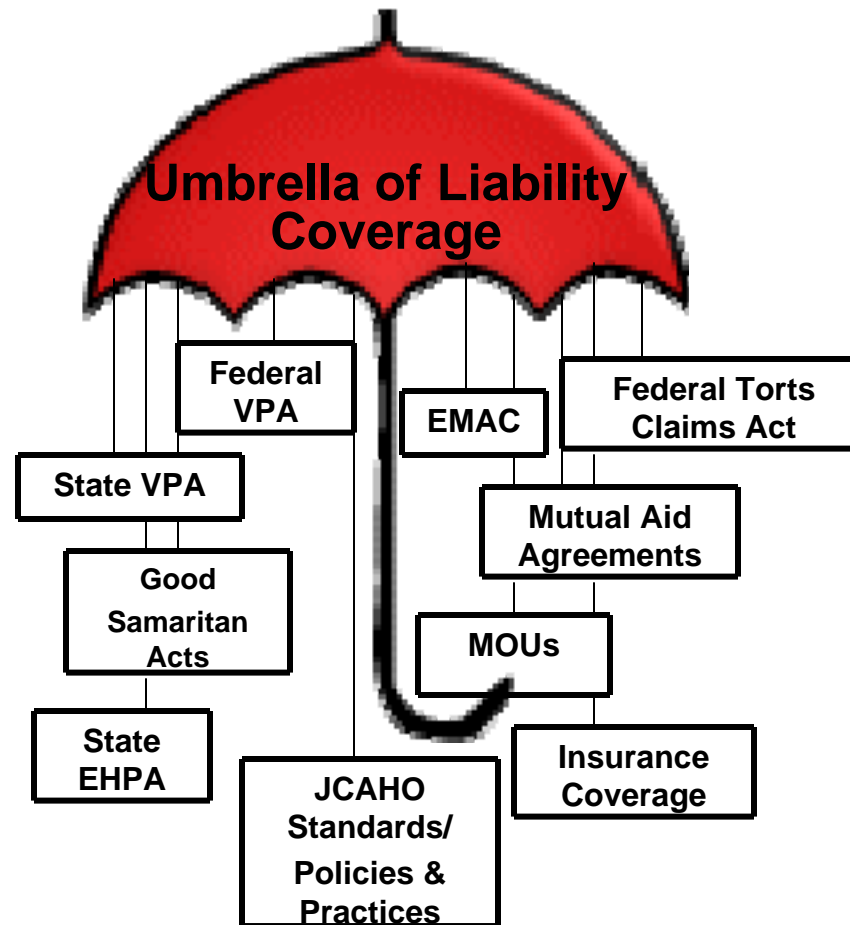
Civil Liability



Liability Risks to Volunteers,
Entities, and Others



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



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

- For more information about these issues please contact me or visit our website at:

www.publichealthlaw.net/Projects/AffiliatedProjects.php

- Evan D. Anderson, Fellow, eanderso@jhsph.edu

Thank you!



Steve Wagner, MPH

Ohio Department of Health



Objectives

- To facilitate state, regional and local planning efforts by development of consistent, state-wide parameters to assist in the deployment of healthcare volunteers
- These parameters include:

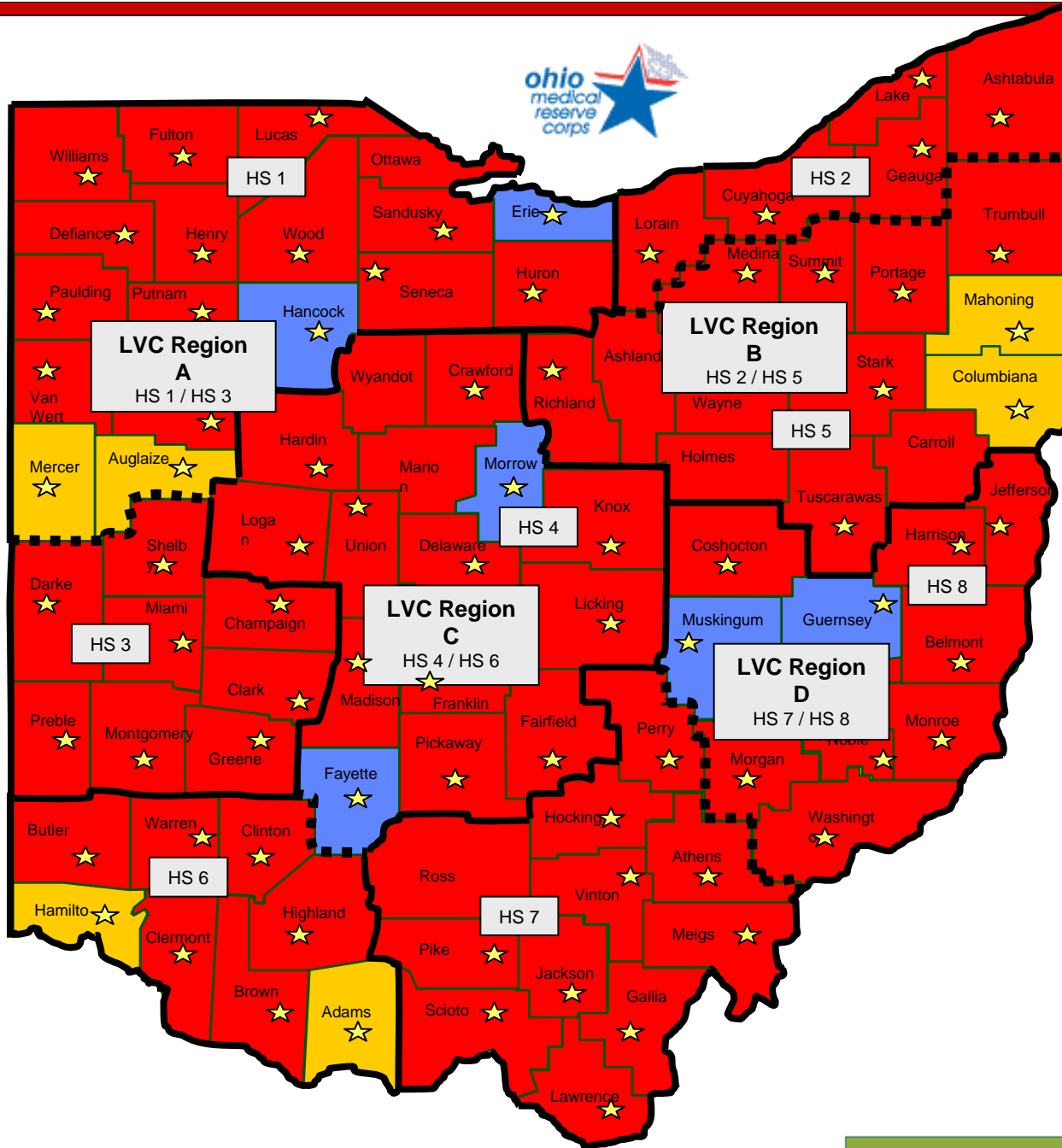
Credentialing

Training

Identification and resolution of legal issues

Other issues to be identified





Summary
 82 County Councils
 78 MRC Units
 (82 Counties)

Registered MRC Units

Combined Registered MRC Unit

MRC Unit In Development

★ = County Citizen Corps Council
 LVC = Lead Volunteer Center
 HS = Homeland Security

Ohio Citizen Corps Volunteers – May 2008

- Ohio Citizen Corps – general volunteers
4808
- Ohio Medical Reserve Corps
6525

TOTAL =11,333



Licensed Professionals

- Physician/psychiatrist
- Physician assistant
- Registered nurse
- Licensed practical nurse
- Pharmacist
- Pharmacy Intern
- Psychologist
- Licensed independent social worker
- Licensed independent clinical counselor
- Dentist
- Emergency Medical Services
- Veterinarian



Legal Issues

- Authority
- Liability of volunteer
- Privacy of volunteers
- Worker's compensation
- Background checks
- Participation of volunteers across state lines



ORC 121.404

Signed on January 11, 2006

- Charges the Ohio Community Service Council with duties related to volunteers, including establishing a statewide system for volunteers and assisting political subdivisions with implementing that system.
- Permits the Ohio Community Service Council to accept and administer grants from any source to carry out its functions.
- **Defines "registered volunteer" and creates an exemption from liability for registered volunteers in specified situations.**
- **Establishes which information related to volunteers is a public record and which information is a security record not subject to public disclosure.**
- Requires the Director of Health to establish a system of volunteers as advisable and reasonably necessary to respond in an emergency involving the public's health.



ORC 121.404

- (1) "Registered volunteer" means any individual registered as a volunteer pursuant to procedures established under this section and who serves without pay or other consideration, other than the reasonable reimbursement or allowance for expenses actually incurred or the provision of incidental benefits related to the volunteer's service, such as meals, lodging, and childcare.



ORC 121.404

- B) A registered volunteer is not liable in damages to any person or government entity in tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim or veterinary claim, for injury, death, or loss to person or property that may arise from an act or omission of that volunteer. This division applies to a registered volunteer while providing services within the scope of the volunteer's responsibilities during an emergency declared by the state or political subdivision or in disaster-related exercises, testing, or other training activities, if the volunteer's act or omission does not constitute willful or wanton misconduct.
- NOTE: Healthcare professional must have completed a training where credentialing was completed [review driver's license and professional license wallet card] and must be registered on the database.



ORC 121.404

- The immunity differs from the existing “Good Samaritan” laws in that registered volunteers under the bill work as part of an organized response to an emergency while a “Good Samaritan” under R.C. 2305.23 (not in the bill) works outside an office or hospital, and is understood to have come upon the emergency instead of being part of an organized response.



ORC 121.404

- (D)(1) A registered volunteer's status as a volunteer, and any information presented in summary, statistical, or aggregate form that does not identify an individual, is a public record pursuant to section 149.43 of the Revised Code.



MAKE EVERY MINUTE COUNT



HEROES AREN'T BORN, THEY VOLUNTEER



WWW.SERVEOHIO.ORG



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Natrona County MRC

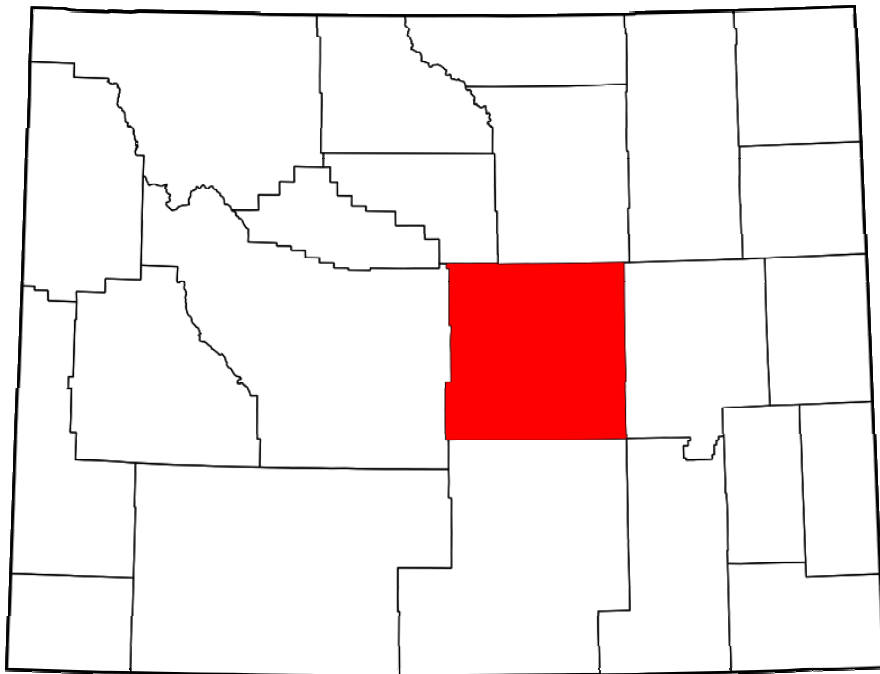
A Local Liability Perspective

Marty Thone, M.S., Ph.D.
Director

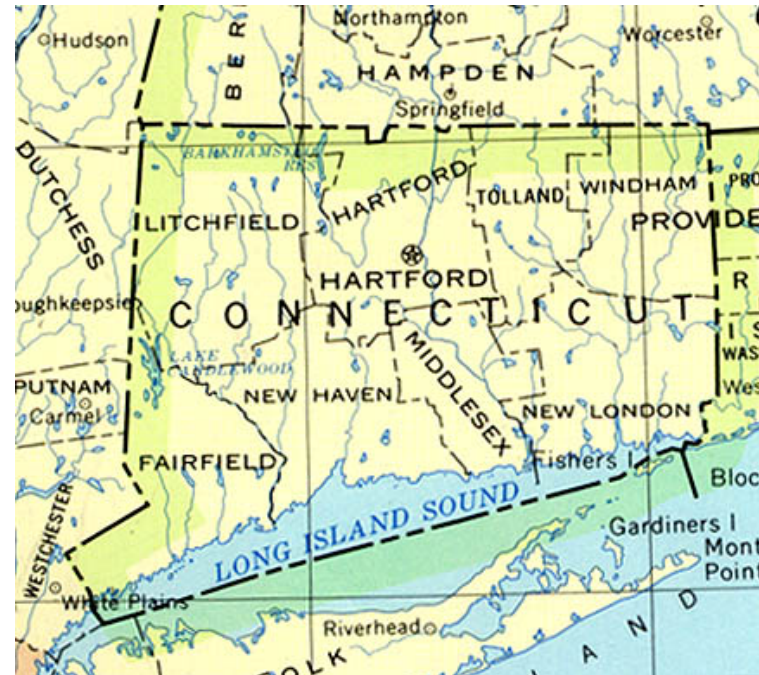


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Natrona County, Wyoming



- Area – 5,376 sq mi
- Pop – 70,000



- Area – 5,543 sq mi
- Pop – 3.4 million

Casper, WY

- Pop – 58,000
- 2nd Largest city in Wyoming
- Hometown of Dick Cheney and Matthew Shepard



Natrona County MRC

- Established 2005
- Medical Response Unit of the Casper-Natrona County Health Department
- Currently 54 Volunteers
- 2 Missions

Firefighter Rehabilitation

Disaster Medical Response



Assets



Becoming the **healthiest** NATION in a **healthier** WORLD

Natrona County MRC

- Statistics

- Donated over 2,130 manhours

- Provided medical coverage at over 23 major community events

- Provided fire rehab at over 35 fires or training exercises

- Provided medical treatment to over 100 persons



Liability Concerns

- Medical Malpractice
- General “employee” concerns

Negligent hiring

Sexual harassment

Workplace violence

On-duty impairment

Wrongful discharge



Protection

- All volunteers, when deployed, are non-paid employees of the Health Department
Covered under both the medical liability insurance policy and Worker's Compensation policy of the Department
- With a disaster declaration, Wyoming Statutes provide liability protection



Risk Management

- “Employee Issues”
 - Credential verification
 - Background check
 - Rules of Conduct
 - Volunteer Board of Directors
 - Investigate allegations
 - Make recommendations to Director



Risk Management

- Medical Issues

Established 4 levels of expertise

Mandatory training prior to treating any person

Standard treatment protocol (American Heart Assn.)

Work in teams of 2 or 3: one providing oversight

Document all treatment rendered



Summary

- Know who your members are and their qualifications
- Establish medical protocols
- Let your members know what is expected of them
- Always work in teams
- Document everything!

