

Risk Management and
Emergency Law and
Legal Protection
pertaining to MRC
Volunteers

Medical Reserve Corps Regional Workshop

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Negligence and the Standard Defenses

Tort of Negligence:

- Duty
- Breach of the duty
- Harm
- Proximate Causation

Standard Defenses:

- Contributory negligence
- Assumption of risk
- Statute of Limitations

Good Samaritan Act Va. Code § 8.01-225

Any person who in good faith, renders emergency care or assistance, without compensation, to any ill or injured person at the scene of an accident, fire, or any life-threatening emergency, or en route therefrom to any hospital, medical clinic or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance.

Good Samaritan Act Limitations

- Applies only to emergency care for ill and injured persons
- Must be at the scene or en route therefrom. Cannot be at a health care facility.
- Applies only to individuals, not institutions.
- Applies only to those rendering care without compensation.

Va. Code § 8.01-225

Good Samaritan Act

Specific provisions for:

- Administration of:
 - Epinephrine
 - Opioid Antagonists
- Operational medical directors

Va. Code § 8.01-225

State
Government
Volunteers Act
Va. Code §
2.2-3605

Liability insurance may be provided by the department utilizing their services both to regular-service and occasional-service volunteers to the same extent as may be provided by the department to its paid staff. Volunteers in state and local service, including, but not limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT), shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff.

State Government Volunteers Act

“Volunteer in state and local services” shall include, but shall not be limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT) while engaged in emergency services and preparedness activities as defined in § 44-146.16.

Va. Code § 2.2-3601

Volunteer Protection Act

Volunteer Protection Act: 42 U.S.C. § 14504

Liability protection for volunteers who work without compensation for government or non-profit organizations

Other immunities

Hospital employee rendering care to patient of a free clinic.

- Va. Code § 32.1-127.3

Immunity and state plan coverage for those volunteer in free clinics or federally qualified health centers.

- Va. Code § 54.1-106

Those who serve on community policy and management teams.

- Va. Code § 2.2-5205

Team physicians.

- Va. Code § 8.01-225.1

Hospice volunteers.

- Va. Code § 8.01-226.4

Game Changer!



Emergency Declaration

Federal declaration of emergency

- By HHS
- PREP Act Declaration (also HHS)
- Stafford Act (FEMA)

State declaration of emergency

Local emergency

The PREP Act

Public Readiness and Emergency Preparedness Act

- Enacted in 2005
 - 319F-3(b) of the Public Health Service Act
 - 42 U.S.C. 247d-6d

The PREP Act

Two functions:

1. Broad liability protection for covered persons
2. Compensation to individuals injured by receipt of covered countermeasures

Individual files a claim with Countermeasures Injury Compensation Program (CICP). See

<https://www.hrsa.gov/cicp>

The PREP Act

“Subject to the other provisions of this section, a covered person shall be immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure if a declaration under subsection (b) has been issued with respect to such a countermeasure.”

42 U.S.C. 247d-6d (emphasis added)

The PREP Act

Covered Person:

Manufacturer, distributor, program planner, qualified person who prescribed, administered, or dispensed countermeasure.

The PREP Act

Loss

Death, physical, mental, or emotional injury, disability or fear thereof.

Loss or damage to property, including business interruption.

42 U.S.C. 247d-6d

The PREP Act

Covered Countermeasures

Delineated in the Secretary's Declaration – and in the case of Covid-19, the 10 amendments.

Typically vaccines, treatment, prophylaxis, drugs, devices

CARES Act added NIOSH approved respiratory protective devices. § 3103.

Coverage hinges on administration of a covered countermeasure

BUT see 4th Amended Declaration to PREP Act for Covid-19 – distinction between nonfeasance allocation that results in non-use. Prioritization or purposeful allocation of a Covered Countermeasure, particularly if done in accordance with a public health authority's directive, can fall within the PREP Act and this Declaration's liability.

The PREP Act – Covered Countermeasures

- See Estate of Maglioli v. Andover Subacute Rehab. Ctr., 16 F.4th 393 (3rd Cir. 2021) (alleged failures to have proper social distancing, visitor restrictions and adequate staffing in early days of the pandemic not a covered countermeasure)
- Cannon v. Watermark Ret. Cmstys, Inc., 2021 U.S. Dist. LEXIS 133613(E.D. Pa) (experimental use of hydro chloroquine not a covered countermeasure)
- Parker v. St. Lawrence Cty. Pub. Health Dept., 954 N.Y.S.2d 259 (2012) (covered vaccine still a covered countermeasure despite failure to obtain informed consent).
- Ruiz v. ConAgra Foods, 2021 U.S. Dist. LEXIS 134677 (E.D. WI 2021)
- April 7, 2020 General Counsel Opinion re: products reasonably believed to be covered countermeasures.

The PREP Act

“Arising out of, relating to, or resulting from”

See Storment v. Walgreens, 2022 U.S. Dist. LEXIS 133261 (D.NM 2022)
(patient slipped and fell while dizzy from the vaccine).

Marshall v. CVS Pharmacy, LLC, 580 F. Supp. 3d 1301 (N.D. Ga 2022)
(patient privacy violation, reputational harm).



Current PREP Act Declarations

- Covid-19 (10 amended declarations) Effective Feb. 2020 – but could be ending soon.
- Nerve agents and certain insecticides
- Zika Virus Vaccines
- Ebola Virus Therapeutics and Vaccines
- Countermeasures for:
 - Anthrax
 - Pandemic Influenza
 - Acute Radiation Syndrome
 - Smallpox
 - Botulism Toxin

PREP Act – Willful Misconduct Exception

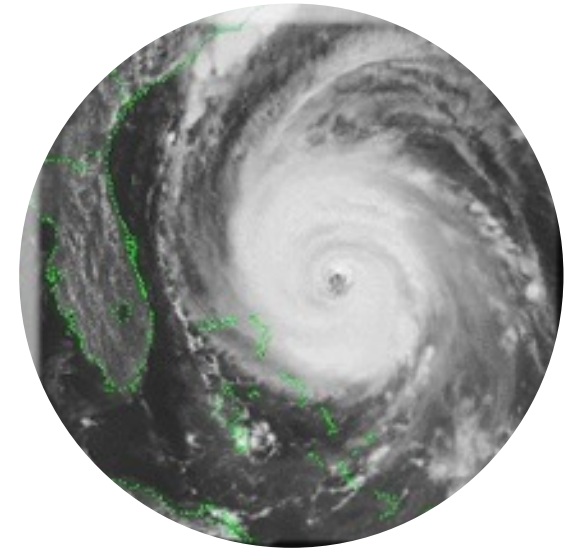
- If person acted (i) intentionally to achieve a wrongful purpose; (ii) knowingly without legal or factual justification; and (iii) in disregard of known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.
- Compliance with Secretary's guidelines re: administration of countermeasure is a defense. Must notify Secretary or state/local authority w/in 7 days.
- Regulatory compliance also a defense.

Mutual Aid - EMAC

- Reciprocity of licenses and permits
- Agents of the requesting state for tort liability and immunity purposes
- Liability protection while acting in good faith
- Workers' Compensation

State Emergency Powers Orders

May provide liability protection to those responding to an emergency



Commonwealth of Virginia Emergency Services and Disaster Law Va. Code § 44- 146.13 *et seq.*

Public or private agencies and public or private employees engaged in emergency activities while complying with the Code or Executive Order are immune from liability.

Includes MRC and CERT.

Va. Code § 44-146.23(c)

Commonwealth of
Virginia Emergency
Services and Disaster
Law
Va. Code § 44-146.13
et seq.

If any person holds a license, certificate, or other permit issued by any state, or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may gratuitously render aid involving that skill in this Commonwealth during a disaster, and such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such gratuitous service.

Va. Code § 44-146.23(c)

Commonwealth of Virginia Emergency Services and Disaster Law Va. Code § 44- 146.13 *et seq.*

- Must be complying with the Disaster Law, rule, regulation, or executive order. Scope of order/protection not clear until drafted.
- Does not apply before the declaration of emergency.
- Excludes willful misconduct.

Assisting with
Isolation/Quarantine
Va. Code § 32.-
48.016

- Any person, including a person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT), who, in good faith and in the performance of his duties, acts in compliance with this article and the Board of Health's regulations shall not be liable for any civil damages for any act or omission resulting from such actions unless such act or omission was the result of gross negligence or willful misconduct.

Covid-19 Governor Declared Emergency

- Not in effect currently
- Authorizes additional persons to administer the vaccine
- Liability protection for:
 - Those administering the vaccine
 - Those volunteering their facilities as vaccination sites

Chapter 1, 2021 Acts of Assembly (HB2333)

Altered Standard of Care - Abandonment

- A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster by delivering health care to persons injured in such disaster shall be immune from civil liability for any injury or wrongful death arising from abandonment by such health care provider of any person to whom such health care provider owes a duty to provide health care when (i) a state or local emergency has been or is subsequently declared; and (ii) the provider was unable to provide the requisite health care to the person to whom he owed such duty of care as a result of the provider's voluntary or mandatory response to the relevant disaster.

Virginia Code § 8.01-225.01

Altered Standard of Care

- In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster shall not be liable for any injury or wrongful death of any person arising from the delivery or withholding of health care when (i) a state or local emergency has been or is subsequently declared in response to such disaster, and (ii) the emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and which resulted in the injury or wrongful death at issue

§ 8.01-225.02

Altered Standard of Care - Credentialing

- In the absence of gross negligence or willful misconduct, any hospital or other entity credentialing health care providers to deliver health care in response to a disaster shall be immune from civil liability for any cause of action arising out of such credentialing or granting of practice privileges if (i) a state or local emergency has been or is subsequently declared and (ii) the hospital has followed procedures for such credentialing and granting of practice privileges that are consistent with the applicable standards of an approved national accrediting organization for granting emergency practice privileges.

Virginia Code § 8.01-225.01

Volunteers Not Always Entitled to Coverage for:

Life Insurance

Health Insurance

Leave

Workers' Compensation

Willful/Criminal Acts

Legal Defense

Who gets
Workers'
Compensation?

Employees acting within the course
and scope of employment

Who gets Workers' Compensation

Emergency Management Assistance Compact (“EMAC”) if Governor has declared state of emergency and Virginia has activated EMAC

- Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Va. Code § 44-146.28:1, Article VIII.

Who gets Workers' Compensation

- Volunteers if: firefighters, EMS, search and rescue, regional hazmat teams, CERT, MRC members, etc. if political subdivision or public institution of higher education has adopted a resolution acknowledging them as employees for purposes of workers' comp.
- Emergency personnel responding at the request of VDEM.

Va. Code § 65.2-101.



Questions?

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