

Liability Protections for Emergency Volunteers

SERVGA Administrator Conference

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April 2, 2019



Learning Objectives

Civil Liability - theories of liability

Legal protections available to emergency volunteers and organizations

- Federal Law
- State Law

Risk Management Considerations



Case Scenario

Patrice was instructed that she needed to receive a vaccine and to go to one of the predetermined facilities where the vaccine is being offered.

At the facility, Vincent administered the vaccine to Patrice.

Patrice suffered a severe adverse reaction to the vaccine.

It was discovered that Vincent administered the wrong vaccine to Patrice.

Discuss...



Civil Liability

What is Civil Liability?

- ***Civil liability*** is the potential *responsibility* that a person or entity may owe for their *actions, or failures to act*, that result in measurable injuries or losses to others
 - **Direct Liability** – being directly responsible for *your* actions (i.e., individual or entity)
 - **Vicarious Liability** – being responsible for the actions of *others* in their control – e.g., organization responsible for actions of its volunteers



Forms of Civil Liability

- Intentional Torts
 - Battery / Assault
 - Possible Defenses: Consent; Necessity
- Negligence (unintentional tort)
 - Failing to use ordinary care (duty, breach, causation, damages)
 - “ordinary negligence” vs. “gross negligence”
- Privacy Violations
- Misrepresentation



Examples

Intentional Tort – e.g., Battery

- *Example:* A health care provider administers a vaccine without a patient's informed consent

Negligence

- *Example:* A public health physician administers pain medication to a patient without knowing other medications the patient is taking. The patient suffers an adverse reaction

Privacy

- *Example:* A public health clinic inappropriately discloses a patient's medical information without the patient's express authorization

Misrepresentation

- *Example:* A nurse administers medical care knowing that the patient believes the nurse is a physician

Standards of Care in Emergencies

General Standard

Georgia Standard:

"Reasonable degree of care and skill which, under similar conditions and like circumstances, is ordinarily employed by the profession generally."



"Crisis Standard of Care"

Not a legal standard

How to act during emergency situations



Adapt to respond, treat, and care based on the circumstances

e.g., to meet patient surge capacity and limited resources

Institutes of Medicine (IOM)-

"Substantial change in usual healthcare operations and the level of care it is possible to deliver resulting from a pervasive or catastrophic disaster."

http://assets.nydailynews.com/img/2010/01/15/aig_chinese_team.jpg



Legal Protections Available for Emergency Volunteers

- **Federal Law**
- **State Law**



Emergency Volunteers

Who is a *Volunteer*?

- Someone who provides services for no expectation of compensation

Emergency Volunteer?

- A volunteer who engages in an emergency management activity or provides services in response to or in preparation of an emergency or disaster
 - "Affiliated"
 - "Non-affiliated" – *spontaneous, self-deployed*

Umbrella of Liability Protection

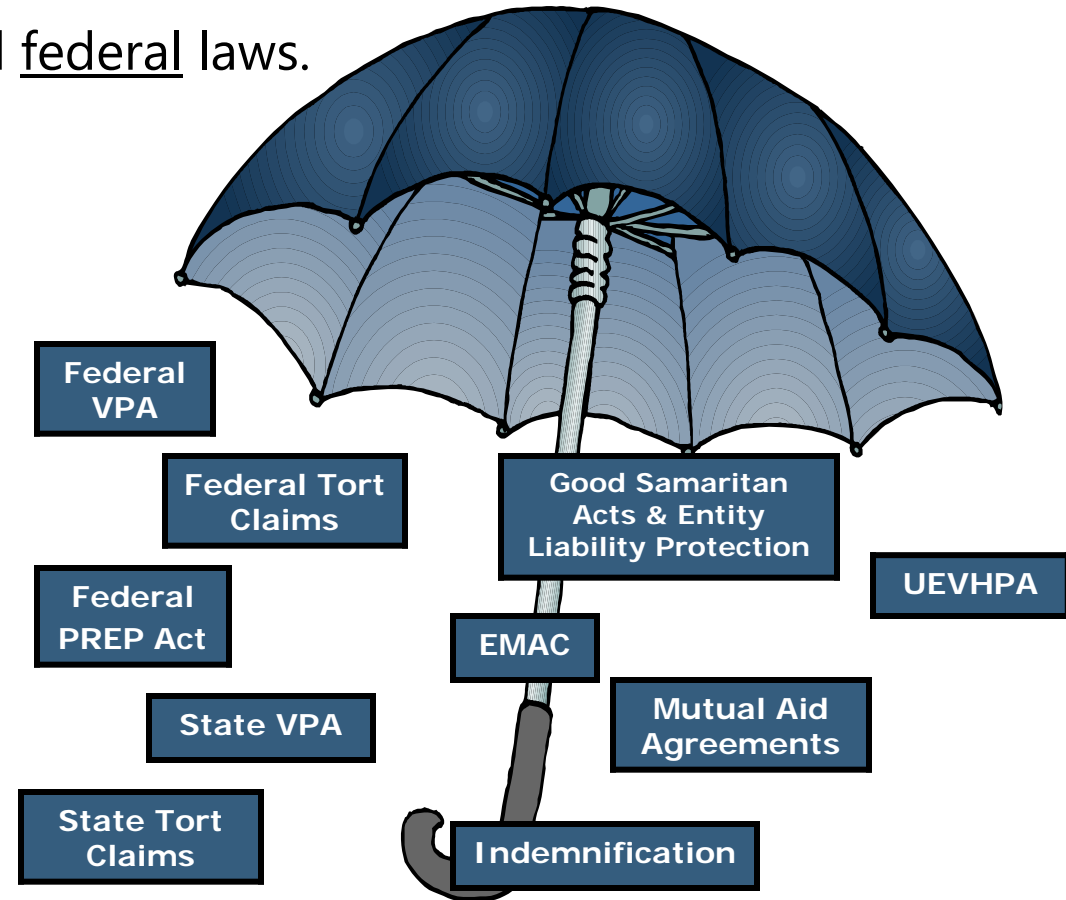
Multiple liability protections under state, and federal laws.

Federal Law

- Volunteer Protection Act of 1997
- PREP Act

Georgia State Law

- Georgia Tort Claims Act
- Emergency Management Act of 1981
- Volunteer Protection Statutes
- Good Samaritan Act
- EMAC
- UEVHPA



The following statutes are for the protection against civil liability and would not shield a person against criminal liability.

Protection from Civil Liability

Who could be protected?

- Individual volunteers
- Volunteer organizations
- Volunteer healthcare entities

For What?

- Against injury to others
- Damage to property



Federal Liability Protections

Federal Volunteer Protection Act of 1997

42 USC § 14501 et seq.

Not liable if:

- Volunteer serving **governmental** or **non-profit** entity
- Volunteer acting within **scope of responsibilities**
- Volunteer is properly **licensed**, if required

Exceptions:

- Harm not a result of ***willful*** or ***criminal misconduct, gross negligence, reckless misconduct***
- Harm not caused by the operation of a motor vehicle
- Can still be sued for “non-economic damages” (pain and suffering)
- Does not protect the organization
- Does not pre-empt state law that may provide additional protection from liability for volunteers

Federal Liability Protections

PREP Act (Public Readiness and Emergency Preparedness Act) 42 U.S.C. § 247d-6d

- Protects “covered persons” described in declaration by Secretary of HHS
- **Broad:** For *any loss* with a causal relationship to any stage of development, distribution, administration or use of the “covered countermeasures” drugs and devices
 - **Exceptions:**
 - Outside scope of declaration, willful misconduct causing death or injury
 - Non-tort claims (e.g., contract claims)
- PREP Act Case – *Parker v. St. Lawrence*
 - **H1N1 2009** - HD held school-based vaccination clinic as result of PREP Act dec for use of **H1N1 influenza vaccine**. Child vaccinated at school without parent’s authorization, and parents brought action for **negligence** and **battery**
 - NY appellate court dismissed claims – PREP Act’s immunity provision preempted state claim



State Liability Protections

Georgia Laws:

- Emergency Management Statute
- Government Immunity Laws (Tort Claims Act)
- Good Samaritan
- Volunteer Protection Statutes
- EMAC
- UEVHPA



State Liability Protections

General Conditions:

- Providing services with or without **compensation**
- **Affiliation** with a organization, state or county entity
- Under their **direction** and **control**
- Act within **scope of official duties**
- Provide services under **licensure** (in good standing)
- Act with “**good faith**”
- Act without **gross negligence, willful, reckless, or criminal misconduct**

State Law Liability Protections

Government Immunity Laws

“Georgia Tort Claims Act” O.C.G.A. § 50-21-20, et seq.

Covers:

- *Employee* of the State (inlc. **volunteers**)
- Must be in a **structured volunteer program** organized, controlled, and directed by a **state government entity**
- Protects Volunteers **acting within scope of official duties**
- Includes non-emergencies
- Act *excludes* counties and cities **O.C.G.A. § 50-21-22(5)**

State Law Liability Protections

Emergency Management Statute

“Georgia Emergency Management Act of 1981” O.C.G.A. § 38-3-35

Covers:

- Emergency management worker (**VHP** or **Lay Volunteer**)
- Member of a **volunteer program** run by the **State or County**
- Engaged in **emergency management activity** (exercise or PH emergency)
 - Does not need to be during a declared emergency
- Exceptions:
 - **Willful misconduct, gross negligence, or bad faith**

State Law Liability Protections

Good Samaritan Laws

“Georgia Good Samaritan Act” O.C.G.A. § 51-1-29

Covers:

- any person who **voluntarily** renders **emergency care**
 - In “**good faith**”
 - At scene of accident or emergency
-
- **Broad** – need not be affiliated with an organization or be a VHP
 - Must not have a **pre-existing legal duty** to render services (doctor/patient relationship) – *must exercise reasonable care*
 - May not protect when at scene away from the emergency
 - Not usually applicable to emergency volunteers (MRCs)

State Law Liability Protections

Volunteer Protection Statutes [Selected]

“Voluntary Health Care Provider Immunity” O.C.G.A. § 51-1-29.1

Covers:

- **Licensed Volunteer Health Care Provider**
 - Providing services for, or at the request of, State, county, hospital, public school, or non-profit org.
 - Providing services within scope of licensure
 - Need not be during an emergency
- Exception:
 - **Gross negligence** or **willful** or **reckless misconduct**

State Law Liability Protections

Volunteer Protection Statutes [Selected]

“Liability of Persons/Entities Acting During Catastrophic Acts of Nature”

O.C.G.A. § 51-1-29.2

“Corporate Good Samaritan Act”

Covers:

- **Volunteer** - individuals or private org.’s (for profit or not-for-profit)
- Under the direction and coordination of a **STATE** agency (not county)
- Acting in “**good faith**”
- During **declared state of emergency**, or while **preparing** for or in **anticipation** of **state of emergency** (natural or manmade)

Exception:

- **Willful** or **wanton negligence**, or **misconduct**



State Law Liability Protections

Volunteer Protection Statutes [Selected]

“Charitable Immunity” O.C.G.A. § 51-1-20

Covers:

- **Volunteer** – serving a non-profit or charitable organization (e.g., church or faith-based institution, community agency)
- Acting in **“good faith”**
- Within **scope of official duties**

Exception:

- **Willful** or **wanton negligence** or **misconduct**



(EMAC) Emergency Management Assistance Compact

O.C.G.A. § 38-3-81

Mutual Aid between States – ratified by all 50 States

- Framework to share assets, resources and personnel during a governor-declared emergency

Licensing reciprocity – subject to limitations

Protection from civil liability:

- Volunteers must first be made “**officers or employees**” of the assisting state deployed to respond to emergencies
- Act in “**good faith**”, and without willful misconduct, gross negligence, or recklessness

Possible workers’ compensation protections

- “Officers or employees” of party state if Gov. of requesting state permits

(UEVHPA) Uniform Emergency Volunteer Health Practitioners Act O.C.G.A. § 38-3-160 et seq.

Uniform law adopted by states in whole or in part (19 states adopted)

- Adopted in Georgia in 2016

Protection from liability:

- Volunteer Health Practitioners – licensed in another state in good standing
- Providing services during a declared state of emergency
- Must act within scope of licensure
- Registered in ESAR-VHP system (SERVGA)
- May also protect host entities

Subject to limitations of Governor - duration, type, and geographical area

Exceptions:

- willful misconduct, recklessness, gross negligence, criminal misconduct, or intentional torts

Does not include provision for worker's compensation



What about Workers' Compensation and Personal Injury Benefits for Volunteers?

Under Georgia Law, volunteers are specifically excluded from State Workers' Compensation

- O.C.G.A. § 34-9-1 - must be "employee of the State"
- *May* include: **Volunteers** who are members or workers of an emergency management organization, EMS, or rescue organization whether governmental or not, or first responder services of any **county** or **municipality**, ***but only if*** the county has adopted a resolution for this purpose."

State's General Liability Policy does not provide for medical or bodily injury benefits. Unless authorized by State law.

- Administered by the **Department of Administrative Services (DOAS)**



Case Scenario Revisited

Patrice was instructed that she needed to receive a vaccine and to go to one of the predetermined facilities where the vaccine is being offered.

At the facility, Vincent administered the vaccine to Patrice.

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It was discovered that Vincent administered the wrong vaccine to Patrice.

Discuss...

Case Scenario

Can Vincent (or facility) be protected from liability?

- What statutes could possibly be used to protect him?
- What does Vincent need to be in order to fall under the protection?
- What are the exceptions?



Risk Management Considerations

- Identify your risks based on activities and understand potential dangers
- Selecting and screening volunteers
- Preparing and training volunteers
 - Clear expectations and scope of duties
 - Provide safe work environment, including protective equipment
- Managing volunteers
 - Rules and guidelines for volunteers to follow
 - Continue to supervise



Main Takeaways

Emergency Volunteers may generally find liability protection under multiple state and/or federal laws

Depends on

- *who the volunteer works for,*
- *what the volunteer did, and*
- *how they did it*
 - absent bad faith, willful misconduct, and gross negligence

Risk Management is the best way to help prepare for and control the effects of risk and protect your organization and volunteers

Questions?



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