

DISASTER AVOIDED: PROTECTING THE “GOOD SAMARITAN” PHYSICIAN

In June, 2006, ten months after Hurricane Katrina devastated the Gulf Coast region, the Louisiana Attorney General, Charles Foti, issued a criminal indictment and arrest warrant for Dr. Anna Pou and two nurses, alleging they murdered patients at Memorial Hospital in New Orleans. This indictment alleged that, during the days after the storm, Dr. Pou and the nurses delivered “lethal cocktails” of drugs to patients who had yet to be rescued, and were barely surviving in oppressive heat without any electricity, food or medical supplies. This indictment and the scenario that followed Dr. Pou in the months and years since this happened shocked both the local and national medical communities. Every health care provider lives with the possibility of delivering care in a disaster or catastrophe situation and often, with good conscience, volunteers to do so. What happened in Louisiana created a chilling effect that physicians and other health care workers would no longer be willing to provide volunteer services in disasters.

This very serious issue was not only discussed by nationwide organizations such as the American Medical Association and the National Nursing Association, but was legislatively addressed by many states. The Louisiana Legislature has taken numerous steps in recent years to fill in the gaps in federal legislation and to protect and limit the liability for in-state and out-of-state medical personnel who provide aid in disaster situations.

Louisiana, as with many other states, had developed what has become known as the “Good Samaritan Law” to protect and limit the legal liability of a health care provider who provides services at the scene of an emergency. The Louisiana law stated that a physician, surgeon, physician assistant (or their professional companies), as well as a nurse, were not liable for any civil damages as a result of the health care provider’s acts, or failure to act, or failure to act to provide or arrange for further medical treatment, if such services were gratuitously rendered emergency care services at the scene of an emergency. This response to an emergency liability protection was further extended over the years to include physicians and surgeons, interns and residents who respond in good faith to imminent life-threatening situations or emergencies in hospitals or facilities where such health care provider was not required to respond to such emergency or, were, in fact, “on-call” for an emergency, unless the patient was already under the care of the physician. However, none of these actions were protected if the damage or injury was caused by willful or wanton misconduct or gross negligence.

The Good Samaritan statute was further extended to eventually include any physician, surgeon or member of the medical profession, who was *not* licensed in Louisiana (but had a license in another state) from violations of the Louisiana Medical Practice Act (i.e., practicing without a license in Louisiana) when such health care provider gratuitously rendered care or services at the scene of an emergency. None of these laws protected licensed Louisiana health care providers like Dr. Pou, who provided services during such a disaster as Hurricane Katrina, because they remained on duty or were on-call.

Because of these terrible discrepancies in the law, Dr. Pou, whose criminal indictments were eventually all dismissed, championed legislative changes to close the gap for Louisiana

health care providers and the risks they take and are exposed to in a situation like Hurricane Katrina. In 2008, with a unanimous legislative vote, Governor Bobby Jindal signed legislation designed to protect both local medical personnel and out-of-state medical personnel from civil liability for assistance provided during declared disasters in the absence of gross negligence or willful misconduct. The first bill, Senate Bill 330, amended Louisiana's Good Samaritan Law to cover medical personnel who provide care, regardless of compensation, and limited civil liability to cases of gross negligence or willful misconduct. Previously, only gratuitous medical care was covered under Louisiana's Good Samaritan Law. This important expansion extended coverage to health care personnel who may be "on duty" during a declared emergency, and, therefore, are being compensated by the health care provider employing such personnel.

A second bill, Senate Bill 301, protected health care providers and personnel from civil liability for injuries, deaths, or psychological trauma occurring during any actual or attempted evacuation, sheltering, transportation or repopulation of a health care provider facility during a declared emergency. This change came as a response to the ethical dilemmas inherent in the evacuations of medical facilities during declared states of emergency: whether to evacuate, and if so, who to evacuate first. Health care providers and professionals are now shielded from civil liability, absent gross negligence or willful and wanton misconduct, for incidents occurring during the attempted execution of evacuation or transportation orders during a declared disaster.

Finally, pursuant to the criminal charges filed against Dr. Pou, a third bill, House Bill 1379, established a three-member Emergency/Disaster Medical Review Panel, similar to that used in medical malpractice cases, to review the actions of medical personnel during a disaster. The panel is charged with rendering an independent, but non-binding, expert opinion concerning whether clinical judgment was exercised in good faith under the circumstances. Although a prosecutor is not required to refer an investigation to the panel for evaluation of whether criminal charges are warranted, once this panel process is instituted, the prosecuting authority must refrain from making an arrest until the panel has rendered its opinion. The process, as well as the opinion itself, remain confidential and may not be utilized in subsequent civil or criminal proceedings, unlike the opinions rendered by medical review panels in the malpractice context. This process inserts an element of peer review in determining the standard of care that health care professionals are expected to follow during a disaster and is aimed at preventing frivolous charges from being filed against health care professionals attempting to provide care under disastrous conditions.

Louisiana, as with many other states, continues to evolve legislatively in addressing these disaster issues. In 2009, Louisiana, along with eleven other states, adopted the Uniform Emergency Volunteer Health Practitioners Act ("UEVHPA"). UEVHPA allows health care professionals who are licensed and in good standing to register with a database prior to or during a disaster to provide volunteer services in other states that have enacted UEVHPA. Registration makes it possible for a health care practitioner to provide volunteer health care services in another state during a declared emergency as if the practitioner were licensed in that state. UEVHPA also limits the civil liability of volunteer health care providers administering medical care during a declared emergency. Furthermore, UEVHPA eliminates vicarious liability for acts or omissions of volunteer health care practitioners if the practitioners would not be liable. However, UEVHPA does allow administrative sanctions if the volunteer health care provider

exceeds the scope of practices established by both the provider's licensing state and the state in which the provider is volunteering.

In the past five years, Louisiana, through the efforts of its physicians, consistently remains on the forefront of legislative developments aimed at increasing the availability of medical care during emergency and disaster situations as the legislature has continually expanded coverage of disaster medicine laws. Through amendments to the Good Samaritan Law, devising an innovative Emergency/Disaster Medical Review Panel process, and adopting the Uniform Emergency Volunteer Health Practitioner Act, Louisiana's comprehensive policies provide both encouragement and protection for Louisiana health care professionals providing medical care during disasters, regardless of compensation, and to health care practitioners from other states seeking to volunteer during a state of emergency.