MEMORANDUM

This project was considered by the Commission in 2009 and released as a Draft Tentative Report in November of that year. Staff is now revisiting the project in order to conclude the necessary work so that it can be released as a Final Report. The full report is attached to this Memorandum and the issues on which further Commission guidance is requested are identified below.

First, as the Commission may recall, UEVHPA was drafted by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) after hurricanes Katrina and Rita which struck within weeks of each other in 2005. The response to the resulting emergency conditions highlighted deficiencies in the federal and state systems designed to facilitate the interstate use of volunteer health practitioners. No comprehensive system existed to link the various public and private programs to address the issue of interstate licensure reciprocity. The hurricanes, as other large-scale emergencies could, caused a breakdown of communications, which lead to uncoordinated and ineffective response efforts. Concerns regarding exposure to civil liability and the availability of workers’ compensation protection also inhibited the recruitment and deployment of volunteers.

The Uniform Law Commission (formerly NCCUSL), includes the following information on its website in support of state enactment of the Act:

- **Advance Registration.** Volunteers must register with a public or private registration system that meets certain standards, most importantly the capacity to determine whether they are properly licensed and in good standing within their principal state of practice. The organizations that may operate a registration system are strictly limited to public and private organizations with the competence and experience to reliably meet the Act’s standards…

- **Private Sector Included.** Interstate license recognition under many existing systems is functionally limited to state officers, employees, or other volunteers formally incorporated into official “state forces.” Under the UEVHPA, all licensed practitioners providing health, veterinary, or mortuary services may register as emergency volunteer health practitioners. This includes physicians, EMTs, nurses, psychologists, social workers, counselors, morticians, veterinarians, and other licensed health professionals…

- **Flexibility.** Volunteers are allowed to register in advance with systems located throughout the country rather than requiring that they register in the affected state at a time when its systems may be overwhelmed and its communications severely disrupted. This allows for states to take advantage of the expanding number of registration systems already being developed by private and public agencies, and provides a safeguard against breakdowns in communication and infrastructure that might otherwise affect local capacity to deploy volunteers when an emergency is declared.

- **Integration with existing state systems.** Host entities, meaning the entities in the disaster state that deploy and use volunteer health practitioners, must coordinate all activities with the state agency charged with emergency management, thus ensuring effective and appropriate
use of their services. This coordination requirement helps ensure that volunteers do not “self-deploy” in a manner that is counterproductive to a state’s efforts.

- **Regulation.** Volunteer health practitioners must conform to scope of practice requirements of both their home state and the state within which they provide services. They may not perform services that a similar health practitioner would not be allowed to perform under a license issued by the host state, and they may not perform services that go beyond those for which they are licensed in their home states.

- **Liability and Workers’ Compensation Coverage.** The Act clarifies the extent to which volunteers and organizations registering, deploying, and using them are exposed to or immune from civil liability for professional malpractice. Further, the Act also makes workers’ compensation benefits available to volunteer health practitioners who otherwise would not have access to such benefits, treating them as if they were employees of the host state.

When the Commission last considered this project, six states had adopted the Act. Since that time, five more states have adopted it (Arkansas, Colorado, Illinois, Indiana, Kentucky, Louisiana, New Mexico, North Dakota, Oklahoma, Tennessee, and Utah) and four others (Connecticut, Mississippi, Nevada and Texas) introduced it this year. The District of Columbia and the United States Virgin Islands have also adopted the Act.¹

Further Commission guidance is requested on the following issues:

**I. Definition of volunteer health practitioner.**

- “Volunteer health practitioner” means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in New Jersey, unless the practitioner is not a resident of New Jersey and is employed by a disaster relief organization providing services in New Jersey while an emergency declaration is in effect.

This definition differs from many legal definitions of “volunteer” that often characterize a volunteer as an individual who does not receive compensation for services. The federal Volunteer Protection Act (VPA) affords volunteers various protections (including from civil liability), but they cannot be compensated beyond reimbursement for expenses incurred or minimal compensation. *See 42 U.S.C. § 14505(6).* In Colorado, for example, a volunteer may not

¹ In addition, according to the ULC website, the Act has been endorsed by the following entities: American Association for Marriage and Family Therapy, American College of Emergency Physicians, American College of Nurse-Midwives, American Public Health Association, American Nurses Association, American Red Cross, American Society for the Prevention of Cruelty to Animals, Center for Biosecurity of the University of Pittsburgh Medical Center, Colorado Public Health Association, Community Health Planning and Policy Development Section, APHA, Health Equity Associates, LLC, Kentucky Public Health Association, National Association of Emergency Medical Technicians, National Association of County & City Health Officials, National Association of State EMS Officials, National Funeral Directors Association, New York State Public Health Association, North Dakota Public Health Association, Pennsylvania Public Health Association, Public Health Association of New York City, Public Entity Risk Institute, Trust for America’s Health, Tulsa City-County Health Department United Way of America, Wisconsin Public Health Association.
receive compensation other than reimbursement for actual expenses incurred. C.R.S. 13-21-115.5 (3)(c)(I). This is true in many states that afford civil liability protections for volunteers. In Delaware, for example, only “medical providers who provide their services without compensation” are entitled to liability protections as volunteer health practitioners. 10 Del. C. § 8135 (c)(1) (2006).

The broader definition of “volunteer” recognizes that the principal basis for defining a volunteer health practitioner is not whether the practitioner is compensated. Compensation outside an employment relationship with a host entity is inconsequential in establishing whether an individual is or is not a volunteer. Part of the justification for this more expansive view of voluntarism relates to the positive effects of compensation to support volunteers during emergencies. Many prospective volunteer health practitioners are licensed individuals working in existing health facilities. They may seek to volunteer knowing that their existing employers will continue to compensate them even while they are away. Some disaster relief organizations may provide some nominal sums to volunteer health practitioners to support their efforts.

For the purposes of protection from civil liability, the Commission preliminarily mentioned the possibility of distinguishing between uncompensated volunteers and those who are compensated. A determination will need to be made regarding this issue and the extent to which there should be a difference in the treatment of those two types of ‘volunteers’. It may also be necessary to define what constitutes compensation. Both determinations will influence civil liability protections afforded to volunteers and monitoring agencies. This issue is outlined in Section 11 of the proposed Uniform Act and is further discussed below.

The table on the last page of this Memorandum indicates the manner in which other jurisdictions have handled this issue.

II. Requirement of criminal background checks.

Section 6 of the draft contains the following language:

c. The Department of Health and Senior Services, the Board of Medical Examiners, the Board of Nursing, or the Board of Veterinary Examiners may, in their discretion, waive the requirement of N.J.S.A. 45:1-29 that each volunteer health practitioner undergo a criminal background check as a requirement of licensure when an emergency, as defined by Section 2 of this Act, exists. Agencies may only waive this requirement for health practitioners over whom they have jurisdiction.

It is the understanding of Commission Staff that New Jersey is the only state in the nation to require criminal background checks for its health practitioners. See N.J.A.C. §8:41A-3.2 (paramedic); N.J.S.A. 26:2H-83 (nurses and personal health aids); N.J.A.C 8:43F-6.3 (all employees of adult health care facilities). This requirement would arguably, if unaddressed, impact the operation of the Act and the Act was modified to address this issue.

In the event of an emergency, the requirement of a background check might inhibit the efficiency and overall function of the Act. Out-of-state volunteers would be required to undergo
state issued, criminal background tests before engaging in aid. A worst case scenario, one in which an entire state complex or state agency is debilitated, could slow criminal checks and inhibit potentially necessary state aid.

III. **Limitations on recognition of volunteer health practitioners from other states.**

In Section 6 of the Act, which concerns the recognition of volunteer health practitioners licensed in other states, subsection b. says:

b. A volunteer health practitioner qualified under subsection a. is not entitled to the protections of this Act if any license of the practitioner in any state is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

Staff is concerned about the two uses of the word “any” in the second line.

The first use of “any” seems as though it might preclude a properly licensed health practitioner from assisting during a disaster if that person had, at some point, lost his or her driver’s license or another license unrelated to a practice as a health practitioner.

The second use of “any” in the identical line is of concern to Staff because it may preclude health practitioners from assisting during a disaster if that person had, at some point, obtained a license in another state in an unrelated field. A veterinarian currently in good licensure standing with the state of New York, who lost his medical license in the state of California several years prior, would be arguably be precluded from volunteering his services.

Staff seeks guidance as to whether the Commission sees either result suggested above as possible and, if so, whether such a result is acceptable.

IV. **Limitations on civil liability for volunteers.**

The ULC Act, in Section 11, reads as follows:

**Alternative A**

(a) Subject to subsection (c), a volunteer health practitioner who provides health or veterinary services pursuant to this [act] is not liable for damages for an act or omission of the practitioner in providing those services.

(b) No person is vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under subsection (a).

(c) This section does not limit the liability of a volunteer health practitioner for:

(1) willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;

(2) an intentional tort;

(3) breach of contract;

(4) a claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or

(5) an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.
(d) A person that, pursuant to this [act], operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

[(e) In addition to the protections provided in subsection (a), a volunteer health practitioner who provides health or veterinary services pursuant to this [act] is entitled to all the rights, privileges, or immunities provided by [cite state law.] ]

**Alternative B**

(a) Subject to subsection (b), a volunteer health practitioner who receives compensation of [$500] or less per year for providing health or veterinary services pursuant to this [act] is not liable for damages for an act or omission of the practitioner in providing those services. Reimbursement of, or allowance for, reasonable expenses, or continuation of salary or other remuneration while on leave, is not compensation under this subsection.

(b) This section does not limit the liability of a volunteer health practitioner for:

1. willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;
2. an intentional tort;
3. breach of contract;
4. a claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or
5. an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

(c) A person that, pursuant to this [act], operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

[(d) In addition to the protections provided in subsection (a), a volunteer health practitioner who provides health or veterinary services pursuant to this [act] is entitled to all the rights, privileges, or immunities provided by [cite state law].]

The current Commission draft was modified as follows:

- a. Volunteer health practitioners, as defined in Section 2 of this Act, shall be afforded the same rights, protections, and limitations on liability as are provided by N.J.S. 2A:62A-1 et seq. of the “Good Samaritan Act.”
- b. The rights, protections, and limitations on liability provided under N.J.S. 2A:62A-1 et seq. shall apply to health services performed pursuant to the declared emergency whether or not those health services are performed within a health facility.
- c. The rights, protections, and limitations on liability provided under N.J.S. 2A:62A-1 et seq. shall apply to health services provided for the treatment of human or animal ailments, disease, pain, injury, deformity, mental or physical condition.
- d. No person, including entities that send volunteers to New Jersey to assist during the declared emergencies, is vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under this section.
- e. A person that, pursuant to this Act, operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.
- f. This section does not limit the liability of a volunteer health practitioner for:
(1) Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;
(2) Intentional tort;
(3) Breach of contract;
(4) A claim asserted by a host entity or an entity located in this or another state which employs or uses the services of the practitioner.

This section combines part of Section 11 of the Uniform Act with a reference to New Jersey’s Good Samaritan Act (GSA), N.J.S. 2A:62A-1 et seq., to provide the same limitation on liability provided under the GSA to the emergency volunteers.

Subsection (b) broadens the scope of liability under this Act to match the GSA’s parameters for services rendered in a health facility. This is consistent with a broader protections and limitation of liability afforded volunteer health practitioners in the Emergency Health Powers Act, N.J.S. 26:13-6(d) and was necessary because the GSA has been interpreted by the state Supreme Court as inapplicable when the volunteer physician gives aid in a health facility. Velazquez ex rel. Velazquez v. Jiminez, 172 N.J. 240, 262 (2002). Subsection (c) broadens the Act to immunize veterinarians since the GSA only protects those treating humans.

Subsections (d) and (e) limit vicarious liability for host entities and entities from other states that may send volunteer health practitioners into New Jersey. The language is consistent with N.J.S. 2A:53A-7(b) and (c), which provide immunity from civil actions for acts or omissions committed by volunteers in the provision of aid to nonprofit entities except for “willful, wanton or grossly negligent act[s] of commission or omission, including sexual assault and other crimes of a sexual nature.” By using the term “host entity,” the modified language includes all health facilities used during the emergency, whether or not they are nonprofit facilities. This is a change from N.J.S. 2A:53A-7, which only applies to nonprofit facilities. Subsection (f), taken from the Uniform Act, is meant to limit explicitly the acts or omissions covered by the expanded liability protections.

The table on the last page of this Memorandum indicates the manner in which other jurisdictions have handled this issue.

V. Workers compensation.

The ULC Act reads as follows:

SECTION 12. WORKERS’ COMPENSATION COVERAGE.

(a) In this section, “injury” means a physical or mental injury or disease for which an employee of this state who is injured or contracts the disease in the course of the employee’s employment would be entitled to benefits under the workers’ compensation [or occupational disease] law of this state.

(b) A volunteer health practitioner who dies or is injured as the result of providing health or veterinary services pursuant to this [act] is deemed to be an employee of this state for the purpose of receiving benefits for the death or injury under the workers’ compensation [or occupational disease] law of this state if:
(1) the practitioner is not otherwise eligible for such benefits for the injury or death under the law of this or another state; and 

(2) the practitioner, or in the case of death the practitioner’s personal representative, elects coverage under the workers’ compensation [or occupational disease] law of this state by making a claim under that law.

(c) The [name of appropriate governmental agency] shall adopt rules, enter into agreements with other states, or take other measures to facilitate the receipt of benefits for injury or death under the workers’ compensation [or occupational disease] law of this state by volunteer health practitioners who reside in other states, and may waive or modify requirements for filing, processing, and paying claims that unreasonably burden the practitioners. To promote uniformity of application of this [act] with other states that enact similar legislation, the [name of appropriate governmental agency] shall consult with and consider the practices for filing, processing, and paying claims by agencies with similar authority in other states.

The current Commission draft was modified as follows:

b. A volunteer health practitioner who dies or is injured as the result of providing health or veterinary services pursuant to this Act is deemed to be an employee of this state for the purpose of receiving benefits for the death or injury under the workers’ compensation law of this state if the practitioner is not otherwise eligible for such benefits for the injury or death under the Workers’ Compensation laws of this state.

As explained in the comment, this section is consistent with N.J.S. 34:15-75, which provides workers’ compensation for volunteer firemen, county fire marshals, volunteer first aid or rescue squad workers, volunteer ambulance drivers, forest fire wardens or firefighters, members of boards of education, and volunteer special reserve or auxiliary policemen. This section is needed because, otherwise, volunteers are not considered “employees” within the meaning of Title 34 and, therefore, are not entitled to workers’ compensation.

The receipt of some compensation by volunteers—e.g., reimbursement of, or allowance for, reasonable expenses, or continuation of salary or other remuneration while on leave—arguably should not destroy the right of a volunteer with no other workers’ compensation coverage from being covered. Some townships have paid small sums of money to volunteer firefighters—nothing like a regular salary—and these payments have not taken those firefighters outside the protection of N.J.S. 34:15-75.

The table on the last page of this Memorandum indicates the manner in which other jurisdictions have handled this issue.
In jurisdictions that have adopted the Act:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Definition of volunteer (includes paid and unpaid)</th>
<th>Limitations on liability</th>
<th>Workers comp</th>
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² “A volunteer health practitioner providing health or veterinary services pursuant to the Uniform Emergency Volunteer Health Practitioners Act is entitled to all the rights, privileges or immunities provided by the laws of this state other than the Uniform Emergency Volunteer Health Practitioners Act.” N. M. S. A. 1978, § 12-12A-11.

³ “A volunteer health practitioner who provides health or veterinary services pursuant to the Uniform Emergency Volunteer Health Practitioners Act and who is not otherwise eligible for benefits for injury or death under the workers’ compensation law of this or another state may elect to be deemed an employee of this state for the purpose of receiving such benefits by making a claim in accordance with the workers’ compensation law of this state.” N. M. S. A. 1978, § 12-12A-12.

⁴ “Except as provided in subsection 2, a volunteer health practitioner who dies or is injured as the result of providing health or veterinary services as provided under this chapter is not considered to be an employee of this state for the purpose of receiving benefits under title 65 and must be treated for the purposes of North Dakota law as an individual eligible for workers’ compensation or similar benefits under the law of the state in which the volunteer is qualified for service under an emergency system for advance registration of volunteer health practitioners authorized under subsection 2 of section 37-17.4-04.” NDCC, 37-17.4-11.

⁵ “Notwithstanding § 8-42-101(3)(B) concerning workers’ compensation coverage of certain state employees, a volunteer health practitioner who is providing health services in this state pursuant to this part, or who is traveling to or from this state to provide such services, and who is not covered by workers’ compensation insurance, shall be considered an employee of this state for purposes of any medical workers’ compensation benefits concerning any injury incurred in traveling or providing the services. Benefits for volunteer health practitioners are limited to those medical benefits provided to state employees under the laws of this state.” T. C. A. § 58-2-812.