

Legal Implications of Disaster Medical Response

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Disclaimer

- This presentation is for educational purposes only.
- Information presented is not the opinion of any government agency
- Anyone one with specific questions should solicit the opinion of their personal attorney.

Foundation of U.S. Law

- U.S. Constitution
- Source of Law
 - Common Law
 - Acts of Congress
 - Judicial Decree
 - Regulations?

Officer of General Council

- Legal “advisor” for government agencies
- Defend government agencies and employees
- Interpret law on behalf of the agency
- Their opinion becomes the legal policy of the agency

State Rights vs. Federal Gov

- U.S. Constitution
 - Article 1 Section 8,9,10
 - Congress may: collect taxes and pay debts; provide for defense and general welfare; borrow money; regulate commerce; establish rules of naturalization and bankruptcies; coin money; punish counterfeiting; establish post office and roads; Promote science and art; constitute tribunals inferior to the supreme court; define and punish piracies and felonies of the high Seas and Nations; declare war; raise and support armies and navy; regulate armed forces; provide for calling for of Militia to execute laws of the Union; support military; exclusive legislation of district and make laws to support above.

State Rights vs. Federal Gov (cont.)

- Powers forbidden to Congress: Writ of habeas Corpus shall not be suspended; no ex post facto Laws shall be passed; no preference given to ports of one state over another state; No money drawn from the Treasury but as result of law and account shall be made; shall not grant title of nobility

State Rights vs. Federal Gov (cont.)

- Forbidden state powers: enter into treaties; coin money; emit bills of credit; make anything but gold or silver coin as tender of payment; pass ex post facto laws or law impairing the obligation of contracts; grant title of nobility; tax imports; keep troops without consent of Congress; enter into agreement with another state

State Rights vs. Federal Gov (cont.)

- 10th Amendment
 - Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Stafford Act

Public Law 106-390

- Provides for
 - Planning
 - Preparedness
 - Grants
 - Response

Economy Act

- 31 U.S.C. § 1535
 - Must be appropriations available
 - Must be in best interest of the government
 - Payment shall be prompt

Federal responder

- NDMS
- PHS (41U.S.C. §217b)
- HHS (41U.S.C. §217b)

Posse Comitatus

- 18 U.S.C. § 1385
 - Prevents use of Federal Troop for law enforcement
 - Result of aftermath of Civil War
- John Warner National Defense Authorization Act for Fiscal Year 2007
- Insurrection Act (10 U.S.C. § 331-335)

Volunteer Protection Act of 1997

- Subject to state acceptance and conditions
- Liability protection for the individual if:
 - Working within scope
 - Proper license and authorization
 - Harm not willful, criminal or gross negligence
 - Harm not caused by vehicle

Good Samaritan Law

- Happen upon a person in need
 - Cannot go looking for people needing assistance
 - Still held to standard of care for person of similar skill and or training
- State dependent
- Some states have added volunteer disaster responders.

Re-employments

- Uniform Services Employment and Re-employment Rights Act (USERRA)
- State laws
 - New Mexico Volunteer Emergency Responder Job Protection Act

License, Privileges & Credentials

- Federalized worker
- Model State Emergency Health Powers Act
- Emergency Management Assistance Compact
- Interstate Civil Defense and Disaster Compact
- Nurse Licensure Compact (adopted by 21 states)

Privacy

- Health Information Portability and Accountability Act
 - Covered Entity
 - Provide healthcare
 - Electronic transmission
 - Business associate
 - Standard of Care?

Privacy (cont.)

- Privacy Act
 - Collection of personal information by government
 - Release of information
 - Notice of use.

Treatment of minors

- Minors
- Emancipated
- Emergency treatment

Legal Reporting

- Abuse
- Animal bites
- Criminal activity
- Public Health

Torts Laws

- Malpractice
 - Duty to the plaintiff
 - Harm to plaintiff
 - Breach of duty
 - Proximate cause of harm
- Informed consent
 - Battery
- Public disclosure of Private facts

Criminal offenses

- Murder
 - Intentional killing of another human with malice aforethought
- Manslaughter
- Examples