## Question 1

**Please tell us your thoughts on differing liability rules and caps among states limit Emergency Management Assistance Compact (EMAC) utility, it has been an ongoing challenge regardless of the incident type.**

### Answer 1

EMAC does provide some liability protections in and of itself, but these other protections are also there, separate from EMAC. Let me try to explain how this works, real quick, because I love the question. First of all, if you are deployed through EMAC as a state agent—so that's the typical rep, you're a state agent, you're going through EMAC and that's fantastic; some jurisdictions will actually deputize persons as state agents for the limited duration of the emergency. So just because you don't work for state government doesn't mean you can't be deployed through EMAC, so long as the state may be willing to deputize you for that period of time. That happens quite extensively. During hurricane Katrina we saw a lot of that. If you go through EMAC, you're going to largely be protected from liability consistent with the scheme of the sovereign immunity status that EMAC represents and reflects. That's a great thing. It doesn't mean you can do whatever you want to do when you get to the jurisdiction. It does mean you're not going to be facing specific claims related to pure negligence for mistakes that may happen trying to provide the very best services possible. But these other liability options, a really good tip, just look at (PREP Act), for example, [the Department of Health and Human Services' Public Readiness and Emergency Preparedness Act (PREP Act)]. PREP here refers specifically to the federal act that is addressing the specific ability through federal intervention to sort of handle and dispense federal countermeasures. So the PREP Act liability protections in place are quite extensive for anybody handling, working through, or dealing with federal countermeasures pursuant to public health emergencies. The PREP Act really does protect you extensively. If you're involved in the distribution or handling of these federal countermeasures (e.g., we can be talking about drugs, vaccines, or other things for which you're responsible for handling; or because you're part of the response efforts as pursuant to federal authority), you've got an act there to literally step away in that sort of gold standard immunity provision where you just will not face liability for those specific acts of a non sort of grossly negligent, willful, or wanton nature. There is hardly any liability protection for acts of willful malfeasance, criminal acts, or such; but for the typical negligence claims that could arise, the PREP Act is there to step in and really provide protection. That's true for public or private entities. It's the type of protections you look for. But EMAC is excellent if you're deployed as a state agent.

## Question 2

**Would there be any specific issues dealing with federal EMS providers working with civilian providers?**

### Answer 2

That's an interesting one; none that immediately come to mind. Federal agents enjoy a lot of exclusions from some of the same concerns we've worked through here. So if you're licensed as a medical provider or EMS provider in one jurisdiction but you work for the federal government, you don't have to worry about your licensure if you're deployed to another state. The state recognizes that the federal agent can do what is necessary, but it's a very neat point as to whether there's specific issues that may arise related to that relationship or that sort of intersection of those particular agents. I'll think that through a little more and maybe have a comment or two to share during the call here.

**Question 3**

**Reference Slide 29, in regards to EMS liability**

**Wouldn't burden related to liability be greater on the sending EMS agency, rather than the individual responder? Are you aware of agencies or individuals being sanctioned or sued based on care provided during a legally authorized deployment?**

**Answer 3**

Great question, I love it. So let's break that down a little bit here and, to be sure, one of the things I think any EMS worker is very concerned about is their personal liability. It can threaten their career or livelihood. So if you're involved in some sort of act and a patient gets hurt, oh heavens, you don't want to face that down personally because that can affect your licensure, it can affect your bottom line, you better hope malpractice insurance comes into play and may protect you there. There are a lot of outs in relation to that. Pure negligence issues, a lot of protections that are set into place for specific emergency responses. But you know what? We haven't stopped short on our analysis there. The EMS entity that employs all these people, they're concerned as well. They're very concerned because of the sheer nature of what and how to think through their potential, sort of what we call "vicarious liability". That's a legal, technical term that is meant to suggest that sometimes an entity is liable for the acts of its agents, in this particular case the EMS provider or the EMS personnel. The way to think this through though is to really be quite clear. The themes for liability are there. The possibilities we have found without question could arise. We have not located, and nor does our report suggest, major claims in liability that have arisen, of which during major emergencies have led to big time settlements or big time cases that have led to adjudications. But we can't dispense with them. We have to be conscientious. What you don't want to be is the poster person or the poster entity for a major liability event. That's why we explain what all these particular themes are and then go on to show that you've got protections from it. And those include not just what's under the tent but, remember my original thoughts, when you're in these crisis standards, we employ a very legally different standard of how you assess liability. That's what's so neat about it. Literally the same measures you may have done in a routine case, which might have led to negligence there, wouldn't be considered negligence in a medical triage event because the standard changed. This tent provides you a lot of protections in place as well.

## Question 4

## Are there exemplary state laws that can be recommended?

### Answer 4

Oh, good one, yes, I think so. I like to identify them as, "best practices," you see across states. I think when you go all the way back to the types of states we took a look at for this project (reference webinar slide 8), we really chose these states for the purposes of our review as you see in green; not necessarily because of their population density or other issues, we were aware of some very neat practices and reforms of state laws in post emergency type scenarios. What you saw in Louisiana, what you've seen in Florida, New York State, Washington State. These are very interesting sort of illustrations. But the best way for me to answer that, to be perfectly honest, is to be brief by saying the report will spell it all out for you really nicely. It will actually show you, in multiple tables, what some of those best practices are. Maybe the best option, or the best suggestion, I can give in response to that question is, I don't see a single state that has a perfect legal environment for everything we're talking about. No, I don't see that. What we actually saw is elements in specific states that are really best practices, and when you combine those elements and look at what the options may be, they become quite clear. That's the best answer I can give you in relation to what we saw in looking at these 20 different jurisdictions and then looking beyond them in some cases, too, for some of the better practices. Those examples are out there. They're nicely illustrated in the report and they're very specific to the particular concern that may arise for an EMS personnel or provider.

## Question 5

## Tag-on to Question 4.

## In discovering states, what about the alternative locations issue? Are those some examples that you provide in your report?

### Answer 5

Oh yes, nice point, that's exactly what I'm talking about. There are some best practices that you see in some jurisdictions. I apologize that I can't pull them off "the top of my head" right now as we speak, but we saw some really good, advanced legislative regulatory authorization for the sort of alternate destination issues that arose. I mean really good ideas. Very strong, very beneficial, paving the way for EMS providers to do exactly what you want them to do in these types of events; being able to transport patients, treating them in different places, and transporting them to different destinations, thanks to favorable legal provisions. And then we saw the opposite, too, and that was what was actually interesting was that some jurisdictions, some states, have restrictive state laws that actually basically say if you're an EMS provider, you cannot provide this type of service and you can't transport these patients anywhere other than an emergency department. You can imagine how restrictive that could be during a major emergency event when you talk about patients having to go to a lot of different places for a lot of good reasons. Well, for those restrictions there we count on some sort of temporary waiver to come into place, again, with an emergency declaration. We've got legal opportunities to get by those provisions, but some of them are unenviable in relation to their potential impact on EMS services; as contrasted with some jurisdictions, particularly a couple of states I remember directly, with just very good permissive laws that allow for what you'd want to do in emergency events. And I might actually highlight Arizona. I think we had a couple of key provisions there that I remember now distinctly providing the type of service or type of permissibility you'd want to see.

## Question 6

**What about unaccompanied children? Have state laws addressed this issue when child welfare agency and police are overwhelmed and normal procedures cannot be followed?**

### Answer 6

Oh yes, gosh, I can't address here, for our purposes, the practical side of that. That is a tremendous burden and tremendous issue. It's one that from a practical perspective how you'd logistically handle that, I think, is a combination of multiple different entities involved, not just EMS providers, but what a great question. We do not hone in on that specific topic in this report, with apologies, but what we have seen is actually some very good federal and state guidance on that topic that I've seen come out recently and I would be happy to share that with the requester, separately, via e-mail or with other resources.

I think it's profound though because we do recognize the implications involved there and just how much that may really affect what and how EMS workers come into play in these specific settings. They might be the frontline worker who's dealing with that specific minor in those cases, but we don't hone in on it as a specific area of focus.

## Post Webinar followup to expand on Question 6

As I noted during the webinar, this question implicates many legal issues. While the forthcoming EMS legal report does not specifically address children's interests, several agencies have generated guidance on handling children in disasters. With thanks to my ASU research colleague, **Asha Agrawal**, who contributed to our webinar as well; let us share some of these resources below.

- The American Academy of Pediatrics has issued a policy statement indicating that in disasters HCWs may be able to treat minors without securing proper consent where "the minor's life or health would be jeopardized by delay". When it is not possible to secure timely informed consent for treating the minor, the worker must provide stabilizing treatment and act in the patient's best interest until consent is properly secured.

- The New York Department of Mental Health and Hygiene echoed this view, asserting that children "require special attention and more resources since they must be accompanied by staff" and thus may "require special discharge procedures". It further notes that "Children eight years of age or younger who lack an accompanying caretaker, those with special needs, or those five years of age or younger in the presence of a care taker should not be considered stable solely on visual inspection. These children require more detailed histories and physical examinations for this determination."

- The American Academy of Pediatrics (AAP) Disaster Preparedness Advisory Council notes that HCWs caring for unaccompanied minors in disasters may be granted waivers related to confidentiality via the HIPAA Privacy Rules to facilitate reunification with caregivers. EMS and other agencies should prepare to have child-safe supplies and pre-established dosages "readily available to pediatric health care sites and other locations where children may congregate."

- The Center for Pediatric Emergency Medicine and Emergency Medical Services for Children National Resource Center stress that unaccompanied children must be rapidly identified, and reported to the emergency operations center and the National Center for Missing and Exploited Children.

- FEMA has created the Unaccompanied Minors Registry to which emergency personnel should report displaced children. Once reported, unaccompanied children should undergo a health and social screening and tracked using an identification tag or band with a unique tracking number.

**Question 7**

**Thank you for provide coverage on such a complex topic!**

**Can you describe a few of the key pieces of documentation that should be exchanged both pre-event, such as memoranda of understanding (MOUs) or contracts, as well as postevent, such as license verification, documentation of supervision, or special competencies? Which parties are responsible for providing, maintaining, and reporting such documentation?**

**Answer 7**

Oh yes, nice question. Very well asked because it was at the source of some of what we tried to think through in the planning phase especially. So maybe what I'll suggest to you is you're seeing efforts now across all states on this sort of current wave of emergency planning through crisis standard of care type of work. We have seen a lot of effort across states on that and many of them are building in EMS providers. It must be or must attend type of personnel so we get their perspectives. But what you are suggesting in that question that's very sophisticated is this is not something to put together last minute. It's not something you want to see done in real time that you're trying to figure out what exactly the roles and responsibilities are. I think what you're seeing in sophisticated states that are taking on this issue is they're recognizing straight up EMS is essential to our ability to response from a state or federal or other level. EMS is just an essential player in regards to how we can respond effectively. You are seeing key expectations laid out, spelled out nicely, in conjunction with the EMS providers providing input in crisis standard of care plans and otherwise. So that sort of pre-event stuff very well laid out. I've seen a lot of jurisdictions plans and I'm very impressed with what and how they've thought this one through. But then during and after the event what sort of documentation would you want to have in place. I like that question because you've picked up on something throughout all of this that we're sensitive to, which is what and how can you accurately sort of line up the EMS personnel that you might need, have them ready to deploy, have them ready to serve, well trained, vetted, and all that. Well, of course, you know there are systems in place across all the states like The Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) systems. They're there to register personnel be it physicians, nurses, or EMS providers and those systems actually do a great job of that prevetting and organization of those materials. If you're an EMS provider though—not the worker per se but the provider—trying to figure out exactly what types of materials you really need to have in place, I think you take that directly to your emergency preparedness coordinators at the state level, or at the local level depending on where most of your action is. You take it to them straight and you tell them and ask them what role they perceive for you if that has not been spelled out well, and then legally work from that end to align the types of documents, the type of resources that you need in place to effectuate those specific goals. Now I know that sounds a little amorphous but I can assure you that if you really take that specific task on, I believe legally some of those things will become extremely clear, particularly working with legal counsel that may be representing you but it is not—I repeat not—to be done in real time. That's far too late. It's really beyond what anyone can manage in the throes of an emergency event like what we're talking about here.

## Question 8

## What legal implications should be considered for closed point of dispensing, that is, points of distribution (PODs)?

### Answer 8

Oh yeah, neat, we get a lot of good inquires about that, not just through this specific project but, particularly throughout network for public health law which does a lot of effort, a lot of issues in emergency legal preparedness. You know what, to that point I think that we've done a little bit of work, and I'm talking here about a memo that lays out several key legal issues pursuant to these closed PODs. I think they're really cool, but I'm not exactly sure where federal agents may stand on those at this point in time in relation to whether they think they are the best guidance or best path going forward. But, I would like to suggest that if this person will contact me through ORAU, I will be happy to exchange that with you. I think that will lay that out for you very nicely.

## Post Webinar followup to expand on Question 8

As I noted during the webinar, this is a good question that implicates a lot of legal issues, none of which are covered directly in the forthcoming EMS legal report. However, as I mentioned in my initial response, I've done some work on these issues through our Network for Public Health Law. Notably, please see the following link https://www.networkforphl.org/_asset/2tsy0t/Closed-PODS-legal-issue.pdf for the memo prepared previously that focused precisely on these issues. It lays out nicely the primary legal issues [and potential solutions].