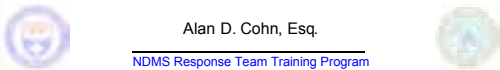


Disaster Health

Legal Issues and Answers
Part 2
**Good Samaritan Laws, Tort Liability
and Insurance**

Alan D. Cohn, Esq.
NDMS Response Team Training Program



“Good Samaritan” Laws

- State laws that relieve medical professionals of liability for acts performed in good faith unless they constitute gross negligence.

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“Good Samaritan” Laws

- “Good Samaritan” laws do not prevent a medical professional from being sued.
- “Good Samaritan” laws make it difficult for the person who is suing to prove a case against a medical professional.

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“Good Samaritan” Laws

- **“Good Samaritan” laws typically apply to persons who do not have a “duty to respond.”**
- **NDMS team members, when activated, have a “duty to respond.”**



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“Good Samaritan” Laws

- **“Good Samaritan” laws typically apply to volunteers.**
- **NDMS team members, when activated, are not volunteers.**



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Tort Liability

- **“Torts” are harms.**
- **To be sued for a tort is to be sued for harming another person**
- **Anyone can be sued.**



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Tort Liability

- The filing of a lawsuit against an individual or entity does not mean that a judgment will be entered against that individual or entity.
- The individual or entity must defend the lawsuit.



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Tort Liability

- Professional liability is an element of tort liability.
- Professional liability, or “malpractice,” is an allegation that a professional has caused harm in the course of his or her practice.



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Tort Liability

- Originally, Federal government immune from suit.
- Federal government passed a law to allow citizens to sue the Federal government for certain harms that its employees cause in the course of their employment.



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Tort Liability

- Suit permitted only in Federal court.
- No jury, no punitive damages
- Malpractice claims against Federal government professionals are considered tort claims against Federal employees.



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Tort Liability

- Individual brings suit for harm caused by NDMS team member
 - Individual team member
 - Team sponsor
 - Federal government



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Tort Liability

- Federal government determines whether NDMS team member was Federal employee, acting within the scope of Federal employment.
- If so, United States is substituted as defendant; no personal liability.



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Tort Liability

- Some local governments have preserved their historic ability to be immune from suit.
- Local government immunity may ordinarily protect medical professionals from suit.



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Tort Liability

- During NDMS activation, there is no local employment relationship.
- Local government immunity may not apply.



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Insurance

- When involved in an approved Federal activity, all response teams and individual team members are covered for workers' compensation, liability and malpractice.



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Insurance

- Since teams are first and foremost a local asset, many teams that are not self-insured as a government entity have chosen to provide their own insurance.



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Insurance

- OEP recommends that teams work through their sponsoring agency to insure that they have adequate coverage for non-federal activities.



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Insurance

- Individual team members should determine whether they wish to carry additional insurance at their own expense.

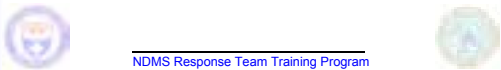


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Federal Employees

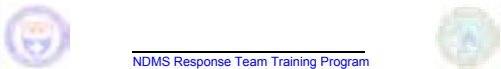
- Federal employees may participate on NDMS teams.
- The employee must coordinate with, and receive the approval of, his or her agency.



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Federal Employees

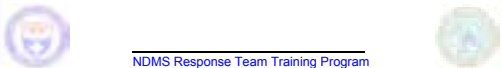
- For deployment, the employee's agency must assign the employee to NDMS on a "detail or temporary duty assignment (TDY)" for NDMS activities.



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Summary

- Federal workers' compensation covers NDMS team members during activations and training.
- NDMS team members are protected from tort liability during activations and training.



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Summary

- NDMS team members' medical licensure "transfers" because team member is responding as part of Federal government.
- "Good Samaritan" laws and local government tort immunity likely do not apply.



NDMS Response Team Training Program



Summary

- Each NDMS team member is responsible for knowing the limits of his or her scope of practice
- If you have questions, ask! Don't wait for an activation to learn your rights, duties, and responsibilities.



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