PLEASE NOTE: THIS RESOLUTION WILL BE DEBATED AT THE 2020 COUNCIL MEETING. RESOLUTIONS ARE NOT OFFICIAL UNTIL ADOPTED BY THE COUNCIL AND THE BOARD OF DIRECTORS (AS APPLICABLE).

RESOLUTION: 45(20)

SUBMITTED BY: Emergency Telehealth Section
Louisiana Chapter

SUBJECT: Emergency Licensing and Protection in Disasters

PURPOSE: 1) Create new or reaffirm policy supporting that all states and U.S. territories waive standard licensing requirements including fees for emergency physicians to provide their services, whether in person or not, in any state or territory once a disaster has been declared by a state or federal entity, agency or official if the emergency physician holds a license in good standing in any U.S. state or territory, does not charge for his/her services, and practices within his/her area of knowledge and expertise. 2) Create new policy that supports legislation protecting any/all emergency physicians who provide their services, in person or otherwise, at no charge during disasters and their aftermath, and granting these emergency physicians immunity if the emergency physician(s) practices within his/their area of knowledge or expertise.

FISCAL IMPACT: Budgeted committee and staff resources for research, surveys, data collection, advocacy efforts and developing a policy statement.

WHEREAS, Natural and/or man-made disasters can and do occur within various parts of the United States and globally; and

WHEREAS, Government is exempt from certain types of civil and criminal prosecution under the protection of sovereign immunity; and

WHEREAS, Medical attention and treatment is often needed in such situations but can be unavailable or in short supply; and

WHEREAS, Emergency physicians along with other healthcare personnel/professionals often respond to such disasters; and

WHEREAS, Many other emergency physicians and other healthcare providers/professional would like to or be willing to respond to such disasters; and

WHEREAS, "The American College of Emergency Physicians (ACEP) and the National Association of Emergency Medical Services Physicians (NAEMSP) believe an organized approach is needed for the utilization of unsolicited medical personnel who volunteer to respond to disaster scenes or mass casualty incidents"[i]; and

WHEREAS, Despite the encouragement of the ACEP and NAEMSP for members to become affiliated with pre-established disaster response organization, many needed physicians in a disaster are not pre-established with such organizations thus resulting in less physicians being able to help in disasters who are willing to; and

WHEREAS, The emergency system, maintained by the U.S. Department of Health and Human Services, is aimed at recruiting medical professionals who are willing to volunteer in times of disasters and verifying their medical credentials ahead of time; and

WHEREAS, The reality is that this is not well advertised, or promoted and many physicians and other health care workers, who can provide valuable services to disaster victims, do not sign up or register in advance[ii]; and

WHEREAS, The response of enough qualified physicians during disasters is critical, if instead there could be

a simple method for confirming licensure in good standing in any US state or territory without requiring pre-registration, instead by having a simple means to check if physicians are licensed in good standing in any US state or territory, this would drastically increase the number of available and qualified emergency physicians who could assist in disasters; and

WHEREAS, Most/all states have state licensing requirements and while many states allow care to be provided without a medical license within the state under disaster or emergency situations, not all do; and

WHEREAS, The Federal Emergency Management Administration (FEMA), Department of Health and Human Services (HHS), Department of Defense (DOD), Department of Homeland Security (DHS), or other federal, state, or governmental agency could contact the Federation of State Medical Boards (FSMB) or maintain a national registry from state medical licensing boards or licensing departments that does not require the physician to actively register beforehand that shows all physicians who hold a medical license in good standing or without any reason not to allow that physician to practice medicine in a disaster situation; and

WHEREAS, Convergent volunteerism is a reality whether planners plan for it or not; and

WHEREAS, FEMA acknowledges that everyone has the potential to contribute strength and resources in times of emergency, that there are valuable and appropriate roles for unaffiliated spontaneous volunteers (sometimes called “unsolicited volunteers”), that "the spontaneous nature of individual volunteering is inevitable; therefore, it must be anticipated, planned for and manage,” and recommends: “emergency management experts and volunteer organizations active in disasters (VOAD) partners are encouraged to identify and utilize all existing capacity for integrating unaffiliated volunteers”[iii]; and

WHEREAS, While currently pacts may exist between some states that allow physicians licensed in one state to become licensed and to practice in other states, these pacts have been slow to develop, becoming licensed in multiple states can be labor and time intensive, do not include all 50 states and thus do not allow for maximum availability to victims of disasters when the need arises; and

WHEREAS, State licensing requirements can be rather complex, difficult and time prohibitive especially when trying to include all 50 states; and

WHEREAS, By allowing easing of licensing requirements during federal or state declared disasters, the availability of qualified emergency physicians who are willing to provide care and treatment for victims of disasters could be increased without affecting licensing requirements of states outside of declared disaster periods; and

WHEREAS, The current litigation environment varies between the 50 states and can be particularly severe in some states, and can be a strong disincentive to provide much needed quality care particularly during times of declared disasters; and

WHEREAS, It is important, fair, and the right thing to do to ensure liability protection to emergency physicians and other healthcare workers who provide services within their expertise and at no charge during times of state or federally declared man-made and natural disasters; and

WHEREAS, ACEP’s “Good Samaritan Protection” policy statement supports legislation to reduce liability exposure and supports extension of existing good samaritan legislation to provide protection from liability for emergency physicians who respond to emergencies outside the emergency department, including but not limited to in-hospital and out of hospital emergencies, mass casualty incidents, and other disasters but does not specifically mention this protection to emergency physicians who provide their services not-in-person, or remotely, as is the case with Telehealth, electronically, via drones, etc.; and

WHEREAS, ACEP already supports sovereign immunity for emergency physicians in certain settings as reflected by ACEP’s “Reform of Tort Law” policy statement that immunity should be given to emergency physicians for emergency medical treatment and labor act (EMTALA) required services; therefore be it

RESOLVED, That ACEP create new or reaffirm policy that supports that all states and U.S. territories waive standard licensing requirements including fees for emergency physicians to provide their services, whether in person or not, in any state or territory once a disaster has been declared by a state or federal entity, agency or official and afterwards until services related to the disaster are no longer needed, so long as emergency physician holds a license in good standing in any U.S. state or territory, does not charge for his/her services and practices within his/her area of knowledge and expertise; and be it further

RESOLVED, That ACEP create new policy that supports legislation protecting any/all emergency physicians who provide their services, in person or otherwise, at no charge during disasters and their aftermath, and granting these emergency physicians immunity and holding them harmless for any services, that they provide to patients during disasters and aftermath so long as the emergency physician(s) practices within his/their area of knowledge or expertise.

*Immunity: an order whereby a physician cannot commit a legal wrong and is immune to civil suit or criminal prosecution.

[i] ACEP Policy Statement approved October 2017. *Unsolicited Medical Personnel Volunteering at Disaster Scenes*.
[ii] NPR. July 15, 2020. < https://www.npr.org/sections/health-shots/2020/03/21/819172512/theres-a-federal-system-for-signing-up-medical-volunteers-but-it-s-neglected>
[iii] Federal Emergency Management Administration. July 15, 2020. *Managing Spontaneous Volunteers in Times of Disaster* and July 2019. *Preventing a Disaster Within the Disaster*

Background

This resolution requests ACEP to: 1) Create new or reaffirm policy supporting that all states and U.S. territories waive standard licensing requirements including fees for emergency physicians to provide their services, whether in person or not, in any state or territory once a disaster has been declared by a state or federal entity, agency or official if the emergency physician holds a license in good standing in any U.S. state or territory, does not charge for his/her services, and practices within his/her area of knowledge and expertise; and 2) Create new policy that supports legislation protecting any/all emergency physicians who provide their services, in person or otherwise, at no charge during disasters and their aftermath, and granting these emergency physicians immunity if the emergency physician(s) practices within his/their area of knowledge or expertise.

ACEP has multiple policy statements that address this resolution as described below. One of the key points in the resolution that is difficult to address is “waive standard licensing requirements including fees.” While ACEP could develop a policy statement, or revise an existing policy statement, it is unlikely that licensing requirements and fees would be suspended.

Despite the willingness of many physicians to provide support in a disaster situation, and who do not register in advance to provide such support, it can create a dangerous situation for physicians that are not trained in disaster response and entering into unstable environments.

ACEP’s policy statement “Support for National Disaster Medical System and Other Response Teams” supports the National Disaster Medical System (NDMS) and encourages further development and funding of the program. ACEP also supports its members who participate in the Disaster Medical Assistance Teams (DMAT), Urban Search and Rescue (USAR teams), or other federal or state-sponsored medical teams.

ACEP’s policy statement “Disaster Medical Response” supports a national credentialing mechanism and up-to-date database of available physicians and medical volunteers who could be deployed as needed in the face of a national emergency. A policy and program must be in place to provide these responders with workers’ compensation and medical liability protection when deploying to a disaster at the request of the federal or state government.

ACEP’s policy statement “Good Samaritan Protection” supports good samaritan protection legislation designed to reduce liability exposure. ACEP also supports the extension of existing good samaritan legislation to provide

protection from liability for emergency physicians who respond to emergencies outside the emergency department, including but not limited to in-hospital and out-of-hospital emergencies, mass casualty incidents, and other disasters.

ACEP's policy statement "Health Care System Surge Capacity Recognition, Preparedness, and Response" includes the following excerpt: Legislation should be enacted where necessary to mitigate provider liability issues during crisis situations.

ACEP's policy statement "Hospital Disaster Physician Privileging" includes language that The Joint Commission (TJC) has put forth standards (TJC Standard EM.02.02.13) to address Hospital Disaster Physician Privileging. During disasters, the hospital may grant disaster privileges to volunteer licensed independent practitioners (LIP).

ACEP's policy statement "Unsolicited Medical Personnel Volunteering at Disaster Scenes" is a joint statement with the National Association of EMS Physicians that encourages "members to become affiliated with pre-established disaster response organizations. This includes becoming pre-registered as disaster response personnel through the Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP), which is present in every state and provides for license verification, personnel notification, and rostering of response teams." This is contrary to the information in the sixth Whereas statement, beginning in line 16, indicating that ACEP and NAEMSP "believe an organized approach is needed for the utilization of unsolicited medical personnel who volunteer to respond to disaster scenes or mass casualty incidents."

ACEP Strategic Plan Reference

Goal 1 – Improve the Delivery System for Acute Care
Objective G – Pursue meaningful medical liability reform and other initiatives at the state and federal levels.
Objective H – Position ACEP as a leader in emergency preparedness and response.

Goal 2 – Enhance Membership Value and Member Engagement
Objective A – Improve the practice environment and member well-being.

Fiscal Impact

Budgeted committee and staff resources for research, surveys, data collection, advocacy efforts and developing a policy statement.

Prior Council Action

Resolution 58(05) Disaster Medical Response referred to the Board. Requested ACEP to recommend to the Federal Emergency Management Agency (FEMA) that they establish a national credentialing mechanism for the deployment of physicians in a national emergency.

Substitute Resolution 41(94) Disaster Response Program adopted. Endorsed the concept of volunteer medical disaster programs at the local level and that, ideally, the volunteer response or emergency physicians and their integration into existing state and federal disaster plans and resources should be coordinated by chapters.

Substitute Resolution 19(91) Disaster Medical Care adopted. Supported the position that every community needs a comprehensive backup system for immediate emergency medical care and directed ACEP to develop guidelines for the development of such systems.

Resolution 38(89) Mitigation of the Effects of Natural Disasters adopted. Supported the concept of global disaster mitigation and planning and that ACEP supports members activity in disaster planning, leadership, health care, educational activities, and networking with other disaster care organizations.

Amended Resolution 31(88) National Disaster Medical System (NDMS) adopted. Directed ACEP to make members aware of the Disaster Medical Assistance Team (DMAT) within the framework of the NDMS and encourage leadership roles within NDMS by specifically seeking a seat on the panel of health and medical preparedness.

Substitute Resolution 37(86) Disaster Plan adopted. Directed ACEP to assume a leadership role in mass casualty incident education and management and provide access for information to interested physicians and suppliers to aid in relief efforts.

Resolution 56(85) National Disaster Medical System adopted. Directed ACEP to continue to support the National Disaster Medical System.

Prior Board Action

June 2019, approved the revised policy statement "Support for National Disaster Medical System and Other Response Teams;" revised and approved June 2013 with the current title; revised and approved October 2006; originally approved March 1999 replacing Resolution 56(85) National Disaster Medical System and Substitute Resolution 19(91) Disaster Medical Care.

June 2019, reaffirmed the policy statement "Disaster Medical Response;" revised and approved June 2013; originally June 2006

February 2018, approved the revised policy statement "Good Samaritan Protection;" revised and approved June 2012; reaffirmed September 2005; originally approved September 1999.

October 2017, reaffirmed the policy statement "Health Care System Surge Capacity Recognition, Preparedness, and Response;" revised and approved October 2011; originally approved August 2004.

October 2017, approved the revised policy statement "Hospital Disaster Physician Privileging;" revised and approved January 2010 with current title; originally approved February 2003 titled "Hospital Disaster Privileging."

October 2017, approved the revised policy statement "Unsolicited Medical Personnel Volunteering at Disaster Scenes;" reaffirmed October 2008; originally approved June 2002.

Substitute Resolution 41(94) Disaster Response Program adopted.

Substitute Resolution 19(91) Disaster Medical Care adopted.

Resolution 38(89) Mitigation of the Effects of Natural Disasters adopted.

Amended Resolution 31(88) National Disaster Medical System (NDMS) overruled.
Substitute Resolution 37(86) Disaster Plan overruled.

Resolution 56(85) National Disaster Medical System adopted.

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