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STATEMENT FOR THE RECORD

of the

American Association of Neurological Surgeons and the Congress of Neurological Surgeons

to the
Subcommittee on Health
Energy & Commerce Committee
U.S. House of Representatives

SUBJECT: H.R. 1876, the Good Samaritan Health Professionals Act of 2017

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The American Association of Neurological Surgeons (AANS) and the Congress of Neurological Surgeons (CNS) would like to express their strong support for H.R. 1876, the Good Samaritan Health Professionals Act of 2017, and would like to thank the subcommittee for holding a hearing on this bipartisan legislation. Introduced by Reps. Marsha Blackburn (R-Tenn.) and David Scott (D-Ga.), this bill is designed to provide liability protections to out-of-state volunteer health professionals (VHPs), including physicians, who volunteer to assist victims of federally declared disasters.

As defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288), the President is authorized to issue major disaster declarations in response to certain incidents that overwhelm the capabilities of tribal, state, and local governments. Swift and timely medical response in a disaster or terrorist attack can significantly decrease the loss of life and improve outcomes for patients who desperately need care.

While neurosurgeons have a long history of stepping forward to assist disaster victims, medical volunteers are often turned away due to the inconsistency of Good Samaritan laws and confusion and uncertainty about the application of these laws. This was, unfortunately, evident during the aftermath of Hurricane Katrina in 2005 when thousands of physicians were prevented from helping those most in need. Sadly, this lack of state uniformity has hindered the ability of VHPs to provide care, and in many cases, physicians could not provide these critical services — even if they wanted to — due to lack of liability protections. H.R. 1876 will help ensure that health professionals who volunteer their services in future disasters will not face similar uncertainties, thereby allowing them to focus on providing aid to victims.

Specifically, this bill would provide VHPs with the level of civil immunity that they have in their home state when they provide this urgently needed care. Removing these barriers will allow neurosurgeons, in particular, with their training in trauma and emergency care, to provide Americans with access to high-quality specialty care during a declared crisis.

It is also notable that during these disasters the timely verification of health professional's licensure is not always possible. H.R. 1876 expresses a sense of Congress that the appropriate entities should verify the licenses as soon as is reasonably practical.

Most importantly, H.R. 1876 does not apply if the volunteer engages in “willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual(s) harmed by the health care professional.”

Good Samaritan Laws

Good Samaritan laws generally provide basic legal protections for those who assist a person who is injured or in danger. In essence, these laws protect the “Good Samaritan” from liability if unintended consequences result from their assistance. All 50 states and the District of Columbia have some form of Good Samaritan law. Who is protected under these statutes — physicians, emergency medical technicians, and other first responders — and how these laws are implemented vary from state to state.¹

These laws typically do not apply to employees on duty or those with a pre-existing obligation to provide care. Good Samaritan laws provide limited immunity from civil liability for ordinary negligence to protected volunteers. They do not provide payment for defense costs, judgments or settlements. As with other volunteer protection statutes, Good Samaritan laws do not cover gross negligence or wanton misconduct.

¹ Health Resources and Services Administration. “Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) — Legal and Regulatory Issues.” Appendix D. Available at <http://www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf>

Volunteer Protection Act of 1997

While the Volunteer Protection Act of 1997 provides protection to non-profit organizations' and government entities' volunteers, like the Red Cross and the National Disaster Medical System (NDMS), it does not apply to health professionals who unexpectedly volunteer of their own volition.

Uniform Emergency Volunteer Health Practitioners Act (UEVHPA)

Some states have adopted the Uniform Emergency Volunteer Health Practitioners Act (UEVHPA).² Under the UEVHPA, VHPs can register through governmentally established registration systems (e.g., ESAR-VHP or Medical Reserve Corps), or with registration systems set up by disaster relief organizations, licensing boards or national or multistate systems that associations of licensing boards or health professionals have created. UEVHPA liability protections take effect upon the state's emergency declaration. But again, these protections only cover VHPs who have already registered and are in the system.

Disaster Relief Fund

It is important to note just how often disaster declarations are made and potentially how often VHPs are needed throughout the country. A total of 936 major disaster declarations was made between FY 2000 and FY 2015, which resulted in more than \$133 billion obligated from the Disaster Relief Fund (DRF).³ This funding includes public, individual, and hazard assistance, in addition to Federal Emergency Management Agency (FEMA) administrative costs and mission assignments.

A total of 19 major disaster declarations were made in Texas alone, totaling \$8.8 billion from Tropical Storm Allison in 2001, Hurricane Rita in 2005 and Hurricane Ike in 2008. Other states of note include: Louisiana with \$36.6 billion (Hurricane Katrina); New York with \$23 billion (Hurricane Sandy in 2013 and 9/11); Florida with \$10.6 billion (Hurricanes Frances, Ivan and Jeanne in 2004; Hurricane Wilma in 2006; and Hurricane Katrina in 2005); and New Jersey with \$3.8 billion (Hurricane Sandy).⁴ The DRF data demonstrates (by one measure) the scope of federal disaster declarations and, therefore, the need for federal legislation to provide the necessary protections for physician volunteers.

Conclusion

While there are several opportunities for health professionals to register with different non-profit organizations and government entities, as mentioned above, these same health professionals are not provided with the same liability protections if they spontaneously volunteer in a disaster area. This patchwork nature of statutory protections for volunteers indicates that a federal legislative remedy is needed to unify these protections. The Good Samaritan Health Professionals Act of 2017 would alleviate this problem.

The AANS and CNS look forward to working with the subcommittee further and encourage passage of this crucial legislation. In the meantime, thank you for considering our comments.

² Uniform Law Commission. UEVHPA. Available at <http://www.uniformlaws.org/Act.aspx?title=Emergency%20Volunteer%20Health%20Practitioners>.

³ Congressional Research Service. "Major Disaster Assistance from the Disaster Relief Fund: State Profiles." Available at <https://fas.org/sgp/crs/homesecc/R43883.pdf>

⁴ Congressional Research Service. "FEMA DRF Major Disaster Assistance: State Profiles."