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Opinion No. 07-107

Ability of Out-of-State Health Care Professionals to Provide Emergency Assistance in Tennessee

QUESTIONS

1. To what interstate disaster compacts does Tennessee belong?

2. How does Tennessee's membership in those compacts affect the ability of health care professionals licensed in other states to provide medical assistance to the victims of a natural disaster in Tennessee?

3. Do these compacts allow health care professionals licensed in all the other states (or just those licensed in certain states) to provide emergency assistance in Tennessee?

4. What action, if any, must the Governor take in order to make it legal for health care professionals from other states to come to Tennessee immediately after a disaster occurs to provide emergency assistance?

5. What limitations, if any, are placed on the emergency assistance that may be provided by health care professionals from other states?

6. There are many health care professionals who are employed by various federal agencies in Tennessee who are not required to be licensed in Tennessee in order to perform their federal job functions. Would it be legal for these health care professionals to provide emergency medical assistance to the victims of a natural disaster in this state?

OPINION

Tennessee has entered into various emergency management compacts that would permit health care professionals from other states, under the circumstances as are outlined in each such compact, to provide emergency assistance to the victims of a natural or other disaster in Tennessee. In any event, Tenn. Code Ann. § 58-2-107(e)(1) provides that, in addition to any other powers conferred upon the Governor by law, the Governor may suspend the provisions of any law, order, rule or regulation prescribing the procedures for conduct of state business or the orders or rules or regulations of any state agency, if strict compliance with the provisions of any such law, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency. Hence, if it were to become necessary in order to cope with an emergency situation, the

Governor has overarching statutory authority to suspend state laws and rules related to licensure of health care professionals.

ANALYSIS

1. Tennessee has entered into three interstate emergency management compacts that address the extent to which out-of-state health care providers legally can come to Tennessee to provide emergency medical assistance in the event of a disaster. These are: the Civil Defense and Disaster Compact, Tenn. Code Ann. § 58-2-402 (Article 4); the Southern Regional Emergency Management Assistance Compact, Tenn. Code Ann. § 58-2-403 (Article V - Licenses and Permits); and the Interstate Earthquake Compact, Tenn. Code Ann. § 58-2-701 (Article IV, Reciprocity).[1] Further, in Pub. L. No. 104-321, 110 Stat. 3877 (1996), Congress consented to the Emergency Management Assistance Compact (EMAC) for mutual aid agreements between the various participating member states, which may include the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.[2]

Executive Order No. 4 (February 13, 1987) and Executive Order No. 15 (April 17, 1998) established the Tennessee Emergency Management Agency ("TEMA") as the agency of state government with responsibility and authority for planning disaster and emergency preparedness, and directing response and recovery. Subsequently, the Legislature enacted 2000 Pub. Chap. 946, which authorized and directed the Governor to create a state agency to be known as the Tennessee Emergency Management Agency to authorize the creation of local organizations for emergency management in the political subdivisions of the state, and to authorize cooperation with the federal government and the governments of other states. Tenn. Code Ann. §§ 58-2-103, 58-2-104. Further, Tenn. Code Ann. § 58-2-106(b)(1) requires TEMA to prepare a Tennessee Emergency Management Plan ("TEMP").[3] The above chapter also included a definition of "compacts" as meaning "the

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[1]In addition, Tennessee also has entered into the Interstate Nurse Licensure Compact, Tenn. Code Ann. § 63-7-301, *et seq*., which includes a "multistate licensure privilege," which means current, official authority from a party state (other than that which is the nurse's primary state of residence) permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. Tenn. Code Ann. § 63-7-302 (Article II(h)). One of the general purposes of this compact is to "[e]nsure and encourage the cooperation of party states in the areas of nurse licensure and regulation." *Id*. at Article I(b)(2). Although the Nurse Licensure Compact is not an emergency management compact, the multitstate licensure provisions that are contained in it may help facilitate the provision of emergency services in a disaster situation. Conversely, the Governor also is authorized to execute the Southeast Interstate Forest Fire Protection Compact, Tenn. Code Ann. §§ 11-4-501, *et seq*.; while this might be considered broadly to be a type of emergency management compact because it provides for mutual aid in fighting forest fires, it does not mention health care professionals.

[2]The language contained in the EMAC is substantially similar to that contained in the Southern Regional Emergency Management Assistance Compact, Tenn. Code Ann. § 58-2-403.

[3]The recently revised TEMP refers to the National Disaster Medical System, which is a coordinated effort by specified federal agencies, working in collaboration with the states and other appropriate public or private entities, to carry out the purposes of the system. In general, the National Disaster Medical System may be activated for limited periods of time to provide health and related services to respond to the needs of victims in a public health emergency

emergency management compacts included in parts 4 and 7 of this chapter," or the three state-enacted emergency management compacts mentioned above. Tenn. Code Ann. § 58-2-101(3).

Moreover, in June 2005, Governor Bredesen signed Executive Order No. 23, which established the National Incident Management System ("NIMS") as the basis for all incident management in the state, in order to provide a consistent nationwide approach for federal, state, local and tribal governments to "work together more effectively and efficiently to prevent, prepare for, respond to, and recover from domestic incidents, regardless of cause, size or complexity." *Id*. Our research indicates that the NIMS Integration Center initiated development of a national emergency responder credentialing system to provide documentation that can authenticate and verify the certification and identity of designated incident managers and emergency responders. The NIMS Integration Center did so in order to enhance the ability of federal, state, tribal and local jurisdictions to identify and dispatch appropriately qualified emergency responders from other jurisdictions when needed. It is using working groups to identify job titles that should be credentialed as well as the minimum qualification, certification, training, education, licensing and physical fitness requirements for each position. Fact Sheet, National Emergency Responder Credentialing System, NIMS Integration Center, DHS/FEMA, April 2006.[4]

2. Tennessee's membership in the three emergency compacts mentioned above affects in various ways the ability of health care professionals licensed in other states to provide medical assistance to the victims of a natural or other disaster in Tennessee. The licensing provisions of each of the three interstate disaster compacts mentioned above are similar in many respects. Tenn. Code Ann. § 58-2-402 (Article 4) provides:

> Whenever any person holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster and such state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered.

In addition, Tenn. Code Ann. § 58-2-403 (Article V) provides, regarding licenses and permits:

> Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of

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and to be present at locations deemed at risk of a public health emergency. 42 U.S.C. § 300hh-11(a).

[4]42 U.S.C. § 247d-7b(a) requires linkage of existing state verification systems to maintain a single national interoperable network of systems, each system being maintained by a state or group of states, for the purpose of verifying the credentials and licenses of health care professionals who volunteer to provide health services during a public health emergency. If feasible, such network shall be integrated with the VetPro system of the Department of Veterans Affairs and the National Emergency Responder Credentialing System. *Id*. at (f).

> qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

In turn, Tenn. Code Ann. § 58-2-701(Article IV) provides, regarding reciprocity:

> Whenever the officers or employees of any party state are rendering aid in another state pursuant to the request of another party state under this compact, those officers or employees shall, while under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid. Any person holding a license, certificate or other permit issued by any state, demonstrating the meeting of qualifications for professional, mechanical, or other skills may render aid involving such skill in any party state to meet an earthquake emergency, and the state in which aid is rendered shall give due recognition to such license, certificate, or other permit as if issued in the state in which aid is rendered.

3. Each of the three emergency disaster compacts discussed above permits health care professionals who are licensed by a compact party state to provide emergency health care assistance in Tennessee. First, the Civil Defense and Disaster Compact, Tenn. Code Ann. § 58-2-402 (Article 4), permits any person who holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, to render aid involving such skill in any party state. The Governor is authorized to enter into such civil defense and disaster compacts "with the several contiguous states" (as well as to enter into an emergency management assistance compact "by and between participating states") in order to provide "mutual aid and assistance among the contracting states" in meeting any emergency or disaster from enemy attack, sabotage or other hostile action. Tenn. Code Ann. § 58-2-401. Further, Tenn. Code Ann. § 58-2-402 (Article 11) provides in pertinent part that such Civil Defense and Disaster Compact "shall become binding between this state and any contiguous state" upon the specific ratification of the compact by Tennessee "and such contiguous state as between themselves . . . ." Thus, the Legislature has limited participation in the Civil Defense and Disaster Compact to contiguous states only. In our view, that compact permits health care professionals who are licensed in contiguous, party states to provide emergency assistance in Tennessee.

Similarly, the Interstate Earthquake Compact of 1988, Tenn. Code Ann. § 58-2-701, is a compact ratified by the Legislature "on behalf of the state of Tennessee with any other state legally joining therein in the form substantially as follows . . . ." Licensed health care professionals in other

states that are party to the compact enjoy reciprocity to the extent described in Article IV of the compact, which is set out above. We arrive at this interpretation by reading the second sentence in Article IV *in pari materia* with the first sentence in that article, which concerns reciprocity. The first sentence in Article IV clearly refers to "officers or employees of any party state." The second sentence in Article IV, however, refers to "any person holding a license, certificate or other permit issued by any state." In our view, the latter phrase means a license, certificate or other permit issued by any *party* state. This is because in construing a statute, the principal objective is to give effect to the intent and purpose of the Legislature, *Carson Creek Vacation Resorts, Inc. v. State Department of Revenue*, 865 S.W.2d 1 (Tenn. 1993). Such intent is ascertained primarily from the natural and ordinary meaning of the language contained in a statute, when read in context with the whole statute. *James Cable Partners, L.P. v. City of Jamestown*, 818 S.W.2d 338 (Tenn. App. 1991). The purpose of the Interstate Earthquake Compact of 1988 is "to provide mutual aid among the states . . . ." Further, the term used to describe Article IV, "Reciprocity," would be meaningless if the recognition of the person's out of state license were not limited to other party states.[5] Moreover, unlike the Civil Defense and Disaster Compact, "any other state legally joining therein" may ratify the Earthquake Compact of 1988. Tenn. Code Ann. § 58-2-701.

Further, Article I of The Southern Regional Emergency Management Assistance Compact, Tenn. Code Ann. § 58-2-403, also expands the potential base of interstate cooperation. That section provides that the compact is made and entered into between the participating member states that enact the compact, to be known as "party states." For the purposes of such agreement, the term "states" is defined as "the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions." *Id*. Article V of this compact limits reciprocity to any person holding a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills. When such assistance is requested by the receiving party state, "such person shall be deemed licensed, certified or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster . . . ." *Id*. Therefore, so long as the health care professionals in question are licensed in other "party states," then under this compact such professionals may provide medical assistance to the victims of a natural or other disaster in Tennessee.

4. Tenn. Code Ann. § 58-2-107(e)(1) provides that, in addition to any other powers conferred upon the Governor by law, the Governor may suspend the provisions of any law, order, rule or regulation prescribing the procedures for conduct of state business or the orders or rules or

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[5]Our research has not revealed any authority from any other compact states, either with respect to the Civil Defense and Disaster Compact, or the Interstate Earthquake Compact of 1988, interpreting the phrase common to each: "a license, certificate or other permit issued by any state." Tenn. Code Ann. §§ 58-2-402(Article 4), 58-2-701(Article IV). Hence, it is not known whether other compact states also would interpret this phrase to mean that only persons holding a license, certificate or other permit issued by any *party* state may render aid involving such skill in any party state. However, our interpretation of this issue regarding the above two compacts is consistent with the explicit language contained in the Southern Regional Emergency Management Assistance Compact, Tenn. Code Ann. § 58-2-403 (Article V) which provides that whenever "any person holds a license, certificate, or other permit issued by any state *party* to the compact . . . . such person shall be deemed licensed, certified, or permitted by the state requesting assistance . . . ." (Emphasis added).

regulations of any state agency, if strict compliance with the provisions of any such law, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency. Moreover, the Governor has additional emergency management powers, included among which are that the Governor shall employ such measures and give such directions to the Department of Health as may be reasonable and necessary "for the purpose of securing compliance with the provisions of this chapter or with the findings or recommendations of such agency by reason of conditions arising from emergencies or threats of emergency." Tenn. Code Ann. § 58-2-107(g).[6]

Clearly, the Governor has overarching statutory authority to issue an executive order in an emergency situation to suspend state laws and rules regarding licensure of health care professionals. If the Governor were to issue such an executive order suspending the state's health licensure laws, then health care professionals from other states legally could provide emergency assistance in Tennessee immediately after a disaster occurs. However, especially in light of the various disaster compacts here discussed, Tennessee would be well advised to request such services from other states. Certain difficulties might arise if health care professionals or other persons were to seek to "self-deploy" to a disaster area. In fact, such inappropriate self-deployment to a disaster area is one of the evils against which the National Emergency Responder Credentialing System, discussed above, seeks to guard.

Moreover, the Legislature enacted this year the "Tennessee Uniform Emergency Volunteer Health Practitioners Act of 2007," Public Chapter No. 579. This bill took effect July 1, 2007, for purposes of promulgation of rules, and is effective for all other purposes on January 1, 2008. It applies to volunteer health practitioners registered with a registration system that meets the requirements of § 6 of the Act, and who provide health services in this state for a host entity while an emergency declaration is in effect. *Id*. at § 4. Further, it provides that, while an emergency declaration is in effect, and subject to any restrictions which TEMA may impose, such appropriately registered volunteer health practitioner who is licensed and in good standing in the state upon which the practitioner's registration is based "may practice and use the titles appropriate thereto in this

[6] In the event the Governor declares an emergency in response to a catastrophic or major disaster, voluntary health care providers participating in the Emergency Management Assistance Compact or Southern Regional Emergency Management Assistance Compact are immune from liability in providing health care to victims or evacuees of the catastrophic or major disaster, as long as the services are provided within the limits of the provider's license, certification or authorization, unless an act or omission was the result of gross negligence or willful misconduct. Tenn. Code Ann. § 58-2-107(*l*)(1). Further, if additional medical resources are required, the Governor may, by executive order, provide limited liability protection to certain health care providers who render services within the limits of their license, certification or authorization to victims or evacuees of such emergencies, provided that such protection may not include any act or omission caused by gross negligence or willful misconduct. Tenn. Code Ann. § 58-2-107(*l*)(2). The duration of the protection provided by subsection (*l*) shall not exceed thirty (30) days, but may be extended by the Governor by executive order for an additional thirty (30) days, if required to ensure the provision of emergency medical services in response to the catastrophic or major disaster. Tenn. Code Ann. § 58-2-107(*l*)(3).

state to the extent authorized by this act as if the practitioner were licensed in this state."[7] However, a volunteer health practitioner who is thus qualified would not be entitled to the protections of the Act if the practitioner is licensed in more than one state and any license of the practitioner has been "disciplinarily suspended, revoked, subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction." *Id*. at § 7. Further, TEMA may promulgate public necessity rules to implement the Act and, in so doing, shall consult with the Department of Health and "shall consult with and consider the recommendations of any other entity established to coordinate the implementation of the emergency management assistance compacts," as well as consult with and consider rules promulgated by similarly empowered agencies in other states, to promote uniformity of application of the Act and to "make the emergency response systems in the various states reasonably compatible." *Id*. at § 11.

5. The Civil Defense and Disaster Compact, Tenn. Code Ann. § 58-2-402 (Article 4) limits the provision of services by health care professionals from other states "to render aid involving such skill in any party state to meet an emergency or disaster." The Southern Regional Emergency Management Assistance Compact, Tenn. Code Ann. § 58-2-403 (Article V - Licenses and Permits) provides in pertinent part that such health care professional may "render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise." The Interstate Earthquake Compact, Tenn. Code Ann. § 58-2-701 (Article IV. Reciprocity) limits the rendering of aid involving such professional skills in any party state in order to meet an earthquake emergency.[8] Last, as mentioned previously (n.7, *supra*), HB 1618, as amended, also contains certain limitations on the emergency assistance that may be provided by health care professionals from other states. Notably, except as is otherwise provided in the Act, a volunteer health practitioner is not authorized to provide services that are outside the practitioner's scope of practice. *Id*. at § 9.

6. A health care professional who is employed by a federal agency in Tennessee and who is not required to be licensed in Tennessee in order to perform his or her federal job functions, may provide emergency medical assistance to the victims of a natural or other disaster in this state if such emergency medical assistance falls within the scope of his or her federal employment. Further, as is discussed above, such health care professional legally may provide emergency medical

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[7]A volunteer health practitioner would be required to adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state, and, except as otherwise provided, would not be authorized to provide services that are outside the volunteer health practitioner's scope of practice; however, TEMA would be authorized to modify or restrict the health services that volunteer health practitioners may provide under the Act, while a host entity (an entity operating in this state that uses volunteer health practitioners to respond to an emergency) would be authorized to restrict provision of such health services. *Id*. at § 9 (a)-(d).

[8]Certain compacts referenced above also contain language regarding more general limitations that do not address specifically the scope of emergency assistance that health care professionals from other states may render in a disaster situation. *See, e.g.*, Tenn. Code Ann. § 58-2-403 (Article IV- Limitations), which provides, among other things, that emergency forces will continue under the command and control of their regular leaders, while the organizational units will come under the operational control of the emergency services authorities of the states receiving assistance.

assistance in Tennessee if he or she is licensed in a compact state and an emergency disaster compact has been activated. Moreover, the Governor may, by executive order under Tenn. Code Ann. § 58-2-107(e)(1), suspend professional licensure requirements in this state in order to cope with the emergency. Finally, such federal employee, as well as certain other health care professionals, could be exempted from licensure, or be issued a special or limited license, under circumstances as are outlined in various provisions of state law. One example would be if such health care professional were to provide services through a sponsoring organization and within the ambit of the "Volunteer Health Care Services Act," Tenn. Code Ann. § 63-6-701, *et seq*. Another example would be Tenn. Code Ann. § 63-1-201, *et seq*., involving medical practitioners practicing in free health clinics.

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