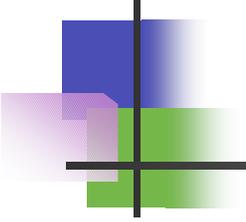


MARYLAND





Maryland Department of Health
and Mental Hygiene (DHMH)
Office of Emergency Preparedness and
Response (OEPR)



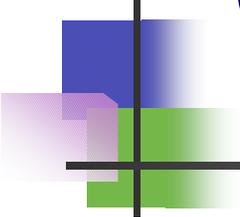
Maryland's Liability Protection for MRC Volunteers

Joan M. Lawrence, M.B.A.

3rd MRC National Conference

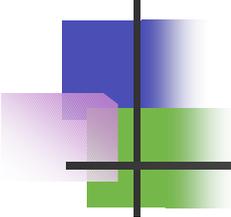
San Francisco, CA

April 21, 2005



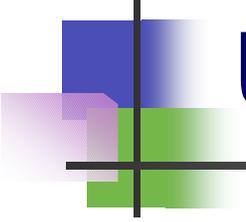
Goals

- Definition of Volunteer
- Liability
- Maryland Tort Claims Act
- Liability Coverage



What is a Volunteer?

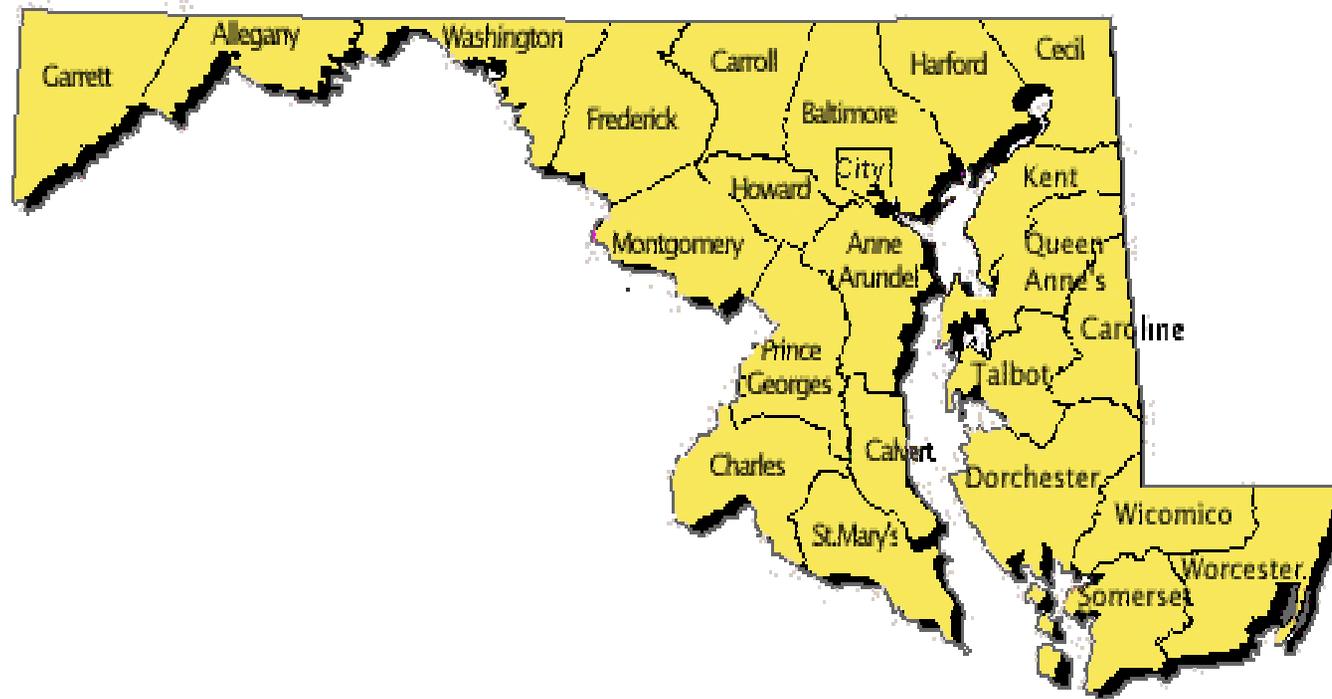
- A person who:
 - a) performing services to or for a unit of State Government,
 - b) engaged in the actual performance of the services at the incident
 - c) In the performance of the services
 - d) participating in a formal volunteer program
 - e) formally recognized by the unit as a volunteer

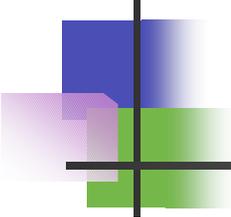


Maryland's Medical Reserve Corps Units per County to date

- Allegany County
- Baltimore City
- Baltimore County
- DHMH - State
- Frederick County
- Howard County
- Montgomery County
- Prince George's County

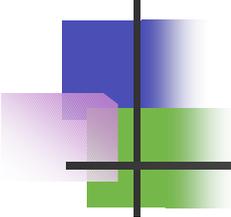
Maryland: 6 Million People





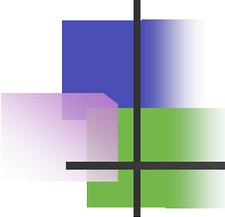
What is Liability?

- Liability is legal responsibility for one's acts or omissions.
- Criminal law
- Civil law



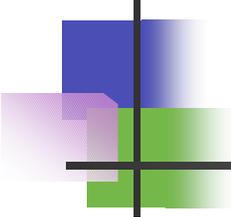
Criminal Law

- Offenses that are serious enough to be prohibited by statute and prosecuted by the government.
- Assault and battery



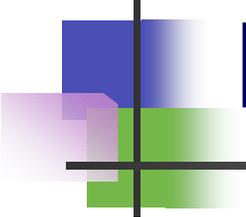
Civil Law

- Three types of liability under civil law.
- Contract
- Statutory
- TORT



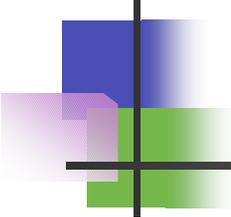
What is a Tort?

- A wrongful act or omission (other than a breach of contract) that causes harm to another, for which the law provides a remedy.
- Negligent torts
- Intentional torts
- Strict liability



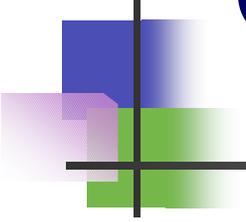
Negligent Torts

- Negligent torts arise from the failure to use reasonable care under the circumstances, causing recoverable damages.



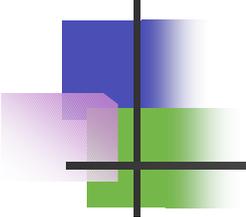
Intentional Torts

- Intentional torts arise from acts or omissions that are intentional rather than negligent.
- Intent to commit act/omission is required
- Intent to cause harm may not be required



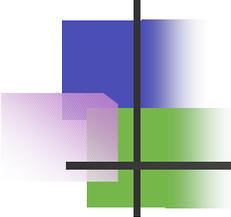
Gross Negligence

- An act that show reckless indifference to the safety of others.
- Maryland courts held that “only extraordinary or outrageous conduct can be termed gross negligence---mere recklessness is not enough; there must be reckless disregard for human *life...McCoy v. Hatmaker, 135 Md.App.693 (2000).*



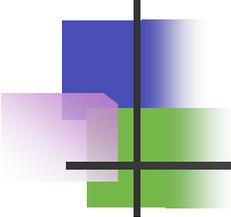
Gross Negligence

- Reckless disregard of the consequences to the safety or property of another
- Willful acts – intention, conscious and directed toward achieving a purpose
- Wanton acts – grossly negligent to the extent of being recklessly unconcerned with the safety of people or property
- Reckless behavior – similar to gross negligence



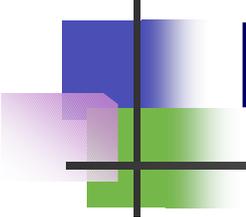
Scope of Practice

- The range of professional activities that a licensed professional is permitted to perform under a state licensing statute, further defined by the professional's experience and training.



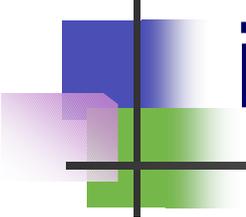
Professional Standard of Care

- The standard of care for a health care professional is the “reasonable person” negligence doctrine in a professional services context.



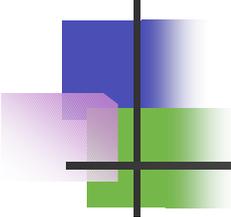
Example of Maryland's Professional Standard of Care

- Under Maryland case law "(a) physician is under a duty to use that degree of care and skill which is expected of a reasonably competent practitioner in the same class to which he belongs, acting in the same or similar circumstances. Under this standard, advances in the profession, availability of facilities, specialization or general practice, proximity of specialists and special facilities, together with all other relevant considerations, are to be taken into account." Skilkret v. Annapolis Emergency Hospital, 276 Md. 187, 200-201 (1975)



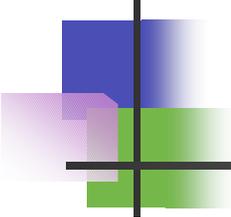
Professional Standard of Care in Litigation

- Expert witness
- Expertise in the area of practice involved (pharmacy, physician, nurse) to be qualified to testify.



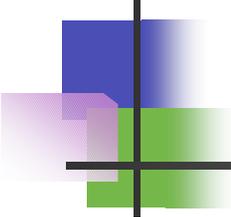
Reducing Liability Risk

- Credentialing
- Roles and responsibilities
- Understanding the Command Structure
- Verifying licenses
- Good standing
- Orientation, training and exercises
- Activation and deactivation procedures
- Volunteer I D Badges



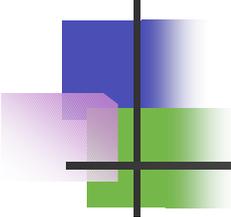
Reducing Liability Risk

- Procedures for patient treatment notes
- Rules of conduct and grounds for dismissal
- Communications procedures
- Post-incident debriefing



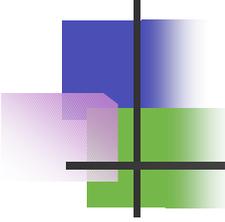
Potential Sources of Negligence

- Credentialing, screening and volunteer assignments
- Patient history, assessment and triage
- Patient handling
- Informed consent
- Diagnosis, medication and treatment
- Patient transport



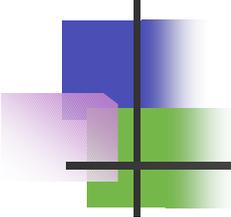
Potential Sources of Negligence

- Operation of motor vehicles
- Documentation of patient care
- Operation of equipment



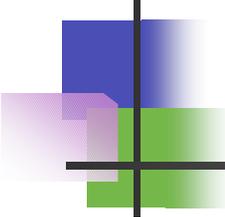
Negligence Consequences

- Injury to patients
- Injury to volunteers
- Injury to response partner workers
- Damage to patient's property
- Damage to volunteer's property
- Damage to response partner's property



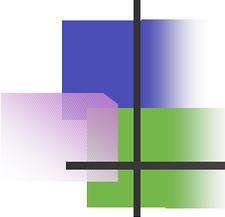
Intentional Tort Liability

- Assault – Intentional and unlawful threat of bodily harm to another, causing that person to have a well-founded fear of imminent harm.



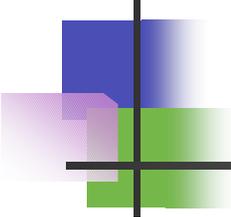
Intentional Tort Liability

- Battery – Unlawful and unprivileged to touching of another person without permission



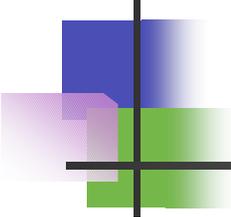
Intentional Tort Liability

- False arrest/imprisonment – Intentional and unlawful detention of another.



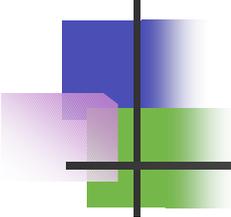
Intentional Tort Liability

- Defamation – Making untrue public statements that damage the reputation of a person or organization.



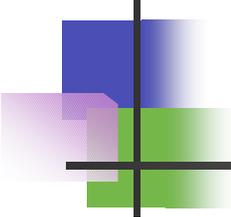
Intentional Tort Liability

- Informed consent
- Isolation of patients exposed to communicable disease
- Possession and communication of health information
- Medication and treatment
- Security



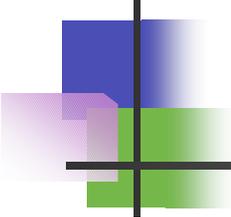
Intentional Tort Liability

- Invasion of privacy – Unauthorized release of confidential information.



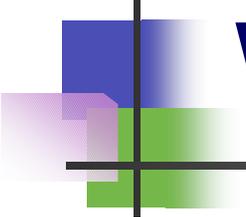
Scope of Activities Covered

- Activities within scope of assignment
- Before a disaster, during training, planning and drills
- During disaster response
- Human caused and natural disasters
- Community health activities
- Transportation of injured during disaster
- Participants during drills



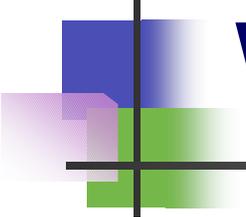
State Law Limitation

- Worker's Compensation
- Discrimination claims or other claims based on the State or federal constitutions



Who is Covered for Liability

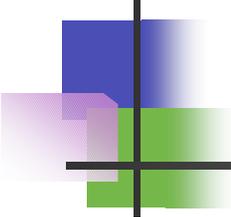
- Maryland's Medical Reserve Corps organizations
- Volunteers registered with Maryland's Medical Reserve Corps
- Volunteers registered with the State
- Spontaneous volunteers



Who is Covered for Liability

Note:

- Spontaneous volunteers and volunteers from other states must be formally recognized as volunteers before they can expect immunity under the Maryland Tort Claims Act.



Immunity by Event

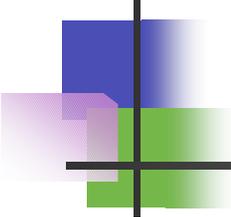
Catastrophic Health Emergency (CHE)

Health Practitioners

- May have immunity through Maryland Tort Claims Act, State Gov. §12-101- *et seq.*
- Not immunity, but coverage through own private insurance

Non-professional support volunteers

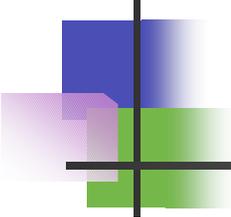
- May have immunity through Maryland Tort Claims Act, State Gov. § 12-101 *et seq.*



Immunity by Event

Other Health Emergencies

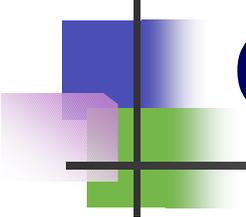
- Health professionals and non-professional support volunteers may have immunity through the Maryland Tort Claims Act – State Gov. §12-101 *et seq.*



Immunity by Event

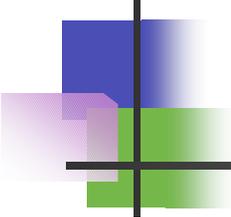
Non-Health Emergency that has Subsequent Health Component

- Health professionals and non-professional support volunteers may have immunity through the Maryland Tort Claims Act – State Gov. §12-101 *et seq.*



Maryland's Activation for Liability Coverage During Events

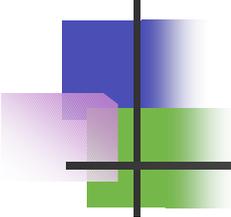
- Governor of Maryland or his designee
- Secretary, DHMH or his designee
- Local Health Officers or his/her designee



Summary

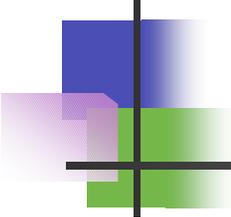
Health care providers and other individuals who are formally recognized members of the Volunteer Medical Reserve Corps (VMRC):

- Local Health Department (LHD)
- Health Occupation Licensing Board (HOLB)
- Office of Emergency Preparedness and Response (OEPR)
- Other DHMH agency or program



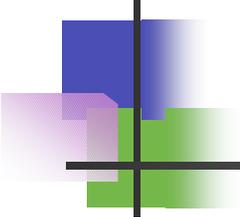
Summary

- Volunteers who render health care or related services for the State which they are not legally obligated to undertake, and who do so without compensation - are State personnel who have qualified personal immunity from suit under the MTCA.



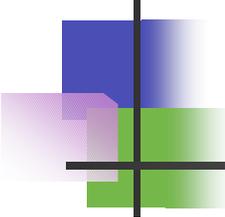
Summary

- Personal immunity from suit and liability applies to the tortuous acts or omissions of a formally recognized State volunteer which are within the scope of the State program responsibilities that are undertaken by the volunteer and committed without malice or gross negligence.



Maryland's Volunteer Liability Video

PAUL BALLARD,
Maryland's Office of the
Attorney General



Contact

Joan M. Lawrence, M.B.A.

Volunteer Program Director &

MRC State Coordinator

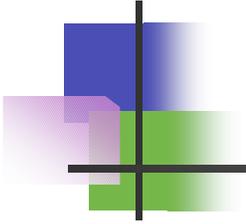
DHMH, Emergency Preparedness and Response

201 W. Preston Street

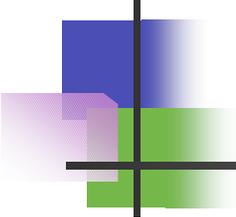
Baltimore, MD 21201

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E-mail: jlawrence@dhmh.state.md.us



QUESTIONS



Handouts

- Maryland Tort Claims Act (MTCA)
- Frequently Asked Questions (FAQ)
- Sample letter to volunteers
- Volunteer Newsletter