



## **NEW ENGLAND SART CONFERENCE**

### **LEGAL ISSUES FOR ANIMAL RESPONSE TEAM VOLUNTEERS**

**December 10, 2008**

Colin J. Zick  
Foley Hoag LLP  
czick@foleyhoag.com

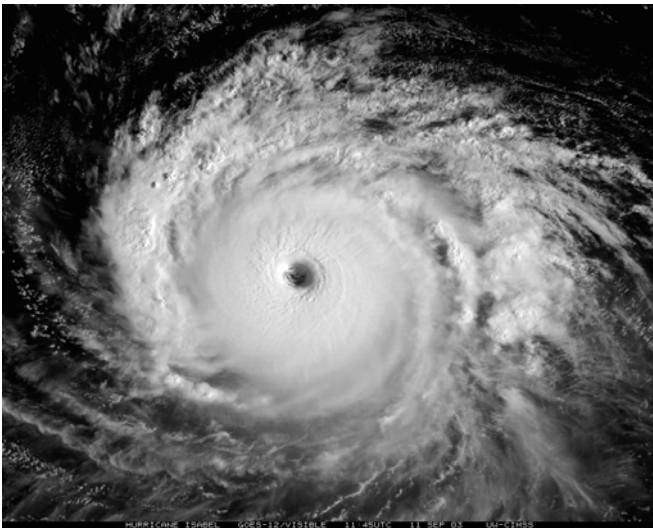
## SUMMARY OF ISSUES FOR ANIMAL RESPONSE TEAM VOLUNTEERS

---

- DISCUSSION OF FEDERAL & STATE STATUTES THAT MAY APPLY
- SPECIFIC ISSUES THAT MAY ARISE
- FACTORS THAT MAY AFFECT THE OUTCOME FOR VOLUNTEERS

## IMAGINE THIS...

- A Major Hurricane Hits the Zooquarium



  
**Zooquarium**

*It just might be more fun than the beach!*

- Animals Need Help!

## WHAT HAPPENS NEXT?

- Individuals in the immediate vicinity rush to help the animals.
- People hear of the situation (via Internet, TV, radio) and come to provide assistance.
- The State declares an emergency and calls its Animal Response Team.
- The State declares an emergency and calls for help from other states.

## QUESTIONS TO ASK

---

- Is there state-sponsored compensation if my involvement results in my injury or death?
- What liability protection do I have for my actions?
- What penalties might I face for providing assistance in a state in which I am not licensed?

## FACTORS THAT AFFECT THE OUTCOME

---

- Who is volunteering?
- Who they are volunteering for?
- What services are being provided?
- Are they licensed or not?

# 1. Individuals In Vicinity Rush to Help Animals

- **State-Sponsored Compensation for Injury or Death? → NONE**
  
- **Liability Protection in New England States?**
  - *Anyone* providing free emergency vet services is immune for *negligent* injury/death of animal in:
    - Maine and Vermont
  - *Vets*, licensed in any state, providing free emergency vet services are immune for negligent injury/death of animal in:
    - Massachusetts, New York and Rhode Island
  - No apparent liability protection in:
    - Connecticut or New Hampshire
  
- **Penalties for Providing Assistance Without a License?**
  - None for *licensed out-of-state vets* consulting with in-state vets (in most states).
  - None for *vet students* practicing under professor or licensed vet (in most states).
  - None for *anyone* providing free emergency vet services (so long as not presenting self as vet) in:
    - Connecticut, Massachusetts, New York and Rhode Island
  - NOTE: Can be immune from civil liability and still penalized for lack of license in:
    - Maine and Vermont

## 2. People Hear of the Situation and Come to Help

- If volunteer is an independent individual, then same as Scenario 1.
- If volunteer is a member of a non-profit (e.g., Animal Response Team) that decides to offer help, then *also* protected by the Volunteer Protection Act of 1997.
  - **State-Sponsored Compensation for Injury or Death?** → Still None.
  - **Liability Protection?** → Volunteers Immune from civil liability for Harm if:
    - Acting within the scope of their volunteer responsibilities;
    - Properly licensed if required in the state where the harm occurred;
    - Not willful or criminal misconduct, gross negligence, or recklessness; and
    - Harm not caused while operating a motor vehicle.
  - **Penalties for Helping Without a License?** → Same as Scenario 1.
- Other Noteworthy Provisions of VPA:
  - Volunteers can still be liable to the non-profit.
  - The non-profit can still be liable.
  - Pre-empts state laws that offer less protection.
  - Applies in all New England states, though it can be altered.
    - New Hampshire: *no* licensing requirement, but non-profit must have record of volunteers.

## 3. State Declares State of Emergency and Calls Local Animal Response Team

- *If the Animal Response Team is officially called in by the state:*
  - **State-Sponsored Compensation for Injury Or Death?**
    - Yes, in most states.
    - Law unclear in:
      - Massachusetts and New York
  - **Liability Protection?**
    - Yes, in most states, for harm caused while giving requested aid if only negligent.
    - State provides legal defense support to such volunteers in:
      - Connecticut and Vermont
    - Law unclear in:
      - Massachusetts and New York
  - **Penalties for Providing Assistance Without A License?**
    - Same as Scenario 1.
    - May further avoid penalties if considered agent of the state acting within duties.
- **Note:** If the Animal Response Team is NOT officially called for by the state, it will be treated as a nonprofit as in Scenario 2.

## 4. State Declares State of Emergency and Calls for Out-of-State Help

- *If the state officially calls for out-of-state Animal Response Teams under the Emergency Management Assistance Compact (EMAC):*
  - **State-Sponsored Compensation for Injury or Death?** → Only from volunteer's home state, and only if that state so provides.
    - Except Rhode Island
  - **Liability Protection?** → Yes.
    - If volunteers considered "agents or employees" of home state when volunteering as members of an Animal Response Team, they're immune out-of-state for civil liability when acting under EMAC as long as they are not reckless, grossly negligent, or acting with willful misconduct.
  - **Penalties for Helping Without a License?** → Those licensed in their home states are deemed licensed out-of-state for purposes of helping under an EMAC request.
- **Note:** If an out-of-state Animal Response Team is not officially called for by the state under EMAC, it will be treated as a nonprofit as in Scenario 2.

# QUESTIONS

---



## **NEW ENGLAND SART CONFERENCE**

### **LEGAL ISSUES FOR ANIMAL RESPONSE TEAM VOLUNTEERS**

**December 10, 2008**

Colin J. Zick  
Foley Hoag LLP  
(617) 832-1275  
czick@foleyhoag.com

	<u>Volunteering When Not Requested</u>			<u>Requested In-State Volunteers</u>			<u>EMAC Out-of-State Volunteers</u>		
<u>State</u>	<u>Injury/Death Compensation?</u>	<u>Liability Protection?</u>	<u>No License Penalty?</u>	<u>Injury/Death Compensation?</u>	<u>Liability Protection?</u>	<u>No License Penalty?</u>	<u>Injury/Death Compensation?</u>	<u>Liability Protection?</u>	<u>No License Penalty?</u>
<b>Connecticut</b>	None	VPA protection if with nonprofit	No penalty for <i>anyone</i> providing free emergency vet services	Yes, if “employee or agent” of state and acting within those duties	Yes, if only simple negligence in course of duties; state will defend	No penalty for <i>anyone</i> providing free emergency vet services	Only from home state if entitled there	“Agents or employees” of home state immune	No penalty for <i>anyone</i> providing free emergency vet services
<b>Maine</b>	None	<i>Anyone</i> immune if free emergency vet services	No penalty for licensed out-of-state vets or vet students...	Yes, if “employee or agent” of state and acting within those duties	Yes, if only simple negligence & harm caused in course of duties	No penalty for vet students or state “agents” acting within duties	Only from home state if entitled there	<i>Anyone</i> immune if free emergency vet services	Deemed licensed if duly licensed in home state; vet students OK
<b>Massachusetts</b>	None	<i>Licensed vets</i> immune if free emergency vet services; VPA protection if with nonprofit	No penalty for <i>anyone</i> providing free emergency vet services	Law unclear	Law unclear	No penalty for <i>anyone</i> providing free emergency vet services	Only from home state if entitled there	<i>Licensed vets</i> immune if free emergency vet services	No penalty for <i>anyone</i> providing free emergency vet services
<b>New Hampshire</b>	None	VPA protection if with nonprofit	No penalty for licensed out-of-state vets or vet students...	Yes, if “employee or agent” of state and acting within those duties	Yes, if only simple negligence & harm caused in course of duties	No penalty for vet students or state “agents” acting within duties	Only from home state if entitled there	“Agents or employees” of home state immune	Deemed licensed if duly licensed in home state; vet students OK
<b>New York</b>	None	<i>Licensed vets</i> immune if free emergency vet services; VPA protection if with nonprofit	No penalty for <i>anyone</i> providing free emergency vet services	Law unclear	Law unclear	No penalty for <i>anyone</i> providing free emergency vet services	Only from home state if entitled there	<i>Licensed vets</i> immune if free emergency vet services	No penalty for <i>anyone</i> providing free emergency vet services
<b>Rhode Island</b>	None	<i>Licensed vets</i> immune if free emergency vet services; VPA protection if with nonprofit	No penalty for <i>anyone</i> providing free emergency vet services	Yes, if “employee or agent” of state and acting within those duties	Yes, if only simple negligence & harm caused in course of duties	No penalty for <i>anyone</i> providing free emergency vet services	Yes – treated as state employee and compensated if acting within duties	Yes, if only simple negligence & harm caused in course of duties	No penalty for <i>anyone</i> providing free emergency vet services
<b>Vermont</b>	None	<i>Anyone</i> immune if free emergency vet services	No penalty for licensed out-of-state vets or vet students...	Yes, if “employee or agent” of state and acting within those duties	Yes, if only simple negligence in course of duties; state will defend	No penalty for vet students or state “agents” acting within duties	Only from home state if entitled there	<i>Anyone</i> immune if free emergency vet services	Deemed licensed if duly licensed in home state; vet students OK

Please note that this handout is a simplified overview of the law. For space purposes, various state-specific details and nuances have been omitted.