

# TOPOFF 2

## Legal Team Handbook

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Dear Recipient:

On behalf of the TOPOFF 2 Legal Team, I am pleased to provide this copy of the TOPOFF 2 Legal Team Handbook. The TOPOFF 2 Legal Team is comprised of attorneys and other professional staff representing public health, emergency management and law enforcement government agencies, as well as health care facilities and the academic community (see attached list of participants). This team has undertaken a review of legal issues relating to bioterrorism and other public health emergencies, with particular attention to those issues that may arise during the May 2003 TOPOFF 2 exercise to be held in Northeastern Illinois.

The Handbook is made available as a courtesy, and reflects voluntary efforts by TOPOFF 2 Legal Team members. The materials in the Handbook furnish general information regarding selected legal issues associated with public health emergency response, but do not cover all such legal issues or constitute the opinion of any TOPOFF 2 Legal Team member. Persons with specific legal questions regarding public health emergency response should consult legal counsel.

I thank the members of the TOPOFF 2 Legal Team for their many contributions to this Handbook, and for their extensive efforts in preparing for the TOPOFF 2 exercise. Special thanks are extended to subcommittee and working group chairpersons, to Judy Munson from the Centers for Disease Control and Prevention, and to Lee Ann Schoeffel from the Illinois Department of Public Health legal staff.

Sincerely,

Anne M. Murphy  
Chair  
TOPOFF 2 Legal Team

Chief Counsel and Chief Privacy Officer  
Illinois Department of Public Health

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## Powers of the Governor

Illinois Constitution of 1970 (See "*Illinois Constitution of 1970*")

### Article V - Supreme Executive Authority

Article V, section 8 of the Illinois Constitution of 1970 provides that the Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws.

### Article XII - Militia

Article XII, section 1 of the Illinois Constitution of 1970 provides that the State militia consists of all able-bodied persons residing in the State except those exempted by law.

Article XII, section 4 provides that the Governor is the commander-in-chief of the organized militia, except when they are in the service of the United States. He may call them out to enforce the laws, suppress insurrection or repel invasion.

Illinois Emergency Management Agency Act (See also "*Illinois Emergency Management Agency Act*")

The Illinois Emergency Management Agency (IEMA) Act (20 ILCS 3305/1 et seq. (West 2000)) was enacted to ensure that a State-wide plan was prepared for preserving the lives and property of the people of the State and for protecting the public peace, health and safety in the event of a disaster. (20 ILCS 3305/2 (West 2000).)

In the event of a disaster, as that term is defined in the Act, the Governor may, by proclamation, declare that a disaster exists and thereafter exercise certain emergency powers. (20 ILCS 3305/6, 7 (West 2001 Supp.))

Section 4 of the IEMA Act (20 ILCS 3305/4 (West 2001 Supp.)) defines "disaster" as follows:

“Disaster’ means an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or technological case, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe or inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, or acts of domestic terrorism.”

The definition of "disaster is intentionally broad, so as to include all types of occurrences, both natural and man-made, and to permit prevention as well as remediation of damage and loss. (See Remarks of Rep. Mahar, May 19, 1975, House Debate on House Bill No. 1109, at 190.) The definition of "disaster" includes: (1)

“epidemic”, which is defined generally as “\* \* \* [a]n outbreak of contagious disease that spreads rapidly” (American Heritage Dictionary 459 (2d College ed. 1982)); and (2) “acts of domestic terrorism”. The use of those terms clearly contemplates that threats to the health and safety of the public from contagious or infectious disease may constitute “disasters”. (See Ill. Att’y Gen. Op. No. I-02-050, issued October 25, 2002.)

With regard to the specific emergency powers of the Governor, subsection 7(a) of the IEMA Act (20 ILCS 3305/7(a) (West 2001 Supp.)) provides that in the event of a disaster, the Governor may, by proclamation, declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period of time not to exceed 30 days the emergency powers set out in that section. In informal Attorney General opinion No. I-01-028, issued July 2, 2001, it was determined that the emergency powers of the Governor cannot be extended beyond the 30 day period permitted in subsection 7(a)(1) of the IEMA Act without legislative approval.

Below is a list of the powers that the Governor may exercise pursuant to subsection 7(a) of the IEMA Act (20 ILCS 3305/7(a):

*Suspension of Statutes and Rules*

Suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by IEMA, in coping with disaster. (20 ILCS 3305/7(a)(1) (West 2001 Supp.)) (See Ill. Att’y Gen. Op. No. I-02-050, issued October 25, 2002.)

*Utilize State and Local Resources; Transfer Direction of Personnel*

Utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State. (20 ILCS 3305/7(a)(2) (West 2001 Supp.))

Transfer the direction, personnel, or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs. (20 ILCS 3305/7(a)(3) (West 2001 Supp.))

*Takings of Real and Personal Property*

On behalf of this State to take possession of, and to acquire full title or a lesser specified interest in, any personal property as may be necessary to accomplish the objectives set forth in section 2 of the Act, including: airplanes, automobiles, trucks, trailers, buses, and other vehicles; coal, oils, gasoline, and other fuels and means of propulsion; explosives, materials, equipment, and supplies; animals and livestock; feed and seed; food and provisions for humans and animals; clothing and bedding; and medicines and medical and surgical supplies; and to take possession of and for a limited period of time occupy and use any real estate necessary to accomplish those objectives; but only upon the

undertaking by the State to pay just compensation as provided in the Act. (20 ILCS 3305/7(a)(4) (West 2001 Supp.).)

Subsection 7(a)(4) sets forth a procedure for providing for just compensation. Specifically, the Governor or persons who take possession of property shall simultaneously with the taking, deliver to the owner or his or her agent, if the identity of the owner or agent is readily ascertainable, a signed statement in writing that shall include: the name and address of the owner, the date and place of the taking, a description of the property sufficient to identify it, a statement of interest in the property that is being taken, and if possible, a statement in writing, signed by the owner setting forth the sum that he or she is willing to accept as just compensation for the property or use. Whether or not the owner or agent is readily ascertainable, a copy of the statement shall promptly be filed by the Governor or the person with the Director of IEMA, who shall keep the docket of the statements.

In cases where the sum the owner is willing to accept as just compensation is less than \$1,000, copies of the statement shall also be filed by the IEMA Director with and shall be passed upon by the Emergency Management Claims Commission. (The Emergency Management Claims Commission consists of 3 disinterested citizens who shall be appointed by the Governor by and with the advice of the Senate, within 20 days after the Governor's declaration of a disaster.) If the sum fixed as just compensation is less than \$1,000 and is accepted in writing by the owner, then the State Treasurer out of funds appropriated for those purposes, shall, upon certification by the Emergency Management Claims Commission, cause the sum so certified to be paid to the owner.

When the compensation to be paid for the taking or use of property or interest is not or cannot be determined and paid under the above procedure, a petition in the name of The People of the State of Illinois shall be promptly filed by the IEMA Director, which filing may be enforced by mandamus, in the circuit court of the county where the property is located when initially taken or used praying that the amount of compensation to be paid to the person interested therein shall be fixed and determined. The contents of the petition are set out and it is noted that the litigation shall be handled by the Attorney General for and on behalf of the State.

Just compensation for the taking or use of property shall be promptly ascertained in proceedings and established by judgment against the State, that shall include, as part of the just compensation so awarded, interest at the rate of 6% per annum on the fair market value of the property or interest therein from the date of the taking or use to the date of judgment.

#### *Distribution of Property*

When required by the exigencies of the disaster, to sell, lend, rent, give or

distribute all or any part of property so or otherwise acquired to the inhabitants of the State, or to political subdivisions of the State, or under the interstate mutual aid agreements or compacts as are entered into under subsection 6(c)(5) to other States, and to account for and transmit to the State Treasurer all funds, if any, received therefor. (20 ILCS 3305/7(a)(5) (West 2001 Supp.))

#### Evacuation

Recommend the evacuation of all or part of the population from any stricken or threatened area within the State if the Governor deems this action necessary. (20 ILCS 3305/7(a)(6) (West 2001 Supp.))

Prescribe routes, modes of transportation, and destinations in connection with evacuation. (20 ILCS 3305/7(a)(7).)

#### Ingress / Egress

Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein. (20 ILCS 3305/7(a)(8) (West 2001 Supp.))

Subsection 7(a)(8) has been construed to include the authority to quarantine persons within the entirety of a declared disaster area or within any premises located within the disaster area. (Ill. Att'y Gen. Op. No. I-02-050, issued October 25, 2002; see also Ill. Att'y Gen. Op. No. I-01-028, issued July 2, 2001.)

#### Rationing / Sale / Price of Goods and Services

Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocations or other means, the use, sale, or distribution of food, fuel, clothing and other commodities, materials, goods or services. (20 ILCS 3305/7(a)(12) (West 2001 Supp.))

Suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives, and combustibles. (20 ILCS 3305/7(a)(9) (West 2001 Supp.))

Prohibit increases in the prices of goods and services during a disaster. (20 ILCS 3305/7(a)(14) (West 2001 Supp.))

#### Emergency Housing

Make provision for the availability and use of temporary emergency housing. (20 ILCS 3305/7(a)(10) (West 2001 Supp.))

#### Commander in Chief of Militia

During the continuance of any disaster, the Governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the Governor shall delegate or assign command authority to do so by orders issued at the time of the

disaster. (20 ILCS 3305/7(a)(13) (West 2001 Supp.).)

Other Powers

Perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population. (20 ILCS 3305/7(a)(12) (West 2001 Supp.).)

Disaster Relief Act

The Disaster Relief Act (15 ILCS 30/0.01 et seq. (West 2000)) authorizes the Governor to draw upon the Disaster Relief Fund in order to provide services or to reimburse local governmental bodies providing services whenever funds regularly appropriate to the State and local governmental bodies for disaster response and recovery are insufficient to provide services, and when the Governor has declared a disaster by proclamation pursuant to the IEMA Act. (15 ILCS 30/1 (West 2000).)

The fund may be used for: payment of emergency employees; payment of the Illinois National Guard when called to active duty; for disaster-related expenses of State Agencies and Departments; and for emergency purchase or renting of equipment and commodities. The fund shall be used for furnishing emergency services and relief to the disaster area as a whole and shall not be used to provide private relief to persons sustaining property damages or personal injury as a result of a disaster. (15 ILCS 30/1 (West 2000).)

Emergency Management Assistance Compact (EMAC) Act (See also "EMAC Act")

The Emergency Management Assistance Compact (EMAC) Act (45 ILCS 151/1 et seq. (West 2001 Supp.)) is a mutual aid agreement and partnership between states that authorizes the party states to share resources during an emergency or disaster declared by the Governor of the affected states.

## ILLINOIS EMERGENCY MANAGEMENT AGENCY (IEMA) ACT

The Illinois Emergency Management Agency (IEMA) Act (20 ILCS 3305/1 et seq. (West 2000)) was enacted to ensure that a State-wide plan was prepared for preserving the lives and property of the people of the State and for protecting the public peace, health and safety in the event of a disaster. (20 ILCS 3305/2 (West 2000).)

### Limitations

Section 3 of the Act (20 ILCS 3305/3 (West 2001 Supp.)) provides that nothing in the Act shall be construed to: interfere with the course or conduct of a labor dispute; interfere with dissemination of news or comment of public affairs, but any communication facility or organization may be requested to transmit or print public service messages furnishing information or instructions in connection with a disaster; affect the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the U.S. or any personnel thereof, when on active duty; but State and political emergency operations plans shall place reliance upon the forces available for performance of emergency management functions; limit, modify or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in the Governor under the constitution, statutes, or common law of the State; limit any home rule unit; or prohibit any contract or association pursuant to Article VII, Section 10 of the Illinois Constitution of 1970.

### Definitions

Section 4 of the IEMA Act (20 ILCS 3305/4 (West 2001 Supp.)) defines a number of terms. Section 4 defines “disaster” as follows:

“‘Disaster’ means an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or technological case, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe or inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, or acts of domestic terrorism.”

The definition of “disaster is intentionally broad, so as to include all types of occurrences, both natural and man-made, and to permit prevention as well as remediation of damage and loss. (See Remarks of Rep. Mahar, May 19, 1975, House Debate on House Bill No. 1109, at 190.) The definition of “disaster”: (1) “epidemic”, which is defined generally as “\* \* \* [a]n outbreak of contagious disease that spreads rapidly” (American Heritage Dictionary 459 (2d College ed. 1982)); and (2) “acts of domestic terrorism”. The use of those terms clearly contemplates that threats to the health and safety of the public from contagious or infectious disease may constitute “disasters”. (See Ill. Att’y Gen. Op. No. I-02-050, issued October 25, 2002.)

### IEMA Powers and Duties

Section 5 of the Act (20 ILCS 3305/5 (West 2001 Supp.)), as amended by Public Act (92-597, effective June 28, 2002) creates IEMA and sets out the powers and duties of IEMA.

### Emergency Management Powers of the Governor

Section 6 (20 ILCS 3305/6 (West 2001 Supp.)) sets out the emergency management powers of the Governor, including the authority to: make, amend, and rescind all lawful necessary orders, rules, and regulations to carry out the provisions of the Act within the limits of authority conferred upon the Governor; cause to be prepared a comprehensive plan and program for the emergency management of the State; procure and preposition supplies, medicines, materials, and equipment, institute training programs and public information programs, and to take all other preparatory steps including the mobilization of emergency services and disaster agencies in advance of actual disaster to insure the furnishing of adequately trained and equipped forces for disaster response; make studies and surveys of the industry, resources, and facilities in the State as may be necessary to ascertain the capabilities of the State for emergency management phases of mitigation, preparedness, response, and recovery and to plan for the most efficient emergency use thereof; and on behalf of the State, negotiate for and submit to the General Assembly for its approval or rejection reciprocal mutual aid agreements or compacts with other states, either on a statewide or political subdivision basis. If the General Assembly is not in session and the Governor has not proclaimed the existence of a disaster, section 6 provides for an Interim Committee on Emergency Management composed of 5 Senators appointed by the President of the Senate and 5 Representatives appointed by the Speaker of the House of Representatives, to approve such agreements on behalf of the General Assembly. A 2/3 vote of the members of the Committee shall be necessary for the approval of any agreement or compact.

### Emergency Powers of the Governor (See also "Powers of the Governor")

Section 7 of the IEMA Act (20 ILCS 3305/7(a) (West 2001 Supp.)) provides that in the event of a disaster, the Governor may, by proclamation, declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period of time not to exceed 30 days the emergency powers set out in that section. In informal Attorney General opinion No. I-01-028, issued July 2, 2001, it was determined that the emergency powers of the Governor cannot be extended beyond the 30 day period permitted in subsection 7(a)(1) of the IEMA Act without legislative approval.

Below is a list of the powers that the Governor may exercise pursuant to subsection 7(a) of the IEMA Act (20 ILCS 3305/7(a)):

#### *Suspension of Statutes and Rules*

Suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by IEMA, in coping with disaster. (20 ILCS 3305/7(a)(1))

(West 2001 Supp.) (See Ill. Att’y Gen. Op. No. I-02-050, issued October 25, 2002.)

*Utilize State and Local Resources; Transfer Direction of Personnel*

Utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the State. (20 ILCS 3305/7(a)(2) (West 2001 Supp.).)

Transfer the direction, personnel, or functions of State departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs. (20 ILCS 3305/7(a)(3) (West 2001 Supp.).)

*Takings of Real and Personal Property*

On behalf of this State to take possession of, and to acquire full title or a lesser specified interest in, any personal property as may be necessary to accomplish the objectives set forth in section 2 of the Act, including: airplanes, automobiles, trucks, trailers, buses, and other vehicles; coal, oils, gasoline, and other fuels and means of propulsion; explosives, materials, equipment, and supplies; animals and livestock; feed and seed; food and provisions for humans and animals; clothing and bedding; and medicines and medical and surgical supplies; and to take possession of and for a limited period of time occupy and use any real estate necessary to accomplish those objectives; but only upon the undertaking by the State to pay just compensation as provided in the Act. (20 ILCS 3305/7(a)(4) (West 2001 Supp.).)

Subsection 7(a)(4) sets forth a procedure for providing for just compensation. Specifically, the Governor or persons who take possession of property shall simultaneously with the taking, deliver to the owner or his or her agent, if the identity of the owner or agent is readily ascertainable, a signed statement in writing that shall include: the name and address of the owner, the date and place of the taking, a description of the property sufficient to identify it, a statement of interest in the property that is being taken, and if possible, a statement in writing, signed by the owner setting forth the sum that he or she is willing to accept as just compensation for the property or use. Whether or not the owner or agent is readily ascertainable, a copy of the statement shall promptly be filed by the Governor or the person with the Director of IEMA, who shall keep the docket of the statements.

In cases where the sum the owner is willing to accept as just compensation is less than \$1,000, copies of the statement shall also be filed by the IEMA Director with and shall be passed upon by the Emergency Management Claims Commission. (The Emergency Management Claims Commission consists of 3 disinterested citizens who shall be appointed by the Governor by and with the advice of the Senate, within 20 days after the Governor’s declaration of a disaster.) If the sum fixed as just compensation is less than \$1,000 and is accepted in writing by the owner, then the State Treasurer out of funds

appropriated for those purposes, shall, upon certification by the Emergency Management Claims Commission, cause the sum so certified to be paid to the owner.

When the compensation to be paid for the taking or use of property or interest is not or cannot be determined and paid under the above procedure, a petition in the name of The People of the State of Illinois shall be promptly filed by the IEMA Director, which filing may be enforced by mandamus, in the circuit court of the county where the property is located when initially taken or used praying that the amount of compensation to be paid to the person interested therein shall be fixed and determined. The contents of the petition are set out and it is noted that the litigation shall be handled by the Attorney General for and on behalf of the State.

Just compensation for the taking or use of property shall be promptly ascertained in proceedings and established by judgment against the State, that shall include, as part of the just compensation so awarded, interest at the rate of 6% per annum on the fair market value of the property or interest therein from the date of the taking or use to the date of judgment.

#### *Distribution of Property*

When required by the exigencies of the disaster, to sell, lend, rent, give or distribute all or any part of property so or otherwise acquired to the inhabitants of the State, or to political subdivisions of the State, or under the interstate mutual aid agreements or compacts as are entered into under subsection 6(c)(5) to other States, and to account for and transmit to the State Treasurer all funds, if any, received therefor. (20 ILCS 3305/7(a)(5) (West 2001 Supp.).)

#### *Evacuation*

Recommend the evacuation of all or part of the population from any stricken or threatened area within the State if the Governor deems this action necessary. (20 ILCS 3305/7(a)(6) (West 2001 Supp.).)

Prescribe routes, modes of transportation, and destinations in connection with evacuation. (20 ILCS 3305/7(a)(7).

#### *Ingress / Egress*

Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein. (20 ILCS 3305/7(a)(8) (West 2001 Supp.).)

Subsection 7(a)(8) has been construed to include the authority to quarantine persons within the entirety of a declared disaster area or within any premises located within the disaster area. (Ill. Att'y Gen. Op. No. I-02-050, issued October 25, 2002; see also Ill. Att'y Gen. Op. No. I-01-028, issued July 2, 2001.)

Rationing / Sale / Price of Goods and Services

Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocations or other means, the use, sale, or distribution of food, fuel, clothing and other commodities, materials, goods or services. (20 ILCS 3305/7(a)(12) (West 2001 Supp.).)

Suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives, and combustibles. (20 ILCS 3305/7(a)(9) (West 2001 Supp.).)

Prohibit increases in the prices of goods and services during a disaster. (20 ILCS 3305/7(a)(14) (West 2001 Supp.).)

Emergency Housing

Make provision for the availability and use of temporary emergency housing. (20 ILCS 3305/7(a)(10) (West 2001 Supp.).)

Commander in Chief of Militia

During the continuance of any disaster, the Governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty. To the greatest extent practicable, the Governor shall delegate or assign command authority to do so by orders issued at the time of the disaster. (20 ILCS 3305/7(a)(13) (West 2001 Supp.).)

Other Powers

Perform and exercise any other functions, powers, and duties as may be necessary to promote and secure the safety and protection of the civilian population. (20 ILCS 3305/7(a)(12) (West 2001 Supp.).)

Mobile Support Teams

Section 8 of the Act (20 ILCS 3305/8 (West 2001 Supp.)) authorizes the Governor to create Mobile Support Teams to aid and to reinforce IEMA, and emergency services and disaster agencies (ESDAs) in areas stricken by disaster. Each mobile support team shall have a leader, selected by the Director, who will be responsible for the organization, administration and training and operation of the mobile support team.

Personnel of a mobile support team while on duty pursuant to a call or while engaged in regularly scheduled training or exercises, shall either: (1) if they are paid employees of the State, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment; (2) if they are paid employees of a political subdivision or body politic of the State and whether serving within or without that political subdivision or body politic, have the powers, duties, rights, privileges, immunities and receive the compensation incidental to their employment; or (3) if they are not employees of the State, political subdivision or body politic, or being such employees, are not normally paid for their services, be entitled to at least one dollar per year compensation from the State.

Personnel of a mobile support team who suffer disease, injury or death arising out of or in the course of emergency duty, shall for the purposes of benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act only, be deemed to be employees of this State. If the person diseased, injured, or killed is an employee described in (3) above, the computation of benefits payable under either of those Acts shall be based on income commensurate with comparable State employees doing the same type of work or income from the person's regular employment, whichever is greater.

Provides for reimbursement of actual and necessary travel and subsistence expenses for mobile support team members while on duty.

#### Financing

Section 9 of the Act (20 ILCS 3305/9 (West 2001 Supp.)) provides that it is the intent of the Legislature and declared to be the policy of the State that funds to meet disasters shall always be available. Provides that it is the intent that first recourse shall be to funds regularly appropriated to State and political subdivision departments and agencies. Authorizes the Governor to make funds available from the Disaster Relief Fund.

#### Emergency Services and Disaster Agencies (ESDAs)

Section 10 (20 ILCS 3305/10 (West 2001 Supp.)) provides for emergency services and disaster agencies (ESDAs). Subsection 10(g) requires each ESDA to prepare an emergency operations plan for its geographic boundaries.

Subsection 10(k) (20 ILCS 3305/10k (West 2001 Supp.)) provides that volunteers who, while engaged in a disaster, an exercise, training related to the emergency operations plan of the political subdivision, or a search and rescue team response to an occurrence or threat of injury or loss of life that is beyond local response capabilities, suffer disease, injury, or death, shall for purposes of the Workers' Compensation Act or Workers' Occupational Diseases Act only, be deemed employees of the State, if: (1) the claimant is a duly qualified and enrolled (sworn in) as a volunteer of IEMA or an ESDA agency accredited by IEMA; and (2) if the claimant was participating in a disaster as defined in section 4, the exercise or training participated in was specifically and expressly approved by IEMA, or the search and rescue team response was to an occurrence or threat of injury or loss of life was beyond local response capabilities and was specifically and expressly approved by IEMA prior to the search and rescue response. The computation of benefits under either of those Acts shall be based on the income commensurate with comparable State employees doing the same type of work or income from the person's regular employment, whichever is greater.

If any person who is entitled to receive benefits through the application of this Section receives, in connection with the disease, injury or death giving rise to such entitlements, benefits under an Act of Congress or federal program, benefits payable under this Section shall be reduced to the extent of benefits under that other Act or program.

Informal Attorney General Opinion No. I-88-019, issued May 4, 1988, discussed workers' compensation coverage for firefighters, police officers, or volunteers who are injured in the course of responding to a mutual aid call from a jurisdiction other than those in which they are normally employed. The opinion construed the workers' compensation coverage provided to Emergency Services and Disaster Agency personnel pursuant to subsection 11(k) of the IEMA Act (currently codified in subsection 10(k) of the Act) when the prerequisites of that section are met. The opinion also construed the determination of which entity would be liable for workers' compensation coverage when the prerequisites of subsection 11(k) are not met.

#### Local Disaster Declarations

Section 11 of the Act (20 ILCS 3305/11 (West 2001 Supp.)) provides for local disaster declarations by the principal executive officers of a political subdivision. The effect of a declaration of a local disaster is to activate the emergency operations plan of that political subdivision and to authorize the furnishing of aid and assistance thereunder.

#### Immunity (See also "*Immunity / Liability*")

Section 15 of the Illinois Emergency Management Agency Act (20 ILCS 3305/15 (West 2001 Supp.)) provides that neither the State, any political subdivision of the State, nor, except in cases of gross negligence or willful misconduct, the Governor, the Director, the Principal Executive Officer of a political subdivision, or the agents, employees, or representatives of any of them, engaged in any emergency management response or recovery activities, while complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act is liable for the death of or any injury to persons, or damage to property as a result of such activity.

Subsection 21(a) of the Act (20 ILCS 3305/21(a) (West 2001 Supp.)) provides that any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of such real estate or premises for the purpose of sheltering persons during an actual or impending disaster, or an exercise together with his or her successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises, or for negligently causing loss of, or damage to, the property of such person.

Subsection 21(b) of the Act (20 ILCS 3305/21(b) (West 2001 Supp.)) provides that any private person, firm or corporation and employees and agents of such person, firm or corporation, in the performance of a contract with, and under the direction of the State or any political subdivision thereof, under the provisions of this Act shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the case of willful misconduct.

Subsection 21(c) of the Act (20 ILCS 3305/21(c) (West 2001 Supp.)) provides that any private person, firm or corporation who renders assistance or advice at the request of the State, or any political subdivision thereof, during an actual or impending disaster, shall not be civilly liable for causing the death of, or injury to, any person or damage to

any property except in the event of willful misconduct. Such immunities in this subsection shall not apply, however, to any private person, firm or corporation, or any employee or agent thereof, whose act or omission caused in whole or in part the actual or impending disaster and who would otherwise be liable therefor.

Use of Licensed Professionals from Outside Illinois (See also "*Licensed Professionals*") Section 16 (20 ILCS 3305/16 (West 2000)) provides that if a disaster as defined in section 4 of the Act occurs in Illinois and the services of persons who are competent to practice any profession, trade or occupation are required in this State to cope with the disaster and it appears that the number of persons licensed or registered in this State may be insufficient for such purpose, then any persons who are licensed elsewhere to practice any such profession, trade or occupation may, if a member of a mobile support team or unit of another State rendering aid in this State pursuant to order of the Governor of their home state and upon the request of the Governor of this State, or if otherwise requested to do so by the Governor or the Director of IEMA of this State, during the time the disaster continues, practice such profession, trade or occupation in this State without being licensed or registered in this State.

#### Emergency Management Agency Personnel Oath

Section 20 (20 ILCS 3305/20 (West 2001 Supp.)) provides that each person, whether compensated or not compensated, who is appointed to serve in any capacity with IEMA or an ESDA shall, before entering upon his or her duties, take an oath, in writing, before the Director or before the coordinator of that ESDA or before other persons authorized to administer oaths in this State. Section 20 sets out the form of the oath and provides that the oath shall be filed with the Director or the ESDA coordinator.

## **EMERGENCY MANAGEMENT ASSISTANCE COMPACT (EMAC) ACT**

The Emergency Management Assistance Compact (EMAC) Act (45 ILCS 151/1 et seq. (West 2001 Supp.)) is a mutual aid agreement and partnership between states that authorizes the party states to share resources during an emergency or disaster declared by the Governor of the affected states. All states, except California, have enacted a version of EMAC. (NOTE: Contact information for attorneys from border states is included in the enclosed TOPOFF 2 Legal Team participant lists.)

### **Article I - Purposes and Authority**

Article I of EMAC (45 ILCS 151/5 (West 2001 Supp.)) sets out the purposes and authorities for the compact. The compact is made and entered into by and between the participating member states, referred to as “party states”. The purpose of the compact is to provide for mutual assistance between the states entering into the compact in managing any emergency or disaster that is declared by the Governor of the affected states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

The compact additionally provides for mutual cooperation during emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states.

### **Article II - General Implementation**

Article II (45 ILCS 151/5 (West 2001 Supp.)) provides, among other things, that the prompt, full and effective utilization of resources of the participating states that are essential to the safety, care and welfare of the people in the event of an emergency or disaster declared by the Governor shall be the underlying principle on which all articles shall be understood.

On behalf of the Governor of each state participating in the compact, the legally designated official who is assigned responsibility for emergency management will be responsible for formulation of appropriate interstate mutual aid plans and procedures necessary to implement the compact.

### **Article III - Party State Responsibilities**

Article III (45 ILCS 151/5 (West 2001 Supp.)) sets out the responsibilities of each party state. Each state is to formulate procedural plans and programs for interstate cooperation. Article III provides that in formulating such plans, party states, insofar as practical, shall: review individual state hazards analyses to determine all those potential emergencies party states might jointly suffer; review party state’s emergency plans and develop a plan which will determine the mechanism for interstate management and provision of assistance; develop interstate procedures to fill any identified gaps and to resolve inconsistencies in existing or developed plans; assist in warning communities adjacent to or crossing state boundaries; protect and assure uninterrupted delivery of

services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services and resources; inventory and set procedures for interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and provide to the extent authorized by law, for temporary suspension of any state statutes.

The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. Requests may be verbal or in writing. Verbal requests must be confirmed in writing within 30 days. Includes a list of items which must be included within a request.

#### Article IV - Limitations

Article IV ((45 ILCS 151/5 (West 2001 Supp.)) provides that any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof. It is understood, however, that a state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance.

#### Article V - Licenses and Permits (See also "Licensed Professionals")

Article V (45 ILCS 151/5 (West 2001 Supp.)) provides that whenever any person holds 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, 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.

#### Article VI - Liability (See also "Immunity / Liability")

Article VI (45 ILCS 151/5 (West 2001 Supp.)) provides that officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith shall not include willful misconduct, gross negligence or gross recklessness.

#### Article VII - Supplementary Agreements

Article VII (45 ILCS 151/5 (West 2001 Supp.)) provides that nothing in the compact precludes any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel, and equipment and supplies.

#### Article VIII - Compensation (See also "Workers' Compensation")

Article VII (45 ILCS 151/5 (West 2001 Supp.)) provides that each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

#### Article IX - Reimbursement

Article IX (45 ILCS 151/5 (West 2001 Supp.)) provides that any party state rendering aid in another state pursuant to the compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and the costs incurred in connection with such requests. Any aiding state, however, may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost. Any two or more states may enter into supplementary agreements establishing a different allocation of costs among those state. Article VIII expenses shall not be reimbursable under this section.

#### Article X - Evacuation

Article X (45 ILCS 151/5 (West 2001 Supp.)) provides that plans for the orderly evacuation and interstate reception of portions of the civilian population as a result of any emergency or disaster shall be worked out and maintained between the party states and the emergency management services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put

into effect by request of the state from which evacuees come. Provides for contents of such plans.

#### Article XI - Implementation

Article XI (45 ILCS 151/5 (West 2001 Supp.)) provides that the compact becomes operative immediately upon its enactment into law by any 2 states; thereafter, to become effective as to any other state upon its enactment by such state. Article XI additionally provides a procedure for a state to withdraw from the compact; and provides for copies of the compact to be deposited at each party state and with the

Federal Emergency Management Agency and other appropriate agencies of the U.S. government.

Article XII - Validity

Article XII (45 ILCS 151/5 (West 2001 Supp.)) provides that the Act shall be construed to effectuate the purposes stated in Article I. If any provision of the compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Article XIII - Additional Provisions

Article XIII (45 ILCS 151/5 (West 2001 Supp.)) provides that nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or Air Force would be in the absence of express statutory authorization be prohibited under section 1385 of title 18, United States Code.

## STATE PUBLIC HEALTH POWERS

### General Public Health Powers

The Illinois Department of Public Health (IDPH) has general supervision of the interests of the health and lives of the people of Illinois. (20 ILCS 2305/2; 20 ILCS 2310/2310-15 (West 2000).) IDPH may delegate its duties to county and multiple-county boards of health. (20 ILCS 2310/2310-15 (West 2000).)

IDPH has broad rule-making authority for the preservation and improvement of the public health. All local boards of health, health authorities and officers, police officers, sheriffs and all other officers and employees of the state or any locality shall enforce the rules and regulations so adopted. (20 ILCS 2305/2 (West 2000).) Whoever violates or refuses to obey any rule or regulation of IDPH shall be deemed guilty of a Class A misdemeanor. The Director of Public Health shall institute prosecutions and proceedings for violation of such rules and regulations, provided that he may designate a local board of health or local health officer to institute prosecutions or proceedings for such violations. Each State's Attorney shall prosecute all actions in his county violating or refusing to obey the rules and regulations of IDPH. (20 ILCS 2305/8.1 (West 2000).)

### Quarantine, Isolation, Closure of Facilities (See also: "*Quarantine / Isolation / Closure*")

IDPH has supreme authority in matters of quarantine, and may declare and enforce quarantine when none exists, and may modify or relax quarantine when it has been established. (20 ILCS 2305/2 (West 2000).)

IDPH is authorized to order a person to be quarantined or isolated or a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease until such time as the condition may be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists. (20 ILCS 2305/2(b) (West 2000).) No person may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public, however, except with the consent of the person or the owner of the place or upon the order of a court of competent jurisdiction. (20 ILCS 2305/2(c) (West 2000).) In order to obtain a court order, IDPH must prove, by clear and convincing evidence, that the public's health and welfare are significantly endangered and that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. (20 ILCS 2305/2(c) (West 2000).)

Any person who knowingly or maliciously disseminates any false information or report concerning the existence of any dangerously contagious or infectious disease in connection with the Department's power of quarantine, isolation, or closure or refuses to comply with a quarantine, isolation or closure order is guilty of a Class A misdemeanor.

Informal Attorney General Opinion No. I-02-050, issued October 25, 2002, addressed the issue of enforcement of quarantine orders. That opinion also construed the

Governor's emergency powers pursuant to the Illinois Emergency Management Agency Act. Specifically, it was determined therein that the Governor could provide for the quarantine of persons within the entirety of a declared disaster area or within any premises located within the disaster area pursuant to the language of subsection 7(a)(8) of the IEMA Act. (20 ILCS 3305/7(a)(8) (West 2001 Supp.)) That section authorizes the Governor to control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein. Additionally, it was noted therein that pursuant to subsection 7(a)(1) of the IEMA Act, the Governor could suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance would in any way prevent, hinder or delay necessary action. Thus, in appropriate circumstances, the Governor could suspend the provisions of the Department of Public Health Act and any rules adopted pursuant thereto with regard to quarantine if strict compliance therewith would prevent, hinder, or delay response to a disaster or interfere with the exercise of his emergency powers.

Control of Communicable Diseases (See also "*Communicable Disease Reporting*") IDPH is required to investigate the causes of and take means to restrict and suppress dangerously contagious or infectious diseases. (20 ILCS 2305/2 (West 2000).) If a local board of health or local authorities neglect or refuse to enforce efficient measures to restrict or suppress such disease, or neglect or refuse to act with sufficient promptness or efficiency, IDPH may enforce such measures as it deems necessary to protect the public health. (20 ILCS 2305/2 (West 2000).)

IDPH has adopted the Control of Communicable Diseases Code (77 Ill. Adm. Code 690.100 et seq.) which requires that reporting entities report diseases and conditions to local health departments who, in turn, report the same to IDPH. With regard to reporting during a bioterrorism event in Illinois, the Control of Communicable Disease Code (77 Ill. Adm. Code. 690.100) requires that the following diseases shall be reported immediately to local health authorities, who shall then report to the Department immediately: anthrax; botulism, food borne; plague; Q-fever; smallpox; tularemia; and any suspected bioterrorist threat or event.

The Illinois Communicable Disease Report Act (745 ILCS 45/1 et seq. (West 2000)) provides that reports of communicable disease made pursuant to State statute or local ordinance shall be confidential, and provides immunity from suit for slander or libel to medical practitioners or other persons who make reports in good faith.

IDPH is authorized to adopt and has adopted rules requiring that upon death of a person who had or is suspected of having an infectious or communicable disease that could be transmitted through contact with the person's body or bodily fluids, the body shall be labeled "Infection Hazard", or with an equivalent term to inform persons having subsequent contact with the body, including, any funeral director or embalmer, to take suitable precautions. Such rules shall require that the label shall be prominently displayed on and affixed to the outer wrapping or covering of the body if the body is wrapped or covered. Responsibility for such labeling shall lie with the attending

physician who certifies death, or if the death occurs in a health care facility, with such staff member as may be designated by the administrator of the facility. (20 ILCS 2305/7 (West 2000); 77 Ill. Adm. Code 690.1200).)

## **LOCAL PUBLIC HEALTH POWERS**

### **Municipalities**

Generally, the corporate authorities of each municipality may do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases. (65 ILCS 5/11-20-5 (West 2000).)

The corporate authorities of each municipality may provide for and maintain a board of health, consisting of more than one person, and to prescribe its powers and duties, except where a municipality has adopted the provisions of Division 17 of the Code. (65 ILCS 5/11-16-1 (West 2000).)

Division 17 of the Illinois Municipal Code (65 ILCS 5/11-17-1 et seq. (West 2000)) provides that, when authorized by referendum, the corporate authorities of each municipality with a population of more than 100,000 and less than 200,000 shall establish and maintain a public health board for the use and benefit of the municipality. The public health board has the authority to prevent and suppress contagious diseases, and may initiate and maintain programs or activities which from time to time may become necessary or proper for the promotion of public health within the jurisdiction of the board. (65 ILCS 5/11-17-5 (West 2000).)

It may be noted that section 7-4-1 of the Municipal Code (65 ILCS 5/7-4-1 (West 2000)) provides that the corporate authorities in all municipalities have jurisdiction in and over all places within one-half mile of the corporate limits for the purpose of enforcing health and quarantine ordinances and regulations.

Section 11-1-6 of the Municipal Code (65 ILCS 5/11-1-6 (West 2000)) provides that the corporate authorities of each municipality may by ordinance grant to the mayor the extraordinary powers and authority to exercise, by executive order, during a state of emergency, such of the powers of the corporate authorities as may be reasonably necessary to respond to the emergency.

### **City of Chicago**

Section 2-112-080 of the Chicago Municipal Code provides that the commissioner of health shall have the power to exercise the general police power of the City of Chicago to correct, by whatever means are necessary, any health hazard that presents an immediate risk to the life or health of one or more citizens of the City of Chicago. Also, Section 2-112-110 makes it the duty of the board of health, in cases of contagious or epidemic disease, to make such rules and regulations and to take such measures as it may in good faith believe and declare the public safety and health demand. It further provides that such emergency rules and regulations shall take effect immediately, even if not yet published. This is in addition to the board's general powers to enact regulations, found in section 2-112-100, which states that the board will formulate regulations for the implementation of health ordinances when in its opinion these are necessary, or are required pursuant to ordinance. Any person who violates any rule, order or sanitary regulation of the health department or board of health shall be fined

not less than \$100 nor more than \$500 for each offense. (Section 2-112-340.)

The Chicago Municipal Code requires communicable disease reporting. Section 2-112-130 provides that physicians and hospitals must report disease occurrence as required by the board. Section 7-20-010 defines the term “contagious, epidemic or communicable disease” by listing some twenty diseases and stating that the board may designate others. Section 2-112-160(d) provides that the commissioner has the duty to determine when a disease is communicable or epidemic. Section 7-20-020 requires that any physician or person in charge of any public or private institution, hospital or dispensary, or any other person who shall discover, prescribe for, treat any person having or suspected of having a contagious, epidemic, or communicable disease, shall report all the facts to the board within 24 hours.

The Chicago Municipal Code additionally authorizes compelled vaccination, medication and quarantine where necessary to stop epidemic. Section 2-112-9- provides that the board shall not pass any regulation which will compel any person to submit to immunization or to any medication against his will except when there shall be an epidemic of a disease, or an epidemic is or appears to be imminent and such a rule or regulation is necessary to arrest the epidemic and safeguard the health of the city. Section 2-112-170 provides that the board may cause a person having, or suspected of having, a communicable disease to be removed to a hospital or other safe place.

The Chicago Department of Public Health is authorized to enter, and investigate any premises where infectious disease is suspected and may order premises disinfected or closed, or vacated. (See 2-112-160, 2-112-220, 2-112-210.) Also, no one shall move or expose any person, sick or deceased, or thing infected with a contagious disease, except as allowed by the board of health. (See 7-20-808, 7-20-090, 7-20-100.)

## Counties

*Boards of Health Under Division 5-20 of Counties Coude (55 ILCS 5/5-20001 et seq. (West 2000)):*

Section 5-20001 of the Counties Code (55 ILCS 5/5-20001 (West 2000)) establishes boards of health. In counties under township organization, the board of health consists of the supervisor, assessor and town clerk of every town. In counties not under township organization, the board consists of the board of county commissioners.

Boards of health created under Division 5-20 have the following powers:

\* To make and enforce such rules tending to check the spread of the disease within the limits of the county or town as may be necessary on the breaking out of any dangerously communicable diseases within the county, town or immediate vicinity. (55 ILCS 5/5-20001 (West 2000).)

\* Specifically, the board may quarantine any house or houses or place where any infected person may be, and cause notices of warning to be put thereon, and require the disinfection of the house or place. (55 ILCS 5/5-20001 (West 2000).)

\* If a board of health fails, refuses or neglects to promptly take the necessary measures to preserve the public health, or refuses or neglects to carry out the rules and regulations of IDPH, thereupon IDPH may discharge such duties. (55 ILCS 5/5-20001; 20 ILCS 2305/2 (West 2000).)

\* Boards of health may additionally: do all acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; appoint physicians as health officers and prescribe their duties; incur the expenses necessary for the performance of their duties and powers; provide gratuitous vaccination and disinfection; and require reports of dangerously communicable diseases. (55 ILCS 5/5-20002 (West 2000).)

No board of health constituted under Division 5-20 shall function in any county during the period that Division 5-25 is in force in that county. (55 ILCS 5/5-20001, 5-20002 (West 2000).)

*County and Multiple-County Health Departments Under Division 5-25 of Counties Code (55 ILCS 5/5-25001 et seq. (West 2000)):*

Any county or two or more adjacent counties may, by resolution of the county board(s), or upon approval by referendum, establish and maintain a full-time health department. (55 ILCS 5/5-25001 (West 2000).) Each county and multiple-county health department is managed by a board of health. (55 ILCS 5/5-25012 (West 2000).)

The board of health of each county or multiple-county health department has the following powers (55 ILCS 5/5-25013 (West 2000)):

\* Within its jurisdiction, and professional and technical competence, enforce and observe all State laws pertaining to the preservation of health and all county and municipal county ordinances except as otherwise provided;

\* Within its jurisdiction, and professional and technical competence, investigate the existence of any contagious or infectious disease and adopt measures, not inconsistent with the regulations of IDPH to arrest the progress of the same;

\* Initiate and carry out programs and activities that may be deemed necessary or desirable in the promotion and protection of health and in the control of disease, including tuberculosis;

\* Recommend to the county board(s) the adoption of such ordinances, rules and regulations as may be deemed necessary or desirable for the promotion and protection of health and control of disease; and

\* Enter into contracts with the State, municipalities, other political subdivisions and non-official agencies for the purchase, sale or exchange of health services.

Each county and multiple-county health department has jurisdiction throughout the entire county or multiple-counties except within (1) any public health district established under the Public Health District Act (70 ILCS 905/0.01 et seq. (West 2000)); (2) any city, village or incorporated town or combination thereof of less than 500,000 inhabitants which maintains a local health department and employs a full-time health officer and other personnel possessing such qualifications as may be prescribed by IDPH; and (3) any city, village or incorporated town of 500,000 or more inhabitants. (55 ILCS 5/5-25008 (West 2000).) A city, village or town which maintains its own independent health department may, however, abandon it and become integrated in the county or multiple-county health department. (55 ILCS 5/5-25008 (West 2000).)

IDPH may classify such health departments and may promulgate rules and regulations setting forth minimum standards for programs and performance, and may prescribe minimum qualifications for professional, technical and administrative staff. (55 ILCS 5/5-25002 (West 2000).)

## Townships

*Boards of Health Under Division 5-20 of Counties Coude (55 ILCS 5/5-20001 et seq. (West 2000)):* (See above section under "Counties.")

*The Public Health District Act (70 ILCS 905/0.01 et seq. (West 2000)):*

Any town or 2 or more adjacent towns in a county under township organization, or any road district, or 2 or more road districts in a county not under township organization may be organized into a public health district, provided that the total population to be served by such district is not less than 75,000. (70 ILCS 905/1 (West 2000).) Each public health district is governed by a board of health. (70 ILCS 905/11 (West 2000).) Each board of health of a public health district is authorized to appoint a medical health officer or a Public Health Administrator as the executive officer of the board of health. (70 ILCS 905/15 (West 2000).)

The medical health officer or administrator shall have the following powers and duties (70 ILCS 905/17 (West 2000)):

\* To be the executive officer of the board of health;

\* To enforce and observe the rules, regulations and orders of IDPH and all State

laws pertaining to the preservation of the health of the people within the public health district;

\* To exercise the rights, powers and duties of all township boards of health and county boards of health within the public health district;

\* To execute and enforce, within the public health district, all city, village and incorporated town ordinances relating to public health and sanitation;

\* To investigate the existence of any contagious or infectious disease within the public health district and to adopt measures, with the approval of IDPH, to arrest the progress of the same;

\* If approved by the board of health, to enter into contracts with municipalities, other political subdivisions and private agencies for the purchase, sale, delivery or exchange of health services.

The board of health may additionally consult with other private and public health agencies in the district on the development of local plans for the most efficient performance of health services. (70 ILCS 905/15 (West 2000).)

## **FEDERAL PUBLIC HEALTH POWERS**

### **General Public Health Emergency Powers**

The Secretary of the Department of Health and Human Services (Secretary) may declare a public health emergency, and may take such action as may be appropriate to respond to the emergency, including making grants and entering into contracts, and conducting and supporting investigations into the cause, treatment, or prevention of a disease or disorder. (42 U.S.C. § 247d(a).) Declaration of a public health emergency requires consultation with public health officials, as may be necessary, and determination that: (1) a disease or disorder presents a public health emergency; or (2) a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exist. (42 U.S.C. § 247d(a).)

The Public Health Emergency Fund is established in the Treasury. If a public health emergency is declared, this Fund is made available to the Secretary to carry out its activities to respond to the emergency. Funds are to supplement, not supplant, other public funds. Congress may appropriate such funds as may be necessary. (42 U.S.C. § 247d(b).)

### **Establishment of Hospitals**

The Surgeon General, pursuant to regulations, may, with approval of the President, select suitable sites for and establish institutions, hospitals, and stations in the states and possessions of the U.S., which in his judgment are necessary to enable the Public Health Service to discharge its functions. (42 U.S.C. § 248.)

### **Public Health Service Commissioned Corps**

Public Health Service Commissioned Corps personnel may be detailed to another federal executive department or to a State health authority or to a State mental health authority at the request of the State health authority or State mental health authority to assist such State or a political subdivision thereof in work related to the functions of the Service. (42 U.S.C. § 215.)

### **National Disaster Medical System (NDMS)**

The Secretary shall provide for the operation of the National Disaster Medical System, which shall be a coordinated effort by Department of Health and Human Services, the Federal Emergency Management Agency, the Veterans Administration and the Department of Defense, working in collaboration with the states and other appropriate public or private entities. (42 U.S.C. § 300hh-11(b).)

The Secretary may activate the National Disaster Medical System to provide health services and health-related social services, other appropriate human services, and appropriate auxiliary services to respond to the needs of victims of a public health emergency; or to be present at locations, and for limited periods of time, specified by the Secretary on the basis that the Secretary has determined that a location is at risk of a public health emergency during the time specified. (42 U.S.C. § 300hh-11(b).)

The National Disaster Medical System was transferred to the Department of Homeland Security pursuant to the federal Homeland Security Act. References to “Secretary”, therefore, are references to the Secretary of Homeland Security.

#### Credentialing of Health Professionals

The Secretary is required to establish a system either directly, or through grant, contract, or cooperative agreement, for advance registration of health professionals for verifying credentials, licenses, accreditations, and hospital privileges, for when such professionals volunteer during a public health emergency. (42 U.S.C. § 247d-7b.)

#### Strategic National Stockpile

The Secretary, in coordination with the Secretary of Veterans Affairs, shall maintain a stockpile or stockpiles of drugs, vaccines, and other biological products, medical devices, and other supplies in such numbers, types, and amounts as are determined by the Secretary to be appropriate and practicable, taking into account other available sources, to provide for the emergency health security of the U.S., including the emergency health security of children and other vulnerable populations, in the event of a bioterrorist attack or other public health emergency. (42 U.S.C. § 300hh-12.)

The Strategic National Stockpile program was transferred to the Department of Homeland Security pursuant to the federal Homeland Security Act. References to “Secretary”, therefore, are references to the Secretary of Homeland Security.

#### Medicare, Medicaid and State Children’s Health Insurance Program (SCHIP) Waivers

Pursuant to 42 U.S.C. § 1320b-5, the Secretary is authorized to waive various Medicare, Medicaid, and State Children’s Health Insurance Program (SCHIP) requirements during an “emergency period”, which includes a public health emergency declared by the Secretary pursuant to 42 U.S.C. § 247d. Waiver of such requirements would facilitate the provision of health care services in an emergency area and during an emergency period, by exempting providers from the sanctions that would ordinarily follow from the failure to meet such requirements. For example, the Secretary could waive the requirements that physicians and other health care professionals be licensed in the State in which they provide services if they have equivalent licensing in another State and are not affirmatively excluded from practice in that State or in any State a part of which is included in the emergency area.

#### Control of Communicable Diseases / Quarantine Authority

The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. (42 U.S.C. § 264(a).) Regulations prescribed under this section may provide for the apprehension, detention or conditional release of individuals to prevent introduction, transmission, or spread of communicable diseases as specified in Executive Orders of the President upon recommendation of the Secretary, in consultation with the Surgeon General. (42 U.S.C. § 264(b).)

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is a serious danger of introduction of such disease into the United States, and that this danger is increased by the introduction of persons and property from such country, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose. (42 U.S.C. § 265.)

To protect the military and naval forces and war workers of the U.S., in the time of war, against any communicable disease specified in Executive orders, the Secretary, in consultation with the Surgeon General, is authorized to provide by regulations for the apprehension and examination, in time of war, of any individual reasonably believed to be infected with such disease and to be a probable source of infection to members of the armed forces of the U.S. or to individuals engaged in the production or transportation of arms, munitions, ships, food, clothing, or other supplies for the armed forces. Such regulations may provide that if upon examination any such individual is found to be so infected, he may be detained for such time and in such manner as may be reasonably necessary. (42 U.S.C. § 266.)

42 U.S.C. § 267 provides that the Surgeon General shall control, direct, and manage all U.S. quarantine stations.

42 U.S.C. § 268 provides that any consular or medical officer of the U.S., designated for such purpose by the Secretary, shall make reports to the Surgeon General of the health conditions at the port or place at which the officer is stationed; and provides that it is the duty of customs officers and Coast Guard officers to aid in the enforcement of quarantine rules and regulations.

42 U.S.C. § 269 requires and sets out the contents of bills of health for vessels at any foreign port or in a State or possession. Bills of health are to include the sanitary history and condition of such vessel, and shall state that it has in all respects complied with the regulations prescribed in that section.

The Secretary of the Department of Health and Human Services is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable disease and with other public health matters, shall cooperate with and aid State and local health authorities in the enforcement of their quarantine and other health regulations, and shall advise the several States on matters relating to the preservation and improvement of the public health. (42 U.S.C. § 243(a).)

Any person detained in accordance with quarantine laws may be treated and cared for by the Public Health Service. Such persons may also receive care and treatment from public or private medical or hospital facilities at the expense of the Service. (42 U.S.C.

§ 249.)

Interstate quarantine regulations

Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any communicable diseases from such State or possession to any other State or possession, he or she may take such measures to prevent such spread of disease as he or she deems reasonably necessary. (42 C.F.R. § 70.2).

A person who has a communicable disease in the communicable period is prohibited from traveling from one State or possession to another without a permit from the health officer of the State, possession or locality of destination, if such permit is required under the law applicable to the place of destination. 42 C.F.R. § 70.3

42 C.F.R. §70.5 provides specific travel restrictions concerning any person who is in the communicable period of cholera, plague, smallpox, typhus or yellow fever, or who having been exposed to any such disease, is in the incubation period. No such person may travel from one State or possession to another, or on a conveyance engaged in interstate traffic, without a permit of the Surgeon General.

42 C.F.R. § 70.4 requires the master of any vessel or person in charge of any conveyance engaged in interstate traffic, on which a case or suspected case of a communicable disease develops, to notify the local health authority at the next port of call as soon as practicable and to take measures to prevent the spread of the disease as the local health authority directs.

Foreign Quarantine Regulations

The provisions of 42 C.F.R. § 71.1 et seq. govern foreign quarantine. 42 C.F.R. § 71.21, for example, requires the master of a ship destined for a U.S. port or the commander of an aircraft destined for a U.S. airport to report immediately to the nearest quarantine station the occurrence on board of any death or ill person among passengers or crew.

42 C.F.R. § 71.32 authorizes the Director to detain, isolate, or place a person under surveillance whenever the Director has reason to believe that any arriving person is infected with or has been exposed to cholera or suspected cholera, diphtheria, infectious tuberculosis, plague, suspected smallpox, yellow fever, or suspected viral hemorrhagic fevers.

## COMMUNICABLE DISEASE REPORTING

### State Communicable Disease Reporting Requirements

(See also “*State Public Health Powers*”)

IDPH is required to investigate the causes of and take means to restrict and suppress dangerously contagious or infectious diseases. (20 ILCS 2305/2 (West 2000).) If a local board of health or local authorities neglect or refuse to enforce efficient measures to restrict or suppress such disease, or neglect or refuse to act with sufficient promptness or efficiency, IDPH may enforce such measures as it deems necessary to protect the public health. (20 ILCS 2305/2 (West 2000).)

IDPH has adopted the Control of Communicable Diseases Code (77 Ill. Adm. Code 690.100 et seq.) which requires that reporting entities report diseases and conditions to local health departments who, in turn, report the same to IDPH. With regard to reporting during a bioterrorism event in Illinois, the Control of Communicable Diseases Code, 77 Ill. Adm. Code. 690.100, requires that the following diseases shall be reported immediately to local health authorities, who shall then report to the Department immediately: anthrax; botulism, food borne; plague; Q-fever; smallpox; tularemia; and any suspected bioterrorist threat or event. Additionally, any unusual case or cluster of cases that may indicate a public health hazard must be reported within 24 hours.

The Communicable Disease Report Act (745 ILCS 45/1 (West 2000)) provides, among other things, that whenever any statute of this State or any ordinance or resolution of a municipal corporation or political subdivision or any rule of an administrative agency requires medical practitioners or other persons to report cases of injury, medical condition or procedure, communicable disease, venereal disease, or sexually transmitted disease to any governmental agency or officer, such reports shall be confidential, and any medical practitioner or other person making such report in good faith shall be immune from suit for slander or libel based upon any statements contained in such report.

Additionally, the identity of any individual who makes a report or who is identified in a report of an injury, medical condition or procedure, communicable disease, venereal disease, sexually transmitted disease or food-borne illness or an investigation conducted pursuant to such a report shall be confidential and the identity of any person making a report or named therein shall not be disclosed publicly or in any action of any kind in any court or before any tribunal, board or agency, provided that records and communications concerning a venereal disease or sexually transmitted disease in any minor under 11 years of age shall be disclosed in accordance with the provisions of the Abused and Neglected Child Reporting Act. An exception is also made for certain tests conducted pursuant to the Unified Code of Corrections.

In People ex rel. Director of Public Health v. Calvo (1992), 89 Ill. 2d 130, pursuant to provisions of the Communicable Disease Report Act (745 ILCS 45/1), the Illinois Supreme Court upheld the confidentiality of reports submitted to the Department of

Public Health relating to the control of venereal disease. Specifically, the court held that the State's Attorney's representation that reports submitted to the Department of Public Health relating to the control of venereal disease might lead the prosecution to other women whom a former Department employee allegedly molested while counseling them as part of the Department's sexually transmitted disease program and that such individuals might be willing to testify in trial on remaining charges of sexual misconduct was insufficient to overcome the statutory privilege maintaining confidentiality of such documents.

#### Local Communicable Disease Reporting Requirements (See also "Local Public Health Powers")

The current statutory provisions authorizing local public health authorities to control communicable disease are stated in broad terms and are differ depending upon the type of local health authority involved.

The Chicago Municipal Code requires communicable disease reporting. Section 2-112-130 provides that physicians and hospitals must report disease occurrence as required by the board. Section 7-20-010 defines the term "contagious, epidemic or communicable disease" by listing some twenty diseases and stating that the board may designate others. Section 2-112-160(d) provides that the commissioner has the duty to determine when a disease is communicable or epidemic. Section 7-20-020 requires that any physician or person in charge of any public or private institution, hospital or dispensary, or any other person who shall discover, prescribe for, treat any person having or suspected of having a contagious, epidemic, or communicable disease, shall report all the facts to the board within 24 hours.

#### HIPAA Impact Upon Communicable Disease Reporting (See also "HIPAA")

In 1996, Congress enacted the Health Insurance Portability and Accountability Act (HIPAA) to apply to health information created or maintained by health care providers who engage in certain electronic transactions, health plans, and health care clearinghouses. The Department of Health and Human Services has issued a Privacy Rule which provides comprehensive Federal protection for the privacy of health information. The Privacy Rule also recognizes fundamental public health activities need to continue in order to ensure public health and safety.

The Privacy Rule provides exceptions to the consent and authorization requirements for uses and disclosures required by law, uses and disclosures for public health activities and for health oversight. Thus, the Privacy Rule supports the Department of Public Health's continued ability to receive health information related to the mandated reporting of diseases, injury, and vital events as well as the Department's collection of data related to preventing or controlling injury, disease, vital events, public health surveillance, investigation and intervention. In addition, the Privacy Rule allows covered entities to provide to a public health authority, such as the Department, information about an individual exposed to a communicable disease or who may otherwise be at risk of contracting or spreading a disease or condition. In Illinois, the

Communicable Disease Report Act, 745 ILCS 45, and the Control of Communicable Disease Code, 77 Ill. Adm. Code 690, require that reporting entities report diseases and conditions to the Department. Accordingly, the mandated reporting and the related provisions in the Privacy Rule clearly require all reporting entities to continue their practice without restrictions, and does not require further contractual agreements. As noted above, the Control of Communicable Diseases Code requires the reporting of bioterrorist threats or events. It follows, therefore, that mandatory reporting during a bioterrorism event or other public health emergency would be permitted if certain privacy rule requirements are met under the HIPAA and the Privacy Rule.

Recent guidance issued by the Department of Health and Human Services indicates that the Privacy Rule does permit covered entities to disclose protected health information, without individuals' authorization, to public officials responding to a bioterrorism threat or other public health emergency. The guidance indicates that the Privacy Rule permits covered entities to disclose needed information to public officials in a variety of ways. Covered entities may disclose protected health information, without the individual's authorization, to a public health authority acting as authorized by law in response to a bioterrorism threat or public health emergency. The Privacy Rule also permits a covered entity to disclose protected health information to public officials who are reasonably able to prevent or lessen a serious and imminent threat to public health or safety related to bioterrorism. In addition, disclosure of protected health information, without the individual's authorization, is permitted where the circumstances of the emergency implicates law enforcement activities; national security and intelligence activities; or judicial and administrative proceedings.

## HIPAA

### HIPAA Impact Upon Communicable Disease Reporting

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The Privacy Rule provides exceptions to the consent and authorization requirements for uses and disclosures required by law, uses and disclosures for public health activities and for health oversight. Thus, the Privacy Rule supports the Department of Public Health's continued ability to receive health information related to the mandated reporting of diseases, injury, and vital events as well as the Department's collection of data related to preventing or controlling injury, disease, vital events, public health surveillance, investigation and intervention. In addition, the Privacy Rule allows covered entities to provide to a public health authority, such as the Department, information about an individual exposed to a communicable disease or who may otherwise be at risk of contracting or spreading a disease or condition. In Illinois, the Communicable Disease Report Act, (745 ILCS 45/0.01 *et seq.* (West 2000)), and the Control of Communicable Diseases Code, (77 Ill. Adm. Code 690), require that reporting entities report diseases and conditions to the Department. Accordingly, the mandated reporting and the related provisions in the Privacy Rule clearly require all reporting entities to continue their practice without restrictions, and does not require further contractual agreements. The Control of Communicable Diseases Code requires the reporting of bioterrorist threats or events. It follows, therefore, that mandatory reporting during a bioterrorism event or other public health emergency would be permitted under the HIPAA and the Privacy Rule.

### IDPH Draft Statement on HIPAA Impact on Communicable Disease Reporting

IDPH has drafted a statement to provide guidance to covered entities in Illinois that is meant to clarify the Department's position with respect to HIPAA's impact upon public health reporting. A copy of that statement is included herein.

### Department of Health and Human Services Guidance Re: HIPAA Impact on Responding to Bioterrorism Threat or Other Public Health Emergency

Recent guidance issued by the Department of Health and Human Services indicates that the Privacy Rule does permit covered entities to disclose protected health information, without individuals' authorization, to public officials responding to a bioterrorism threat or other public health emergency. The guidance indicates that the Privacy Rule permits covered entities to disclose needed information to public officials in a variety of ways. Covered entities may disclose protected health information, without the individual's authorization, to a public health authority acting as authorized by law in response to a bioterrorism threat or public health emergency. The Privacy Rule also

permits a covered entity to disclose protected health information to public officials who are reasonably able to prevent or lessen a serious and imminent threat to public health or safety related to bioterrorism. In addition, disclosure of protected health information, without the individual's authorization, is permitted where the circumstances of the emergency implicates law enforcement activities; national security and intelligence activities; or judicial and administrative proceedings. A copy of the FAQ is included herein.

## **QUARANTINE / ISOLATION / CLOSURE OF FACILITIES**

### State Quarantine Authority

(See also: “*State Public Health Powers*”; “*Attorney General Opinions*”; “*Cases*”)

IDPH has supreme authority in matters of quarantine, and may declare and enforce quarantine when none exists, and may modify or relax quarantine when it has been established. (20 ILCS 2305/2 (West 2000).)

IDPH is authorized to order a person to be quarantined or isolated or a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease until such time as the condition may be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public’s health any longer exists. (20 ILCS 2305/2(b) (West 2000).) No person may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public, however, except with the consent of the person or the owner of the place or upon the order of a court of competent jurisdiction. (20 ILCS 2305/2(c) (West 2000).) In order to obtain a court order, IDPH must prove, by clear and convincing evidence, that the public’s health and welfare are significantly endangered and that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. (20 ILCS 2305/2(c) (West 2000).)

Any person who knowingly or maliciously disseminates any false information or report concerning the existence of any dangerously contagious or infectious disease in connection with the Department’s power of quarantine, isolation, or closure or refuses to comply with a quarantine, isolation or closure order is guilty of a Class A misdemeanor.

Informal Attorney General Opinion No. I-02-050, issued October 25, 2002, addressed the issue of enforcement of quarantine orders. That opinion also construed the Governor’s emergency powers pursuant to the Illinois Emergency Management Agency Act. Specifically, it was determined therein that the Governor could provide for the quarantine of persons within the entirety of a declared disaster area or within any premises located within the disaster area pursuant to the language of subsection 7(a)(8) of the IEMA Act. (20 ILCS 3305/7(a)(8) (West 2001 Supp.)) That section authorizes the Governor to control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein. Additionally, it was noted therein that pursuant to subsection 7(a)(1) of the IEMA Act, the Governor could suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance would in any way prevent, hinder or delay necessary action. Thus, in appropriate circumstances, the Governor could suspend the provisions of the Department of Public Health Act and any rules adopted pursuant thereto with regard to quarantine if strict compliance therewith would prevent, hinder, or delay response to a disaster or interfere with the exercise of his emergency powers.

Local Quarantine Authority (See also “Local Public Health Powers”)

Municipalities

Generally, the corporate authorities of each municipality may do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases. (65 ILCS 5/11-20-5 (West 2000).)

The corporate authorities of each municipality may provide for and maintain a board of health, consisting of more than one person, and to prescribe its powers and duties, except where a municipality has adopted the provisions of Division 17 of the Code. (65 ILCS 5/11-16-1 (West 2000).)

Division 17 of the Illinois Municipal Code (65 ILCS 5/11-17-1 et seq. (West 2000)) provides that, when authorized by referendum, the corporate authorities of each municipality with a population of more than 100,000 and less than 200,000 shall establish and maintain a public health board for the use and benefit of the municipality. The public health board has the authority to prevent and suppress contagious diseases, and may initiate and maintain programs or activities which from time to time may become necessary or proper for the promotion of public health within the jurisdiction of the board. (65 ILCS 5/11-17-5 (West 2000).)

It may be noted that section 7-4-1 of the Municipal Code (65 ILCS 5/7-4-1 (West 2000)) provides that the corporate authorities in all municipalities have jurisdiction in and over all places within one-half mile of the corporate limits for the purpose of enforcing health and quarantine ordinances and regulations.

City of Chicago

Section 2-112-080 of the Chicago Municipal Code provides that the commissioner of health shall have the power to exercise the general police power of the City of Chicago to correct, by whatever means are necessary, any health hazard that presents an immediate risk to the life or health of one or more citizens of the City of Chicago. Also, Section 2-112-110 makes it the duty of the board of health, in cases of contagious or epidemic disease, to make such rules and regulations and to take such measures as it may in good faith believe and declare the public safety and health demand. It further provides that such emergency rules and regulations shall take effect immediately, even if not yet published. This is in addition to the board’s general powers to enact regulations, found in section 2-112-100, which states that the board will formulate regulations for the implementation of health ordinances when in its opinion these are necessary, or are required pursuant to ordinance. Any person who violates any rule, order or sanitary regulation of the health department or board of health shall be fined not less than \$100 nor more than \$500 for each offense. (Section 2-112-340.)

The Chicago Municipal Code additionally authorizes compelled vaccination, medication and quarantine where necessary to stop epidemic. Section 2-112-9- provides that the board shall not pass any regulation which will compel any person to submit to immunization or to any medication against his will except when there shall be an

epidemic of a disease, or an epidemic is or appears to be imminent and such a rule or regulation is necessary to arrest the epidemic and safeguard the health of the city. Section 2-112-170 provides that the board may cause a person having, or suspected of having, a communicable disease to be removed to a hospital or other safe place.

The Chicago Department of Public Health is authorized to enter, and investigate any premises where infectious disease is suspected and may order premises disinfected or closed, or vacated. (See 2-112-160, 2-112-220, 2-112-210.) Also, no one shall move or expose any person, sick or deceased, or thing infected with a contagious disease, except as allowed by the board of health. (See 7-20-808, 7-20-090, 7-20-100.)

### Counties

Boards of Health Under Division 5-20 of Counties Code (55 ILCS 5/5-20001 et seq. (West 2000)) Boards of health created under Division 5-20 have the power to make and enforce such rules tending to check the spread of the disease within the limits of the county or town as may be necessary on the breaking out of any dangerously communicable diseases within the county, town or immediate vicinity. (55 ILCS 5/5-20001 (West 2000).) Specifically, the board may quarantine any house or houses or place where any infected person may be, and cause notices of warning to be put thereon, and require the disinfection of the house or place. (55 ILCS 5/5-20001 (West 2000).) If a board of health fails, refuses or neglects to promptly take the necessary measures to preserve the public health, or refuses or neglects to carry out the rules and regulations of IDPH, thereupon IDPH may discharge such duties. (55 ILCS 5/5-20001; 20 ILCS 2305/2 (West 2000).)

County and Multiple-County Health Departments Under Division 5-25 of Counties Code (55 ILCS 5/5-25001 et seq. (West 2000)) have the power within their jurisdiction, and professional and technical competence, to enforce and observe all State laws pertaining to the preservation of health and all county and municipal county ordinances except as otherwise provided; within its jurisdiction, and professional and technical competence, investigate the existence of any contagious or infectious disease and adopt measures, not inconsistent with the regulations of IDPH to arrest the progress of the same; initiate and carry out programs and activities that may be deemed necessary or desirable in the promotion and protection of health and in the control of disease, including tuberculosis; recommend to the county board(s) the adoption of such ordinances, rules and regulations as may be deemed necessary or desirable for the promotion and protection of health and control of disease; and enter into contracts with the State, municipalities, other political subdivisions and non-official agencies for the purchase, sale or exchange of health services. (55 ILCS 5/5-25013 (West 2000).)

Each county and multiple-county health department has jurisdiction throughout the entire county or multiple-counties except within (1) any public health district established under the Public Health District Act (70 ILCS 905/0.01 et seq. (West 2000)); (2) any city, village or incorporated town or combination thereof of less than 500,000 inhabitants which maintains a local health department and employs a full-time health officer and other personnel possessing such qualifications as may be prescribed by

IDPH; and (3) any city, village or incorporated town of 500,000 or more inhabitants. (55 ILCS 5/5-25008 (West 2000).) A city, village or town which maintains its own independent health department may, however, abandon it and become integrated in the county or multiple-county health department. (55 ILCS 5/5-25008 (West 2000).)

### Townships

See above provisions regarding powers of Boards of Health Under Division 5-20 of Counties Code. (55 ILCS 5/5-20001 et seq. (West 2000).)

The Public Health District Act (70 ILCS 905/0.01 et seq. (West 2000)) provides that the medical health officer or administrator of a public health district shall have the following powers and duties (70 ILCS 905/17 (West 2000)): to be the executive officer of the board of health; to enforce and observe the rules, regulations and orders of IDPH and all State laws pertaining to the preservation of the health of the people within the public health district; to exercise the rights, powers and duties of all township boards of health and county boards of health within the public health district; to execute and enforce, within the public health district, all city, village and incorporated town ordinances relating to public health and sanitation; to investigate the existence of any contagious or infectious disease within the public health district and to adopt measures, with the approval of IDPH, to arrest the progress of the same; and if approved by the board of health, to enter into contracts with municipalities, other political subdivisions and private agencies for the purchase, sale, delivery or exchange of health services.

### Federal Quarantine Authority (See also "Federal Public Health Powers")

The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. (42 U.S.C. § 264(a).) Regulations prescribed under this section may provide for the apprehension, detention or conditional release of individuals to prevent introduction, transmission, or spread of communicable diseases as specified in Executive Orders of the President upon recommendation of the Secretary, in consultation with the Surgeon General. (42 U.S.C. § 264(b).)

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is a serious danger of introduction of such disease into the United States, and that this danger is increased by the introduction of persons and property from such country, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose. (42 U.S.C. § 265.)

To protect the military and naval forces and war workers of the U.S., in the time of war, against any communicable disease specified in Executive orders, the Secretary, in consultation with the Surgeon General, is authorized to provide by regulations for the

apprehension and examination, in time of war, of any individual reasonably believed to be infected with such disease and to be a probable source of infection to members of the armed forces of the U.S. or to individuals engaged in the production or transportation of arms, munitions, ships, food, clothing, or other supplies for the armed forces. Such regulations may provide that if upon examination any such individual is found to be so infected, he may be detained for such time and in such manner as may be reasonably necessary. (42 U.S.C. § 266.)

42 U.S.C. § 267 provides that the Surgeon General shall control, direct, and manage all U.S. quarantine stations.

42 U.S.C. § 268 provides that any consular or medical officer of the U.S., designated for such purpose by the Secretary, shall make reports to the Surgeon General of the health conditions at the port or place at which the officer is stationed; and provides that it is the duty of customs officers and Coast Guard officers to aid in the enforcement of quarantine rules and regulations.

42 U.S.C. § 269 requires and sets out the contents of bills of health for vessels at any foreign port or in a State or possession. Bills of health are to include the sanitary history and condition of such vessel, and shall state that it has in all respects complied with the regulations prescribed in that section.

The Secretary of the Department of Health and Human Services is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable disease and with other public health matters, shall cooperate with and aid State and local health authorities in the enforcement of their quarantine and other health regulations, and shall advise the several States on matters relating to the preservation and improvement of the public health. (42 U.S.C. § 243(a).)

Any person detained in accordance with quarantine laws may be treated and cared for by the Public Health Service. Such persons may also receive care and treatment from public or private medical or hospital facilities at the expense of the Service. (42 U.S.C. § 249.)

#### *Interstate quarantine regulations*

Whenever the Director of the Centers for Disease Control and Prevention determines that the measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any communicable diseases from such State or possession to any other State or possession, he or she may take such measures to prevent such spread of disease as he or she deems reasonably necessary. (42 C.F.R. § 70.2).

A person who has a communicable disease in the communicable period is prohibited from traveling from one State or possession to another without a permit from the health

officer of the State, possession or locality of destination, if such permit is required under the law applicable to the place of destination. 42 C.F.R. § 70.3

42 C.F.R. §70.5 provides specific travel restrictions concerning any person who is in the communicable period of cholera, plague, smallpox, typhus or yellow fever, or who having been exposed to any such disease, is in the incubation period. No such person may travel from one State or possession to another, or on a conveyance engaged in interstate traffic, without a permit of the Surgeon General.

42 C.F.R. § 70.4 requires the master of any vessel or person in charge of any conveyance engaged in interstate traffic, on which a case or suspected case of a communicable disease develops, to notify the local health authority at the next port of call as soon as practicable and to take measures to prevent the spread of the disease as the local health authority directs.

#### Foreign Quarantine Regulations

The provisions of 42 C.F.R. § 71.1 et seq. govern foreign quarantine. 42 C.F.R. § 71.21, for example, requires the master of a ship destined for a U.S. port or the commander of an aircraft destined for a U.S. airport to report immediately to the nearest quarantine station the occurrence on board of any death or ill person among passengers or crew.

42 C.F.R. § 71.32 authorizes the Director to detain, isolate, or place a person under surveillance whenever the Director has reason to believe that any arriving person is infected with or has been exposed to cholera or suspected cholera, diphtheria, infectious tuberculosis, plague, suspected smallpox, yellow fever, or suspected viral hemorrhagic fevers.

## **DISPOSITION OF HUMAN REMAINS**

### **Department of Public Health Act**

Section 2 of the Department of Public Health Act (20 ILCS 2305/2 (West 2000)) provides broad authority to the Illinois Department of Public Health (IDPH) with regard to restricting and suppressing dangerously contagious or infectious diseases.

Section 7 of the Department of Public Health Act (20 ILCS 2305/7 (West 2000)) authorizes IDPH to adopt rules requiring that upon the death of a person who had or is suspected of having an infectious or communicable disease that could be transmitted through contact with the person's body or bodily fluids, the body shall be labeled "Infection Hazard" or with an equivalent term to inform persons having subsequent contact with the body. Such rules shall require that the label be prominently displayed on or affixed to the outer wrapping or covering of the body if the body is wrapped or covered. IDPH has adopted rules pursuant to this section. Those rules are located in section 690.1200 of the Control of Communicable Diseases Code. (77 Ill. Adm. Code 690.1200.)

### **Vital Records Act**

The Vital Records Act (410 ILCS 535/2 (West 2000)) establishes in the Department of Public Health an Office of Vital Records which shall install, maintain and operate the system of vital records throughout the State.

Section 21 of the Vital Records Act (410 ILCS 535/21 (West 2000)) sets out the requirements for written reports by funeral directors, permits to transport a body within Illinois, and permits for disposition of dead human bodies. IDPH has adopted rules governing transportation and disposition of dead human bodies. Those rules are set out in section 500.50 of the Illinois Vital Records Code (77 Ill. Adm. Code 500.50).

### **Burial of Dead Bodies Act**

Section 2 of the Burial of Dead Bodies Act (410 ILCS 5/2 (West 2000)) provides that all dead human bodies or the remains of persons interred in the earth within this State which are not encased in a concrete, fiberglass, or other similar hardback outer enclosure shall have a cover of not less than 18 inches of earth at the shallowest point over the receptacle in which such body or remains are placed. Any person who knowingly buries a dead body or the remains of a person in violation of this Act is guilty of a petty offense.

### **Crematory Regulation Act**

The Crematory Regulation Act (410 ILCS 18/1 (West 2000)) regulates crematories and sets out the requirements for cremation authority, cremation procedures, and disposition of cremated remains.

Section 20 of the Act (410 ILCS 18/20 (West 2000)) requires a cremation authorization form to be signed by an authorized agent prior to cremation and sets out the content of such form. Included among the required items in the cremation authorization form is

notification as to whether the death occurred from a disease declared by the Department of Public Health to be infectious, contagious, communicable or dangerous to the public health. (410 ILCS 18/20(a)(1)(C) (West 2000).) Section 20 additionally requires a completed and executed burial transit permit indicating that the human remains are to be cremated. (410 ILCS 18/20(a)(2) (West 2000).)

Section 35 (410 ILCS 18/35 (West 2000)) provides that human remains shall not be cremated within 24 hours after the time of death, as indicated in the Medical Examiner's/Coroner's Certificate of Death. In any death, the human remains shall not be cremated by the crematory authority until a cremation permit has been received from the coroner or medical examiner of the county in which the death occurred and the crematory authority has received a cremation authorization form, executed by an authorizing agent. In no instance, however, shall the lapse of time between the death and the cremation be less than 24 hours, unless (i) it is known the deceased has an infectious or dangerous disease and that the time requirement is waived in writing by the medical examiner or coroner where the death occurred; or (ii) because of a religious requirement

#### Autopsy Act

Section 2 of the Autopsy Act (410 ILCS 505/2 (West 2000)) provides that any physician may perform an autopsy upon the body of a decedent, provided, that he has a written authorization form from one of the persons listed in that section. Section 3 (410 ILCS 505/3 (West 2000)) provides that the authorized personnel of a hospital or other qualified personnel selected by a physician may assist a physician performing an autopsy.

#### Cadaver Act

Section 1 of the Cadaver Act (410 ILCS 510/1 (West 2000)) provides that superintendents of penitentiaries, houses of correction and bridewells, hospitals, state charitable institutions and county homes, coroners, sheriffs, jailors, funeral directors, and all other state, county, town, and city officers, in whose custody is the body of any deceased person, required to be buried at public expense, shall, in the absence of disposition of such body, or any part thereof by will or other written instrument, give permission to any physician or surgeon licensed in Illinois or to any medical college or school, or other institution of higher science education or school of mortuary science, public or private, of any city, town, or county, upon his or their receipt in writing and request therefor, to receive and remove free of public charge or expense, after having given proper notice to relatives or guardians of the deceased, the bodies of such deceased persons about to be buried at public expense, to be by him or them used within the state, for advancement of medical, anatomical, biological or mortuary science.

Section 3 provides that any officer refusing to deliver the remains or body of any deceased person when demanded in accordance with the provisions of this act, shall be guilty of a petty offense; and for a third offense, or any offense thereafter, the person shall be guilty of a Class A misdemeanor.

### Duties of County Coroners

Division 3-3 of the Counties Code (55 ILCS 5/3-3001 et seq. (West 2000)) sets out the powers and duties of county coroners.

Section 3-3013 (55 ILCS 5/3-3013 (West 2000)) provides that every coroner, whenever, as soon as he knows or is informed that the dead body of any person is found, or lying within his county, whose death is suspected of being (a) a sudden or violent death \* \* \* (c) a death where the circumstances are suspicious, obscure, mysterious or otherwise unexplained or where, in the written opinion of the attending physician, the cause of death is not determined; shall go to the place where the dead body is, and take charge of the same and shall make preliminary investigation into the circumstances of the death. Section 3-013 sets out procedures for summoning 8 persons of lawful age to serve as jurors for inquests.

Section 3-3015 (55 ILCS 5/5-3015 (West 2000)) provides that where a death has occurred and the circumstances are suspicious, obscure, mysterious, or otherwise unexplained and in the opinion of the examining physician or the coroner the cause of death cannot be established definitively except for an autopsy, it is declared that the public interest requires that an autopsy be performed, and it is the duty and responsibility of the coroner to cause an autopsy to be performed.

Section 3-3020 (55 ILCS 5/3-3020 (West 2000)) requires every law enforcement official, funeral director, ambulance attendant, hospital director or administrator or person having custody of the body of a deceased person where the death is one subject to investigation under 3-3013, and any physician in attendance upon death of the decedent, shall notify the coroner promptly. Any such person failing to notify the coroner promptly shall be guilty of Class A misdemeanor unless such person has reasonable cause to believe that the coroner has already been notified.

### Funeral Directors and Embalmers Licensing Code

The Funeral Directors and Embalmers Licensing Code (225 ILCS 41/1-1 (West 2000)) regulates the practice of funeral directing and embalming.

## **PURCHASING AUTHORITY**

### **Illinois Procurement Code**

The Illinois Procurement Code (30 ILCS 500/1-1 et seq. (West 2000)) sets out the procedures for purchasing by state government. Generally, the State uses a competitive process whenever possible to purchase goods or services. The competitive process utilized depends upon the goods or services being purchased.

Section 20-30 of the Code (30 ILCS 500/20-30 (West 2000)) authorizes emergency purchases without competitive sealed bidding or prior notice where there exists a threat to public health or public safety, or when immediate expenditure is necessary for repairs to State property in order to protect against further loss of or damage to State property, to prevent or minimize serious disruption to State services, or to ensure the integrity of State records. Emergency procurements shall be made with as much competition as is practicable under the circumstances. A written description of the basis for the emergency and reasons for selection of the particular contractor shall be included in the contract file. Before the next appropriate volume of the Illinois Procurement Bulletin, the purchasing agency shall publish in the Illinois Procurement Bulletin a copy of each written description and reasons and total cost of each emergency procurement made during the previous month. Additionally, a purchasing agency making a procurement under this section shall file affidavits with the chief procurement officer and the Auditor General within 10 days after the procurement setting forth the amount expended, the name of the contractor involved, and the conditions and circumstances requiring the emergency procurement.

### **Illinois Emergency Management Agency Act**

Pursuant to subsection 7(a)(1) of the IEMA Act (20 ILCS 3305/7(a)(1) (West 2001 Supp.)), the Governor is authorized to suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by IEMA, in coping with disaster. (20 ILCS 3305/7(a)(1) (West 2001 Supp.)) (See Ill. Att'y Gen. Op. No. I-02-050, issued October 25, 2002.)

### **Counties Code**

Section 5-1022 of the Counties Code (55 ILCS 5/5-1022 (West 2000)) generally requires that any purchase by a county with fewer than 2,000,000 inhabitants of services, materials, equipment or supplies in excess of \$10,000, other than professional services, shall be contracted in one of the following ways: (1) by a contract let to the lowest responsible bidder after advertising for bids in a newspaper published within the county or, if no newspaper is published within the county, then a newspaper having general circulation within the county; or (2) by a contract let without advertising for bids in the case of an emergency if authorized by the county board.

### Municipal Code

In municipalities of less than 500,000 population, the corporate authorities may provide by ordinance that all supplies needed for use of the municipality shall be furnished by contract, let to the lowest bidder. (65 ILCS 5/8-9-2 (West 2000).)

In municipalities with over 500,000 population, all purchase orders or contracts of whatever nature involving amounts in excess of \$10,000 made by or on behalf of the municipality shall be let by free and open competitive bidding after advertisement, to the lowest responsible bidder, or in appropriate instance, to the highest responsible bidder, depending upon whether the municipality is to expend or to receive money. (65 ILCS 5/8-10-3 (West 2000).) Section 8-10-5 (65 ILCS 5/8-10-5 (West 2000)) provides, however, that in the case of an emergency affecting the public health or safety, contracts may be let to the extent necessary to resolve such emergency without public advertisement.

## TAKINGS OF PROPERTY

### United States Constitution

The fifth amendment to the United States Constitution (U.S. Const., amend. V), made applicable to the states through the fourteenth amendment (U.S. Const., amend. XIV), provides that private property shall not be taken for public use without just compensation.

### Illinois Constitution of 1970

Article I, section 15 of the Illinois Constitution of 1970 provides that private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

### Eminent Domain

Article VII of the Code of Civil Procedure (735 ILCS 5/7-101 et seq. (West 2000)) sets out the procedures for the exercise of the power of eminent domain.

### Illinois Emergency Management Agency Act (See "IEMA Act")

Section 7 of the IEMA Act (20 ILCS 3305/7(a) (West 2001 Supp.)) provides that in the event of a disaster, the Governor may, by proclamation, declare that a disaster exists. Upon such proclamation, the Governor shall have and may exercise for a period of time not to exceed 30 days the emergency powers set out in that section. During a disaster, the Governor may, on behalf of this State to take possession of, and to acquire full title or a lesser specified interest in, any personal property as may be necessary to accomplish the objectives set forth in section 2 of the Act. Subsection 7(a)(4) sets forth a procedure for providing for just compensation.

## LICENSED PROFESSIONALS

### License / Certification of Health Care Professionals

#### Terminology Re: Distribution of Pharmaceuticals

##### Prescription authority

The term “prescription” is defined in section 3(e) of the Pharmacy Practice Act (225 ILCS 85/3(e) (West 2000)) to include any written, oral, facsimile, or electronically transmitted order for drugs or medical devices, issued by a physician authorized to practice medicine in all its branches, dentist, veterinarian, or podiatrist, or therapeutically certified optometrist, within the limits of their licenses, by a physician assistant in accordance with subsection (f) of Section 4, or by an advanced practice nurse in accordance with subsection (g) of Section 4, containing the following: (1) name of the patient; (2) date when prescription was issued; (3) name and strength of drug; (4) quantity; (5) directions for use; (6) prescriber’s name, address and signature; and (7) DEA number where required, for controlled substances.

Section 3.21 of the Illinois Food, Drug, and Cosmetic Act (410 ILCS 615/3.21 (West 2000)) provides that except as authorized by that Act, the Controlled Substances Act, the Pharmacy Practice Act of 1987, the Dental Practice Act, the Medical Practice Act of 1987, the Veterinary Medicine and Surgery Practice Act, or the Podiatric Medical Practice Act of 1987, it is a prohibited act to sell or dispense a prescription drug without a prescription.

Physicians licensed to practice medicine in all its branches (225 ILCS 60/3, 49 (West 2000)) have the authority to prescribe medications. Other licensed personnel, including, dentists (225 ILCS 25/17 (West 2000)), podiatrists (225 ILCS 100/5 (West 2000)), and therapeutically certified optometrists (225 ILCS 80/15.1 (West 2000)) have limited authority to prescribe medications. Physicians may delegate limited prescriptive authority to advanced practice nurses pursuant to the Nursing and Advanced Practice Nursing Act (225 ILCS 65/15-20 (West 2000)), and physician assistants pursuant to the Physician Assistant Practice Act of 1987 (225 ILCS 95/7.5 (West 2000)). Veterinarians additionally possess the authority to prescribe medication to treat animals. (225 ILCS 115/3 (West 2000).)

##### Dispensing authority

The term “dispense” is defined in section 3(m) of the Pharmacy Practice Act (225 ILCS 85/3(m) (West 2000)) to mean “\* \* \* the delivery of drugs and medical devices, in accordance with applicable State and federal laws and regulations, to the patient or the patient’s representative authorized to receive these products, including the compounding, packaging, and labeling necessary for delivery, and any recommending or advising concerning the contents and therapeutic values thereof. ‘Dispense’ does not mean the physical delivery to a patient or a patient’s representative in a home or institution by a designee of a pharmacist or by common carrier. ‘Dispense’ also does not mean the physical delivery of a drug or medical device to a patient or a patient’s

representative by a pharmacist's designee within a pharmacy or drugstore while the pharmacist is on duty and the pharmacy is open.”

“Compounding” is defined (225 ILCS 85/3(o) (West 2000)) to mean the preparation, mixing, assembling, packaging, or labeling of a drug or medical device: (1) as the result a practitioner’s prescription drug order or initiative that is dispensed pursuant to a prescription in the course of professional practice; or (2) for the purpose of, or incident to, research, teaching or chemical analysis; or (3) in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.”

Administration authority

The term “administer” with regard to administering medications is not defined in any of the license acts discussed below. It is well established, however, that undefined terms in a statute must be given their ordinary and popularly understood meaning. (Gem Electronics of Monmouth, Inc. v. Department of Revenue (1998), 183 Ill. 2d 470, 477-78.) The term “administer” is defined by Webster’s as “\* \* \* to give remedially (as medicine) \* \* \*”. (Webster’s Third New International Dictionary 27 (1981).) The broad definition of administer does not provide guidance regarding what actions are included in administering medications.

Administrative rules outlining the standards for pharmacology/administration of medication courses for practical nurses (68 Ill. Adm. Code 1300.44), however, provide as follows:

“ \* \* \*

a) Approved licensed practical nursing programs shall include a course designed to educate practical nursing students and/or licensed practical nurses to administer medications via oral, topical, subcutaneous, intradermal and intramuscular routes under the direction of a registered professional nurse, licensed physician, or licensed dentist that contains the following minimum components:

\* \* \*

3) Administration of Medication

A) Following procedures of safety as described in subsections (a)(3)(C), (D), (E), and (F) in administering medications.

B) Developmental adaptations for administering medications to patients of all ages.

C) Assessment of Patient Condition.

- D) Planning for administration of medication including:
  - i) Checking for doctor's order
  - ii) Securing proper equipment
  - iii) Verifying proper packaging of medication
- E) Implementation of administration of medication including:
  - i) Site selection
  - ii) Verifying route of administration
  - iii) Administering the vaccination
  - iv) Recording medication administration
  - v) Patient education for compliance
- F) Evaluation of patient response including:
  - i) Effects/side effects/allergic responses
  - ii) Recording/reporting of effects

\* \* \*

“

Based upon the many components that must be included in the training courses for licensed practical nurses for instruction concerning the administration of medications, it appears that administration of medicine includes more than just the physical act of delivering medications to a patient.

### Current Scopes of Practice

#### Physicians

The Medical Practice Act of 1987 (225 ILCS 60/1 et seq. (West 2000)) licenses physicians in two categories: physicians licensed to practice medicine in all of its branches; or chiropractic physicians licensed to treat human ailments without the use of drugs and without operative surgery. (225 ILCS 60/11 (West 2000).) Section 3 of the Medical Practice Act of 1987 (225 ILCS 60/3 (West 2000)) provides that no person shall practice medicine, or any of its branches, without a valid, existing license to do so.

The Medical Practice Act of 1987 does not contain a definition of the practice of medicine. The practice of medicine, however, can be defined by reviewing section 49

of the Medical Practice Act of 1987 (225 ILCS 60/49 West 2000)) which sets out the actions that constitute the unlawful practice of medicine. Specifically, section 49 provides as following:

“If any person does any of the following and does not possess a valid license issued under this Act, that person shall be sentenced as provided in Section 59: (i) holds himself or herself out to the public as being engaged in the diagnosis or treatment of physical or mental ailments or conditions, including but not limited to, deformities, diseases, disorders, or injuries of human beings; (ii) suggests, recommends or prescribes any form of treatment for the palliation, relief or cure of any physical or mental ailment or condition of any person with the intention of receiving, either directly or indirectly, any fee, gift, or compensation whatever; (iii) diagnoses or attempts to diagnose, operate upon, profess to heal, prescribes for, or otherwise treats any ailment or condition, of another; (iv) maintains an office for examination or treatment of persons afflicted, or alleged or supposed to be afflicted, by any ailment or condition; (v) manipulates or adjusts osseous or articular structures; or (vi) who attaches the title Doctor, Physician, Surgeon, M.D., D.O., or D.C. or any other word or abbreviation to his or her name indicating that he or she is engaged in the treatment of human ailments or conditions as a business.”

Based upon the above, it appears that physicians are authorized to diagnose and treat physical or mental ailment, and prescribe treatment, including medication. (225 ILCS 60/3, 49 (West 2000).)

It is also possible for physicians to delegate certain tasks to others. Section 54.5 of the Medical Practice Act of 1987 (225 ILCS 65/54.5 (West 2000)) authorizes physicians licensed to practice medicine in all its branches to: delegate care and treatment responsibilities to a physician assistant in accordance with the requirements of the Physician Assistant Practice Act of 1987; collaborate with an advanced practice nurse in accordance with the requirements of the Nursing and Advanced Practice Nursing Act; and collaborate with a certified registered nurse anesthetist in accordance with the Nursing and Advanced Practice Nursing Act. Subsection 54.5(d) (225 ILCS 65/54.5(d) (West 2000)) further states: “ \* \* \* [n]othing in this Act shall be construed to limit the delegation of tasks or duties by a physician licensed to practice medicine in all its branches to a licensed practical nurse, registered professional nurse, or other personnel.” The administrative rules for the administration of the Medical Practice Act of 1987 (68 Ill. Adm. Code 1285.335) mirror the language set out in section 54.5. Section 1285.335(f) states as follows: “Nothing in this Section shall be construed to limit the delegation of tasks or duties by a physician licensed to practice medicine in all its branches to a licensed practical nurse, a registered professional nurse, or other personnel, including but not limited to certified nurse assistants or medical assistants.”

### Nurses and Advanced Practice Nurses

The Nursing and Advanced Nursing Practice Act (225 ILCS 65/5-1 et seq. (West 2000)) licenses nurses in three classifications: licensed practical nurses (L.P.N.s); registered professional nurses (R.N.s); and advanced practice nurses (A.P.N.s). Section 5-15 of the Nursing and Advanced Nursing Practice Act (225 ILCS 65/5-15 (West 2000)) provides that no person shall practice or offer to practice professional and practical nursing unless that person has been licensed under the provisions of the Act.

Subsection 5-10(l) of the Act (225 ILCS 65/5-10(l) (West 2000)) defines “registered nursing practice” to include all nursing specialties and means the performance of any nursing act based upon professional knowledge, judgment, and skills acquired by means of completion of an approved registered professional nursing education program. A registered professional nurse provides nursing care that includes, but is not limited, to: “(1) the assessment of healthcare needs, nursing diagnosis, planning, implementation, and nursing evaluation; \* \* \* (4) the administration of medications and treatments as prescribed by a physician licensed to practice medicine in all its branches, a licensed dentist, a licensed podiatrist, or a licensed optometrist, or as prescribed by a physician assistant in accordance with written guidelines required under the Physician Assistant Practice Act of 1987 or by an advanced practice nurse in accordance with written collaborative agreement required under the Nursing and Advanced Practice Nursing Act; \* \* \* (6) the delegation to and supervision of individuals who assist the registered professional nurse in implementing the plan of care \* \* \* .” R.N.s are authorized to perform those acts which fall within the definition of “registered nursing practice”.

With regard to the scope of practice of L.P.N.s, subsection 5-10(j) (225 ILCS 65/5-10(j) (West 2000)) defines “practical nursing” to mean “\* \* \* the performance of nursing acts requiring the basic nursing knowledge, judgement, and skill acquired by means of completion of an approved practical nursing education program. Practical nursing includes assisting in the nursing process as delegated by and under the direction of a registered professional nurse. The practical nurse may work under the direction of a licensed physician, dentist, podiatrist, or other health care professional as determined by the Department.” Based upon that definition, L.P.N.s may perform nursing acts requiring the basic knowledge, judgment, and skill acquired by means of completion of an approved practical nursing education program. L.P.N.s may also assist in the nursing process as delegated by and under the direction of a R.N.

You may note that regulations outlining the standards for pharmacology/administration of medication courses for practical nurses (68 Ill. Adm. Code 1300.44) provide that approved licensed practical nursing programs shall include a course designed to educate practical nursing students and/or licensed practical nurses to administer medications via oral, topical, subcutaneous, intradermal and intramuscular routes under the direction of a registered professional nurse, licensed physician, or licensed dentist.

Pursuant to section 15-15 of the Nursing and Advanced Practice Nursing Act (225 ILCS 65/15-15 (West 2000)), an advanced practice nurse (A.P.N.) must be a registered

professional nurse who meets specific license requirements and receives a license as an advanced practice nurse. Advanced practice nurses, except certified nurse anaesthetists, who have a written collaborative agreement with a collaborating physician in the diagnosis and management of wellness and other conditions, may care for patients by using advanced diagnostic skills, the results of diagnostic tests and procedures ordered by the advanced practice nurse, a physician assistant, a dentist, a podiatrist, or a physician, and professional judgment to initiate and coordinate the care of patients; by ordering diagnostic tests, prescribing medications and drugs, and administering medications and drugs; and by using medical, therapeutic, and corrective measures to treat illness and improve health status. Because A.P.N.s are registered nurses, A.P.N.s would be authorized to do the same functions that R.N.s would perform. A.P.N.s who have a written collaborative agreement with a collaborating physician would also be authorized to order diagnostic tests, prescribe medications, and administer medications.

### Physician Assistants

The Physician Assistant Practice Act of 1987 (225 ILCS 95/4 (West 2000)) provides that a physician assistant (P.A.) may perform such procedures within the specialty of the supervising physician, except that such physician shall exercise such direction, supervision, and control over such physician assistants as will assure that patients receive only quality medical care. Physician assistants shall be capable of performing a variety of tasks within the speciality of medical care under the supervision of a physician. A physician may delegate tasks and duties to the physician assistant that shall be consistent with physician assistant education, training and experience. The delegated tasks or duties shall be specific to the practice setting and shall be implemented and reviewed under guidelines established by the physician or physician / physician assistant team. Physician assistants shall practice only within the established guidelines. It appears that a physician assistant's current authority is dependent upon guidelines established by the physician / physician assistant team.

### Emergency Medical Technicians

Section 3.50 of the Emergency Medical Services (EMS) Systems Act (210 ILCS 50/3.50 (West 2001 Supp.)) sets out the licensing categories for Emergency Medical Technicians, including: Emergency Medical Technician-Basic (E.M.T.-B); Emergency Medical Technician-Intermediate (E.M.T.-I); and Emergency Medical Technician-Paramedic (E.M.T.-P). "Emergency Medical Technician-Basic (E.M.T.-B)" means a person who has successfully completed a course of instruction in basic life support as prescribed by the Department, is currently licensed by the Department, and practices within an EMS System. (210 ILCS 50/3.50 (West 2001 Supp.)) "Basic Life Support (BLS) Services" means a basic level of pre-hospital and inter-hospital emergency care and non-emergency medical care that includes airway management, cardiopulmonary resuscitation (CPR), control of shock and bleeding and splinting of fractures as specified in the Basic Life Support curriculum of the U.S. Department of Transportation and any modifications specified in rules adopted by the Department. (210 ILCS 50/3.10 (West 2000).)

“Emergency Medical Technician-Intermediate (E.M.T.-I)” means a person who has successfully completed a course of instruction in intermediate life support as prescribed by the Department, is currently licensed by the Department, and practices within an Intermediate or Advanced Life Support EMS System. (210 ILCS 50/3.50 (West 2001 Supp.)) “Intermediate Life Support (ILS) Services” means an intermediate level of pre-hospital and inter-hospital emergency care and non-emergency medical care that includes basic life support care plus intravenous cannulation and fluid therapy, invasive airway management, trauma care, and other authorized techniques and procedures as outlined in the Intermediate Life Support curriculum of the U.S. Department of Transportation and any modifications specified in rules adopted by the Department. (210 ILCS 50/3.10 (West 2000).) Persons licensed as E.M.T.-Is are currently authorized to administer medications pursuant to a modification to the Intermediate Life Support curriculum of the U.S. Department of Transportation.

“Emergency Medical Technician-Paramedic (E.M.T.-P)” means a person who has successfully completed a course of instruction in advanced life support care as prescribed by the Department, is licensed by the Department, and practices within an Advanced Life Support EMS System. (210 ILCS 50/3.50 (West 2001 Supp.)) “Advanced Life Support (ALS) Services” means an advanced level of pre-hospital and inter-hospital emergency care and non-emergency medical care that includes basic life support care, cardiac monitoring, cardiac defibrillation, electrocardiography, intravenous drug therapy, administration of medications, drugs and solutions, use of adjunctive medical devices, trauma care, and other authorized techniques and procedures, as outlined in the Advanced Life Support national curriculum of the U.S. Department of Transportation and any modifications specified in rules adopted by the Department. (210 ILCS 50/3.10 (West 2000).) That care shall be initiated as authorized by the EMS Medical Director in a Department approved advanced life support EMS system, under the written or verbal direction of a physician licensed to practice medicine in all its branches or under the verbal direction of an Emergency Communications Registered Nurse.

“Pre-hospital care” and “Inter-hospital care” include those emergency medical services rendered to emergency patients for analytic, resuscitative, stabilizing, or preventive purposes, during transportation of such patients to hospitals, or from one hospital to another hospital, respectively. (210 ILCS 50/3.10 (West 2000).) “Non-emergency medical care” means medical services rendered to patients whose conditions do not meet the Act’s definition of emergency, during transportation of such patients to health care facilities for the purpose of obtaining medical or health care services which are not emergency in nature. (210 ILCS 50/3.10 (West 2000).)

Section 3.55 (210 ILCS 50/3.55 (West 2001 Supp.)) of the Act provides that any person currently licensed as an E.M.T.-B, E.M.T.-I, or E.M.T.-P may perform emergency and non-emergency medical services as defined in the Act, in accordance with his or her level of education, training and licensure, the standards of performance and conduct prescribed by the Illinois Department of Public Health in rules adopted pursuant to the Act, and the requirements of the EMS System in which he or she practices, as

contained in the approved Program Plan for that System. A person currently licensed as an E.M.T.-B, E.M.T.-I, or E.M.T.-P may only practice as an E.M.T. or utilize his or her E.M.T. license in pre-hospital or inter-hospital emergency care settings or non-emergency medical transport situations, under the written or verbal direction of the EMS Medical Director. (210 ILCS 50/3.55 (West 2001 Supp.))

The current authority of a licensed E.M.T. depends upon his or her license classification and training. With regard to administration of medications, E.M.T.-Ps are specifically authorized to provide advanced life support services. Advanced life support services include, among other things, administration of medications, drugs and solutions as outlined in the Advanced Life Support national curriculum. Advanced life support care, however, must be initiated and authorized by the EMS Medical Director, under the written or verbal direction of a physician licensed to practice medicine in all its branches, or under the verbal direction of an Emergency Communications Registered Nurse. Persons licensed as E.M.T.-Is are also authorized to administer medications pursuant to a modification to the Intermediate Life Support curriculum of the U.S. Department of Transportation. Any person licensed as an E.M.T.-B, E.M.T.-I or E.M.T.-P may only practice as an E.M.T. or utilize his or her E.M.T. license under the written or verbal direction of the EMS Medical Director. (210 ILCS 50/3.55 (West 2001 Supp.)) It should be further noted that any authority of an E.M.T. to administer medications is limited to pre-hospital or inter-hospital emergency care settings or non-emergency medical transport situations.

#### *Certified Nursing Assistants*

Section 3-206 of the Nursing Home Care Act (210 ILCS 45/3-206 (West 2000)) provides that no person, except a volunteer who receives no compensation and is not included for the purpose of meeting any staffing requirements, shall act as a nursing assistant in a facility, nor shall any person, under any other title, not licensed, certified or registered to render medical care by the Department of Professional Regulation, assist with the personal, medical, or nursing care of residents in a facility, unless such person meets specified requirements, including training, the content of which is governed by administrative rules adopted by the Illinois Department of Public Health. Nursing assistants are required to perform their duties under the supervision of a nurse. The Illinois Department of Public Health maintains a registry of all individuals who have completed the training required by section 3-206. (210 ILCS 45/3-206.01 (West 2001 Supp.), as amended by Public Act 92-651, effective July 11, 2002.)

With regard to administration of medications, in opinion No. S-1033, issued January 9, 1976 (1976 Ill. Att'y Gen. Op.), Attorney General Scott determined that the administration of medications does not fall within the commonly performed duties of nurse aids and orderlies, and therefore such individuals need not be licensed under the Nursing Act. The training modules set out in the Long-Term Care Assistants and Aides Training Programs Code (77 Ill. Adm. Code 395) additionally do not currently allow Certified Nursing Assistants to administer medications to patients. The current scope of practice of a Certified Nursing Assistant does not include the authority to administer medications.

### Pharmacists and Pharmacy Technicians

Section 5.5 of the Pharmacy Practice Act of 1987 (225 ILCS 85/5.5 (West 2000)) prohibits the practice of pharmacy without a license. Section 3(d) of the Pharmacy Practice Act of 1987 (225 ILCS 85/3(d) (West 2000)) defines “practice of pharmacy” to mean “\* \* \* the provision of pharmaceutical care to patients as determined by the pharmacist’s professional judgment in the following areas, which may include but are not limited to: (1) patient counseling; (2) interpretation and assisting in the monitoring of appropriate drug use and prospective drug utilization review; (3) providing information on the therapeutic values, reactions, drug interactions, side effects, uses, selection of medications and medical devices, and outcome of drug therapy; (4) participation in drug selection, drug monitoring, drug utilization review, evaluation, administration, interpretation, application of pharmacokinetic and laboratory data to design safe and effective drug regimens; (5) drug research (clinical and scientific); and (6) compounding and dispensing of drugs and medical devices.

The Pharmacy Practice Act (225 ILCS 85/3(m) (West 2000)) defines “dispense” to mean “\* \* \* the delivery of drugs and medical devices, in accordance with applicable State and federal laws and regulations, to the patient or the patient’s representative authorized to receive these products, including the compounding, packaging, and labeling necessary for delivery, and any recommending or advising concerning the contents and therapeutic values thereof. ‘Dispense’ does not mean the physical delivery to a patient or a patient’s representative in a home or institution by a designee of a pharmacist or by common carrier. ‘Dispense’ also does not mean the physical delivery of a drug or medical device to a patient or a patient’s representative by a pharmacist’s designee within a pharmacy or drugstore while the pharmacist is on duty and the pharmacy is open.” “Compounding” is defined (225 ILCS 85/3(o) (West 2000)) to mean the preparation, mixing, assembling, packaging, or labeling of a drug or medical device: (1) as the result a practitioner’s prescription drug order or initiative that is dispensed pursuant to a prescription in the course of professional practice; or (2) for the purpose of, or incident to, research, teaching or chemical analysis; or (3) in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.”

“Practice of pharmacy” includes, among other things, compounding and dispensing medications. “Dispense” includes the delivery of drugs to the patient including the compounding, packaging and labeling necessary for delivery. “Compounding” means the preparation, mixing, assembling, packaging or labeling of drugs. Pharmacists, therefore, are currently authorized to prepare, mix, assemble, repackage and label pharmaceuticals. Pharmacists are also authorized to provide patient counseling, assisting in monitoring drug use, and provide information on the therapeutic values, reactions, drug interactions, side effects, uses, selection of medications and outcome of drug therapy.

Section 9 of the Pharmacy Practice Act of 1987 (225 ILCS 85/9 (West 2000)) provides for registration of pharmacy technicians. Registered pharmacy technicians are authorized to assist licensed pharmacists in the practice of pharmacy, under the

personal supervision of a licensed pharmacist.

### Use of Non-licensed Personnel or Licensed Personnel Outside Normal Scope of Practice

Typically, licensed professionals must practice only within their respective scopes of practice. Each of the statutes referenced above additionally provides for penalties for practicing within the definitions of such professions without a proper license. It appears, however, that the Medical Practice Act of 1987 and the Nursing and Advanced Nursing Practice Act of 1987 provide for non-licensed individuals or individuals licensed under other acts to perform acts that would meet the definition of practicing medicine or practicing nursing during emergencies.

#### Medical Practice Act of 1987

Section 3 of the Medical Practice Act of 1987 (225 ILCS 60/3 (West 2000)) provides that no person shall practice medicine, or any of its branches, without a valid, existing license to do so. Section 4 of the Act (225 ILCS 60/4 (West 2000)), however, provides that the Act does not apply to, inter alia, persons rendering gratuitous services in cases of emergency. The term “gratuitous” is not defined in the Medical Practice Act of 1987. It is well established, however, that undefined terms in a statute must be given their ordinary and popularly understood meaning. (Gem Electronics of Monmouth, Inc. v. Department of Revenue (1998), 183 Ill. 2d 470, 477-78.) The term “gratuitous” is defined by Webster’s as “\* \* \* given freely or without recompense: granted without pay or without claim or merit \* \* \* costing the recipient or participant nothing”. (Webster’s Third New International Dictionary 992 (1981).) The ordinary and popularly understood meaning of the phrase “gratuitous services” would mean services that are provided without charging the recipient a fee. It appears, therefore, that non-licensed persons or persons who are licensed under other professional acts may render services in cases of emergency without violating the Medical Practice Act of 1987 if such services are provided without charging the recipient a fee.

As previously noted, a physician may delegate certain tasks to others. (225 ILCS 65/54.5(d) (West 2000).) The authority to delegate tasks is not limited to emergency situations. The administrative rules for the administration of the Medical Practice Act of 1987 (68 Ill. Adm. Code 1285.335) specifically reference the authority of a physician to delegate tasks or duties to a licensed practical nurse, a registered professional nurse, or other personnel, including but not limited to certified nurse assistants or medical assistants. The provisions referencing physician delegation of duties do contain any requirement that delegated services must be provided gratuitously.

#### Nursing and Advanced Nursing Practice Act

Like the Medical Practice Act of 1987, the Nursing Practice and Advanced Nursing Practice Act contains exceptions for emergency situations. Specifically, section 5-15 of the Act (225 ILCS 65/5-15 (West 2000)) provides that the Act does not prohibit the furnishing of nursing assistance in an emergency. Unlike the exemption set out in the Medical Practice Act of 1987, there is no requirement that emergency nursing services

be gratuitous. It appears, therefore, that non-licensed persons or persons who are licensed under professional acts may provide nursing assistance in an emergency without violating the Nursing and Advanced Nursing Practice Act.

#### Pharmacy Practice Act of 1987

Unlike the Medical Practice Act of 1987 and the Nursing and Advanced Nursing Practice Act, the Pharmacy Practice Act does not contain an emergency exception. In order for persons who are licensed under other professional acts or non-licensed individuals to conduct those acts which are included within the definition of the “practice

of pharmacy” without violating the Act, it will be advisable for the Governor to suspend the provisions of the Pharmacy Practice Act.

In the event of a disaster, as that term is defined in the Act, the Governor may, by proclamation, declare that a disaster exists and thereafter exercise certain emergency powers. (20 ILCS 3305/6, 7 (West 2001 Supp.)) Pursuant to subsection 7(a) of the IEMA Act (20 ILCS 3305/7(a) (West 2001 Supp.)), the Governor is authorized suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action, including emergency purchases, by IEMA, in coping with disaster. (20 ILCS 3305/7(a)(1) (West 2001 Supp.)) (See Ill. Att’y Gen. Op. No. I-02-050, issued October 25, 2002.)

#### Physician Assistant Practice Act of 1987

Based upon the emergency exemptions set out in the Medical Practice Act of 1987 and the Nursing and Advanced Nursing Practice Act, it would appear that physician assistants could perform tasks that are included within those Acts, without violating those acts. It is also possible that a physician could delegate certain tasks to physician assistants. There is no provision in the Physician Assistant Practice Act of 1987, however, that would authorize a physician assistant to work outside his or her current scope of practice in an emergency. In order to provide absolute authority for physician assistants to assist in an emergency, it will be advisable for the Governor, in concert with a disaster declaration, to suspend the provisions of the Physician Assistant Practice Act that limit a physician assistant’s scope of practice.

#### Emergency Medical Services (EMS) Systems Act

Based upon the emergency exemptions set out in the Medical Practice Act of 1987 and the Nursing and Advanced Nursing Practice Act, it would appear that E.M.T.s could perform tasks that are included within those Acts, without violating those acts. It is also possible that a physician could delegate certain tasks to E.M.T.s. There is no provision in the Emergency Medical Services (EMS) Systems Act, however, that authorizes an E.M.T. to work outside his or her current scope of practice. In order to provide absolute authority for E.M.T.s to assist in an emergency, it will be advisable for the Governor, in concert with a disaster declaration, to suspend the provisions of the EMS Systems Act relating to E.M.T. scopes of practice.

### Certified Nursing Assistants

Based upon the emergency exemptions set out in the Medical Practice Act of 1987 and the Nursing and Advanced Nursing Practice Act, it would appear that Certified Nursing Assistants could perform tasks that are included within those Acts without violating those acts. It is also possible that a physician could delegate certain tasks to C.N.A.s. There is no provision in section 3-206 of the Nursing Home Care Act that authorizes a C.N.A. to work outside his or her current scope of practice. In order to provide absolute authority for C.N.A.s to assist in an emergency, it will be advisable for the Governor, in concert with a disaster declaration, to suspend the provisions of the Nursing Home Care Act relating to C.N.A. scope of practice.

### Other Practice Acts

It is possible that other health care professionals, such as podiatrists, dentists, optometrists, or physical therapists, for example, would be called upon to assist in an emergency. Based upon the emergency exemptions set out in the Medical Practice Act of 1987 and the Nursing and Advanced Nursing Practice Act, it would appear that other licensed professionals could perform tasks that are included within those Acts, without violating those acts. As is discussed above, however, it will be advisable for the Governor, in concert with a disaster declaration, to suspend their practice acts in order to authorize them to perform functions that might go outside their current scopes of practice.

### Use of Licensed Personnel From Other States

With regard to licensed personnel from other states, Section 3 of the Medical Practice Act of 1987 (225 ILCS 60/3 (West 2000)) provides that a physician who holds an active license in another state may provide medical services to patients in Illinois during a bonafide emergency in immediate preparation for or during interstate transit. Section 5-15 of the Nursing and Advanced Nursing Practice Act (225 ILCS 65/5-15 (West 2000)) provides that the Act does not prohibit the practice of nursing by a nurse who holds an active license in another state when providing services to patients in Illinois during a bonafide emergency or in immediate preparation for or during interstate transit. The term "bonafide emergency" is not defined by the above statutory provisions. It must be assumed, however, that a situation that necessitates the declaration of a disaster by the Governor would constitute a bonafide emergency.

The above provisions of the Medical Practice Act of 1987 and the Nursing Practice Act authorize licensed professionals from other states to perform certain functions within Illinois during bonafide emergencies. The Emergency Management Assistance Compact Act and the Illinois Emergency Management Agency Act specifically authorize licensed professionals from other states to provide services in Illinois during a declared disaster.

Article V of the Emergency Management Assistance Compact (EMAC) Act (45 ILCS 151/5 (West 2001 Supp.)) provides that whenever any person holds 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, 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. All states bordering Illinois have enacted a version of EMAC.

Section 16 of the Illinois Emergency Management Agency Act (20 ILCS 3305/16 (West 2000)) additionally provides that if a disaster as defined in section 4 of the Act occurs in Illinois and the services of persons who are competent to practice any profession, trade or occupation are required in this State to cope with the disaster and it appears that the number of persons licensed or registered in this State may be insufficient for such purpose, then any persons who are licensed elsewhere to practice any such profession, trade or occupation may, if a member of a mobile support team or unit of another State rendering aid in this State pursuant to order of the Governor of their home state and upon the request of the Governor of this State, or if otherwise requested to do so by the Governor or the Director of IEMA of this State, during the time the disaster continues, practice such profession, trade or occupation in this State without being licensed or registered in this State.

#### Use of Licensed Personnel Employed by Federal Agencies

Licensed medical personnel employed by federal agencies may be called upon the assist during an emergency. Such personnel would include, among others, the personnel with the National Disaster Medical System (NDMS). It does not appear that the ability of such personnel to practice within Illinois during an emergency would be contingent upon Illinois license requirements.

The United States Supreme Court has recognized that states may not impose qualification requirements on federal employees acting within the scope of their employment. (See e.g., Sperry v. State of Florida ex rel. the Florida Bar (1963), 373 U.S. 379; Penn Dairies, Inc. v. Milk Control Commonwealth of Pennsylvania (1943), 318 U.S. 261; Johnson v. Maryland (1920), 254 U.S. 51. Accordingly, once individuals are appointed under a federal Act, their licenses will be valid in all states and territories as long as these individuals are performing work within the scope of the federal appointments.

#### **Emergency Privileges / Emergency Credentialing**

Concerns have been expressed regarding whether a hospital or other health care entity may allow outside medical personnel to assist regular staff during an emergency given the current requirements for granting medical staff privileges and for credentialing.

#### Hospital Medical Staff Privileges

It appears that the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has authorized the granting of disaster privileges when the emergency

management plan has been activated and the organization is unable to handle the immediate patient needs. (See MS.5.14.4.1). Specifically, during disasters in which the emergency management plan has been activated, the chief executive officer or medical staff president or his or her designee has the option to grant disaster privileges. The chief executive officer or president of the medical staff or his or her designee(s) may grant disaster privileges upon presentation of any of the following: a current picture hospital ID card; a current license to practice and a valid picture ID issued by a state, federal, or regulatory agency; identification indicating that the individual has been granted authority to render patient care in emergency circumstances, such authority having been granted by a federal, state or municipal entity; or presentation by current hospital or medical staff member(s) with personal knowledge regarding the practitioner's identity. The JCAHO document further states that the individual(s) responsible for granting privileges must be identified, along with contingencies for alternates, should the need arise. The responsible individual(s) is not required to grant privileges to any individual and is expected to make such decisions on a case by case basis at his or her discretion. The medical staff must identify in writing the individual responsible for granting privileges; describe in writing the responsibilities of the individuals responsible for granting disaster privileges; describe in writing a mechanism to manage the activities of individuals who receive disaster privileges and to readily identify such individuals; and address the verification process as a high priority. The medical staff must have a mechanism to ensure that the verification process of the credentials and privileges of individuals who receive disaster privileges begins as soon as the immediate situation is under control. This privileging process is identical to the process established under the medical staff bylaws for granting temporary privileges to fulfill an important patient care need.

In Illinois, subsection 10.4(a) of the Hospital Licensing Act (210 ILCS 85/10.4(a) (West 2000)) governs medical staff privileges. Section 10.4 requires that any hospital licensed under the Act or organized under the University of Illinois Hospital Act shall, prior to the granting of any medical staff member's privileges to an applicant, or renewing a current medical staff member's privileges, request of the Director of Professional Regulation information concerning the licensure status and any disciplinary action taken against the medical staff member's license, except for medical personnel who enter a hospital to obtain organs and tissues for transplant from a deceased donor in accordance with the Uniform Anatomical Gift Act. The Director of Professional Regulation shall transmit, in writing and in a timely fashion, such information regarding the license of the applicant or the medical staff member, including the record of any imposition of any periods of supervision or monitoring as a result of alcohol or substance abuse, and such information as may have been submitted to the Department indicating that the applicant or medical staff member has been denied, or has surrendered, medical staff privileges at a hospital licensed under the Act, or any equivalent facility in another state or territory of the U.S.

Subsection 10.4(b) (210 ILCS 85/10.4(b) (West 2000)) additionally provides that hospitals licensed under the Act, except county hospitals as defined in the Illinois Public Aid Code, shall comply with, and the medical staff bylaws of these hospitals shall

include rules consistent with, the provisions of this Section in granting, limiting, renewing or denying medical staff privileges. Subsection 10.4(b) sets out minimum procedures for pre-applicants and applicants for medical staff membership as well as minimum procedures with respect to medical staff and clinical privilege determinations concerning current members of the medical staff. Included within the required minimum procedures is an evaluation of a pre-applicant or applicant's current health status and current license status in Illinois. (See also 77 Ill. Adm. Code. 250.310.)

### Credentials

Section 15 of the Health Care Professional Credentials Data Collection Act (410 ILCS 517/15 (West 2001 Supp.)) requires hospitals, health care entities or health care plans that employ, contract with, or allow health care professionals to provide medical or health care services and require health care professionals to be credentialed or recredentialed to use uniform forms for collecting credentials data. Additionally, each health care entity and health care plan shall complete the process of verifying a health care professional's credentials in a timely fashion and shall complete the process of credentialing or recredentialing within 60 days after submission of all credentials data and completion of verification of the credentials data. (410 ILCS 517/15 (West 2001 Supp.); 77 Ill. Adm. Code 965.140.)

IDPH, in consultation with the Health Care Credentials Council, shall by rule: develop the uniform forms described above (410 ILCS 517/15 (West 2001 Supp.)); establish a single credential cycle based on a specific variable or variables (410 ILCS 517/20 (West 2001 Supp.)); establish a uniform site survey instrument (410 ILCS 517/25 (West 2001 Supp.)); and adopt rules necessary to develop and implement and enforce the requirements of the Act. (410 ILCS 517/35 (West 2000).)

Pursuant to section 40 of the Act (410 ILCS 517/40 (West 2000)), any health care entity, health care plan, hospital or health care professional that violates any Section of this Act shall forfeit and pay to IDPH a fine in an amount determined by IDPH of not more than \$1,000 for the first offense and not more than \$5,000 for each subsequent offense.

Pursuant to the Health Care Professional Credentials Data Act, IDPH has adopted the Health Care Professional Credentials Data Collection Code. (77 Ill. Adm. Code 965 et seq.)

### Federal Credential / License Verification System

At the federal level, it should be noted that the Secretary is required to establish a system either directly, or through grant, contract, or cooperative agreement, for advance registration of health professionals for verifying credentials, licenses, accreditations, and hospital privileges, for when such professionals volunteer during a public health emergency. (42 U.S.C. § 247d-7b.)

## HOSPITAL LICENSING ACT

### Facility License for Federal Mobile Hospitals

It is anticipated that the National Disaster Medical System (NDMS) may be dispatched to Illinois during the TOPOFF 2 exercise. The NDMS is a Federally coordinated system that augments the nation's emergency medical response capability. (See 42 U.S.C. § 300hh-11 (2002).) The NDMS may be activated to provide health services, health-related social services, other appropriate human services, and appropriate auxiliary services to respond to the needs of victims of a public health emergency; or to be present at locations, and for limited periods of time, specified by the Secretary of Health and Human Services on the basis that the Secretary has determined that a location is at risk of a public health emergency during the time specified.

A NDMS Disaster Medical Assistance Team (DMAT) is a group of medical and support personnel designed to provide emergency medical care during a disaster or other unusual event. DMATs deploy to disaster sites with adequate supplies and equipment to support themselves for a period of 72 hours while providing medical care at a fixed or temporary medical site. They may provide primary health care and / or augment overloaded health care staff. DMATs are designed to be a rapid-response element to supplement local medical care until other Federal or contract resources can be mobilized, or the situation resolved.

A concern arose regarding the use of DMATs should they operate in the capacity of a mobile hospital. The specific concern related to whether DMATs would be required to obtain a hospital license from IDPH before providing services.

In Illinois, section 4 of the Hospital Licensing Act (210 ILCS 85/4 (West 2000)) provides that no person shall establish a hospital without first obtaining a permit from the Department and no person shall open, conduct, operate or maintain a hospital without first obtaining a license from the Department. Section 3 of the Hospital Licensing Act (210 ILCS 85/3 (West 2000)) defines "hospital" to mean " \* \* \* any institution, place, building, or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of 2 or more unrelated persons admitted for overnight stay or longer in order to obtain medical, including obstetric, psychiatric and nursing, care of illness, disease, injury, infirmity, or deformity. \* \* \* " That section further states, however, that " \* \* \* the term 'hospital' does not include \* \* \* (3) hospitalization or care facilities maintained by the federal government or agencies thereof."

### Emergency Privileges / Emergency Credentialing

Concerns have been expressed regarding whether a hospital or other health care entity may allow outside medical personnel to assist regular staff during an emergency given the current requirements for granting medical staff privileges and for credentialing.

### Hospital Medical Staff Privileges

It appears that the Joint Commission on Accreditation of Healthcare

Organizations (JCAHO) has authorized the granting of disaster privileges when the emergency management plan has been activated and the organization is unable to handle the immediate patient needs. (See MS.5.14.4.1). Specifically, during disasters in which the emergency management plan has been activated, the chief executive officer or medical staff president or his or her designee has the option to grant disaster privileges. The chief executive officer or president of the medical staff or his or her designee(s) may grant disaster privileges upon presentation of any of the following: a current picture hospital ID card; a current license to practice and a valid picture ID issued by a state, federal, or regulatory agency; identification indicating that the individual has been granted authority to render patient care in emergency circumstances, such authority having been granted by a federal, state or municipal entity; or presentation by current hospital or medical staff member(s) with personal knowledge regarding the practitioner's identity. The JCAHO document further states that the individual(s) responsible for granting privileges must be identified, along with contingencies for alternates, should the need arise. The responsible individual(s) is not required to grant privileges to any individual and is expected to make such decisions on a case by case basis at his or her discretion. The medical staff must identify in writing the individual responsible for granting privileges; describe in writing the responsibilities of the individuals responsible for granting disaster privileges; describe in writing a mechanism to manage the activities of individuals who receive disaster privileges and to readily identify such individuals; and address the verification process as a high priority. The medical staff must have a mechanism to ensure that the verification process of the credentials and privileges of individuals who receive disaster privileges begins as soon as the immediate situation is under control. This privileging process is identical to the process established under the medical staff bylaws for granting temporary privileges to fulfill an important patient care need.

In Illinois, subsection 10.4(a) of the Hospital Licensing Act (210 ILCS 85/10.4(a) (West 2000)) governs medical staff privileges. Section 10.4 requires that any hospital licensed under the Act or organized under the University of Illinois Hospital Act shall, prior to the granting of any medical staff member's privileges to an applicant, or renewing a current medical staff member's privileges, request of the Director of Professional Regulation information concerning the licensure status and any disciplinary action taken against the medical staff member's license, except for medical personnel who enter a hospital to obtain organs and tissues for transplant from a deceased donor in accordance with the Uniform Anatomical Gift Act. The Director of Professional Regulation shall transmit, in writing and in a timely fashion, such information regarding the license of the applicant or the medical staff member, including the record of any imposition of any periods of supervision or monitoring as a result of alcohol or substance abuse, and such information as may have been submitted to the Department indicating that the applicant or medical staff member has been denied, or has surrendered, medical staff privileges at a hospital licensed under the Act, or any equivalent facility in another state or territory of the U.S.

Subsection 10.4(b) (210 ILCS 85/10.4(b) (West 2000)) additionally provides that hospitals licensed under the Act, except county hospitals as defined in the Illinois Public Aid Code, shall comply with, and the medical staff bylaws of these hospitals shall include rules consistent with, the provisions of this Section in granting, limiting, renewing or denying medical staff privileges. Subsection 10.4(b) sets out minimum procedures for pre-applicants and applicants for medical staff membership as well as minimum procedures with respect to medical staff and clinical privilege determinations concerning current members of the medical staff. Included within the required minimum procedures is an evaluation of a pre-applicant or applicant's current health status and current license status in Illinois. (See also 77 Ill. Adm. Code. 250.310.)

Credentials Section 15 of the Health Care Professional Credentials Data Collection Act (410 ILCS 517/15 (West 2001 Supp.)) requires hospitals, health care entities or health care plans that employ, contract with, or allow health care professionals to provide medical or health care services and require health care professionals to be credentialed or recredentialed to use uniform forms for collecting credentials data. Additionally, each health care entity and health care plan shall complete the process of verifying a health care professional's credentials in a timely fashion and shall complete the process of credentialing or recredentialing within 60 days after submission of all credentials data and completion of verification of the credentials data. (410 ILCS 517/15 (West 2001 Supp.); 77 Ill. Adm. Code 965.140.)

IDPH, in consultation with the Health Care Credentials Council, shall by rule: develop the uniform forms described above (410 ILCS 517/15 (West 2001 Supp.)); establish a single credential cycle based on a specific variable or variables (410 ILCS 517/20 (West 2001 Supp.)); establish a uniform site survey instrument (410 ILCS 517/25 (West 2001 Supp.)); and adopt rules necessary to develop and implement and enforce the requirements of the Act. (410 ILCS 517/35 (West 2000).)

Pursuant to section 40 of the Act (410 ILCS 517/40 (West 2000)), any health care entity, health care plan, hospital or health care professional that violates any Section of this Act shall forfeit and pay to IDPH a fine in an amount determined by IDPH of not more than \$1,000 for the first offense and not more than \$5,000 for each subsequent offense.

Pursuant to the Health Care Professional Credentials Data Act, IDPH has adopted the Health Care Professional Credentials Data Collection Code. (77 Ill. Adm. Code 965 et seq.)

#### Federal Credential / License Verification System

At, the federal level, it should be noted that the Secretary is required to establish a

system either directly, or through grant, contract, or cooperative agreement, for advance registration of health professionals for verifying credentials, licenses, accreditations, and hospital privileges, for when such professionals volunteer during a public health emergency. (42 U.S.C. § 247d-7b.)

## Health Care Professional Credentials Data Collection Act

### Emergency Privileges / Emergency Credentialing

Concerns have been expressed regarding whether a hospital or other health care entity may allow outside medical personnel to assist regular staff during an emergency given the current requirements for granting medical staff privileges and for credentialing.

### Hospital Medical Staff Privileges

It appears that the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has authorized the granting of disaster privileges when the emergency management plan has been activated and the organization is unable to handle the immediate patient needs. (See MS.5.14.4.1). Specifically, during disasters in which the emergency management plan has been activated, the chief executive officer or medical staff president or his or her designee has the option to grant disaster privileges. The chief executive officer or president of the medical staff or his or her designee(s) may grant disaster privileges upon presentation of any of the following: a current picture hospital ID card; a current license to practice and a valid picture ID issued by a state, federal, or regulatory agency; identification indicating that the individual has been granted authority to render patient care in emergency circumstances, such authority having been granted by a federal, state or municipal entity; or presentation by current hospital or medical staff member(s) with personal knowledge regarding the practitioner's identity. The JCAHO document further states that the individual(s) responsible for granting privileges must be identified, along with contingencies for alternates, should the need arise. The responsible individual(s) is not required to grant privileges to any individual and is expected to make such decisions on a case by case basis at his or her discretion. The medical staff must identify in writing the individual responsible for granting privileges; describe in writing the responsibilities of the individuals responsible for granting disaster privileges; describe in writing a mechanism to manage the activities of individuals who receive disaster privileges and to readily identify such individuals; and address the verification process as a high priority. The medical staff must have a mechanism to ensure that the verification process of the credentials and privileges of individuals who receive disaster privileges begins as soon as the immediate situation is under control. This privileging process is identical to the process established under the medical staff bylaws for granting temporary privileges to fulfill an important patient care need.

In Illinois, subsection 10.4(a) of the Hospital Licensing Act (210 ILCS 85/10.4(a) (West 2000)) governs medical staff privileges. Section 10.4 requires that any hospital licensed under the Act or organized under the University of Illinois Hospital Act shall, prior to the granting of any medical staff member's privileges to an applicant, or renewing a current medical staff member's privileges, request of the Director of Professional Regulation information concerning the licensure status and any disciplinary action taken against the medical staff member's license, except for medical personnel who enter a hospital to obtain organs and

tissues for transplant from a deceased donor in accordance with the Uniform Anatomical Gift Act. The Director of Professional Regulation shall transmit, in writing and in a timely fashion, such information regarding the license of the applicant or the medical staff member, including the record of any imposition of any periods of supervision or monitoring as a result of alcohol or substance abuse, and such information as may have been submitted to the Department indicating that the applicant or medical staff member has been denied, or has surrendered, medical staff privileges at a hospital licensed under the Act, or any equivalent facility in another state or territory of the U.S.

Subsection 10.4(b) (210 ILCS 85/10.4(b) (West 2000)) additionally provides that hospitals licensed under the Act, except county hospitals as defined in the Illinois Public Aid Code, shall comply with, and the medical staff bylaws of these hospitals shall include rules consistent with, the provisions of this Section in granting, limiting, renewing or denying medical staff privileges. Subsection 10.4(b) sets out minimum procedures for pre-applicants and applicants for medical staff membership as well as minimum procedures with respect to medical staff and clinical privilege determinations concerning current members of the medical staff. Included within the required minimum procedures is an evaluation of a pre-applicant or applicant's current health status and current license status in Illinois. (See also 77 Ill. Adm. Code. 250.310.)

Credentials Section 15 of the Health Care Professional Credentials Data Collection Act (410 ILCS 517/15 (West 2001 Supp.)) requires hospitals, health care entities or health care plans that employ, contract with, or allow health care professionals to provide medical or health care services and require health care professionals to be credentialed or recredentialed to use uniform forms for collecting credentials data. Additionally, each health care entity and health care plan shall complete the process of verifying a health care professional's credentials in a timely fashion and shall complete the process of credentialing or recredentialing within 60 days after submission of all credentials data and completion of verification of the credentials data. (410 ILCS 517/15 (West 2001 Supp.); 77 Ill. Adm. Code 965.140.)

IDPH, in consultation with the Health Care Credentials Council, shall by rule: develop the uniform forms described above (410 ILCS 517/15 (West 2001 Supp.)); establish a single credential cycle based on a specific variable or variables (410 ILCS 517/20 (West 2001 Supp.)); establish a uniform site survey instrument (410 ILCS 517/25 (West 2001 Supp.)); and adopt rules necessary to develop and implement and enforce the requirements of the Act. (410 ILCS 517/35 (West 2000).)

Pursuant to section 40 of the Act (410 ILCS 517/40 (West 2000)), any health care entity, health care plan, hospital or health care professional that violates any

Section of this Act shall forfeit and pay to IDPH a fine in an amount determined by IDPH of not more than \$1,000 for the first offense and not more than \$5,000 for each subsequent offense.

Pursuant to the Health Care Professional Credentials Data Act, IDPH has adopted the Health Care Professional Credentials Data Collection Code. (77 Ill. Adm. Code 965 et seq.).

#### Federal Credential / License Verification System

At the federal level, it should be noted that the Secretary is required to establish a system either directly, or through grant, contract, or cooperative agreement, for advance registration of health professionals for verifying credentials, licenses, accreditations, and hospital privileges, for when such professionals volunteer during a public health emergency. (42 U.S.C. § 247d-7b.)

## Emergency Medical Services (EMS) Systems Act

### Emergency Medical Services (EMS) Systems

Section 3.20 of the Emergency Medical Services (EMS) Systems Act (210 ILCS 50/3.20 (West 2000)) provides that “Emergency Medical Services (EMS) System” means an organization of hospitals, vehicle service providers and personnel approved by the Illinois Department of Public Health in a specific geographic area, which coordinates and provides pre-hospital and inter-hospital emergency care and non-emergency medical transports at BLS, ILS, or ALS level pursuant to a System program plan submitted to and approved by IDPH, and pursuant to the EMS Region Plan adopted for the EMS Region in which the System is located. Section 3.20 additionally provides for classification of hospitals as Resource, Association and Participating Hospitals.

“Pre-hospital care” and “Inter-hospital care” include those emergency medical services rendered to emergency patients for analytic, resuscitative, stabilizing, or preventive purposes, during transportation of such patients to hospitals, or from one hospital to another hospital, respectively. (210 ILCS 50/3.10 (West 2000).) “Non-emergency medical care” means medical services rendered to patients whose conditions do not meet the Act’s definition of emergency, during transportation of such patients to health care facilities for the purpose of obtaining medical or health care services which are not emergency in nature. (210 ILCS 50/3.10 (West 2000).)

“Basic Life Support (BLS) Services” means a basic level of pre-hospital and inter-hospital emergency care and non-emergency medical care that includes airway management, cardiopulmonary resuscitation (CPR), control of shock and bleeding and splinting of fractures as specified in the Basic Life Support curriculum of the U.S. Department of Transportation and any modifications specified in rules adopted by the Department. (210 ILCS 50/3.10 (West 2000).)

“Intermediate Life Support (ILS) Services” means an intermediate level of pre-hospital and inter-hospital emergency care and non-emergency medical care that includes basic life support care plus intravenous cannulation and fluid therapy, invasive airway management, trauma care, and other authorized techniques and procedures as outlined in the Intermediate Life Support curriculum of the U.S. Department of Transportation and any modifications specified in rules adopted by the Department. (210 ILCS 50/3.10 (West 2000).)

“Advanced Life Support (ALS) Services” means an advanced level of pre-hospital and inter-hospital emergency care and non-emergency medical care that includes basic life support care, cardiac monitoring, cardiac defibrillation, electrocardiography, intravenous drug therapy, administration of medications, drugs and solutions, use of adjunctive medical devices, trauma care, and other authorized techniques and procedures, as outlined in the Advanced Life Support national curriculum of the U.S. Department of Transportation and any modifications specified in rules adopted by the Department. (210 ILCS 50/3.10 (West 2000).) That care shall be initiated as authorized by the EMS Medical Director in a Department approved advanced life support EMS system, under

the written or verbal direction of a physician licensed to practice medicine in all its branches or under the verbal direction of an Emergency Communications Registered Nurse.

### Emergency Medical Technicians

Section 3.50 of the Emergency Medical Services (EMS) Systems Act (210 ILCS 50/3.50 (West 2001 Supp.)) sets out the licensing categories for Emergency Medical Technicians, including: Emergency Medical Technician-Basic (E.M.T.-B); Emergency Medical Technician-Intermediate (E.M.T.-I); and Emergency Medical Technician-Paramedic (E.M.T.-P). “Emergency Medical Technician-Basic (E.M.T.-B)” means a person who has successfully completed a course of instruction in basic life support as prescribed by the Department, is currently licensed by the Department, and practices within an EMS System. (210 ILCS 50/3.50 (West 2001 Supp.))

“Emergency Medical Technician-Intermediate (E.M.T.-I)” means a person who has successfully completed a course of instruction in intermediate life support as prescribed by the Department, is currently licensed by the Department, and practices within an Intermediate or Advanced Life Support EMS System. (210 ILCS 50/3.50 (West 2001 Supp.)) Persons licensed as E.M.T.-Is are currently authorized to administer medications pursuant to a modification to the Intermediate Life Support curriculum of the U.S. Department of Transportation.

“Emergency Medical Technician-Paramedic (E.M.T.-P)” means a person who has successfully completed a course of instruction in advanced life support care as prescribed by the Department, is licensed by the Department, and practices within an Advanced Life Support EMS System. (210 ILCS 50/3.50 (West 2001 Supp.))

Section 3.55 (210 ILCS 50/3.55 (West 2001 Supp.)) of the Act provides that any person currently licensed as an E.M.T.-B, E.M.T.-I, or E.M.T.-P may perform emergency and non-emergency medical services as defined in the Act, in accordance with his or her level of education, training and licensure, the standards of performance and conduct prescribed by the Illinois Department of Public Health in rules adopted pursuant to the Act, and the requirements of the EMS System in which he or she practices, as contained in the approved Program Plan for that System. A person currently licensed as an E.M.T.-B, E.M.T.-I, or E.M.T.-P may only practice as an E.M.T. or utilize his or her E.M.T. license in pre-hospital or inter-hospital emergency care settings or non-emergency medical transport situations, under the written or verbal direction of the EMS Medical Director. (210 ILCS 50/3.55 (West 2001 Supp.))

The current authority of a licensed E.M.T. depends upon his or her license classification and training. E.M.T.-Ps are specifically authorized to provide advanced life support services. Advanced life support services include, among other things, administration of medications, drugs and solutions as outlined in the Advanced Life Support national curriculum. Advanced life support care, however, must be initiated and authorized by the EMS Medical Director, under the written or verbal direction of a physician licensed to practice medicine in all its branches, or under the verbal direction of an Emergency

Communications Registered Nurse. Persons licensed as E.M.T.-Is are also authorized to administer medications pursuant to a modification to the Intermediate Life Support curriculum of the U.S. Department of Transportation. Any person licensed as an E.M.T.-B, E.M.T.-I or E.M.T.-P may only practice as an E.M.T. or utilize his or her E.M.T. license under the written or verbal direction of the EMS Medical Director. (210 ILCS 50/3.55 (West 2001 Supp.).)

#### Immunity / Liability Provisions

Subsection 3.150(a) of the EMS Systems Act (210 ILCS 50/3.150(a) (West 2000)) provides that any person, agency, or governmental body certified, licensed or authorized pursuant to this Act or rules thereunder, who in good faith provides emergency or non-emergency medical services during a Department approved training course, in the normal course of conducting their duties, or in an emergency shall not be civilly liable as a result of their acts or omissions in providing such services unless such acts or omissions, including the bypassing of nearby hospitals or medical facilities in accordance with the protocols developed pursuant to this Act, constitute willful and wanton misconduct.

Subsection 3.150(b) (210 ILCS 50/3.150(b) (West 2000)) provides that no person, including any private or governmental organization, or institution that administers, sponsors, authorizes, supports, finances, educates or supervises the functions of emergency medical services personnel certified, licensed or authorized pursuant to the Act, including persons participating in a Department approved training program, shall be liable for any civil damages for any act or omission in connection with administration, sponsorship, authorization, support, finance, education or supervision of such emergency medical services personnel, where the act or omission occurs in connection with activities within the scope of the Act, unless the act or omission was the result of willful and wanton misconduct.

Subsection 3.150(c) provides that exemption from civil liability for emergency care is as provided in the Good Samaritan Act.

Subsection 3.150(f) provides that no EMS Medical Director who in good faith exercises his responsibilities under the Act shall be liable for damages in any civil action based on such activities unless an act or omission during the course of such activities constitutes willful and wanton misconduct.

## IMMUNITY / LIABILITY

### Illinois Emergency Management Agency Act

Section 15 of the Illinois Emergency Management Agency Act (20 ILCS 3305/15 (West 2001 Supp.)) provides that neither the State, any political subdivision of the State, nor, except in cases of gross negligence or willful misconduct, the Governor, the Director, the Principal Executive Officer of a political subdivision, or the agents, employees, or representatives of any of them, engaged in any emergency management response or recovery activities, while complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act is liable for the death of or any injury to persons, or damage to property as a result of such activity.

Subsection 21(a) of the Act (20 ILCS 3305/21(a) (West 2001 Supp.)) provides that any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of such real estate or premises for the purpose of sheltering persons during an actual or impending disaster, or a exercise together with his or her successors in interest, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises, or for negligently causing loss of, or damage to, the property of such person.

Subsection 21(b) of the Act (20 ILCS 3305/21(b) (West 2001 Supp.)) provides that any private person, firm or corporation and employees and agents of such person, firm or corporation, in the performance of a contract with, and under the direction of the State or any political subdivision thereof, under the provisions of this Act shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the case of willful misconduct.

Subsection 21(c) of the Act (20 ILCS 3305/21(c) (West 2001 Supp.)) provides that any private person, firm or corporation who renders assistance or advice at the request of the State, or any political subdivision thereof, during an actual or impending disaster, shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of willful misconduct. Such immunities in this subsection shall not apply, however, to any private person, firm or corporation, or any employee or agent thereof, whose act or omission caused in whole or in part the actual or impending disaster and who would otherwise be liable therefor.

### Emergency Management Assistance Compact Act

Article VI of the Emergency Management Assistance Compact Act (45 ILCS 151/5 (West 2001 Supp.)) provides that officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith shall not include willful misconduct, gross negligence

or gross recklessness.

#### Emergency Medical Services (EMS) Systems Act

Subsection 3.150(a) of the EMS Systems Act (210 ILCS 50/3.150(a) (West 2000)) provides that any person, agency, or governmental body certified, licensed or authorized pursuant to this Act or rules thereunder, who in good faith provides emergency or non-emergency medical services during a Department approved training course, in the normal course of conducting their duties, or in an emergency shall not be civilly liable as a result of their acts or omissions in providing such services unless such acts or omissions, including the bypassing of nearby hospitals or medical facilities in accordance with the protocols developed pursuant to this Act, constitute willful and wanton misconduct.

Subsection 3.150(b) (210 ILCS 50/3.150(b) (West 2000)) provides that no person, including any private or governmental organization, or institution that administers, sponsors, authorizes, supports, finances, educates or supervises the functions of emergency medical services personnel certified, licensed or authorized pursuant to the Act, including persons participating in a Department approved training program, shall be liable for any civil damages for any act or omission in connection with administration, sponsorship, authorization, support, finance, education or supervision of such emergency medical services personnel, where the act or omission occurs in connection with activities within the scope of the Act, unless the act or omission was the result of willful and wanton misconduct.

Subsection 3.150(c) provides that exemption from civil liability for emergency care is as provided in the Good Samaritan Act.

Subsection 3.150(f) provides that no EMS Medical Director who in good faith exercises his responsibilities under the Act shall be liable for damages in any civil action based on such activities unless an act or omission during the course of such activities constitutes willful and wanton misconduct.

#### Good Samaritan Act

The "Good Samaritan" immunity provisions set out in the Good Samaritan Act (745 ILCS 49/1 et seq. (West 2000)) appear to provide immunity to various professionals for providing emergency care.

Specifically, section 25 of the Good Samaritan Act (745 ILCS 49/25 (West 2000)) provides that any person licensed under the Medical Practice Act of 1987 or any person licensed to practice the treatment of human ailments in any other state or territory of the United States who in good faith, provides emergency care without fee to a person, shall not, as a result of his or her acts or omissions, except willful or wanton misconduct on the part of the person, in providing the care, be liable for civil damages.

Similar provisions relating to emergency care without fee apply to: advance practice nurses (745 ILCS 49/34); professional nurses and practical nurses (745 ILCS 49/35);

physical therapists (745 ILCS 39/45); physician assistants (745 ILCS 49/50); and law enforcement officers or firemen (745 ILCS 49/70).

The following professionals are immunized for providing emergency care without fee to a victim of an accident at the scene of an accident: dentists (745 ILCS 49/15); optometrists (745 ILCS 49/42); podiatrists (745 ILCS 49/50); respiratory care practitioners (also applies to care to a victim of a natural disaster) (745 ILCS 49/55); and veterinarians (745 ILCS 49/60).

With regard to nurses, section 40 (745 ILCS 49/40 (West 2000)) provides that no person licensed as a professional nurse or as a practical nurse who, without compensation, renders nursing services shall be liable, and no cause of action may be brought, for damages resulting from an act or omission in rendering such services unless the act or omission involved willful or wanton misconduct. As used in this section, "entity" means a proprietorship, partnership, association or corporation, whether or not operated for profit. Nothing in this section is intended to bar any cause of action against an entity or change the liability of any entity which arises out of an act or omission of any person under this section.

#### Good Samaritan Food Donor Act

The Good Samaritan Food Donor Act (745 ILCS 49/1 et seq. (West 2000)) provides for immunity for certain donors of recipients of food.

#### State Government

Article XIII, section 4 of the Illinois Constitution of 1970 abolished sovereign immunity "[e]xcept as the General Assembly may provide by law." The General Assembly enacted the State Lawsuit Immunity Act (745 ILCS 5/1 (West 2000)) which provides that except as provided in the Illinois Labor Relations Act or the Court of Claims Act, the State of Illinois shall not be made a defendant or party in any court. Section 8 of the Court of Claims Act (705 ILCS 505/8 (West 2000)) provides that the court of claims has exclusive jurisdiction to hear and determine, inter alia, all claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit. The award for damages in a case sounding in tort, other than certain cases involving the operation of a State vehicle, shall not exceed the sum of \$100,000 to or for the benefit of any claimant. (705 ILCS 505/8(d) (West 2000).)

Section 2 of the State Employee Indemnification Act (5 ILCS 350/2 (West 2000)) provides that the State, through the office of the Attorney General, will defend a "State employee" in a civil action arising out of an act or omission occurring within the scope of his or her employment, unless the act or omission was intentional, willful or wanton misconduct. Further, unless the court or jury finds that the conduct or inaction which gave rise to the claim was intentional, willful or wanton misconduct, the State will indemnify the employee for any damages that may be awarded. The term "State" is defined to include "the State of Illinois, the General Assembly, the court, or any State office, department, division, bureau, board, commission, or committee \* \* \* that receives State funding, or any other agency or instrumentality of the State. It does not mean any

public entity as defined in Section 1-206 of the Local Government and Governmental Employees Tort Immunity Act". (5 ILCS 350/1(a) (West 2000).) The term "employee" means "any present or former elected or appointed officer, trustee, or employee of the State, \* \* \* individuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing, \* \* \* but does not include an independent contractor except as provided in this Section. (5 ILCS 350/1(b) (West 2000).)

### Local Government

The Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq. (West 2000)) provides immunity to local public entities and their employees in specific circumstances. "Local public entity" is defined to include a county, township, municipality, municipal corporation, school district, school board, educational service region, regional board of school trustees, community college district, community college board, forest preserve district, park district, fire protection district, sanitary district, museum district, emergency telephone system board, and all other local governmental bodies. It does not include the State or any office, officer, department, division, bureau, board, commission, university or similar agency of the State. (745 ILCS 10/1-206 (West 2000).) "Public employee" means employee of a local public entity. "Employee" is defined to include a present or former officer, member of a board, commission or committee, agent, volunteer, servant or employee, whether or not compensated, but does not include an independent contractor.

Subsection 6-104(a) of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/6-104(a) (West 2000)) provides that neither a local public entity nor a public employee is liable for an injury resulting from the policy decision to perform or not perform any act to promote the public health of the community by preventing disease or controlling the communication of disease within the community if such decision was the result of the exercise of discretion vested in the local public entity or public employee, whether or not such discretion was abused. Sub section 6-104(b) (745 ILCS 10/6-104(b) additionally states that neither a local public entity nor a public employee is liable for an injury caused by an act or omission in carrying out with due care a decision described in subdivision (a).

In Opinion No. S-1171, issued November 19, 1976 (1976 Ill. Att'y Gen. Op. 324), Attorney General Scott determined that a county is liable to the United States for costs incurred by the United States which resulted from the negligence of county health department employees and volunteers in conducting the swine flu vaccination program. (This opinion construed section 6-104(b) of the Local Governmental and Governmental Employees Tort Immunity Act.)

## WORKERS' COMPENSATION

Workers' compensation benefits are typically determined pursuant to the provisions of the Workers' Compensation Act (820 ILCS 305/1 et seq. (West 2000)) and the Workers' Occupational Diseases Act (820 ILCS 310/1 et seq. (West 2000)).

Additionally, the Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics, Firemen, Chaplains and State Employees Compensation Act (820 ILCS 315/1 et seq. (West 2000)) provides compensation for law enforcement officers, civil defense workers, civil air patrol members, paramedics, firemen, chaplains, or State employees, killed in the line of duty.

### Illinois Emergency Management Agency Act

#### Members of Mobile Support Teams

Personnel of a mobile support team while on duty pursuant to a call or while engaged in regularly scheduled training or exercises, shall either: (1) if they are paid employees of the State, have the powers, duties, rights, privileges and immunities and receive the compensation incidental to their employment; (2) if they are paid employees of a political subdivision or body politic of the State and whether serving within or without that political subdivision or body politic, have the powers, duties, rights, privileges, immunities and receive the compensation incidental to their employment; or (3) if they are not employees of the State, political subdivision or body politic, or being such employees, are not normally paid for their services, be entitled to at least one dollar per year compensation from the State.

Personnel of a mobile support team who suffer disease, injury or death arising out of in the course of emergency duty, shall for the purposes of benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act only, be deemed to be employees of this State. If the person diseased, injured, or killed is an employee described in (3) above, the computation of benefits payable under either of those Acts shall be based on income commensurate with comparable State employees doing the same type of work or income from the person's regular employment, whichever is greater.

#### IEMA / ESDA Volunteers

Subsection 10(k) (20 ILCS 3305/10k (West 2001 Supp.)) provides that volunteers who, while engaged in a disaster, an exercise, training related to the emergency operations plan of the political subdivision, or a search and rescue team response to an occurrence or threat of injury or loss of life that is beyond local response capabilities, suffer disease, injury, or death, shall for purposes of the Workers' Compensation Act or Workers' Occupational Diseases Act only, be deemed employees of the State, if: (1) the claimant is a duly qualified and enrolled (sworn in) as a volunteer of IEMA or an ESDA agency accredited by IEMA, and (2) if the claimant was participating in a disaster as defined in section 4, the exercise or training participated in was specifically and expressly approved by IEMA, or the search and rescue team response was to an

occurrence or threat of injury or loss of life was beyond local response capabilities and was specifically and expressly approved by IEMA prior to the search and rescue response. The computation of benefits under either of those Acts shall be based on the income commensurate with comparable State employees doing the same type of work or income from the person's regular employment, whichever is greater.

If any person is entitled to receive benefits through the application of this Section receives, in connection with the disease, injury or death giving rise to such entitlements, benefits under an Act of Congress or federal program, benefits payable under this Section shall be reduced to the extent of benefits under that other Act or program.

Informal Attorney General Opinion No. I-88-019, issued May 4, 1988, discussed workers' compensation coverage for firefighters, police officers, or volunteers who are injured in the course of responding to a mutual aid call from a jurisdiction other than those in which they are normally employed. The opinion construed the workers' compensation coverage provided to Emergency Services and Disaster Agency personnel pursuant to subsection 11(k) of the IEMA Act (currently codified in subsection 10(k) of the Act) when the prerequisites of that section are met. The opinion also construed the determination of which entity would be liable for workers' compensation coverage when the prerequisites of subsection 11(k) are not met.

#### Emergency Management Assistance Compact

Article VII (45 ILCS 151/5 (West 2001 Supp.)) provides that each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

## STATE / LOCAL LAW ENFORCEMENT AUTHORITY

### Powers and Duties of Sheriffs (See also “*State Public Health Powers*”; “*Attorney General Opinions*”)

Division 3-6 of the Counties Code (55 ILCS 5/3-6001 et seq. (West 2000)) sets out the powers and duties of sheriffs. Section 3-6021 of the Counties Code (55 ILCS 5/3-6021 (West 2000)) provides that each sheriff shall be conservator of the peace in his or her county, and shall prevent crime and maintain the safety and order of the citizens of that county. Pursuant to section 3-6022 (55 ILCS 5/3-6022 (West 2000)), in order to keep the peace, prevent crime, or to execute any warrant, process, order, or judgment, he or she may call to his or her aid, when necessary, any person or the power of the county. The sheriff is also the Supervisor of Safety and shall enforce all laws of the State, and within the municipalities in his county, the ordinance of such municipalities relating to the regulation of motor vehicle traffic and the promotion of safety on public highways.

All local boards of health, health authorities and officers, police officers, sheriffs and all other officers and employees of the state or any locality shall enforce the rules and regulations so adopted. (20 ILCS 2305/2 (West 2000).) Whoever violates or refuses to obey any rule or regulation of IDPH shall be deemed guilty of a Class A misdemeanor. Any person who knowingly or maliciously disseminates any false information or report concerning the existence of any dangerously contagious or infectious disease in connection with the Department’s power of quarantine, isolation, or closure or refuses to comply with a quarantine, isolation or closure order is guilty of a Class A misdemeanor.

### State Police

Section 2605-200 of the Department of State Police Law of the Civil Administrative Code of Illinois (20 ILCS 2605/2605-200(a) (West 2000)), the Department of State Police, inter alia, has the authority to investigate the origins, activities, personnel, and incidents of crime. The Department of State Police is specifically authorized to cooperate with the police of cities, villages, and incorporated towns and with the peace officers of any county in enforcing the laws of the State and in making arrests and recovering property. Persons exercising the powers set forth in subsection (a) within the Department are conservators of the peace and as such have all the powers possessed by policemen in cities and sheriffs, except that they may exercise those powers anywhere in the State in cooperation with or after contact with the local law enforcement officials. (20 ILCS 2605/2605-200 (West 2000).)

### Municipal Police

Pursuant to section 11-1-2 of the Illinois Municipal Code (65 ILCS 5/11-1-2 (West 2000)), police officers in municipalities shall be conservators of the peace. They shall have the power: (1) to arrest or cause to be arrested, with or without process, all persons who break the peace or are found violating any municipal ordinance or any criminal law of the State; (2) to commit arrested persons for examination; (3) if necessary, to detain arrested persons in custody over night or Sunday in any safe place or until they can be brought before the proper court; and (4) to exercise all other powers

as conservators of the peace prescribed by the corporate authorities. Authorizes municipal police officers to serve warrants. The corporate authorities of the municipalities may prescribe additional duties and powers of the police officers.

#### “Peace officer”

The term “peace officer” is defined in section 2-13 of the Criminal Code of 1961 (720 ILCS 5/2-13 (West 2000)) to include any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

For purposes of Sections concerning unlawful use of weapons, for the purpose of assisting an Illinois peace officer in an arrest, or when the commission of a felony under Illinois law is directly observed by the person, then officers, agents, or employees of federal government commissioned by federal statute to make arrests for violations of federal criminal laws shall be considered “peace officers” under this Code, but not limited to all criminal investigators of: (1) the United States Department of Justice, the Federal Bureau of Investigation, the Drug Enforcement Agency and the Department of Immigration and Naturalization; (2) the United States Department of the Treasury, the Secret Service, the Bureau of Alcohol, Tobacco, and Firearms, and the Customs Service; (3) the United States Internal Revenue Service; (4) the United States General Services Administration; (5) the United States Postal Service; and (6) all United States Marshalls or Deputy United States Marshalls whose duties involve the enforcement of federal criminal laws.

#### Use of Force

Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 et seq.(West 2000)) outlines justifiable use of force. With regard to peace officers, section 7-5 (720 ILCS 5/7-5 (West 2000)) provides that a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or where he reasonably believes both that such force is necessary to prevent the arrest from being defeated by resistance or escape, and the person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or

otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

#### Arrest

Article 107 of the Code of Criminal Procedure of 1963 (725 ILCS 5/107-1 (West 2000)) governs arrest. Section 107-2 (725 ILCS 5/107-2 (West 2000)) provides that a peace

officer may arrest a person when: he has a warrant commanding such person to be arrested; he has reasonable grounds to believe that a warrant for the person's arrest has been issued; or he has reasonable grounds to believe that the person is committing or has committed an offense. Section 107-3 (725 ILCS 5/107-3 (West 2000)) authorizes any person to arrest another when he has reasonable grounds to believe that an offense other than an ordinance violation is being committed. Section 107-4 (725 ILCS 107-4 (West 2000)) governs arrest by peace officers from other jurisdictions.

#### Statewide Grand Jury Act

The Statewide Grand Jury Act (725 ILCS 215/1 et seq. (West 2000)) authorizes the Attorney General to apply for the appointment of a Circuit Judge to convene and preside over a statewide grand jury with authority to investigate, indict, and prosecute on a statewide basis. Section 2 of the Act (725 ILCS 215/2 (West 2000)) provides that in such application, the Attorney General shall state that the convening of a Statewide Grand Jury is necessary because of an alleged offense or offenses set forth in this section involving more than one county of the State and identifying any such offense alleged; and: (1) that he or she believes that the grand jury function for the investigation and indictment of the offense or offenses cannot effectively be performed by a county grand jury together with the reasons for such belief and (2) that each State's Attorney with jurisdiction over an offense or offenses to be investigated has consented to the impaneling of the Statewide Grand Jury, or if one or more State's Attorneys having jurisdiction over an offense or offenses to be investigated fails to consent to the impaneling of the Statewide Grand Jury, the Attorney General shall set forth good cause for impaneling the Statewide Grand Jury.

Public Act 92-854, effective December 5, 2002, among other things, amended the Statewide Grand Jury Act to add any violations of Article 29D of the Criminal Code of 1961 to the list of offenses for which a Statewide Grand Jury could be convened and impaneled.

#### Criminal Offenses / Acts of Terrorism

Public Act 92-854, effective December 5, 2002, added Article 29D to the Criminal Code of 1961. Article 29D adds the following offenses to the Criminal Code of 1961: soliciting or providing material support for terrorism (720 ILCS 5/29D-15); making a terrorist threat (720 ILCS 29D-20); falsely making a terrorist threat (720 ILCS 5/29D-25); terrorism (720 ILCS 29D-30); and hindering prosecution of terrorism (720 ILCS 5/29D-

35). (See text of Public Act 92-854 for the definition of the offenses and the terms used therein.)

#### Causing a Catastrophe

Section 20-5.5 of the Criminal Code of 1961 (720 ILCS 5/20-5.5 (West 2000)) provides that a person commits the offense of causing a catastrophe if he or she knowingly causes a catastrophe by explosion, fire, flood, collapse of a building, release of poison, radioactive material, bacteria, virus, or other dangerous and difficult to confine force or substance. "Catastrophe" is defined therein to mean serious physical injury to 5 or

more persons or substantial damage to 5 or more buildings or inhabitable structures or substantial damage to a vital public facility that seriously impairs its usefulness or operation. "Vital public facility" means a facility that is necessary to ensure or protect the public health, safety, or welfare, including but not limited to, a hospital, law enforcement agency, fire department, private or public utility company, national defense contractor, a facility of the armed forces, or emergency services agency.

## Illinois Attorney General Opinions

### I-02-050

Informal Attorney General Opinion No. I-02-050, issued October 25, 2002, addressed the issue of enforcement of quarantine orders. That opinion also construed the Governor's emergency powers pursuant to the Illinois Emergency Management Agency Act. Specifically, it was determined therein that the Governor could provide for the quarantine of persons within the entirety of a declared disaster area or within any premises located within the disaster area pursuant to the language of subsection 7(a)(8) of the IEMA Act. (20 ILCS 3305/7(a)(8) (West 2001 Supp.)) That section authorizes the Governor to control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein. Additionally, it was noted therein that pursuant to subsection 7(a)(1) of the IEMA Act, the Governor could suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance would in any way prevent, hinder or delay necessary action. Thus, in appropriate circumstances, the Governor could suspend the provisions of the Department of Public Health Act and any rules adopted pursuant thereto with regard to quarantine if strict compliance therewith would prevent, hinder, or delay response to a disaster or interfere with the exercise of his emergency powers.

### I-01-028

Informal Attorney General Opinion No. I-01-028, issued July 2, 2001, addressed whether the Governor could declare a disaster upon the discovery of a single confirmed case of foot and mouth disease in Illinois. It was determined therein that based upon the nature of the disease and the potential loss of livestock its appearance could bring, the occurrence of even a single case could justify the declaration of a "disaster" due to the "threat of widespread or severe damage" that the disease would cause if it went unchecked. The authority of the Governor to control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises during a disaster was also discussed. It was noted that the Governor's emergency powers do not extend to control travel to or from areas that are not within a declared disaster area. Additionally, it was determined that the emergency powers granted to the Governor cannot be extended beyond the 30 day period permitted in subsection 7(a) of the Illinois Emergency Management Agency Act without legislative approval.

### 83-017

In Opinion No. 83-017, issued October 7, 1983 (1983 Ill. Att'y Gen. Op. 51), Attorney General Hartigan determined that the Department of Public Health had authority to promulgate a rule which required non-immunized children whose parents or legal guardians object to measles immunization on religious grounds to be excluded from school for a twenty-one day period following an outbreak of measles in the school. Additionally, it was determined that such a rule does not impose an unconstitutional restriction on the free exercise of religion protected by the first amendment to the United States Constitution.

#### S-1171 (1976)

In Opinion No. S-1171, issued November 19, 1976 (1976 Ill. Att'y Gen. Op. 324), Attorney General Scott determined that a county is liable to the United States for costs incurred by the United States which resulted from the negligence of county health department employees and volunteers in conducting the swine flu vaccination program. (This opinion construed section 6-104(b) of the Local Governmental and Governmental Employees Tort Immunity Act.)

#### I-88-019

Informal Attorney General Opinion No. I-88-019, issued May 4, 1988, discussed workers' compensation coverage for firefighters, police officers, or volunteers who are injured in the course of responding to a mutual aid call from a jurisdiction other than those in which they are normally employed. The opinion construed the workers' compensation coverage provided to Emergency Services and Disaster Agency personnel pursuant to subsection 11(k) of the IEMA Act (currently codified in subsection 10(k) of the Act) when the prerequisites of that section are met. The opinion also construed the determination of which entity would be liable for workers' compensation coverage when the prerequisites of subsection 11(k) are not met.

#### 93-019

In Attorney General Opinion No. 93-019, issued July 27, 1993, Attorney General Burriss determined that county emergency services and disaster agency volunteers may not generally provide traffic and crowd control services upon the highways of the State, except when summoned to aid the sheriff or a deputy sheriff in maintaining the peace. Additionally, a county emergency services and disaster agency does not have the authority to create and maintain an auxiliary police unit.

#### S-1033 (1976)

In opinion No. S-1033, issued January 9, 1976 (1976 Ill. Att'y Gen. Op. 62), Attorney General Scott determined that the administration of medication does not fall within the commonly performed duties of nurse aids and orderlies, and therefore such individuals need not be licensed under the Nursing Act.

## CASES

People ex rel. Director of Public Health v. Calvo (1982), 89 Ill. 2d 130. Pursuant to provisions of the Communicable Disease Report Act, the Illinois Supreme Court upheld the confidentiality of reports submitted to the Department of Public Health relating to the control of venereal disease. Specifically, the court held that the State's Attorney's representation that reports submitted to the Department of Public Health relating to the control of venereal disease might lead the prosecution to other women whom a former Department employee allegedly molested while counseling them as part of the Department's sexually transmitted disease program and that such individuals might be willing to testify in trial on remaining charges of sexual misconduct was insufficient to overcome the statutory privilege maintaining confidentiality of such documents.

People ex rel. Barmore v. Robertson (1922), 302 Ill. 422. The Illinois Supreme Court upheld quarantine of a typhoid carrier who filed a writ of habeas corpus stating that she was unlawfully restrained of her liberty at her home. The typhoid carrier had been ordered to quarantine in her home by the Chicago commissioner of health. The court discussed the police powers as they relate to the protection of public health. The court also discussed quarantine at length. The court held that the city commissioner of health had no authority to determine when a contagious and infectious disease exists and to establish quarantine because the commissioner's authority was limited to carrying into execution proper orders of a legally constituted board of health. Ultimately, the court held that although the original quarantine was established without authority, the State department of health, by authorizing the modified quarantine, in effect established such quarantine, and the city then was restraining the typhoid carrier as an agent of the State department.

People ex rel. Baker v. Strautz (1944), 386 Ill. 345. The Illinois Supreme Court upheld, as a valid exercise of the police power, a statute which provided that when it appeared to a judge or justice of the peace that any person coming before him on any criminal charge may be suffering from a communicable or venereal disease, it shall be the duty of the judge or justice of the peace to refer such person to examination. If such person was found to have a communicable or venereal disease, he or she could be sent for treatment to a hospital, sanitarium, or clinic.

Jacobson v. Massachusetts (1904), 197 U.S. 11. The United States Supreme Court upheld, as a valid exercise of police power, a Cambridge Board of Health regulation, adopted pursuant to statutory authority, which mandated vaccination of all inhabitants against smallpox.

U.S. ex rel. Siegel v. Shinnick (1963), 219 F. Supp. 789. The United States District Court, E.D. New York, upheld isolation of an individual exposed to smallpox pursuant to federal Public Health Service regulations.

## DRAFT DOCUMENTS

Below are summaries and copies of the simulated executive orders that were prepared for the TOPOFF 2 Full Scale Exercise.

### Simulated Executive Order #1

In a bioterrorist event, it will be important for law enforcement officials to access medical information regarding certain individuals. Executive Order #1 suspends confidentiality provisions of the Communicable Disease Report Act and provisions of the Illinois Clinical Laboratory and Blood Bank Act which would currently prevent IDPH from sharing information contained in communicable disease reports or the results of laboratory tests with the Federal Bureau of Investigation and law enforcement officials.

### Simulated Executive Order #2

Executive Order #2 suspends the Health Care Professionals Credentialing Data Collection Act and provisions of the Hospital Licensing Act in order to allow licensed professionals to practice within a hospital in which they currently do not have staff privileges during the disaster.

### Simulated Executive Order #3

It is possible that Illinois would not have a sufficient number of physicians, pharmacists, or registered nurses to handle all of the medical and pharmaceutical distribution needs that would arise in the event of a mass disaster. Therefore, it is thought that we should temporarily suspend legal constraints on other licensed professionals performing these actions. Executive Order #3 suspends the Pharmacy Practice Act of 1987 in order to: allow persons other than pharmacists or pharmacy technicians to dispense medications; authorize the distribution and administration of medications at locations other than pharmacies; and authorize a general order describing the class of individuals who should receive medications, and the medications to be administered or dispensed. Additionally, this executive order suspends the Physician Assistant Practice Act of 1987, and provisions of the Emergency Medical Services (EMS) Systems to authorize physician assistants and emergency medical technicians to be able to practice outside their scopes of practice in order to provide for medical assessment, screening and treatment, including but not limited to the distribution and administration of medications to persons who may have been infected or exposed to pneumonic plague, or otherwise are in need of emergency medical services.

It is presently not thought necessary to suspend the provisions of the Medical Practice Act of 1987 because a license is not required for persons rendering gratuitous services in case of an emergency. Moreover, it is not thought necessary to suspend the provisions of the Nursing and Advanced Practice Nursing Act because the furnishing of nursing assistance in an emergency without a license is not prohibited.

Anticipating the need for additional personnel to respond to the disaster, Executive Order #3 authorizes personnel who possess similar licenses in other states to perform medical assessment, screening and treatment, including but not limited to the

distribution and administration of medications to persons who may have been infected or exposed to pneumonic plague, or otherwise are in need of emergency medical services.

Finally, Executive Order #3 authorizes non-licensed or non-certified persons, who are supervised by a licensed physician, to perform or assist in performing medical assessment, screening and treatment, including but not limited to the distribution and administration of medications, to persons who may have been infected or exposed to pneumonic plague or otherwise are in need of emergency medical services.

Simulated Executive Order #4A (Isolation and quarantine of noncompliant individuals)  
Current state law requires IDPH to obtain a court order before isolation or quarantine may be imposed. This requirement may serve as an impediment to responding to a bioterrorist event. Executive Order #4A would suspend section 2(c) of the Department of Public Health Act in order to authorize isolation, quarantine or closure of facilities without a prior court order. Additionally, Executive Order #4A orders isolation of infected persons.

# ***TOPOFF 2 Exercise Simulated Executive Order***

**EXECUTIVE ORDER**

**NUMBER 1 (2003)**

## **EXECUTIVE ORDER TO SUSPEND STATUTES TO PROVIDE FOR RELEASE OF INFORMATION TO LAW ENFORCEMENT**

WHEREAS, clinical identification of pneumonic plague in the Chicago area has prompted authorities to suspect the intentional release of the biological agent causing pneumonic plague, which has the potential to cause widespread and severe illness and loss of life within the State of Illinois;

WHEREAS, in order to detect the person or group of persons who may be responsible for the intentional release of the biological agent causing pneumonic plague, the Federal Bureau of Investigation, the Illinois State Police and other law enforcement agencies and officials will need to obtain information that would otherwise be withheld from release, including the identification of actual and potential victims of the release of the biological agent, in order to facilitate a criminal investigation into the suspected intentional release of the biological agent causing pneumonic plague;

WHEREAS, the provisions of the Communicable Disease Report Act (745 ILCS 45/1 et seq. (West 2000)) provide that whenever any statute of this State or any ordinance or resolution of a municipal corporation or political subdivision or any rule of an administrative agency requires medical practitioners or other persons to report cases of injury, medical condition or procedure, communicable disease, venereal disease, or sexually transmitted disease to any governmental agency or officer, such reports shall be confidential, and the identity of any individual who makes a report or who is identified in a report shall be confidential and shall not be disclosed publicly or in any action of any kind in any court or before any tribunal, board or agency;

WHEREAS, section 7-102 of the Illinois Clinical Laboratory and Blood Bank Act (210 ILCS 25/7-102 (West 2000)) provides that the result of a test shall be reported directly to the licensed physician or other authorized person who requested it;

WHEREAS, pursuant to section 7 of the Illinois Emergency Management Agency Act (20 ILCS 3305/7 (West 2001 Supp.)), on May 13, 2003, I have issued a proclamation declaring that a disaster exists within the State of Illinois;

WHEREAS, pursuant to subsection 7(a)(1) of the Illinois Emergency Management Agency Act (20 ILCS 3305/7(a)(1) (West 2001 Supp.)), upon a declaration of a disaster, the Governor may suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules, and regulations of any State agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay

## ***TOPOFF 2 Exercise Simulated Executive Order***

necessary action in responding to the disaster;

THEREFORE, I hereby order the following:

1. The confidentiality provisions of the Communicable Disease Report Act (745 ILCS 45/1 et seq. (West 2000)) are hereby suspended in order to allow the release of information, including the identification of actual and potential victims of the release of a biological agent, to the Federal Bureau of Investigation, the Illinois State Police, and other law enforcement agencies and officials to the extent necessary to facilitate a criminal investigation into the suspected intentional release of the biological agent causing pneumonic plague.
2. The provisions of section 7-102 of the Illinois Clinical Laboratory and Blood Bank Act (210 ILCS 25/7-102 (West 2000)) restricting the reporting test results to the person who requested the test are hereby suspended in order to allow the release of information, including the identification of actual and potential victims of the release of a biological agent, to the Federal Bureau of Investigation, the Illinois State Police, and other law enforcement agencies and officials to the extent necessary to facilitate a criminal investigation into the suspected intentional release of the biological agent causing pneumonic plague.

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May 13, 2003

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Rod R. Blagojevich, Governor

# ***TOPOFF 2 Exercise Simulated Executive Order***

**EXECUTIVE ORDER**

**NUMBER 2 (2003)**

## **EXECUTIVE ORDER TO SUSPEND CERTAIN STATUTES AND REGULATIONS TO PROVIDE FOR EMERGENCY MEDICAL STAFF PRIVILEGES**

WHEREAS, clinical identification of pneumonic plague in the Chicago area has prompted authorities to suspect the intentional release of the biological agent causing pneumonic plague, which has the potential to cause widespread and severe illness and loss of life within the State of Illinois;

WHEREAS, the extent of illness and loss of life is such that additional physicians and other licensed professionals may be needed to provide medical services within a hospital or other health care facility during a disaster.

WHEREAS, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has authorized the granting of disaster privileges when the emergency management plan has been activated and the organization is unable to handle the immediate patient needs.

WHEREAS, the following statutory provisions may presently prevent physicians and other licensed professionals who are not presently on the staff of a hospital or other health care facility from providing emergency medical services within such facility during a disaster:

(1) Section 10.4 of the Hospital Licensing Act (210 ILCS 85/10.4 (West 2000)) requires that any hospital licensed under the Act or organized under the University of Illinois Hospital Act shall, prior to the granting of any medical staff member's privileges to an applicant, or renewing a current medical staff member's privileges, request of the Director of Professional Regulation information concerning the licensure status and any disciplinary action taken against the medical staff member's license, except for medical personnel who enter a hospital to obtain organs and tissues for transplant from a deceased donor in accordance with the Uniform Anatomical Gift Act. Section 10.4 additionally provides that hospitals licensed under the Act, except county hospitals as defined in the Illinois Public Aid Code, shall comply with, and the medical staff bylaws of these hospitals shall include rules consistent with, the provisions of this Section in granting, limiting, renewing or denying medical staff privileges. Section 10.4 sets out minimum procedures for pre-applicants and applicants for medical staff membership as well as minimum procedures with respect to medical staff and clinical privilege determinations concerning current members of the medical staff. Included within the required minimum procedures is an evaluation of a pre-applicant or applicant's current health status and current license status in Illinois.

(2) Section 15 of the Health Care Professional Credentials Data Collection Act (410 ILCS 517/15 (West 2001 Supp.)) requires hospitals, health care entities or health care plans that employ, contract with, or allow health care professionals to provide medical or

## ***TOPOFF 2 Exercise Simulated Executive Order***

health care services and require health care professionals to be credentialed or recredentialed to use uniform forms for collecting credentials data. Additionally, each health care entity and health care plan shall complete the process of verifying a health care professional's credentials in a timely fashion and shall complete the process of credentialing or recredentialing within 60 days after submission of all credentials data and completion of verification of the credentials data. (410 ILCS 517/15 (West 2001 Supp.); 77 Ill. Adm. Code 965.140.)

WHEREAS, pursuant to section 7 of the Illinois Emergency Management Agency Act (20 ILCS 3305/7 (West 2001 Supp.)), on May 13, 2003, I have issued a proclamation declaring that a disaster exists within the State of Illinois.

WHEREAS, pursuant to subsection 7(a)(1) of the Illinois Emergency Management Agency Act (20 ILCS 3305/7(a)(1) (West 2001 Supp.)), upon a declaration of a disaster, the Governor may suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules, and regulations of any State agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in responding to the disaster;

THEREFORE, I hereby order the following:

1. The provisions of section 10.4 of the Hospital Licensing Act (210 ILCS 85/10.4 (West 2000)) and any regulations adopted pursuant thereto are hereby suspended for the purpose of authorizing hospitals and other health care facilities to issue emergency privileges or credentials to authorize physicians and other licensed professionals to provide medical services within a hospital or other health care facility during the current disaster.
2. The provisions of the Health Care Professional Credentials Data Collection Act (410 ILCS 517/1 et seq. (West 2000)) and any regulations adopted pursuant thereto are hereby suspended for the purpose of authorizing hospitals and other health care facilities to issue emergency privileges or credentials to authorize physicians and other licensed professionals to provide medical services within a hospital or other health care facility during the current disaster.

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May 13, 2003

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Rod R. Blagojevich, Governor

# ***TOPOFF 2 Exercise Simulated Executive Order***

**EXECUTIVE ORDER**

**NUMBER 3 (2003)**

## **EXECUTIVE ORDER TO SUSPEND PROFESSIONAL LICENSE AND CERTIFICATION STATUTES AND REGULATIONS TO PROVIDE FOR MEDICAL ASSESSMENT, SCREENING AND TREATMENT DURING DISASTER**

WHEREAS, clinical identification of pneumonic plague in the Chicago area has prompted authorities to suspect the intentional release of the biological agent causing pneumonic plague, which has the potential to cause widespread and severe illness and loss of life within the State of Illinois;

WHEREAS, the performance of medical assessment, screening and treatment, including but not limited to the distribution and administration of medications, to persons who may have been infected or exposed to pneumonic plague, or otherwise are in need of emergency medical services, is necessary to combat or prevent the spread of pneumonic plague and protect the public health;

WHEREAS, there is not a sufficient number of licensed or certified personnel in Illinois to perform medical assessment, screening and treatment, including but not limited to the distribution and administration of medications, to treat the number of persons may have been infected or exposed to pneumonic plague, or otherwise are in need of emergency medical services;

WHEREAS, persons currently licenced or certified under the Medical Practice Act of 1987, the Nursing and Advanced Practice Nursing Act, the Pharmacy Practice Act of 1987, the Physician Assistant Practice Act, and the Emergency Medical Services Systems Act are limited to performing only those acts authorized by their current respective scopes of practice; and performance of acts described in the above acts without a license or outside respective scopes of practice is currently prohibited;

WHEREAS, pursuant to section 3 of the Medical Practice Act of 1987 (225 ILCS 60/3 (West 200)), a license is not required for “persons rendering gratuitous services in cases of emergency”;

WHEREAS, pursuant to section 5-15 of the Nursing and Advanced Practice Nursing Act (225 ILCS 65/5-15 (West 2000)), the “furnishing of nursing assistance in an emergency” without a license is not prohibited;

WHEREAS, there are no emergency exceptions to the license requirements in the Pharmacy Practice Act of 1987, the Physician Assistant Practice Act, and the Emergency Medical Services Systems Act;

WHEREAS, section 3 of the Medical Practice Act of 1987 (225 ILCS 60/3 (West 2000)) and

## ***TOPOFF 2 Exercise Simulated Executive Order***

section 5-15 of the Nursing and Advanced Practice Nursing Act (225 ILCS 65/5-15 (West 2000)) authorize physicians and nurses from other states to perform certain functions within Illinois during bonafide emergencies;

WHEREAS, section 16 of the Illinois Emergency Management Agency Act (20 ILCS 3305/16 (West 2000)) provides that if a disaster occurs in Illinois and the services of persons who are competent to practice any profession, trade, or occupation are required in this State to cope with the disaster, and it appears that the number of persons licensed or registered in this State may be insufficient for such purpose, then any persons who are licensed or registered elsewhere to practice any such profession, trade or occupation may, if a member of a mobile support team or unit of another state rendering aid in this State pursuant to the order of the Governor of their home state and upon the request of the Governor of this State, or if otherwise requested to do so by the Governor or the Director of IEMA of this State, during the time the disaster continues, practice such profession, trade or occupation in this State without being licensed or registered in this State;

WHEREAS, article V of the Emergency Management Assistance Compact Act (45 ILCS 151/5 (West 2001 Supp.)) provides that whenever any person holds 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, 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;

WHEREAS, licensed physicians are authorized to delegate tasks or duties to a physician assistant in accordance with the requirements of the Physician Assistant Practice Act of 1987, an advanced practice nurse in accordance with the Nursing and Advanced Practice Nursing Act, and to a licensed practical nurse, a registered professional nurse, or other personnel, including but not limited to certified nurse assistants or medical assistants (225 ILCS 60/54.5 (West 2000));

WHEREAS, persons currently licenced or certified under the Medical Practice Act of 1987, the Nursing and Advanced Practice Nursing Act, the Pharmacy Practice Act of 1987, the Physician Assistant Practice Act, and the Emergency Medical Services Systems Act; personnel who possess similar licenses or certifications in other states; and non-licensed persons, under supervision of a licensed physician, can safely provide or assist in providing medical assessment, screening and treatment, including but not limited to the distribution and administration of medications;

WHEREAS, the Illinois Department of Public Health is authorized to acquire and distribute medications and vaccines free of charge to citizens of the State upon request by physicians or hospitals; and distribution of such medications and vaccines may be through public and private agencies or individuals and firms designated by the Director of Public Health as authorized

## ***TOPOFF 2 Exercise Simulated Executive Order***

agencies for this purpose (20 ILCS 2310/2310-250 (West 2000));

WHEREAS, it is necessary that prescription medications be distributed and administered from places other than pharmacies or clinical settings;

WHEREAS, a general order describing the class of individuals who should receive medications, and the medications or vaccine to be administered or dispensed is necessary;

WHEREAS, ordinarily, prescription drugs can only be dispensed from a licensed pharmacy with a licensed pharmacist on duty and meeting other specified requirements (225 ILCS 85/3, 15 (West 2000));

WHEREAS, a licensed pharmacist may only dispense a prescription drug pursuant to an order issued by a physician authorized to practice medicine in all its branches, dentist, veterinarian, podiatrist, therapeutically certified optometrist, within the limits of their licenses, by a physician assistant pursuant to the Physician Assistant Practice Act of 1987, or by an advanced practice nurse pursuant to the Nursing and Advanced Practice Nursing Act, that contains the following: (a) name of the patient; (b) date when prescription issues; (c) name and strength of drug; (d) quantity; (e) directions for use; (f) prescriber's name, address and signature; and (g) DEA number where required for controlled substances (225 ILCS 85/3(e) (West 2000); see also (410 ILCS 615/3.21 (West 2000));

WHEREAS, it is unlawful to dispense prescription drugs except as provided in the Pharmacy Practice Act of 1987 (20 ILCS 85/1 et seq. (West 2000));

WHEREAS, timely distribution and administration of medications cannot be accomplished by strict adherence to the statutes and regulations that ordinarily govern the compounding, dispensing, delivery and administration of prescription medications;

WHEREAS, pursuant to section 7 of the Illinois Emergency Management Agency Act (20 ILCS 3305/7 (West 2001 Supp.)), on May 13, 2003, I have issued a proclamation declaring that a disaster exists within the State of Illinois;

WHEREAS, pursuant to subsection 7(a)(1) of the Illinois Emergency Management Agency Act (20 ILCS 3305/7(a)(1) (West 2001 Supp.)), upon a declaration of a disaster, the Governor may suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules, and regulations of any State agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in responding to the disaster;

THEREFORE, I hereby order the following:

1. The provisions of the Pharmacy Practice Act of 1987 (225 ILCS 85/1 et seq.) and any

## ***TOPOFF 2 Exercise Simulated Executive Order***

regulations adopted pursuant thereto are hereby suspended to authorize appropriate actions for response to the disaster, including but not limited to the actions enumerated herein.

2. The provisions of the Physician Assistant Practice Act (225 ILCS 95/1 et seq. (West 2000)) and any regulations adopted pursuant thereto, are hereby suspended to authorize appropriate actions for response to the disaster, including but not limited to the actions enumerated herein.
3. Sections 3.50 and 3.55 of the Emergency Medical Services Systems Act (210 ILCS 50/3.50, 3.55 (West 2001 Supp.)), and any regulations adopted pursuant thereto, are hereby suspended to authorize appropriate actions for response to the disaster, including but not limited to the actions enumerated herein.
4. Any person who is licenced or certified under the Medical Practice Act of 1987, the Nursing and Advanced Practice Nursing Act, the Pharmacy Practice Act of 1987, the Physician Assistant Practice Act, and the Emergency Medical Services Systems Act; and personnel who possess similar licenses or certifications in other states are hereby authorized to perform medical assessment, screening and treatment, including but not limited to the distribution and administration of medications, to persons who may have been infected or exposed to pneumonic plague, or otherwise are in need of emergency medical services, as directed by the Director of Public Health or the director of a local health department.
6. Non-licensed and non-certified persons, who are supervised by a licensed physician, are hereby authorized to perform or assist in performing medical assessment, screening and treatment, including but not limited to the distribution and administration of medications, to persons who may have been infected or exposed to pneumonic plague or otherwise are in need of emergency medical services, as directed by the Director of Public Health or the director of a local health department.
7. Medications may be dispensed, compounded, distributed, or administered from any location designated by the Director of Public Health or the director of a local public health department, in conjunction with state and local emergency operations centers.
8. Medications may be dispensed, compounded, distributed, or administered to individuals or groups of individuals based upon a general order issued by the Director of the Illinois Department of Public Health or the director of a local public health department.

# ***TOPOFF 2 Exercise Simulated Executive Order***

**EXECUTIVE ORDER**

**NUMBER 4A (2003)**

## **EXECUTIVE ORDER CONCERNING ISOLATION, QUARANTINE OR CLOSURE OF FACILITIES DURING DISASTER**

WHEREAS, clinical identification of pneumonic plague in the Chicago area has prompted authorities to suspect the intentional release of the biological agent causing pneumonic plague, which has the potential to cause widespread and severe illness and loss of life within the State of Illinois;

WHEREAS, the presence of pneumonic plague in the Chicago area poses a serious threat to the public health and may cause death;

WHEREAS, plague has been declared to be contagious, infectious, communicable and dangerous to the public. (See 77 Ill. Adm. Code 690.100);

WHEREAS, in order to combat and prevent the spread of pneumonic plague and protect the public health, it may be necessary to rapidly order and implement isolation, quarantine, or closure of facilities;

WHEREAS, Section 2 of the Department of Public Health Act (20 ILCS 2305/2 (West 2000)) provides that the Illinois Department of Public Health has supreme authority in matters of quarantine, and may declare and enforce quarantine when none exists, and may modify or relax quarantine when it has been established. (20 ILCS 2305/2 (West 2000).)

WHEREAS, the Illinois Department of Public Health is authorized to order a person to be quarantined or isolated or a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease until such time as the condition may be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists. (20 ILCS 2305/2(b) (West 2000).)

WHEREAS, pursuant to subsection 2(c) of the Department of Public Health Act, no person may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public, however, except with the consent of the person or the owner of the place or upon the order of a court of competent jurisdiction. (20 ILCS 2305/2(c) (West 2000).) In order to obtain a court order, IDPH must prove, by clear and convincing evidence, that the public's health and welfare are significantly endangered and that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. (20 ILCS 2305/2(c) (West 2000).)

WHEREAS, the requirements for prior consent or a court order set out in subsection 2(c) of the Department of Public Health Act would prevent the rapid order and implementation of isolation,

## ***TOPOFF 2 Exercise Simulated Executive Order***

quarantine, or closure of facilities;

WHEREAS, pursuant to section 7 of the Illinois Emergency Management Agency Act (20 ILCS 3305/7 (West 2001 Supp.)), on May 13, 2003, I have issued a proclamation declaring that a disaster exists within the State of Illinois;

WHEREAS, pursuant to subsection 7(a)(1) of the Illinois Emergency Management Agency Act (20 ILCS 3305/7(a)(1) (West 2001 Supp.)), upon a declaration of a disaster, the Governor may suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules, and regulations of any State agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in responding to the disaster;

WHEREAS, pursuant to subsection 7(a)(8) of the Illinois Emergency Management Agency Act (20 ILCS 3305/7(a)(8) (West 2001 Supp.)), upon a declaration of a disaster, the Governor may control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;

THEREFORE, I hereby order the following:

1. The provisions of subsection 2(c) of the Department of Public Health Act (20 ILCS 2305/2(c) (West 2000)) are hereby suspended to the extent necessary for rapidly ordering and implementing isolation, quarantine, or closure of facilities. After exigent circumstances making it untenable to obtain the consent of a person ordered to quarantine or isolation or the owner of a place ordered to be closed and made off limits to the public or a court order authorizing such quarantine, isolation or closure, are no longer present, the Illinois Department of Public Health or a local health department are directed to obtain consent or a court order as soon as reasonably possible.
2. All persons who are known or suspected to be infected with pneumonic plague within the disaster area shall be isolated for the period of communicability. All persons subject to such isolation shall comply with the directions of the Director of Public Health or the director of a local health department.

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May 13, 2003

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Rod R. Blagojevich, Governor