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## LETTER TO THE EDITOR

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### Landmark Legislation Reflects Important Lessons Learned from Hurricane Katrina

On June 8, 2008, Louisiana Governor Bobby Jindal signed into law three pieces of legislation designed to protect medical personnel and patients in the event of future disasters. All three acts apply only during declared disasters and cover physicians, nurses, emergency medical technicians, along with visiting doctors and nurses from other states.

The bills passed without a single dissenting vote, signaling the legislature's recognition that medical care during disasters is rendered under extraordinary circumstances in conditions far from traditional, and that protecting medical judgment under such conditions was a necessity. This unprecedented legislation puts us at the forefront of national disaster medicine reform and could be used as a model for other states considering similar action.

It is noteworthy that the bills were enacted coincidental with the naming of the season's first hurricane and as Louisiana and the Gulf Coast approach the third anniversary of Hurricane Katrina - a catalyst for badly needed reform. They are the response to a groundswell of public outrage after the arrest of Dr. Anna Maria Pou and nurses Cheri Landry and Lori Budo. These courageous women bravely stayed behind to serve patients during the storm, only to be accused of criminal wrongdoing in the deaths of nearly forty stranded, acutely ill hospital patients. A grand jury ultimately found no cause for pursuit of those allegations. However, civil suits were filed by several family members of patients in the wake of the attorney general's actions.

"It is only fitting that Louisiana took the unprecedented step of righting the wrongs that were done to medical professionals and their patients during and after Hurricane Katrina, and to call national attention to the need for sweeping reforms and protections", said Dr. Anna Pou, a central organizer of the state's reform coalition. Dr. Pou was instrumental in organizing, raising funds, and lobbying for the Committee for Disaster Medicine Reform. The bills should be understood well beyond the context of hurricanes alone; they apply in all cases of declared disasters such as terrorist acts, chemical plant explosions, pandemics, tornadoes and other natural disasters.

The Louisiana State Medical Society, Louisiana State Nurses Association, and the Louisiana Nurse Anesthetists Association were involved in passing the landmark legislation. The Louisiana District Attorney's Association recognized the need for reform and helped draft a compromise that protected the constitutional rights of law enforcement officials to do their jobs without direct interference.

Senate Bill 330 amends Louisiana's Good Samaritan Statute, applicable during declared disasters only. This measure protects healthcare professionals regardless of whether or not they are compensated for their work. This is an important change as most healthcare professionals are working during a disaster, whereas the original statute only offered civil protection if services were gratuitous. The measure also protects medical personnel from simple

negligence and only allows liability for gross negligence and willful misconduct.

The Good Samaritan statute attempts to encourage voluntarism by medical personnel during medical emergencies. It recognizes the self-sacrifice by medical personnel in remaining in harms way during disasters and protects them from frivolous litigation claims.

Senate Bill 301 provides additional civil protection. During disasters, reverse triage protocols are often put into use, with those patients not expected to survive being the last to be evacuated. Many doctors and nurses who stayed during Hurricane Katrina face civil lawsuits for patient deaths that occurred while awaiting evacuation. This bill gives immunity for simple and gross negligence by doctors and nurses, thereby, protecting them from civil damage to patients as a result of evacuation or treatment (or failed evacuation or treatment) at the direction of the military or government in accordance with disaster medicine protocols. For the first time, a state statute defines disaster medicine as patient care under circumstances when the number of patients exceeds normal medical capacities. The statute recognizes that medical personnel should not bear civil liability for such disastrous situations unless involved in intentional misconduct.

House Bill 1379 sets up a unique Disaster Medicine Review Panel concept to examine medical judgment during a disaster. Louisiana is the first state in the country to grant legal protection with these key features:

- An independent medical panel consisting of three members: the coroner, a member of the medical community, and a disaster medicine expert appointed by the Governor. The panel would render an independent opinion regarding medical judgment. The panel must rest its opinion on scientifically reliable evidence which may help all parties avoid a lengthy grand jury process where there is no forensic basis for prosecution.
- The prosecuting authority will refrain from arresting medical personnel until the opinion is rendered.
- The panel review process is advisory and allows an opportunity for respondent medical personnel to provide input.
- The standard of care of medical personnel is established as "good faith medical judgment" given the disastrous circumstances under which the judgment was rendered.

To learn more, please visit the Web sites: [www.cdmr.org](http://www.cdmr.org) and [www.supportdrpou.com](http://www.supportdrpou.com).

If you wish to support the CDMR's legislative efforts by making a donation, please submit checks payable to Committee for Disaster Medicine Reform, 748 Camp St, New Orleans, LA 70130.

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