





Get Ready **Stay Ready**

Disaster Planning for California Hospitals



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What is an Emergency Declaration?

- It is a political act proclaiming or declaring that specified conditions exist which justify the exercise of extraordinary governmental powers as authorized by law to respond to the conditions specified.



Declarations are an Aspect of Emergency Response

- Declarations can be prepared in concept during the Planning Phase of the emergency preparedness cycle.
- A declaration or proclamation occurs only during the response phase when the facts support the declaration or proclamation.



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How is an Emergency Proclaimed?

- The official authorized to proclaim the emergency issues a signed, written proclamation (not needed for State of War Emergency, but still a good idea).
- The proclamation must contain sufficient "whereas" clauses reciting the circumstances that legally justify the proclamation.



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How is an Emergency Proclaimed? (cont.)

- The proclamation then proclaims the type of emergency being proclaimed.
 - State of War Emergency
 - State of Emergency
 - Local Emergency
 - Health Emergency
- It may include additional orders authorized under the emergency proclaimed.



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Why Proclaim an Emergency?

- To make response and recovery funding available.
- To invoke powers specific to the type of emergency proclaimed.
- To expand the available immunities from liability for response-related activities.



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State of War Emergency

- "The condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent."
(Govt. Code 8558(a))



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State of War Emergency Powers

- Governor has "complete authority" over all agencies of the state, and a right to exercise all police power vested in the state by law.
- Governor may make orders and regulations to protect life and property. (Govt. Code 8620)
- State and local officials must comply with orders and regulations or face misdemeanor charges and removal from office for the period of emergency. (Govt. Code 8621)



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State of War Emergency Powers (cont.)

- Any person holding a license, certificate, or other permit issued by any other state for professional, mechanical, or other skills, similar to one issued in California may render aid involving such skill to meet the emergency as if the license, certificate, or other permit had been issued in California. (Govt. Code 8623)
- Can exercise these powers outside the state. (Govt. Code 8622)



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State of Emergency

- The duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions . . . which, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat. (Govt. Code 8558(b))



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SOE Proclamation Prerequisites

- The Governor must find the existence of circumstances set forth in the last slide, and either:
 - Be requested to do so by a city's mayor or chief executive officer, or a county's Board of Supervisor chairperson or county administrative officer, or
 - Find that local authority is inadequate to cope with the emergency. (Govt. Code 8625)
- Make the proclamation in writing. (Govt. Code 8626)



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State of Emergency Powers

- The Governor has, to the extent he/she deems necessary, complete authority over all agencies of the state government and the right to exercise all police power vested in the state by law. (Govt. Code 8627)
- Governor may promulgate, issue and enforce orders and regulations. (Govt. Code 8627)



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State of Emergency Powers (cont.)

- Foods, Pharmaceuticals and Emergency Necessities
 - Governor may temporarily suspend any state or local statute, ordinance, regulation, or rule imposing nonsafety related restrictions on the delivery of food products, pharmaceuticals, and other emergency necessities distributed through retail or institutional channels. (Govt. Code 8627.5)



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State of Emergency Powers (cont.)

- State Agencies — Governor may direct all agencies of the state government:
 - To utilize and employ state personnel, equipment, and facilities for the performance of any and all activities designed to prevent or alleviate actual and threatened damage due to the emergency.
 - To provide supplemental services and equipment to political subdivisions to restore any services which must be restored in order to provide for the health and safety of the citizens of the affected area. (Govt. Code 8628)



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Common SOWE and SOE Powers

- Orders and suspensions.
- Governor may:
 - In writing make, amend, and rescind orders and regulations necessary to carry out the provisions of the Emergency Services Act. (Govt. Code 8567)
 - Suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency where strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the emergency. (Govt. Code 8571)



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Common SOWE and SOE Powers (cont.)

- Governor may:
 - Commandeer or utilize any private property or personnel deemed by him necessary in carrying out the responsibilities hereby vested in him as Chief Executive of the state and the state shall pay the reasonable value thereof. (Govt. Code 8572)
 - Request assistance from other states under the Emergency Management Assistance Compact. (Govt. Code 179.5)



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Local Emergency

- The duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions . . . which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat.



(Govt. Code 8558(c))

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Local Emergency Proclamation Prerequisites

- Must be proclaimed by the governing body or a designated official.
 - If proclaimed by a designated official, it remains in effect only 7 days.
 - If proclaimed by the governing body, the governing body must review the need for continuing the local emergency every 30 days.
- (Govt. Code 8630)



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Local Emergency Powers

- State agencies and political subdivisions have the authority to provide mutual aid consistent with agreements. (Govt. Code 8631, 8632)
- The cost of extraordinary services incurred by political subdivisions in executing mutual aid agreements shall constitute a legal charge against the state when approved by the Governor. (Govt. Code 8633)



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Local Emergency Powers (cont.)

- The governing body or designated official may promulgate orders and regulations necessary to provide for the protection of life and property, including the imposition of curfews within designated boundaries where necessary to preserve the public order and safety. (Govt. Code 8634)



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Common SWOE/SOE/LE Powers

- Governor may make expenditures from any fund legally available in order to deal with actual or threatened conditions, in addition to those appropriated to support the Emergency Services Act. (Govt. Code 8645)
- The local health officer may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard within his or her jurisdiction. "Preventive measure" means abatement of any public health hazard caused by the disaster. (Health & Safety Code 101040)



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Health Emergencies

- Applies to:
 - Spills of hazardous or medical waste, or
 - Imminent and proximate threats of the introduction of any communicable disease, chemical agent, non-communicable biologic agent, toxin or radioactive agent.
- Director of CDPH may declare a health emergency.
- Local Health Officer may declare a local health emergency. (Health & Safety Code 101080)



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Health Emergency Powers

- For spills, may:
 - Require the disclosure of information regarding the spill.
 - Share that information with other responding agencies.
 - Conduct testing.
- State agencies and political subdivisions may provide mutual aid.
- Extraordinary response costs may become a charge against the state.
- Immunities for medical personnel under the Emergency Services Act take effect.



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Expansion of Immunities

- Each kind of emergency expands the available immunities from liability to varying degrees.
- Immunities under the Emergency Services Act are broader than the immunities available under health emergencies.



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Effect of Immunity

- Absent an immunity, liability may be imposed upon persons responding to an emergency for harm their actions cause.
- Immunities instruct the courts not to impose liability upon certain behavior in order to encourage that behavior for the benefit of society.



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Immunities under the Emergency Services Act

- Govt. Code 8655 – State and political subdivisions not liable for the exercise of discretionary functions or duties to carry out the Emergency Services Act.
- Govt. Code 8657 – Volunteer disaster service workers have same immunities as officers and employees during the emergency.
- Govt. Code 8659 – Physicians, hospitals, pharmacists, respiratory care practitioners, nurses, dentists, and veterinarians not liable for services rendered at request of responsible state or local official during the emergency, unless willful and wanton.



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Immunities During Emergencies

- Civil Code 1714.5
 - Owners of buildings used for fallout shelters, mass care centers, etc. not liable for injury sustained by persons seeking shelter or aid.
 - Disaster service workers not liable for injuries to persons or property resulting from acts or omissions while performing disaster services anywhere within a jurisdiction covered by the emergency, unless willful.
- Civil Code 1714.6 – No negligence or prosecution for following directives or orders of Governor during a proclaimed emergency.



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Waivers of Law

- Bus. & Prof. Code 4062 – Pharmacists may dispense prescription drugs without a prescription during a declared federal, state or local emergency. Pharmacy Board may waive the rules of practice to protect public health, and may allow mobile pharmacies.
- Bus. & Prof. Code 900 – During State of Emergency, out-of-state health care practitioners can practice in California without a license upon the request of the Director of Emergency Medical Services Authority.



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Suspension of Statutes & Regulations

- Authorized by Govt. Code 8571.
- Applies only to:
 - "Regulatory statutes,"
 - "Statutes prescribing the procedure for conduct of state business," or
 - The orders, rules, or regulations of any state agency.



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Emergency Regulations by Governor

- Authorized by Govt. Code 8567.
- Can only be ordered by the Governor in writing.
- May be issued during a State emergency with immediate effect.
- Must be "necessary to carry out the provisions" of the Emergency Services Act.
- Must be widely publicized.



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Federal Public Health Emergency

- 42 USC 247d – Secretary of Health and Human Services Agency may determine that disease or disorder presents a public health emergency.
- Upon declaration, Secretary may make grants, enter into contracts, and conduct and support investigations into cause, treatment or prevention.
- May waive certain Medicare, Medicaid, CHIP, EMTALA and HIPAA requirements if there is a Presidential declaration of national emergency or disaster under the Stafford Act.

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Presidential Declarations of Emergency or Major Disaster

- National Emergencies Act (50 USC 1601, et seq.)
- Stafford Act (42 USC 5121, et seq.)
 - Made only at the request of the Governor.
 - Governor must make findings that support either:
 - A declaration of emergency.
 - A declaration of major disaster.
 - Findings are based on a joint preliminary damage assessment with FEMA.



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Declaration of Emergency or Major Disaster

- Based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. (42 USC 5170, 5191)
- Under a major disaster declaration, Dept. of Defense resources can be mobilized to perform work essential for the preservation of life and property.
 - Federal military may generally not be used for law enforcement under the Posse Comitatus Act of 1878. (18 USC 1385)



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Calling Up the National Guard

- The National Guard is the active militia organized under state and federal law.
- Insurrection Act of 1807 (10 USC 331-335.) – President can call out National Guard in event of insurrection or if state fails to uphold constitutional rights.
- Governor is commander and chief of the militia, and may:
 - Call the militia forth to “execute the law.” (Cal.Const.,Art.5,sec.7.)
 - Order the militia into active service in case of “. . . public calamity or catastrophe. . .” (Mil.& Vet. Code 146(a))
 - This does not require a declaration of emergency.



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Martial Law

- National Guard called up by the Governor functions as law enforcement and provides logistical support. (See Penal Code 830.4)
- Calling up the National Guard does not signify the existence of "martial law."
- "Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction." (In Re Milligan (1866) 71 US 2, 127)



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Questions?

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Thank you

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