

Public Health Law 101: Law of Public Health Surveillance, Investigations, and Emergencies

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Faculty

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Objectives

- Understand legal authority for information gathering in surveillance-related activities
- Understand legal issues in public health interventions
- Recognize legal authority for interventions in public health emergencies

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Disclaimer

While every effort has been made to verify the accuracy of these materials, legal authorities and requirements may vary from jurisdiction to jurisdiction. Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal manner.

The Case of the Contaminated Cos

- Several patrons at eatery get sick
 - Who notifies public health?
 - Who follows up and how?
 - What records are involved?
 - How may records be shared?
 - Does CDC need to know?
 - Should the Militia be called out?

Federalism and the Allocation of Public Health Powers

- Constitutional powers divided between states and federal government
- Federal powers in public health activities
- State powers in public health activities

Federalism and Division of Disease Control Authority

- Disease surveillance is primarily a state
 - Law police power function
- Federal government takes the lead with goods in interstate commerce

Federalism and Division of Disease Control Authority

- Federal and state governments cooperate when
 - Diseases cross state lines
 - Overlapping or joint legal authorities exist

Objective 1

- Understand the legal authority for information gathering during public health surveillance and investigation activities

Public Health Jurisdiction

- Legal authority for surveillance and intervention is primarily state and local
- Non-enforcement federal assistance is available from CDC in disease control matters

Public Health Jurisdiction

- Federal enforcement is provided through
 - Regulation of interstate commerce
 - Interstate travel restrictions on disease-carrying individuals

Core Concepts: Surveillance, Investigation and Control

- Public health surveillance detects infectious diseases
- Outbreak
 - Disease occurrence in excess of expected
- Trends in outbreaks may alter or innovate control activities

Disease Control - Powers

- To enumerate the subject diseases
- To require health care providers to report cases and suspected cases
- To perform traditional public health disease surveillance
- Surveillance can lead to quarantine and isolation

Disease Reporting and Public Health Surveillance

- Early historical public health legal measures
- Surveillance begins with disease reporting
- Disease reporting dates to the American Colonial period

Disease Reporting and Public Health Surveillance

- Who reported?
 - Traditional reporters were physicians
 - Now many other required reporters
 - Permissive reporters such as veterinarians

CDC Roles in Public Health Surveillance

- CDC is the national clearinghouse
 - Receiving anonymous data from states
 - Looking for patterns
 - Tracking emerging diseases
- CDC provides a measure of quality control by consultation

Public Health Reporting

- Surveillance requirements - state law
 - Code of Ala.1975, §§ 22-11A-1, et seq.
 - Board of Health Rules
- Many reflect national guidelines developed or coordinated through CDC
- Occupational disease reporting in Alabama is generally federal (OSHA)

Penalties for Failing to Report

- Civil penalties
- Administrative actions
- Malpractice lawsuits
- Criminal fines

Personal Privacy Under Federal Law

- Personal privacy is a relatively new concept
 - States can limit it
- No historical right to medical privacy thus few questions about reporting

Personal Privacy Under Federal Law

- U.S. Supreme Court first addressed medical reporting in 1977
- No general federal right of medical privacy until HIPPA

Access to Private Medical Records and Property

- States require access to records as a condition of medical and facility licensure
- Federal Government requires access to records as condition of participation in Medicare/Medicaid under contract law
- Federal Commerce Clause requirements

Public Health Field Investigations: Information & Individuals

- Investigators identify sources or causative agent of infection and contacts
- Epidemiologically important contacts are key to infectious disease investigations

Requirements for Information Accuracy: When Is Cooperation Essential?

- 5th Amendment privilege against incrimination
 - Criminal cases only
 - No privilege to withhold information about infectious disease
- Courts can order fine or jail time for refusal to comply

Management of Surveillance and Reporting Data

- Access limited to disease control personnel
- Provisions for sharing information with third parties
 - Partner notification
 - Advisories to medical and nursing, EMS and funeral personnel

Protections for Health Department Records

- Prosecutors, lawyers and the media often seek health department records
- Protections for health department records
 - Medical privacy laws such as HIPPA
 - Public Records Law exceptions

Protections for Health Department Records

- Protections for health department records
 - Section 22-11A-1, et seq. specific protections
 - Federal mental health and alcohol abuse records protections

Limits on State Records Protections

- Privacy laws typically do not protect business records such as restaurants
- Certain federal laws can pre-empt state law protections
 - National security agencies have broad access to records

Objective 2

- Be familiar with legal issues in public health interventions

Principles for Interventions

- Goal
 - Establish a defensible, scientific and rational basis for intervention
- The level and nature of intervention depends on the facts
 - Causative agent
 - Mode of spread

Principles for Interventions

- The greater the danger, the greater the judicial deference to public health

Examples of Interventions Relying on Legal Authorities

- Contact tracing and partner notification
- Quarantine and isolation
- Mandatory vaccination

Examples of Interventions Relying on Legal Authorities

- Mandatory screening and testing
- Limiting access to property and places
- Destruction of property

Legal Flexibility for Interventions: Emerging Infectious Disease

- Emerging diseases are new to the community and old diseases may re-emerge
 - Infectivity and severity may be unknown

Legal Flexibility for Interventions: Emerging Infectious Disease

- Public Health may have to act on incomplete or uncertain information
 - Courts recognize the importance of prevention
 - Court usually defer to public health's broad powers

Interventions for Persons Exposed to Communicable Diseases

- Education
 - Nature and risk of disease
- Contacts offered testing
- Offered treatment w/without testing
- Contacts may be quarantined or restricted

Legal Issues: Refusal of Testing and/or Treatment

- Do disease risks justify mandatory testing?
- The U.S. Constitution allows forced testing and restrictions, but
 - Persons being isolated or restricted until non-infectious may be preferable

Legal Authorities for Interventions in Children

- Religious objections to vaccination
 - Alabama recognizes religious objections
 - Philosophical objection is not sufficient

Mandatory Treatment

- Recent case
 - *Best v. Bellevue Hospital* New York (2004)
 - TB patient confined when sought to leave hospital/refusing TB treatment
 - Filed suit against health department & hospitals
 - Court ordered treatment

Mandatory Vaccination

- Historical background
 - *Jacobson v. Massachusetts*, US Supreme Court (1905)
 - 1902 smallpox outbreak in Cambridge, MA
 - Conviction for refusal to vaccinate

Mandatory Vaccination

- Historical background
 - *Jacobson v. Massachusetts*, US Supreme Court (1905)
 - Police power embraces “reasonable regulations” to protect public health and safety

Vaccination in Alabama

- School (Day Care) Children – § 16-30-1
- Otherwise only voluntary without a declaration
- Mass clinics set up under § 304 of the Homeland Security Act in an event such as smallpox or PI
- Mandatory vaccination requires Governor’s declaration of an emergency

Federal Powers: Vaccination

- No existing general authority for Federal Government to mandate vaccination
 - DoD and Department of State can require vaccination of servicemen

Federal Powers: Vaccination

- Smallpox Emergency Personnel Protection Act of 2003
 - Encourages vaccination by providing liability protection and
 - Compensation for injuries

Isolation Commitment Statutes

- Section 22-11A-23 – Voluntary testing and treatment
- Section 22-11A-24 – Involuntary testing and treatment
- Section 22-11A-28 – Instantaneous Detaining
- Used most effectively with tuberculosis

Alabama Quarantine

- Authority - §§ 22-12-1, *et .seq.*
- Order is issued by proper authorities
- The person or place is “locked down”
- “Cordon Sanitaire” imposed
- Enforced by civil authorities
- “Breaking quarantine”
- Allows arrests without a warrant

Isolation Definition

- Isolation
 - Persons who have signs and symptoms of a specific infectious illness

Quarantine Definition

- Quarantine
 - “Quarantine refers to the separation and restriction of movement of persons who, while not yet ill, have been exposed to an infectious agent and therefore may become infectious

Quarantine Principles

- Detention must be “by least restrictive means necessary”
- Separate isolated from quarantined individuals
- Monitor health status of individuals
- Attend to needs of detained individuals

Quarantine Principles

- Safe and hygienic detention facility
- Consider cultural and religious beliefs (“to the extent possible”)

Interventions and Rights

- Individuals
 - Isolated individuals have a statutory process and appeal
 - Code of Ala. 1975 §§22-11A-23 through 33

Interventions and Rights

- Individuals
 - Writ of habeas corpus may be available
 - Appearance before a judge
 - Agency has to prove legal and factual basis

Interventions and Rights

- Businesses
 - Permittees & licensees subject to
 - Warrantless inspection
 - Instant closure orders
 - Administrative & judicial appeals

Interventions and Rights

- Businesses
 - Unregulated businesses generally require a court order for closure
 - This is subject to emergency orders

Interventions and Rights

- Food establishments
 - Restaurants required to post scores
 - Restaurants may be closed or restricted in use of certain pieces of equipment

Interventions and Rights

- Food establishments
 - Food processors may be closed or products recalled
 - Contagious employees excluded

Management of Private Property: Impounding Unsafe Foods

- ADPH has authority to seize and hold “unwholesome” food stuffs and to summarily destroy them if necessary
- Compensation is not paid for such goods

Management of Private Property: Impounding Unsafe Foods

- See AAC Chapter 420-3-22-.08(15) for seize and hold order procedures
- AGI can also issue “stop sale orders” for adulterated foodstuffs

Federal Powers

- Foods
 - FDA
 - Federal Food, Drug and Cosmetic Act
 - USDA
 - Federal Meat Inspection Act; Animal Health Act

Federal Powers

- Foods
 - EPA
 - Federal Insecticide, Fungicide, and Rodenticide Act and CERCLA
 - HHS/CDC
 - Public Health Service Act

Interventions

- **Waterborne Illness**
 - **Beaches closed for high coliform counts**
 - **Public pools closed for failing routine tests**
 - **“Boil water” notices issued**
 - **Fish advisories posted & publicized**

Interventions and Rights

- **Judicial deference**
 - **New York Bathhouse cases of 1985**
 - **Reputed “gay” bathhouses closed based on perceived role in transmission of HIV transmission**
 - **Court deferred to health department’s finding of necessity to protect the public health**

Interventions and Rights

- **Judicial deference**
 - **“It is not for the courts to determine which scientific view is correct in ruling . . . whether the police power has been properly exercised.”**
 - **“The relation between the means and the end is not wholly vain and fanciful, an illusionary pretense.”**

Public Health and the Role of the Police

- **Police (Sheriff) rarely used in public health**
- **Enforcement of orders**
 - **Most public health orders do not require force**
 - **Police involved only after orders violated**

Objective 3

- **Recognize the legal authority for interventions in public health emergencies**

Public Health Emergencies

- **Scope**
 - **Natural disasters such as hurricanes, floods, ice storms and heat waves**
 - **Manmade disasters such as train wrecks, chemical or radiological releases and spills from vehicles and facilities and CBRN terrorist events**

Public Health Emergencies

- **Scope**
 - **Outbreaks and epidemics**
 - **Influenza epidemics**
 - **Severe localized outbreaks**

Disasters and Emergencies

- **First responders**
 - **Emergency or disaster declarations and proclamations usually follow the event**
 - **However, first responders, including public health, must respond immediately**

Official Emergency Declarations & Proclamations

- **Governor’s Emergency Proclamation**
- **Triggers Title 34 Emergency Management Act provisions and federal support**
- **Stands up ADPH EP teams in coordination with other state agencies**

Personal and Premises Liability Protections

- **With exceptions, any “emergency management worker” is granted state officer immunity**
- **Requirements for licenses to practice do NOT apply**

Personal and Premises Liability Protections

- **“Emergency worker” is anyone helping out whether paid or not**
- **Protections may be available for “loaners”**

Official Emergency Declarations & Proclamations

- **Presidential Emergency or Disaster Declaration triggers the NRF**
- **FEMA assists local authorities with housing, water, supplies and loans**

Assistance from Other States

- EMAC
 - The Emergency Management Assistance Compact
 - Approved by Congress in 1966 (P.L. 104-321)
 - Adopted in all states (more or less)
 - Is a contract among states to share personnel and resources

Assistance from Other States

- EMAC
 - Is activated by a governor proclaiming a state of emergency and formally requesting assistance
 - Many mutual aid agreements do not require the formalities

Assistance from Other States

- EMAC major issues
 - Liability
 - Reimbursement
 - Response

Disasters and Emergencies

- General interventions
 - Evacuation orders implemented by law enforcement
 - Sanitation Orders
 - Destruction of contaminated food
 - Advise on potability of drinking water

Disasters and Emergencies

- General interventions
 - Sanitation and food sanitation in mass care shelters
 - Surveillance and control of disease outbreaks and vector control
 - Approval to re-open food establishments and hotels

Interventions: Toxic Spills

- Fire, Hazmat and local first responders have primary responsibility
- ADEM is called in certain events
- Health Department's role is limited
 - Issuing health advisories
 - Participating in long-term surveillance as appropriate

Interventions: Severe Disease Outbreaks

- **Mass Vaccination**
 - Depending on availability
- **Rationing or prioritized distribution of medicines and health care**
- **Local and international travel restrictions**
 - State/federal joint responsibility
- **Isolation or quarantine**

Interventions Mass Vaccinations

- **Mandating vaccination**
- **Highest priority groups include health care workers, then emergency service workers and police**
- **Issue: what if individuals refuse vaccination?**
- **Rationing limited vaccines**

Mass Vaccinations Legal Issues

- **Citizen fears**
 - Vaccination complications
 - Lack of compensation
 - Lack of full FDA approval
- **Essential private providers will want legal immunity**

Bioterrorism National Security Powers

- **Constitution gives the president broad powers to manage national security threats**
- **Congress can pass national security laws but the president is primary where the threat is external**

Bioterrorism National Security Powers

- **The law on domestic security threats is new and developing**
- **The president may intervene in some states for some threats, but the extent is untested in court**

Bioterrorism: State and Local Health Departments

- **B/T threats are public health threats but also crimes and potential national security threats**
- **B/T outbreaks are managed using the same tools as traditional public health threats**

Bioterrorism: State and Local Health Departments

- The danger of outbreak would accelerate investigation procedures
- Managing such outbreaks might require court orders to obtain information by force

Bioterrorism: Law Enforcement

- Law enforcement will identify, apprehend & prosecute bioterrorists
- Fifth Amendment rights in obtaining needed disease control information
- Result
 - There may be a choice between disease control & gathering criminal evidence

Bioterrorism: Law Enforcement

- Public health needs to be careful of chain-of-custody in investigations and decon as this might also be criminal evidence

Summary

- Public Health has broad powers to collect personal and business information on public health conditions
- Interventions must balance the individuals rights against societies'
- Courts will allow broad public health powers during emergencies

CDC Training Resources Law and Public Health Emergencies

- Public Health Emergency Law 3.0
- Forensic Epidemiology 3.0
- Forensic Epidemiology 3.0
- Available a www.cdc.gov/phlp

Additional Information

CDC Public Law Program at
www.cdc.gov/phlp

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