

Legal Issues



Alabama Department of Public Health Fatality Management Conference

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OBJECTIVES - OUTLINE

- State/County Public Health Powers
- The Nature of Emergencies
 - Proclamations and Declarations
 - Orders and Powers – federal and state
- Quarantine – State and Federal
- Cross Border Issues
- Jurisdictional Conflicts
- Decedent's Issues
- First Amendment Problems

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Powers of State Board of Health and Health Officer

- Functions of the State Board of Health
- Supervise county health officers and Boards
- Advise Governor on disease outbreaks
- Declare and abate nuisances
- Declare and abate diseases outbreaks
- Isolate, commit and treat infected persons
- Proclaim and supervise quarantine
- Supervise ESF-8 (See *State EOP*)
- ADPH Incident Commander

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Measures Available Without “Emergency” Declaration

To control communicable disease, public health can exercise certain measures without “declaring” public health emergency -- including

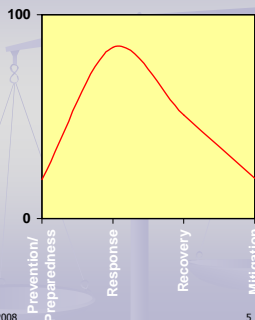
- Mandatory Surveillance
- Quarantine/Isolation
- Travel Restrictions
- Contact tracing
- Vaccinations/Medical Examinations

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Government Authority to Act in Emergencies: Model

- ▲ Legal *authority* is at its peak at the emergency's peak
- ▲ As crisis comes under control, legal authority is subject to greater legal constraints
- ▲ *And attention shifts to* responsibility for costs and damages/losses



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What are Public Health Emergencies?

- **Stand-Alone Public Health Emergencies**
 - Public health emergencies w/o other emergency conditions
 - E.g. Food-borne outbreak, school measles or TB outbreak
- **Combined Public Health Emergencies**
 - Additional, complicating emergency conditions exist
 - E.g., earthquake/hurricane/tornado impacts water, sanitation and/or medical infrastructure

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Declarations and Proclamations

What are Declarations and Proclamations?

- Public announcements
- Legal determinations
 - Made by an authorized government official
 - Triggering special emergency powers
 - Allowing expenditure of emergency funds



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State Emergency Proclamations

- **Red Scare**— Genesis of Emergency management
- Under *Code of Ala. 1975*, § 31-9-2, Governor proclaims an "emergency" defined as:
 - Enemy attack, sabotage
 - or "other hostile action;"
 - Fire, flood and "other natural causes."
- "Public Health Emergencies," a special class



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Governor Bob Riley (R) Alabama

Governor's Powers

Typically, the Governor has authority to:

- Make orders, rules and regulations;
- To utilize all state employees;
- To utilize any state or local officers or agencies, granting state officer immunity to such, including volunteers.

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Emergency Orders

In a pandemic, use the following:

- Proclamation of State of Emergency
- Fatality Management Issues
- Altered Standards of Care
- Vaccine Rationing
- Isolation and Quarantine
- Social Distancing – closing mass events

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Key Federal Declarations

- Public Health Emergency
- Stafford Act "Emergency"
- Stafford Act "Disaster"
- Stafford Act "Major Disaster"



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The Stafford Act



Stafford Act is the principal discretionary federal authority to assist state and local governments in responding to catastrophic events of any type

- Activated by presidential declaration of a "major disaster" or an "emergency"
- The Stafford Act provides for federal authorities and funds to:
 - Plan and provision pre-event
 - Send equipment and FEMA manpower in-event
 - Send the Army in a catastrophic event (though not for "police power" functions)
 - Back pay post-event

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Public Health Emergencies: Federal

Secretary of HHS can declare "Public Health Emergency" under § 319 of The Public Health Services Act

- Emergency lasts for 90 days, unless earlier terminated, or extended, by Secretary
- Under declaration, Secretary "may take such action as may be appropriate to respond to the public health emergency"



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What is Quarantine?

- Isolation is when you've "got it" while Quarantine is when you *might* have it.
- Ancient History
- What happens and how does it work?



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Federal Quarantine/Isolation

- The Surgeon General/CDC, may detain, examine, or conditionally release persons suspected of carrying certain communicable diseases. 42 USC § 264
- Authority applies only if the communicable disease has been designated in an executive order of the President
 - SARS was added to list in only two weeks
 - Avian flu was added to the list in April 2005

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Procedural Requirements

- Federal statutes specify few procedural requirements for imposition
- Constitution requires due process when depriving an individual of 'liberty' –
 - Notice and hearing requirements
 - Showing detention needed to protect public health
 - Right to counsel; reviewable final decision
- Provision for the following is required:
 - Access to food, water, medical supplies & treatment
 - Basic needs for survival

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Encouraging Voluntary Compliance

- Large quarantine with consent of those involved is more effective
- Even with voluntary compliance, there are factors that undercut compliance:
 - *Lost wages or income*
 - *Groceries and essential services*
 - *Boredom*

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Alternatives to Mandatory Quarantine/Isolation

In lieu of quarantine, the objective of preventing transmission of disease may be met by:

- Use of masks, gloves
- "Snow Day" and "Shelter-in-Place"
- Voluntary isolation/quarantine (in designated facility)
- Telephone monitoring in the home
- "Work Quarantine"
- Active use of law enforcement officers to serve process and monitor

These options are "less restrictive alternatives" to mandatory quarantine

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Cross Border Issues



- Commerce Clause – Interstate Commerce
- Closing the Border
 - Governor
 - US PHS Quarantine
- Interstate Transportation of Dead Bodies
- EMAC and licensing issues
- Full Faith and Credit Issues
- DoD Authority
 - "Insurrection Act"
 - *Posse Comitatus Act*
 - John Warner National Defense Auth. Act 2007

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Jurisdiction Issues at the Scene

State / Local Agencies

- Sheriff and Local law enforcement agency
- Fire and Medical personnel
- HazMat Team/Bomb Squad/Radiation and Biohazard Personnel
- State/County Public Health
- Radiation Control Agency
- Coroner/ME jurisdiction of the body

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Jurisdiction Issues at the Scene

Federal Agencies – PDD-39

- FBI – domestic terrorism, NBC incidents
- FAA/NTSB – airline/transportation incidents
- FEMA – consequence management
- HHS/CDC – public health events
- Homeland Security -Major Events (HSPD-5)
- HHS Components: CPB, ICE and Coast Guard

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Jurisdictional Quandary

What to do with conflicts?

It's confusing at best
at a mass scene, so use ICS Procedure -
form a Unified Command



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Decedent's Issues

- Interstate Transport
- Non-Traditional Burial
 - Local Cemetery Establishment Regulation
 - Record-keeping
 - "Funeral Directors" signatures
 - 24 hour cremation rule
 - Re-interment
 - Non-deseccration (abuse) of a corpse
- 5-Year declaration of death

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Conflicts with Religious Beliefs – First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . ."

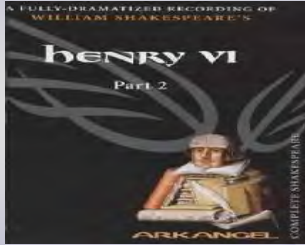
- Religious Freedom Restoration Act.
 - *Cheema v. Thompson* – Sikh knife Case
- *Warner v. City of Boca Raton*
 - Burial practices, vertical monuments prohibited
- *Church of the Lukumi Babalui, Inc. v. City of Hialeah*
 - Animal Sacrifice prohibition
- *Hill v. State* (Ala. 1956) Snake handling
- State laws/rules protecting public health and safety
 - OK if "minimal infringement" of religious liberty.

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Shakespeare Said:

"The first thing we do, let's kill all the lawyers"



Well, maybe not. But let's not let the lawyers get in the way of good public health.