

Public Health Law 101



A CDC Foundational Course for
Public Health Practitioners



Public Health Law Program

<http://www.cdc.gov/phlp>



PUBLIC HEALTH LAW 101

A CDC Foundational Course for Public Health Practitioners

- Unit 1: Key Concepts of U.S. Law in Public Health Practice
- Unit 2: Ethics and the Law
- Unit 3: Administrative Law
- Unit 4: Role of the Legal Counsel
- Unit 5: Law of Public Health Surveillance, Investigations, and Emergencies
- Unit 6: Privacy and Confidentiality
- Unit 7: Infectious Diseases
- Unit 8: Environmental Public Health, Occupational Health, and Injury
- Unit 9: Chronic Diseases and Birth Defects



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Unit 5

**Law of Public Health Surveillance,
Investigations, and Emergencies**



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Hypothetical Scenario

- An emerging disease is sweeping cities in the west, mainly affecting children.
 - The disease has a rapid onset, lasts 2 weeks, and has a 10% mortality rate.
 - Can the health officer set up a reporting system without going to the legislature?
- When the disease is found to be carried by ticks on domestic dogs, does the health officer have the power to seize and destroy the suspected animals?
 - Can the federal government investigate this as a possible bioterrorism event?



Unit 5 Objectives

By the end of this unit, you should:

1. Understand the legal authority for information gathering during public health surveillance and investigation activities.
2. Be familiar with legal issues in public health interventions.
3. Recognize the legal authority for interventions in public health emergencies.



•Instructor: this is an essential slide, as the objectives frame the order of content included in this unit.

Federalism and Allocation of Public Health Powers

- The Constitution divides powers between the states and the federal government
- Federal Powers in public health
 - Interstate commerce
 - Foreign trade and travel
 - National security
- State Powers
 - All powers not given to the federal government
 - “Police powers” – Powers exercised by the states to enact legislation and promulgate regulations to protect public health, welfare, and morals, and to promote the common good



Federalism and Division of Disease Control Authority

- State and local governments carry out most communicable disease surveillance and control under the police power
- Federal government provides lead role in controlling diseases related to goods moving in interstate commerce, such as food
- Federal and state governments cooperate when:
 - Communicable disease threats cross state lines
 - Federal government and state authority overlap, as in food safety



Objective 5.1

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



Public Health Jurisdiction

- Most powers for public health surveillance, investigations, and interventions derive from state and local law
- Non-enforcement federal assistance in disease control may be possible:
 - Through CDC, the federal government provides expert public health assistance to state and local governments
- Federal assistance in enforcement through:
 - Regulation of interstate businesses
 - Restrictions on disease carriers who travel interstate



Core Concepts in Public Health Surveillance, Investigation, and Control

- Public health surveillance detects infectious disease threats such as hepatitis B, salmonellosis, shigellosis, pertussis, gonorrhea, and HIV/AIDS
- Outbreak: Disease occurrence in excess of that expected for a given time
- Trends in outbreaks may alter control activities
 - TB outbreak in early 1990s prompted use of directly observed therapy (DOT)
 - New information about some HIV cases further encourages HIV contact tracing



Disease Reporting and Public Health Surveillance

- One of the earliest public health legal measures
 - Public health surveillance begins with disease reporting
 - Disease reporting dates to colonial period
 - After independence, states maintained reporting laws
- Who reported?
 - Traditional reporting laws have applied to physicians
 - Requirements preceded laboratories and hospital-based medical care



CDC Roles in Public Health Surveillance

- CDC functions as a national clearinghouse for state disease reports
 - Receives anonymous data from the states
 - Looks for patterns in reported data
 - Tracks emerging diseases (e.g., West Nile Virus, H5N1 influenza)
- Quality control
 - CDC advises the states but does not regulate them



Public Health Reporting Laws

- Most public health surveillance requirements (e.g., for communicable diseases, chronic illnesses, and injuries) derive from state and local laws
 - Many requirements reflect national guidelines developed or coordinated by CDC
- Occupational disease reporting
 - OSHA requires reporting and tracking of occupational diseases



•Legislative Grants of Power -- The legislature of the state must delegate the police powers to the health department and other state agencies before they can use them.

•Broad Grants of Power -- State legislatures traditionally gave the health department the broadest grant of authority possible. State and federal courts have upheld these broad grants of power. This is consistent with the administrative law principle that agencies need flexibility to deal with unpredictable problems such as disease outbreaks.

•Administrative Rules -- The legislature can give the agency the power to make administrative rules (also called administrative regulations). These have the same legal effect as statutes passed by the legislature. Rules are intended to provide more information about public health standards for laws that only provide general grants of authority. For example, in many states the list of reportable diseases and the manner of reporting is specified in an administrative rule, rather than a statute. This gives the agency the flexibility to add diseases or change reporting standards without new legislation and it gives the persons with a duty to report clear guidance on their obligations.

•State Imposed Limits -- Many states give their health departments the full powers allowed by the U.S. Constitution. Some states limit these powers. These limits may include, for example, limiting the use of isolation for diseases such as tuberculosis, not requiring childhood immunizations for children whose parents object, or imposing limits on the use of quarantine during emergencies.

- Impact of State Limits -- The health department only has the authority given it by the legislature. If the legislature withholds power from the department, or sets administrative limits on its exercise, the department must follow those limits. If the department exceeds those limits, even if it acts within the U.S. Constitution and its actions are necessary to protect the public health, it may be deemed to have acted illegally. Such illegal acts can subject the department and personnel to damage awards and injunctions to stop their actions.

Legal Authority for Public Health Surveillance

- **State Laws**
 - Based on states' police powers
 - Some specific disease reporting requirements are passed by the legislature
 - Most are regulations promulgated by health departments
- **Federal Laws**
 - Requirements for reporting of occupational illnesses are based on the Commerce Clause



Authority to Require Disease Reporting Official Code of Georgia 31-12-2

(a) The department is empowered to declare certain diseases, injuries, and conditions to be diseases requiring notice and to require the reporting thereof to the county board of health and the department in a manner and at such times as may be prescribed. The department shall require that such data be supplied as are deemed necessary and appropriate for the prevention of certain diseases, injuries, and conditions as are determined by the department. All such reports and data shall be deemed confidential and shall not be open to inspection by the public; provided, however, the department may release such reports and data in statistical form or for valid research purposes.



State Regulatory Requirements for Reporting Georgia 290-5-3.02 Provisions. Amended.

(1) It shall be the duty of every licensed physician to report all cases of notifiable diseases or conditions declared to be notifiable to the board of health in the county where the report originates or to the Department. Such reports shall also be made by the chief administrative officer, or a designee thereof (hereinafter referred to as reporters), of each hospital, nursing home, clinic, health maintenance organization, university health service, primary health care center, or institution such as a school, day care center, mental health hospital, and detention facility. These reports may be made by telephone, by letter, or by completing and mailing forms provided by the Department.



Penalties for Failing to Report

- **Civil penalties**
 - Professional license limitation or revocation
 - Loss of laboratory certification and civil fines
 - Malpractice litigation if failure to report results in spread of disease or injury to others
- **Criminal fines**
 - Some reporting laws provide for criminal fines for non-compliance, but are rarely used



Penalties for failing to report:

- While reporting laws are seldom enforced, they do have penalties, which can include fines and license revocation for medical care providers. In one of the earliest cases, *Ohio v. Chandler*, 8 Ohio Dec. Reprint 322 (1882), an action was brought against a physician for failing to report a case of smallpox.

- Failing to comply with reporting laws can also be the basis for tort liability. In *Derrick v. Ontario Community Hospital*, 47 Cal.App.3d 145, 120 Cal.Rptr. 566 (1975), the hospital failed to report a communicable disease, as required by law. Plaintiff alleged that had the disease been reported, the health officer would have taken measures to prevent the spread of the disease and plaintiff would not have been infected. The court agreed that hospital could be found liable if plaintiff could show that it had a legal duty to report the disease and that reporting the disease would have led to activities that would have reduced the probability that plaintiff would be infected.

Licensed health care providers:

- Failure to comply with applicable laws, including reporting laws and investigative demands, is grounds for revoking the medical license of individuals and the operating license of institutions. While this penalty is seldom used, it has been upheld by the courts. There may also be civil fines and possible contempt of court sanctions if the agency gets a court order to force compliance. Failing to report can also trigger tort claims if a third party is injured because the failure to report prevents the agency from dealing with the dangerous person. The most famous case involved a psychiatric patient - *Tarasoff v. Regents of University of California*, 551 P.2d 334 (Cal. 1976). Courts have also upheld claims based on failing to report communicable diseases - *Derrick v. Ontario Community Hospital*, 47 Cal.App.3d 145, 120 Cal.Rptr. 566 (1975) - and child abuse - *Landeros v. Flood*, 551 P.2d 389 (Cal. 1976).

Non-health care providers:

- While legal coercion is seldom used in routine disease investigations, contempt of court fines and imprisonment can be used to force compliance with investigations. As an example, this might become necessary in a bioterrorism investigation.

Law enforcement involvement:

- Some public health investigations, such as investigating a STI in a young child, will require that law enforcement also be involved. When interrogation is carried out by law enforcement officials, it will be done under criminal law standards. This requires more protections, such as the availability of counsel, but also allows the person to be forced to comply with the investigation. While public health concerns will be considered by law enforcement, they may be treated as secondary to the criminal investigation.

Negligence per se for failing to report child abuse - *Landeros v. Flood*, 17 Cal. 3d 399, 551 P.2d 389, 131 Cal. Rptr. 69 (Cal. 1976)

Failure to Report Communicable Disease is Negligence Per Se - *Derrick v. Ontario Community Hospital*. 47 Cal.App.3d 145, 120 Cal.Rptr. 566 (1975)

Personal Privacy in U.S. Law

- Personal privacy is a recent legal concept
 - There was no common law physician-patient privilege
 - Medical privacy and physician-patient privilege were created by state laws beginning in the 1950s
- Constitutional right of reproductive privacy does not extend to general medical privacy
- There was no general federal right of medical privacy until the HIPAA regulations in 2000



•In *Katz v. United States*, 389 U.S. 347, the Court made clear that although the Constitution affords protection against certain kinds of government intrusions into personal and private matters, *fn1 there is no "general constitutional 'right to privacy.'... the protection of a person's general right to privacy - his right to be let alone by other people - is, like the protection of his property and of his very life, left largely to the law of the individual States." *Id.*, at 350-351 (footnote omitted).

•The common law (traditional English law that is the basis for U.S. law) privileges to not testify or otherwise be compelled to reveal confidences were limited to the attorney-client, priest-parishioner, and husband-wife relationship.

Reporting and Privacy

- Historically, there was no right to privacy and, therefore, few legal questions about reporting
- U.S. Supreme Court first addressed medical reporting in 1977:
 - Plaintiff claimed a narcotics prescription reporting system invaded his privacy
 - Court found that public health reporting did not violate any Constitutionally-protected rights
- A state has a duty to limit use and disclosure of information to matters of public interest



Whalen v. Roe, 429 US 589 (1977)

Discussion point - while the state's legal authority to require reporting was clear, there was always some resistance from physicians who did not want to report diseases. This resistance was based less on asserting the patient's rights than in protecting the physician's prerogatives. Physician compliance with reporting laws is still low, since it is an additional, uncompensated duty.

Access to Private Records and Property

- States can require access to records as a condition for medical and facility licensure
- Federal government requires access to records as a condition for participating in federal payment programs
- Federal government requires employers using toxic chemicals to provide access to employee medical information
- Access to information held by individuals who or businesses that are not regulated may require a court order



Medical Records:

•The state may require health care providers to report information about patients, including individual identifying information, for conditions that affect the public or individual's health. This information may be used for statistical purposes, or to identify individuals to contact for further investigation. The state may also allow public health investigators to review medical records held by health care providers. When record reviews are done for public health investigations, they do not require the patient's permission, nor may the patient deny access to the records. The federal medical care privacy law, HIPAA, exempts the use of medical information for public health purposes from its privacy and record keeping requirements.

Business Premises:

•Businesses such as health care institutions and restaurants operate under licenses issued by the state and/or local government. These licenses require that the business permit entry by inspectors during business hours. The inspector may enter without a warrant, and may close the business if it denies entry. The inspector also has the right to review business records that contain information affecting the public health and safety.

Public Health Field Investigations: Information and Individuals

- Investigators attempt to identify sources of infection or other causative agents, and persons in contact with these sources
- Epidemiologically important individual contacts are key to infectious disease investigations:
 - STI control: sexual contacts
 - TB control: family, close personal, and workplace contacts
 - Other infectious agents (e.g., measles): unvaccinated contacts



Public Health Investigations: Network-based Information

- Example of STIs
 - Most transmission associated with persons with many sexual contacts
 - Overlapping information from multiple contacts maximizes identification of persons at risk, even if some provide false information or do not cooperate
- Legal coercion is not used
 - Courts can order cooperation
 - However, such orders may be hard to enforce and might complicate future cooperation with health department



•Most communicable disease control involves diseases that normally present in the community. The objective of the investigation is to manage the spread of the disease and its consequences, not to eradicate it.

•Since perfect information is not necessary, legal coercion is not used when contacts refuse to cooperate or provide false information. The larger issue of cooperation with the health department outweighs the value of using prosecution to force compliance with the investigation.

•Issues with law enforcement consequences: Some investigations may have law enforcement implications, such as when an STI infection turns up evidence of child sexual abuse. When should law enforcement be contacted? When routine disease investigations turn up evidence of behavior that statutes or regulations require be reported to law enforcement or protective services, it must be reported.

Requirements for Information Accuracy: When is Cooperation Essential?

- Does the Constitutional privilege against self-incrimination apply?
 - Constitutional right against self-incrimination only applies to persons at risk of criminal prosecution
 - There is no right to withhold information about civil matters, such as infectious disease contacts
- Court can order fines or imprisonment for refusal to comply



Management of Surveillance and Reporting Data

- Access should be limited to persons who are involved in disease control efforts
- Most states allow information to be shared with persons at risk or with other community service providers, as necessary, including:
 - Advisory to health care and EMS workers who have been exposed to communicable diseases
 - Partner notification for exposed persons



Protections for Agency Records

- Prosecutors, tort lawyers, and the media often seek agency records
- Agency records about individuals have several protections
 - General medical privacy laws (e.g., HIPAA)
 - Open records act exceptions
 - Specific public health records protections
 - Special STI or HIV/AIDS records Laws



Limits on State Records Protections

- Privacy laws usually do not protect information about businesses, such as results of restaurant inspections
- Federal law can preempt state law protections
 - National security agencies have broad rights of access to public and private information, but must conform with Constitutional parameters



•All states, as well as the federal government, have freedom of information laws that provide public access to agency records. While these laws contain exceptions that cover medical information about individuals, and some agency information used for internal decisionmaking, in most states they allow access to information such as the results of restaurant inspections and foodborne illness investigations. (Haigley v. Department of Health and Mental Hygiene, 128 Md.App. 194, 736 A.2d 1185 (Md.Sp.App. 1999))

•The U.S. Constitution, treaties, and acts of Congress can preempt state laws. A federal court, acting under federal law, can require state and local agencies to produce records that are protected from disclosure under state law. This is frequently done in Medicare and Medicaid fraud investigations. The federal courts have traditionally given the federal government broad access to information of all types when it is needed to protect national security. The Homeland Security and Patriot Acts, passed after the attacks on the United States on September 11, 2001, extend these traditional powers.

Objective 5.2

Be familiar with legal issues in public health interventions.



Principles for Interventions

- Primary goal of an investigation is to establish a scientifically rational basis for public health interventions
- The level and nature of interventions depends on factors including the causative agent and mode(s) of spread
- The greater the danger posed by the disease-causing agent, the greater the judicial deference to the health agency's choice of interventions



Examples of Interventions Relying on Legal Authorities

- Contact tracing and partner notification
- Quarantine, isolation, and cordon sanitaire
- Mandatory vaccination
- Mandatory screening and testing
- Limiting access to property and facilities
- Destruction of property



Legal Flexibility for Interventions: Emerging Infectious Diseases

- Emerging diseases are new to the community:
 - West Nile Virus, SARS, Hantavirus
 - Old diseases, formerly under control, may reemerge with changing social or environmental conditions
 - Infectivity and severity may not be known
- Emerging and reemerging diseases may force public health agencies to act on incomplete or uncertain information
 - Courts recognize the importance of prevention
 - Courts usually defer to the agency's broad powers, as long as the agency acts within its statutory authority



Contact Tracing: Non-Sexually Transmitted Infectious Diseases

- Close, non-sexual contacts:
 - Measles
 - TB
- These diseases do not pose privacy issues as complicated as STIs
 - May involve large numbers of contacts (e.g., infected person is a student or uses public transportation)
 - Can spread in workplace, requiring employers to cooperate during investigation



Special Issues in Investigations: Sexually-Transmitted Infections

- Privacy is critical in STI investigations
 - Investigators keep the names of all contacts confidential
- Can potentially trigger partner violence
 - May require social services to protect partner from domestic violence



Interventions for Persons Exposed to Communicable Diseases

- **Education**
 - Nature and risks of disease
- **Testing**
 - Contacts offered diagnostic testing to determine if they are infected
 - Contacts may be offered treatment without testing, based on epidemiologic data
- **Restrictions**
 - Contacts may be quarantined or restricted



Issues: Refusal of Testing and Treatment

- Do risks of the disease justify mandatory testing?
 - U.S. Constitution allows forced testing and restrictions to protect the public
- Persons who refuse treatment for dangerous diseases may be restricted or isolated until they are non-infectious
 - While such an approach is coercive, it may be considered ethically more desirable than physically forcing treatment



Legal Authorities for Interventions in Children

- All states require parents to provide necessary medical care for their children
 - If care is not provided for serious illnesses, including communicable diseases, then the court can appoint a guardian to consent to care for the child
 - The court can order care over the parents' religious objections
- Religious and philosophical exemptions to vaccination
 - Almost all states allow parents to refuse to have children vaccinated for religious reasons
 - 20 states now allow parents to refuse vaccination for philosophical reasons



Interventions and Property

- Food
 - Restaurants can be closed because of poor sanitation
 - Food processors can be forced to recall products
 - Contagious employees can be excluded from work
- Waterborne illnesses
 - Beaches are closed for high fecal coliform counts
 - Public pools are closed if water fails routine testing
 - Health departments may issue orders to boil or treat water before drinking



Interventions and Rights: Individuals

- Isolated individuals may petition for a writ of *habeas corpus* – at the hearing, the state must:
 - Bring person before a judge
 - Show legal authority for the detention
 - Show factual basis for the detention
- Some states have provided additional due process, requiring hearings before orders are issued to restrict individuals



Interventions and Rights: Businesses

- Businesses with health department permits or licenses:
 - Are subject to warrantless inspections
 - Can be closed on order of an inspector
 - Depending on state or local law, order can be appealed to court or local government
- If the business is not regulated by the health department, a warrant and/or court order will be needed to allow inspections and closure
 - There is an exception to warrant and court order requirements for emergencies



Public Health Interventions: Judicial Deference

- New York City closed gay bathhouses in 1985
 - Rationale: Based on their role in HIV transmission
 - Owners argued that this was not necessary
- The court deferred to the health department's finding that such closings were necessary to protect the public's health:

"It is not for the courts to determine which scientific view is correct in ruling upon whether the police power has been properly exercised. 'The judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretense'"



•The Bathhouse cases -- *City of New York v New St. Mark's Baths*, 130 Misc. 2d 911, 497 N.Y.S.2d 979 (1986).

Public Health and the Role of the Police

- Police rarely are used in public health because:
 - Public health is not primarily a law enforcement function
 - Law enforcement presence may adversely affect the public's cooperation with health department
- Enforcement of Orders
 - Most public health orders do not require force
 - Police usually are involved after court order is violated
- Criminal behavior
 - Health departments are not expected to report crimes such as drug abuse or prostitution
 - Health departments are expected, and may be required by law, to report crimes against vulnerable populations (e.g., child abuse)



Objective 5.3

Recognize the legal authority for interventions in public health emergencies.



Public Health Emergencies

- Natural disasters
 - Hurricanes
 - Floods
 - Heat waves
- Manmade disasters
 - Train wrecks with toxic chemicals
 - Leaks from industrial facilities
 - Biological or chemical terrorism
- Outbreaks and Epidemics
 - Influenza epidemics
 - Severe localized outbreaks



Disasters and Emergencies: First Response

- In most disasters and emergencies, official emergency declarations are issued shortly after event begins
 - Public health and other first responders may be required to address community's needs before there is official recognition of event that triggers emergency powers
- First response is often based upon fundamental public health powers to respond to emergencies, even in the absence of express emergency laws



Official Emergency Declarations

- State's emergency declaration
 - Triggers state emergency laws and federal support
 - Brings state emergency preparedness teams into action
 - Public health actions coordinated with other emergency services
- Federal Emergency Management Agency
 - FEMA assists local authorities by helping provide emergency housing, water, other supplies, and loans



Assistance from Other States: EMAC

- Emergency Management Assistance Compact (EMAC)
 - Approved by Congress in 1996 (Public Law 104-321) and adopted by all states
- Administered by state emergency management agencies
- Serves as a contract among the states, providing rules to be followed when sharing personnel and other resources across state boundaries during an emergency
- Activated by a Governor-declared state of emergency (however: mutual planning and information sharing does not require a declaration)



<http://www.emacweb.org/>

Assistance from Other States: EMAC Major Issues

- Three major issues are addressed by EMAC:
 - **Liability**
 - The state requesting assistance under EMAC is responsible in tort for the actions of workers from the assisting state
 - **Reimbursement**
 - The state providing assistance is guaranteed payment, either from federal funds secured by the state requesting assistance or from funds of the requesting state (the state providing assistance may waive reimbursement)
 - **Response**
 - EMAC allows for quick response to an emergency with unique government resources (personnel, equipment, and materials)
 - Quick response is facilitated by a provision specifying that licensed personnel from a state providing assistance are deemed licensed in the state receiving assistance



<http://www.emacweb.org/>

Disasters and Emergencies: General Interventions

- Evacuation orders
 - Implemented by police and sheriffs
- Sanitation orders
 - Destruction of contaminated food
 - Advise on whether drinking water is contaminated
- Overseeing Shelters
 - Sanitation
 - Food service
 - Surveillance and control of disease outbreaks



Interventions: Toxic Spills

- **Fire department**
 - Usually has responsibility and expertise to manage chemical spills
 - Health departments advise on health effects and environmental contamination
- **Long-term monitoring**
 - Health department may establish surveillance system for future health effects
 - Long-term monitoring data may be subpoenaed in injury litigation



Interventions: Severe Disease Outbreaks

- Mass vaccination (if a vaccine is available)
- Rationing or prioritized distribution of medicines and health care
- Local and international travel restrictions
- Isolation and quarantine



Interventions: Mass Vaccinations

- **Mandating vaccinations**
 - High-priority groups may include health care workers, emergency service workers, and police
 - Issue: If high-priority group members refuse vaccination, they can be excluded from work – but is that a useful solution?
- **Rationing of limited vaccine supplies**
 - Government seizure of private vaccine discouraged by law
 - Seizure may result in loss of state immunity
 - Seizure could result in loss of federal funding
 - Private property owners may be entitled to a court hearing and compensation after such emergency seizure



Mass Vaccinations: Legal Issues

- Fear of vaccination complications
 - People may avoid vaccination if they fear they will not be compensated for related injuries
 - New vaccines may require approval on limited data, with possible result of increased public fears
- Private health care providers
 - Essential to rapid vaccination of population
 - Want immunity from vaccine injury claims
 - Immunity may be conferred by state or federal law



Interventions: Quarantine and Isolation

- Traditional police powers
 - Isolation and quarantine of individuals and communities
 - Powers used widely in the 19th Century and as late as 1950s
- Changing legal standards
 - A few state courts have increased due process standards for orders isolating individuals for tuberculosis control



Examples of case decisions related to traditional police powers:

- Court upholds jailing of uncooperative tuberculosis carrier - *In re Washington*, 735 N.W.2d 111 (Wis. 2007)
- Court upholds power to close gay bathhouses - *City of New York v New St. Mark's Baths*, 130 Misc. 2d 911, 497 N.Y.S.2d 979 (1986)
- Case upholding broad public authority to fluoridate of water - *Kaul v. City of Chehalis*, 45 Wash. 2d 616, 277 P.2d 352 (Wa. 1954)
- State may exclude persons from a locale to prevent the spread of disease - *Compagnie Francaise de Navigation a Vapeur v. Board of Health of State of Louisiana*, 186 U.S. 380 (1902)

Increased due process protections:

- Decision equating tuberculosis quarantine with mental health commitment and requiring pre-detention hearing - *City of Newark v. J.S.*, 279 N.J.Super. 178, 652 A.2d 265, 3 A.D. Cases 1834 (N.J.Super.Law Div. 1993)

Emergency Powers Laws: Modifying Basic Grants of Authority

- Some states have adopted statutes that provide detailed standards for actions in a public health emergency
 - Some of these laws limit traditional police powers
 - States must follow any limitations in these emergency laws
- If state statutes are silent on emergency powers, then health department has broad powers to act under state's police powers



Appealing Emergency Orders

- If state has an emergency powers act, orders can be appealed through procedures in the act
 - If state lacks a specific appeals process, then individual isolation and quarantine orders can be appealed through a *habeas corpus* proceeding
 - Mass quarantine or isolation orders can be appealed through injunction proceedings
- States can require appeals of emergency orders to go through administrative review before being taken to courts



Richards EP, Rathbun KC. Making state public health laws work for SARS outbreaks. *Emerg Infect Dis* Feb 2004.

Bioterrorism: National Security Powers

- Constitution gives the President broad powers to manage national security threats
 - Congress can pass national security laws, but primary powers belong to the President when threat is external to U.S.
 - Law on domestic national security threats is new and developing
- The President may intervene in the states for some threats (e.g., bioterrorism), but extent of these powers is untested



Bioterrorism: State and Local Health Departments

- Bioterrorist events are public health threats, but also are crimes and potential national security threats
 - Outbreaks resulting from bioterrorism are managed with same public health tools as used for other outbreaks
 - Danger of outbreak and need to quickly trace its origin will change investigation procedures
- Rather than rely on voluntary information, courts' orders may be used to force cooperation



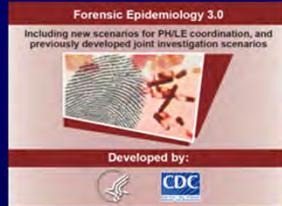
Bioterrorism: Law Enforcement

- Law enforcement will be involved to identify, apprehend, and prosecute terrorists
 - Individuals cannot be forced to provide information if it might incriminate them in a crime
 - Result: May force choice between obtaining disease control information and collecting evidence that can be used in court
- To extent feasible during investigation and decontamination, public health investigators must observe procedures for collection of criminal evidence



CDC Training Resources on Law and Public Health Emergencies

Public Health Emergency Law 3.0



Forensic Epidemiology 3.0

Available at: www.cdc.gov/phlp



Conclusion: Unit 5



Summary: Unit 5

- Health departments have broad powers to collect personal and business information on public health conditions
- Public health interventions must balance the individual's right to autonomy against the protection of the public's health
- Courts will allow broad public health powers during emergencies



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