



Harvard School of Public Health
Center for Public Health Preparedness

**LEGAL ISSUES IN PUBLIC HEALTH EMERGENCIES:
AN OVERVIEW FOR MAINE**

TRAIN THE TRAINER PROGRAM

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WELCOME:

Welcome to the Maine Train the Trainer Program, Legal Issues in Public Health Emergencies: An Overview for Maine. Before we begin, let us have introductions so we are better acquainted with one another.

INTRODUCTIONS & ICE BREAKER:

In this exercise, you will be introducing the person next to you. Please turn to the person to your right or left and find out three items about them; a) their name b) primary position or role c) one of their favorite pastimes. With this information, please introduce this colleague to the larger group.

Post-Introductions: Now that we are introduced to one another, let us proceed with the presentation. I encourage each one of you to continue getting to know one another throughout the time that we are gathered here today.

PRESENTATION OVERVIEW:

This presentation has been prepared by the Harvard School of Public Health Center for Public Health Preparedness to provide an overview of the legal issues relevant to public health emergencies in Maine. As you may already know, public health law is a matter primarily of state law, not federal, and while the principles generally are consistent, the provisions of specific laws may vary greatly from state to state. This presentation is intended for use by individuals for personal education, or by educators and trainers to present to a class of students.

The content has been developed for public health professionals, but should prove beneficial to hospital personnel, first line-responders, and the general public interested in learning more about public health law.

The information in this presentation is provided for educational purposes only and should not be construed as legal advice. Participation in this presentation does not create a lawyer-client relationship.

This presentation is an overview, and includes discussion of legal issues generally, with specific provisions of only a sample of relevant Maine law. There is a multitude of laws that may apply in a public health emergency, related to any one of the issues that we raise in this discussion.

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PRE-TEST QUESTIONNAIRE

This Pre-Test Questionnaire is designed to measure achievement of the Legal Issues in Public Health Emergencies learning objectives for this module by first measuring among training participants the level of knowledge prior to receiving training about the fundamentals of public health law applicable during public health emergencies.

- Please complete this questionnaire and hand it back to your trainer.
- Please circle the correct answer(s) from the answer choices provided.

1. Public health law

- a) is promulgated (made into statutes) by the public's vote
- b) does not have limitations in its application
- c) is relevant during public health emergencies
- d) all of the above

2. The three branches of government are (circle three)

- a) Executive
- b) Federal
- c) Judicial
- d) State
- e) Legislative

3. In Maine, declaration of an extreme public health emergency may be made when

- a) a death threat is made to a high ranking politician
- b) a highly infectious agent poses an imminent threat of substantial harm to the population of the state
- c) a suspicious package is intercepted at the post office
- d) there is loss of electrical power at a Coast Guard base

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4. Under Maine privacy and confidentiality statute,

- a) health care workers are prohibited from disclosing confidential health information under any circumstance to public health authorities without that patient's consent
- b) only epidemiologists can share health information about a patient in order to investigate a health problem/outbreak
- c) there are no exemptions from the HIPAA Rule (*Health Insurance Portability and Accountability Act of 1996*)
- d) health care workers who, in good faith, disclose truthful protected health information to aid "public health investigations and interventions" usually are protected from liability

5. In an Extreme Public Health Emergency, this is **NOT** allowable;

- a) A hospital must follow its own response plan and not that of the state or local government with regards to patient transfer or referral
- b) An individual will be arrested if she/he refuses to allow members of the response community on his property
- c) DNA testing or examination of infected/exposed person without their consent
- d) Treatment of a disease even when it is against one's religious beliefs

6. Which of these statements is true

- a) In the protection of health of the population, the law aims at a balance between individual rights and public interest
- b) *Parens Patriae* is a power retained by a state
- c) Health care practitioners who perform negligent acts while responding public health emergencies are not immune from civil liability
- d) States and their localities have primary responsibility for isolation and quarantine between their borders
- e) all of the above statements

7. In public health law, this legal consideration is made in protecting the health of the public

- a) Balance between individual rights & protection of the health of the population
- b) Least Restrictive Alternative
- c) Due Process
- d) Privacy & Confidentiality
- e) Enforcement
- f) all of the above

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8. Which of these is NOT regulated under the states' Police Power

- a) Smoking
- b) Quarantine & isolation
- c) Protected Health Information (PHI)
- d) Immunization

9. Management of persons in an extreme public health emergency does NOT include;

- a) Eminent Domain
- b) Face-to-face counseling
- c) Cease and Desist Order
- d) Court ordered confinement, isolation & treatment

10. Which of these statements is true

- a) In public health emergencies health care providers acting outside the scope of licensure are immune from civil liability
- b) Individuals who contract smallpox vaccinia by voluntarily participating in a Smallpox Emergency Response Plan may be compensated for their injuries
- c) The law is often catching up to unanticipated events and circumstances
- d) Health officials will be liable for not allowing loved ones to bury their dead - regardless of the cause of death
- e) b & c
- f) a & c & d

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GROUP EXERCISE

The Tuberculosis Outbreak

On the afternoon of Friday, May 21, 2004, Dr. Volandes, the emergency department attending at Maplewood Hospital diagnosed 42 year old Archibald Wiggins with tuberculosis. Archibald reported having previously been treated for a persistent cough five months ago at a health clinic. This clinic is located in the town of Lakeville, close to the homeless shelter where he stayed for 8 months. He recalls being teased by his 17 housemates for being immune to the cold weather as he never used his bed coverings because of the night sweats he was always experiencing. Archibald, a skilled carpenter, learned of a theater company that had moved to Maplewood and that carpenters were being sought to help build a theater. Archibald saw the move to Maplewood as his chance for employment and an end to his two years of homelessness.

Question 1: List at least 2 action steps Dr. Volandes and Maplewood Hospital should take in the provision of care to Archibald, given his background and diagnosis.

Steps can include:

1. _____
2. _____

Question 2:

a) What legal mandates with regards to Archibald's treatment and care does this case bring into play?

b) What legal mandates may be applied with regards to the health of others with whoever Archibald was in close contact?

c) How might the privacy and confidentiality questions/legal issues arising as a result of responding to this health concern be resolved under Maine Public Health Law?

Question 3: What other agencies and departments must be informed/become involved in response to the health concern that Archibald presents?

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ANSWER KEY:

Question 1: List at least 2 action steps Dr. Volandes and Maplewood Hospital should take in the provision of care to Archibald, given his background and diagnosis.

Steps can include:

- 1. Mandatory medical treatment*
- 2. Isolation and quarantine*
- 3. Face-to-face counseling*
- 4. Supportive services etc.*

Question 2:

a) What legal mandates with regards to Archibald's treatment and care does this case bring into play?

Disclosure of Archibald's health information (TB diagnosis) via case reporting to the state ("Legally, the Division of Disease control is authorized to receive reports by Main Statute 22 MSRA, Chapter 250 Control of Communicable Diseases, Sections 801-825 and Maine Rules [Rules for Control of Notifiable Conditions 10-144 C.M.R. Ch. 25] requiring all medical providers to continue to report, and to cooperate with "public health investigations and interventions"). Other mandates include; mandatory medical treatment, isolation and quarantine of Archibald etc.

b) What legal mandates may be applied with regards to the health of others with whoever Archibald was in close contact?

Contact tracing (of those who had prolonged contact with Archibald in Maplewood, Lakeville and other towns), mandatory TB testing/examination and mandatory treatment, isolation and quarantine of those cases with active TB and reporting of these active TB cases to the Division of Disease Control.

c) How might the privacy and confidentiality questions/legal issues arising as a result of responding to this health concern be absolved under Maine Public Health Law?

Maine Department of Human Services, Bureau of Health, Division of Disease Control (DDC) provided exemptions for the HIPAA restrictions on disclosure of Protected Health Information for those functions of reportable disease surveillance and preventive follow-up, outbreak investigation, preventive outreach education and appropriate preventive follow-up services for contacts of communicable diseases.

Question 3: What other agencies and departments must be informed/become involved in response to the health concern that Archibald presents?

- 1. Theater company in Maplewood*
- 2. Homeless shelters where Archibald has stayed*
- 3. Clinics where Archibald has previously been treated for symptoms*
- 4. City Public Health Divisions/DDC*
- 5. City police –if the cases are recalcitrant*
- 6. The media*
- 7. Office of the Mayor*
- 8. Federal Center for Disease Control and Prevention*

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POST-TEST QUESTIONNAIRE & ANSWER KEY

This Post-Test Questionnaire is designed to measure achievement of the Legal Issues in Public Health Emergencies learning objectives for this module by measuring the level of knowledge after receiving training about the fundamentals of public health law applicable during public health emergencies.

- Please complete this questionnaire and hand it back to your trainer.
- Please circle the correct answer(s) from the answer choices provided.

1. Public health law

- a) is promulgated (made into statutes) by the public's vote
- b) does not have limitations in its application
- c) is relevant during public health emergencies
- d) all of the above

Answer: c

2. The three branches of government are (circle three)

- a) Executive
- b) Federal
- c) Judicial
- d) State
- e) Legislative

Answer: a & c & e

3. In Maine, declaration of an extreme public health emergency may be made when

- a) a death threat is made to a high ranking politician
- b) a highly infectious agent poses an imminent threat of substantial harm to the population of the state
- c) a suspicious package is intercepted at the post office
- d) there is loss of electrical power at a Coast Guard base

Answer: b

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- b) only epidemiologists can share health information about a patient in order to investigate a health problem/outbreak
- c) there are no exemptions from the HIPAA Rule (*Health Insurance Portability and Accountability Act of 1996*)
- d) health care workers who, in good faith, disclose truthful protected health information to aid "public health investigations and interventions" usually are protected from liability

Answer: d

5. In an Extreme Public Health Emergency, this is NOT allowable;

- a) A hospital must follow its own response plan and not that of the state or local government with regards to patient transfer or referral
- b) An individual will be arrested if she/he refuses to allow members of the response community on his property
- c) DNA testing or examination of infected/exposed person without their consent
- d) Treatment of a disease even when it is against one's religious beliefs

Answer: a

6. Which of these statements is true

- a) In the protection of health of the population, the law aims at a balance between individual rights and public interest
- b) Parens Patriae is a power retained by a state
- c) Health care practitioners who perform negligent acts while responding public health emergencies are not immune from civil liability
- d) States and their localities have primary responsibility for isolation and quarantine between their borders
- e) all of the above statements

Answer: e

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7. In public health law, this legal consideration is made in protecting the health of the public

- a) Balance between individual rights & protection of the health of the population
- b) Least Restrictive Alternative
- c) Due Process
- d) Privacy & Confidentiality
- e) Enforcement
- f) all of the above

Answer: f

8. Which of these is NOT regulated under the states' Police Power

- a) Smoking
- b) Quarantine & isolation
- c) Protected Health Information (PHI)
- d) Immunization

Answer: c

9. Management of persons in an extreme public health emergency does NOT include;

- a) Eminent Domain
- b) Face-to-face counseling
- c) Cease and Desist Order
- d) Court ordered confinement, isolation & treatment

Answer: a

10. Which of these statements is true

- a) In public health emergencies health care providers acting outside the scope of licensure are immune from civil liability
- b) Individuals who contract smallpox vaccinia by voluntarily participating in a Smallpox Emergency Response Plan may be compensated for their injuries
- c) The law is often catching up to unanticipated events and circumstances
- d) Health officials will be liable for not allowing loved ones to bury their dead -regardless of the cause of death
- e) b & c
- f) a & c & d

Answer: e

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CLOSING EXERCISE:

- On a piece of paper list three things that you plan to do this coming month to prepare yourself or your agency to increase awareness on legal issues in public health emergencies in your community.

- Now find a partner and share two things that you learned from today's session and share one thing that you plan to do this coming month. After 5 minutes, come back to the larger group.

- Each pair should share with the larger group the one thing (either an action item or a learned point) you found most enlightening. (*We all learn more from each other than what we could possibly learn by ourselves.*)

- Everyone, please take your own piece of paper on which earlier; you listed the three things you plan to do this next month. Crumple it up and put it in your purse, pocket, or briefcase agreeing to carry it with you for the next thirty days.

(It is amazing how often one cleans out one's purse, pocket or briefcase over a thirty day period, thinking, "What is this crumbled piece of paper here for?.....Oh, yes!!")

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REFERENCES

Maine State Information

- Constitution, Statutes, and Session Laws of Maine, at <http://janus.state.me.us/legis/ros/meconlaw.htm>
- Homepage of Maine Department of Human Services, at <http://www.state.me.us/dhs/>
- Rule Chapters for the (Maine) Department of Human Services, at <http://www.state.me.us/sos/cec/rcn/apa/10/chaps10.htm>
- OPHEP Executive Director
Paul Kuehnert, MS, RN
General Information: 207-287-3796

USDHHS Information

- Federal advisories on disease surveillance, at www.cdc.gov
- Smallpox Injury Prevention Program, at <http://www.hrsa.gov/smallpoxinjury/>
- EMTALA Resource, at <http://www.cms.hhs.gov/providers/emtala/default.asp>

Public Health Law Texts

- Kenneth R. Wing, *The Law and the Public's Health*, Sixth Ed., Health Administration Press, 2003.
- Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint*, University of California Press, 2000.