

PUBLIC HEALTH LAW AND POLICY PROGRAM
Center for Law, Science & Innovation

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ARIZONA STATE UNIVERSITY

Legal Issues In Public Health Emergencies

James G. Hodge, Jr., J.D., LL.M.
Lincoln Professor of Health Law and Ethics
Director, Public Health Law and Policy Program
Director, Network for Public Health Law – Western Region

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Principal Topics:

- Defining “Crisis” in the Context of Emergencies
- Assessing the Legal and Ethical Environments in Emergencies
- Core Legal Issues
 - Licensure of Health Practitioners
 - Liability

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Crisis Standards of Care

Conventional Contingency Crisis

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Crisis Standard of Care - IOM

CONVENTIONAL CONTINGENCY CRISIS

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Public Health Emergencies - Defined

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Public Health Emergencies - Defined

Boston flu outbreak prompts mayor to declare public health emergency
Mayor Tom Menino urges residents to get vaccinated as city confronts 700 confirmed cases amid fears of nationwide danger

Adam Gabbatt | New York
quarantine on its Thursday 10 January 2013 10:45 EST
Jump to comments (...)

Four-year-old Gabriella Diaz sits as a nurse administers a flu shot at the Whitaker Street Health Center in Boston, Massachusetts. Photograph: Charles Krupnik

The city of Boston has declared a public health emergency as fears of a nationwide flu outbreak intensify.

Mayor Thomas Menino urged residents to get vaccinated against flu, as the city scrambled to deal with 700 confirmed cases so far – compared to just 70 cases during the whole of last year's flu season.

The move came as experts warned that the current flu strain is one of

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Public Health Emergencies - Defined

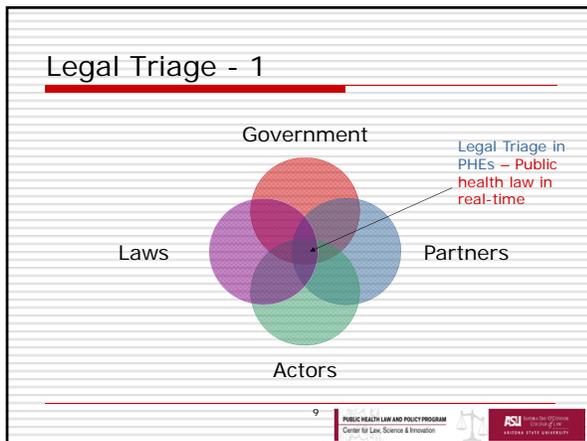
The screenshot shows the official website of Governor Andrew M. Cuomo. At the top, there is a navigation menu with links for 'About', 'Newsroom', 'Legislation', 'Initiatives', 'Translate', and 'Contact'. Below the navigation is the State of New York seal and the text 'State of New York Executive Chamber'. The main content area displays a legislative document titled 'Declaring a Disaster Emergency in the State of New York and Temporarily Authorizing Pharmacists to Immunize Children Against Seasonal Influenza'. The document includes 'WHEREAS' clauses describing the public health emergency. At the bottom of the page, there is a footer with the text 'PUBLIC HEALTH LAW AND POLICY PROGRAM Center for Law, Science & Innovation' and the ASU logo.

Assessing the Role of the Law in Public Health Emergencies

Laws pervade emergency responses at every level of government:

- They determine what constitutes a public health or other emergency
- They help create the infrastructure through which emergencies are detected, prevented, and addressed
- They authorize the performance (or nonperformance) of various emergency responses by a host of actors
- They determine the extent of responsibility for potential or actual harms that arise during emergencies

Legal Triage - 1



Legal Triage - 2

Legal triage refers to the efforts of legal actors and others to construct a favorable legal environment during emergencies through a prioritization of issues and solutions that facilitate legitimate public health responses.

Hodge, JG, Anderson, ED. Principles and practice of legal triage during public health emergencies. *NYU Ann. Surv. Am. L.* 2008; 64(2): 249-291.

Legal Triage - 3

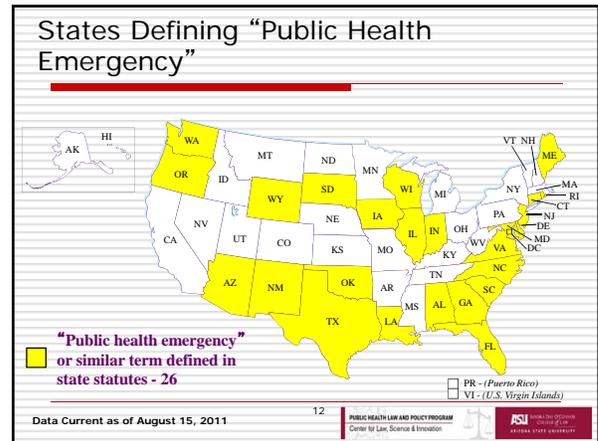
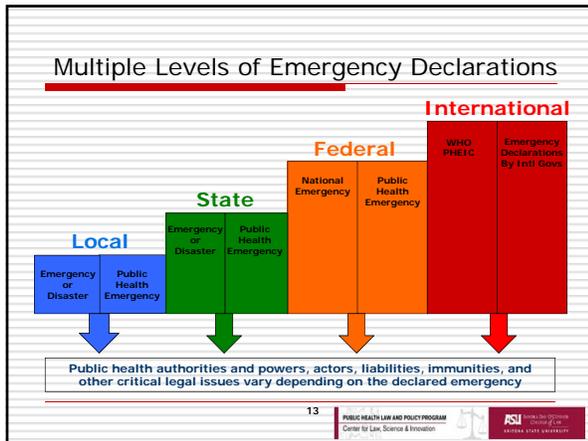
Legal actors and others must:

- **assess and monitor changing legal norms** during emergencies;
- **identify legal issues** that may facilitate or impede public health responses as they arise;
- **develop innovative, responsive legal solutions** to reported barriers to public health responses;
- **explain legal conclusions** through tailored communications to planners and affected persons; and
- consistently **revisit the utility, efficacy, and ethicality** of legal guidance.

Legal Landscape in Emergencies

Once an emergency is declared, the legal landscape changes depending in part on the type of emergency declared





Model State Emergency Health Powers Act

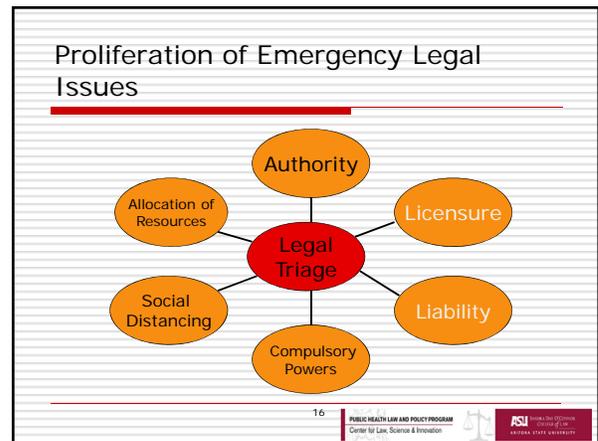
Individuals are bestowed special protections and entitlements

Government is vested with specific, expedited powers to facilitate emergency responses

Licensing and credentialing requirements may be waived

Volunteers and others may be protected from civil liability

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Licensure Reciprocity

- **When can health professionals practice across state lines?**
 - **Emergency Declarations** and other laws allow states to waive normal laws for professional licensure, certification, and privileging during a declared emergency and to recognize out-of-state health professionals.
 - **Emergency Management Assistance Compact (EMAC)** provides similar licensure reciprocity for state agents
 - Other **reciprocity agreements** may apply (e.g., Nurse Licensure Compact)

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Scope of Practice Limits

- **Defined** - extent of a licensed or certified professional's ability to provide health services pursuant to their competence and license, certification, privileges or other lawful authority to practice.
- **Uniform Emergency Volunteer Health Practitioners Act** ~ volunteer health practitioners cannot provide services that are **outside the practitioner's own scope of practice** even if a similarly-situated practitioner in the state is permitted to provide the same services.

Sources:
<http://www.uevhpa.org/DesktopDefault.aspx?tabindex=18>

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What About Civil Liability?

Civil liability is the potential responsibility that a person or institution may owe for their actions, *or failures to act*, that result in injuries or losses to others.



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Who May Be Liable?



Health care workers and volunteers



Health care entities or employers



Persons or entities responsible for emergency responses

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Changing Standards of Care

Standard of Care

Generally refers to the duty owed by health care practitioners to their patients depending on the circumstances



Crisis Standards of Care

INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES
Adapt standard of care to screen and treat increasing numbers of patients with limited resources



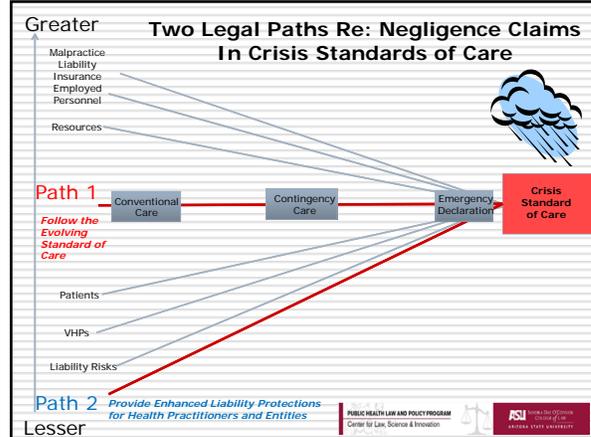
Source: http://www.nationalacademies.org/handbook/13/Chapter_10



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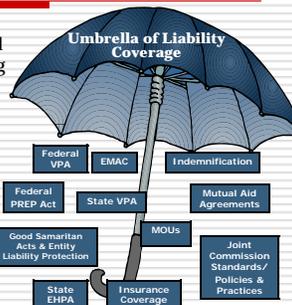
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Liability Protections for Health Practitioners and Entities in Emergencies

Despite liability risks, many legal liability protections apply during emergencies, including:

- Governmental (sovereign) Immunity
- Good Samaritan Acts
- Volunteer Protection Acts
- Federal PREP Act
- Entity Liability Protections



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Conclusions

- So how will these and other legal issues be addressed in Arizona pursuant to implementation of crisis standards of care?; *and*
- How do laws and policies comport with ethics norms and frameworks in emergencies?

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Questions/Comments



- networkforphl.org
- Call or email the Western Region Office at Arizona State University
 - 480-727-2092
 - jhodge@networkforphl.org