



Public Health Law

Office for State, Tribal, Local and Territorial Support
Centers for Disease Control and Prevention

Ebola and the Law: Legal Preparedness for Physicians and Hospitals¹

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The 2014 Ebola outbreak is the largest epidemic of the Ebola virus in history, currently with widespread transmission in three countries in West Africa: Guinea, Liberia, and Sierra Leone, and four confirmed cases of Ebola in the United States. As this epidemic continues to make news, healthcare and public health attorneys are being called on to address questions and concerns related to legal preparedness for potential infectious disease outbreaks.

This issue brief describes select points of interest—including case law, statutes, and information about CDC guidance—highlighted during a presentation entitled “Ebola and Public Health Law” delivered by Gregory Sunshine and Montrece Ransom at the 2015 American Health Lawyers Association Physicians and Hospitals Law Institute on February 3, 2015.

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I. Ebola Legal Preparedness: Why Prepare?

Responses to past public health emergencies suggest that failure to prepare for foreseeable public health threats and disasters could result in allegations of negligent or inadequate planning from patients, the public, and healthcare facility employees. The following is a selection of legal cases that addressed emergency response-related liability.

A. Americans with Disabilities Act (ADA)

- *Communities Actively Living Indep. & Free v. City of Los Angeles*, CV 09-0287 CBM RZX, 2011 WL 4595993 (C.D. Cal. Feb. 10, 2011).
 - In 2011, US District Court held that Los Angeles violated state disability laws and the ADA for not considering persons with disabilities in city emergency plans.
- *Brooklyn Center for Independence of the Disabled v. The City of New York*, 980 F.Supp.2d 588 (S.D.N.Y. 2013).
 - In November 2013, a jury found that the City of New York had not adequately prepared for persons with disabilities in the city’s disaster response plans, particularly regarding evacuation and messaging.
- *DC Center for Independent Living v. District of Columbia*, 1:14-cv-01528 (D.D.C. Sept. 9, 2014) (Complaint).
 - On September 9, 2014, A coalition of disability rights advocates filed a federal class action lawsuit in the US District Court for the District of Columbia, alleging similar claims against Washington, DC.

B. Duty to Plan and to Comply with Plan

- *Prince v. Waters*, 850 N.Y.S.2d 803 (2008).

- The widow of a volunteer firefighter sued the county and the fire control coordinator after her husband was killed in the line of duty.
- The New York State appellate court found that the National Incident Management System-Incident Command System “may form the predicate for liability” under state law because it “‘mandates a reasonably defined and precedentially developed standard of care,’ and does not require the trier of fact to ‘second-guess [a firefighter’s] split-second weighing of choices.’”
- *Husband v. Tenet Health Systems Mem’l Med. Ctr., Inc.*, 16 So. 3d 1220 (La. Ct. App. 4 Cir. Aug. 2009).
 - Patients, family members, visitors, staff members, and employees of Memorial Medical Center in New Orleans brought a class action lawsuit against the hospital for damages stemming from hospital evacuation after Hurricane Katrina.
 - The Fourth Circuit of the Court of Appeals of Louisiana upheld the trial court’s certification of the class because the allegation that the hospital’s failure to have a “a sufficient emergency plan, negligently caused the injuries to the class members, all of whom were on [the hospital’s] premises during Hurricane Katrina and its aftermath” satisfied the commonality and typicality certification requirements.
- *Mineo v. Underwriters at Lloyds, London*, 997 So. 2d 1872007 (La. Ct. App. 4 Cir. Oct. 2008).
 - The children of a nursing home resident who died after he was not evacuated during Hurricane Katrina filed a negligence action alleging that the nursing home was negligent in failing to provide adequate food, hydration, or medical care to the resident.
 - The Fourth Circuit of the Court of Appeals of Louisiana reversed part of the trial court’s summary judgment against the plaintiff, finding a sufficient question of fact as to “whether or not the evacuation order issued by the local authorities created a duty on behalf of [the nursing home.]” However, claims alleging that the nursing home was negligent in failing to provide residents adequate medication and medical care sounded in medical malpractice. As a result, dismissal was found to be appropriate on the basis that these claims had not first been presented to medical review panel, as required by law.

II. Public Health Powers and Health Care

A. Disease Investigation

The following is a list of select statutes that give public health authorities the power to investigate the spread of diseases and that dictate how these powers are exercised, including rules governing use and access to disease investigation information.

1. Authority to investigate the spread of communicable diseases

- Texas
 - TEX. HEALTH & SAFETY CODE ANN. § 81.061.
Investigation

(a) The department shall investigate the causes of communicable disease and methods of prevention. . . .

(c) The department may investigate the existence of communicable disease in the state to determine the nature and extent of the disease and to formulate and evaluate the control measures used to protect the public health. A person shall provide records and other information to the department on request according to the department's written instructions.

- TEX. HEALTH & SAFETY CODE ANN. § 81.065.

Right of Entry

For an investigation or inspection, the commissioner, an employee of the department, or a health authority has the right of entry on land or in a building, vehicle, watercraft, or aircraft and the right of access to an individual, animal, or object that is in isolation, detention, restriction, or quarantine[.]”

- Nevada: NEV. REV. STAT. ANN. § 441A.160.

Investigation: Powers of health authority to conduct investigation of communicable disease; order to require person to submit to examination;

1. A health authority who knows, suspects or is informed of the existence within the jurisdiction of the health authority of any communicable disease shall immediately investigate the matter and all circumstances connected with it, and shall take such measures for the prevention, suppression and control of the disease as are required by the regulations of the Board or a local board of health.

2. A health authority may:

(a) Enter private property at reasonable hours to investigate any case or suspected case of a communicable disease.

(b) Order any person whom the health authority reasonably suspects has a communicable disease in an infectious state to submit to any medical examination or test which the health authority believes is necessary to verify the presence of the disease. The order must be in writing and specify the name of the person to be examined and the time and place of the examination and testing, and may include such terms and conditions as the health authority believes are necessary to protect the public health.

- Kansas: KAN. STAT. ANN. § 65-128.

Rules and regulations of secretary to prevent spread and dissemination of diseases

(b) The secretary of health and environment is authorized to issue such orders and adopt rules and regulations as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health, including but not limited to, providing for the testing for such diseases[.]

2. Disclosure of health information under state disease investigation laws

- Kansas: KAN. STAT. ANN. § 65-118.

Reporting to local health authority as to infectious or contagious diseases. . . .

(a) Whenever any person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse[,] administrator of a hospital, licensed adult care home-administrator, licensed physician assistant, licensed social worker, teacher or school administrator knows or has information indicating that a person is suffering from or has died from a reportable infectious or contagious disease as defined in rules and regulations, such knowledge or information shall be reported immediately to the county or joint board of health or the local health officer, together with the name and address of the person who has or is suspected of having the infectious or contagious disease, or the name and former address of the deceased individual who had or was suspected of having such a disease. In the case of a licensed hospital or adult care home, the administrator may designate an individual to receive and make such reports. The secretary of health and environment shall, through rules and regulations, make provision for the consolidation of reports required to be made under this section when the person required to make the report is working in a licensed hospital or adult care home. Laboratories certified under the federal clinical laboratories improvement act pursuant to 42 code of federal regulations, 493 shall report the results of microbiologic cultures, examinations, immunologic essays for the presence of antigens and antibodies and any other laboratory tests which are indicative of the presence of a reportable infectious or contagious disease to the department of health and environment. The director of the division of public health may use information from death certificates for disease investigation purposes.

- Maryland: MD. CODE ANN., HEALTH-GEN. §18-904.

Collection and use of information.

(b) [T]he Secretary may by order, directive, or regulation:

1. Require a health care provider or other person to report information to the Secretary or other public official[;]
2. Obtain access to information in the possession of a health care provider[;]
3. Require or authorize a health care provider to disclose information to an agency of the federal, State, or local government or another health care provider.

- California: CAL. HEALTH & SAFETY CODE § 120130.

List of reportable diseases and conditions; establishment and contents;

(a) The department shall establish a list of reportable diseases and conditions. For each reportable disease and condition, the department shall specify the timeliness requirements related to the reporting of each disease and condition, and the mechanisms required for, and the content to be included in, reports made pursuant to this section. The list of reportable diseases and conditions

may include both communicable and noncommunicable diseases. . . . The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers. Modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the revised list shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e). Those diseases listed as reportable shall be properly reported as required to the department by the health officer.

- Note: disclosures under the aforementioned statutes may qualify for the HIPAA privacy rule public health exception under *45 C.F.R. § 164.512(b)(1)*. *Uses and disclosures for which an authorization or opportunity to agree or object is not required.*

3. Protection of disease investigation information

- Kansas: KAN. STAT. ANN. § 65-118.

Reporting to local health authority as to infectious or contagious diseases; . . . confidentiality of information; disclosure

(c) Information required to be reported under subsection (a) of this section shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the requirements of subsection (a) of this section or subsection (a) of K.S.A. 65-119, and amendments thereto, except such information may be disclosed:

- (1) If no person can be identified in the information to be disclosed and the disclosure is for statistical purposes;
- (2) If all persons who are identifiable in the information to be disclosed consent in writing to its disclosure;
- (3) If the disclosure is necessary, and only to the extent necessary, to protect the public health;
- (4) If a medical emergency exists and the disclosure is to medical personnel qualified to treat infectious or contagious diseases. Any information disclosed pursuant to this paragraph shall be disclosed only to the extent necessary to protect the health or life of a named party [.]

- Maryland: MD. CODE ANN., HEALTH-GEN. § 18-201.

Duty of physician to report contagious diseases.

Confidentiality

(c)(1) Except as provided in paragraphs (2) through (5) of this subsection, all reports and all information collected in connection with a report from a health care provider, the subject of the report, or other individuals who might be affected by the condition or disease in the report are:

- (i) Confidential;

- (ii) Not medical records under Title 4, Subtitle 3 of this article;
- (iii) Not open to public inspection; and
- (iv) Not discoverable or admissible in evidence in any civil or criminal matter except in accordance with a court order sealing the court record . . .

(5) This subsection does not apply to a disclosure by the Secretary to another governmental agency performing its lawful duties as authorized by an act of the Maryland General Assembly or the United States Congress where the Secretary determines that:

- (i) The agency to whom the information is disclosed will maintain the confidentiality of the disclosure; and
- (ii) The disclosure is necessary to protect the public health or to prevent the spread of an infectious or contagious disease.

- Virginia

- VA. CODE ANN. § 32.1-36(F)(2).

Reports by physicians and laboratory directors.

Except as provided in this subsection, a [reportable disease] report submitted pursuant to this subsection shall be confidential and shall not be a public record pursuant to the Freedom of Information Act (§ 2.2-3700 et seq.). The Department shall cooperate with and may share information submitted to it pursuant to this subsection with the United States Centers for Disease Control and Prevention, and state and federal law-enforcement agencies in any investigation involving the release, theft or loss of a dangerous microbe or pathogen required to be reported under this subsection.

- VA. CODE ANN. § 32.1-41.

Anonymity of patients and practitioners to be preserved in use of medical records.

The Commissioner or his designee shall preserve the anonymity of each patient and practitioner of the healing arts whose records are examined pursuant to § 32.1-40. [Authority of Commissioner to examine medical records,] except that the Commissioner, in his sole discretion, may divulge the identity of such patients and practitioners if pertinent to an investigation, research or study. Any person to whom such identities are divulged shall preserve their anonymity.

B. Isolation and Quarantine: Authority and Administrative Procedures

Isolation and quarantine are common practices in public health, and both aim to control exposure to infectious or potentially infectious persons. Both isolation and quarantine may be undertaken voluntarily or compelled by public health authorities. The following is a list of select state statutes that give public health authorities power to isolate and quarantine individuals or groups to control the spread of disease. Also included are examples of statutory language related to administrative procedures associated with isolation, quarantine, and other disease control measures.

- Illinois: 20 ILL. COMP. STAT. 2305/2(c).

[N]o person or a group of persons may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction. The Department may, however, order a person or a group of persons to be quarantined or isolated . . . on an immediate basis without prior consent or court order if, in the reasonable judgment of the Department, immediate action is required to protect the public from a dangerously contagious or infectious disease. In the event of an immediate order issued without prior consent or court order, the Department shall, as soon as practical, within 48 hours after issuing the order, obtain the consent of the person or owner or file a petition requesting a court order authorizing the isolation or quarantine or closure. . . . To obtain a court order, the Department, by clear and convincing evidence, must prove that the public's health and welfare are significantly endangered by a person or group of persons that has, that is suspected of having, that has been exposed to, or that is reasonably believed to have been exposed to a dangerously contagious or infectious disease[.] The Department must also prove that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. For purposes of this subsection, in determining whether no less restrictive alternative exists, the court shall consider evidence showing that, under the circumstances presented by the case in which an order is sought, quarantine or isolation is the measure provided for in a rule of the Department or in guidelines issued by the Centers for Disease Control and Prevention or the World Health Organization. Persons who are or are about to be ordered to be isolated or quarantined . . . shall have the right to counsel. If a person or owner is indigent, the court shall appoint counsel for that person or owner. Persons who are ordered to be isolated or quarantined . . . shall be given a written notice of such order. The written notice shall additionally include the following: (1) notice of the right to counsel; (2) notice that if the person or owner is indigent, the court will appoint counsel for that person or owner; (3) notice of the reason for the order for isolation, quarantine, or closure; (4) notice of whether the order is an immediate order, and if so, the time frame for the Department to seek consent or to file a petition requesting a court order as set out in this subsection; and (5) notice of the anticipated duration of the isolation, quarantine, or closure.

- Texas

- TEX. HEALTH & SAFETY CODE ANN. § 81.083.

Administration of Control Measures to Individual

(b) If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual... to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

- (c) An order under this section must be in writing and be delivered personally or by registered or certified mail to the individual. . .
- (d) An order under this section is effective until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease.
- (e) An individual may be subject to court orders under Subchapter G1 if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and:
- (1) The individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; or
 - (2) A public health disaster exists, regardless of whether the department or health authority has issued a written order and the individual has indicated that the individual will not voluntarily comply with control measures.
- (f) An individual who is the subject of court orders under Subchapter G shall pay the expense of the required medical care and treatment except as provided by Subsections (g)-(i).
- (g) A county or hospital district shall pay the medical expenses of a resident of the county or hospital district who is:
- (1) Indigent and without the financial means to pay for part or all of the required medical care or treatment; and
 - (2) Not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program or facility.
- (h) The state may pay the medical expenses of a nonresident individual who is:
- (1) Indigent and without the financial means to pay for part or all of the required medical care and treatment; and
 - (2) Not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program. . . .
- (j) The department may:
- (1) Return a nonresident individual involuntarily hospitalized in this state to the program agency in the state in which the individual resides; and
 - (2) Enter into reciprocal agreements with the proper agencies of other states to facilitate the return of individuals involuntarily hospitalized in this state.
- (k) If the department or a health authority has reasonable cause to believe that a group . . . has been exposed . . . the department or health authority may order the members of the group to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

- TEX. HEALTH & SAFETY CODE ANN. § 81.082.
Administration of Control Measures
(c-1) A health authority may designate health care facilities within the health authority's jurisdiction that are capable of providing services for the . . . quarantine, isolation . . . or imposition of control measures during a public health disaster or during an area quarantine. A health authority may not designate a nursing home or other institution licensed under Chapter 242[: Convalescent and Nursing Homes and Related Institutions].
- Kansas
 - KAN. STAT. ANN. § 65-129b.
Infections or contagious diseases; authority of local health officer or secretary; evaluation or treatment orders, isolation or quarantine orders
(1)(B) When the local health officer or the secretary determines that it is medically necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease, may order an individual or group of individuals to go to and remain in places of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public.
 - KAN. STAT. ANN. § 65-126.
Quarantine of city, township, or county
(a) Whenever a county or joint board of health officer neglects to properly isolate and quarantine infectious or contagious diseases and persons afflicted with or exposed to such diseases . . . the secretary of health and environment may quarantine any area in which any of these diseases may show a tendency to become epidemic.

C. Medical Guidance for Ebola Patients

CDC guidance for management of Ebola patients suggests that common medical practices such as CPR might not be safe to perform on Ebola-infected persons without proper protective equipment and in the proper environment. This guidance might shift providers' medical standards of care for Ebola patients compared with standards of care for patients without Ebola. Health lawyers can share the following information with their clients, including emergency medical services providers, paramedics, and medical first responders, as they prepare for this potential shift in standards.

1. [EMS Personnel](#)

Pre-hospital resuscitation procedures such as endotracheal intubation, open suctioning of airways, and cardiopulmonary resuscitation frequently result in a large amount of body fluids, such as saliva and vomit. Performing these procedures in a less controlled environment (e.g., moving vehicle) increases risk of exposure for EMS personnel. If conducted, perform these procedures under safer circumstances (e.g., stopped vehicle, hospital destination).

2. [Healthcare Workers](#)

If the patient is exhibiting obvious bleeding, vomiting, copious diarrhea or a clinical condition that warrants invasive or aerosol-generating procedures (e.g., intubation, suctioning, active resuscitation), PPE designated for the care of hospitalized patients as outlined in [CDC guidance](#) should be used. If the patient requires active resuscitation, this should be done in a pre-designated area using equipment dedicated to the patient. If these signs and symptoms are not present and the patient is clinically stable, healthcare workers should at a minimum wear: 1) face shield, 2) surgical face mask, 3) impermeable gown and 4) two pairs of gloves. All equipment used in the care of these patients should not be used for the care of other patients until [appropriate evaluation and decontamination](#).

III. Conclusion

The 2014 Ebola outbreak has highlighted important public health issues that healthcare lawyers should be aware of and be prepared to address. Ebola remains active in Africa and thus remains a threat worldwide, given our global economy. Meanwhile, other emerging diseases pose threats, and many are much more transmissible than Ebola. Seasonal influenza, avian influenza, Middle East respiratory syndrome (MERS), severe acute respiratory syndrome (SARS), antibiotic-resistant and re-emerging pathogens, and as-yet identified pathogens all pose transmission risks could require use of control measures such as quarantine.

Because disease investigation and quarantine laws and procedures vary markedly, it is important that legal counsel, health officials, and healthcare providers familiarize themselves with their jurisdictions' requirements for issuing orders and are prepared to ensure that all procedural and other requirements are met, including due process requirements. In addition to familiarizing themselves with legal issues related to the ADA and the duty to plan, healthcare counsel can review medical guidance offered by CDC and client pandemic preparedness plans. Training in both the clinical and operational factors and the legal requirements is also critical. These steps will help reduce ambiguity about available public health measures, streamline administrative procedures, and help ensure that individual rights are respected. These steps will also help ensure that the public health, healthcare, and legal systems can respond to new threats both rapidly and reasonably.

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