

The Network for Public Health Law Ideas. Experience. Practical answers.

Michigan Public Health Law 401: Authority and Limitations


The Network for Public Health Law – Mid-States Region
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The Fine Print



This presentation is for informational purposes only. It is not intended as a legal position or advice from the presenters or their employers.

For legal advice, attendees should consult with their own counsel.

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1854 Soho Cholera Outbreak Science *plus* law

John Snow's study of water-borne cholera cases was essential

...as was

Local council's action to remove Broad Street Pump Handle



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Outline

- Overview of law and public health
 - Key Concepts
 - Sources of public health authority
 - Michigan Public Health Code
 - Public health law in practice
 - Limitations on public health authority
- COVID-19 Legal Issues: Past, Present, Future
- Lightning Round: Other Emerging Issues
- Health Officer Considerations & Strategies

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Overview of Law and Public Health


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Key Concepts

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Overview: I

- Law as foundation for public health action
- Tension between protecting community's health and intruding into personal liberties (e.g., stay-at-home orders)
- Public health law as cumulative body of constitutional doctrine, statutes, administrative regulations, executive orders, case law


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Overview: II

- Relationship between individual and government
- Relationship between individual and community
- Relationship between various levels of government
- Relationship between courts and other branches of government


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Policy Context

- Social compact as basis for public health laws
- Public health as collective endeavor in age of individualism
- Public distrust of government/scientific denialism (vaccine protesters)
- Steady decline in public health workforce/investment
- Lack of public support/public health voice
- Political accountability


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Concepts: Federalism

- States and federal government as co-equal units
 - Some powers explicitly federal (defense, nuclear power)
 - All powers not specifically federal are reserved for the states (public health)
 - Cooperative federalism (environment)
- Historical tension for control over policy

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Concepts: Preemption

- Higher level of government can preempt (block) actions of lower level
 - Congress can reserve power to the federal government
 - State government can override local municipalities

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Concepts: Governance

- Separation of powers
- Checks and balances
- Political accountability
 - Exists at every level
 - Boards of Health
 - County Commissioners

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The Administrative Process

- **Functions**
 - Issuing regulations
 - Enforcement
 - Issuing policy guidance
- **Public hearings**
 - Generating community support
 - Identifying opposing arguments
 - Timelines
- **Judicial standards of review**

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Gostin's modes of legal intervention

- » Power to tax and spend
- » Power to alter the information environment
- » Power to alter the built environment
- » Power to alter the socioeconomic environment
- » Direct regulation of persons, professionals, and businesses
- » Indirect regulation through the Tort system
- » Deregulation

Lawrence O. Gostin and Lindsay F. Wiley, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 28-33 (2016).

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Sources of Public Health Authority

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Sources of Public Health Authority

- Police powers
- *Jacobson v. Massachusetts*
- State Public Health Codes
- Common law (*parens patriae*)
 - State's inherent power/authority to protect vulnerable persons/populations

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Police Powers: I

- State sovereignty—10th Amendment
- Police powers
 - Provides for state/local public health authority
 - Inherent authority to enact laws, promulgate and enforce regulations

“[T]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people...”

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Police Powers: II

- Broad delegation of authority to administrative agencies
- Broad discretion accorded to agency (e.g., whether/when to notify public of Legionella outbreak)
- Must follow administrative procedures
- Regulations must be within scope of legislation

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Jacobson v. Massachusetts

197 U.S. 11 (1905)

- City of Cambridge, MA, mandated smallpox vaccinations
- Reverend Henning Jacobson objected and brought 14th Amendment challenge
- Legal issue:

"Is this statute . . . inconsistent with the liberty which the Constitution of the United States secures to every person against deprivation by the State" (Justice Harlan)

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Jacobson v. Massachusetts (1905)

- » **Federalism**
- » **Separation of Powers**
- » **Limits (to protect individual liberty)**

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Jacobson v. Massachusetts (1905)

- » **Federalism**

"The safety and the health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect. They are matters that do not ordinarily concern the national government."
- » **Separation of Powers**
- » **Limits (to protect individual liberty)**

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Jacobson v. Massachusetts (1905)

- » **Federalism**
- » **Separation of Powers**

"It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain."
- » **Limits (to protect individual liberty)**

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Jacobson v. Massachusetts (1905)

- » **Federalism**
- » **Separation of Powers**
- » **Limits (to protect individual liberty)**

"[T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good."

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Jacobson v. Massachusetts (1905)

- **Guiding principles**
 - **Public health necessity**
 - **Reasonable means**
 - **Proportionality**
 - **Harm avoidance**

Lawrence O. Gostin, *Jacobson v Massachusetts at 100 years: Police Powers and Civil Liberties in Tension*, 95 AM. J. PUB. HEALTH 576 (2005).

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Jacobson v. Massachusetts (1905)

- **Jacobson remains a robust standard**
- *South Bay Pentacostal Church v. Newsom*, 140 S.Ct. 1613 (2020), Roberts, C.J. Concurring
- **But challenged in litigation related to COVID-19 orders**

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Michigan Public Health Code

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Michigan Constitution

§ 51 Public health and general welfare.

The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.

Const. 1963, Art. IV, § 51, Eff. Jan. 1, 1964

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Legislative Intent: Ascertain and give effect

PUBLIC HEALTH CODE
333.1111 Intent and construction of code.

(1) This code is intended to be consistent with applicable federal and state law and shall be construed, when necessary, to achieve that consistency.

(2) This code shall be **liberally construed** for the protection of the health, safety, and welfare of the people of this state.

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Michigan Public Health Code

1978 PA 368, as amended
MCL 333.1101 et seq.

- **Article 2 Administration**
 - Part 22 State Health Department
 - Part 24 Local Health Departments
- **Article 5 Prevention and control of diseases and disabilities**
- **Article 9 Supportive personal services** (covers immunizations)
- **Article 12 Environmental health** (smoke free law, pools, body art facilities, agricultural labor camps, etc.)

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Structure of the Code

- » **LHD: Primary responsibility for health of people within its jurisdiction**
 - » Duty to protect health; power to investigate, prevent, and control disease and environmental factors
 - » “Local health officer” means the individual in charge of a local health department
- » **State & LHD: Parallel powers and responsibilities**

MCL 333.2235, 333.2413, 333.2415, 333.2417 333.2428, 333.2433, 333.2435

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Structure of the Code

- » **State:**
 - » Provide leadership and specialized services
 - » Take action regarding local matter if LHD unable or unwilling to respond
 - » Respond to imminent danger / menace to public health anywhere in the state

MCL 333.2221, 333.2224, 333.2235, 333.2251, 333.2437



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General authority to protect the public

Powers necessary and appropriate to perform their duties:

- » **Promote and safeguard the public health**
- » **Prolong life**
- » **Prevent and control environmental health hazards**
- » **Prevent and control the spread of disease**
- » **Provide expertise and education regarding health**

MCL 333.2221, 333.2433

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Health Officer takes action

- » **Order to Abate a Nuisance**
- » **Imminent Danger Order**
- » **Emergency Order to Control an Epidemic**
- » **Warning Notice to individual with hazardous communicable disease**
- » **Civil Penalties**
- » **Court action**



MCL 333.2455, 333.2251, 333.2451, 333.2253, 333.2453, 333.5203, 333.2261, 333.2262, 333.2461, 333.2255, 333.2465

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Health Officer determines:

- » That an imminent danger to the health or lives of individuals exists (MCL 333.2251, 333.2451)
- » That control of an epidemic is necessary to protect the public health (MCL 333.2253, 333.2453)
- » That a building or condition is a nuisance, unsanitary condition, or cause of illness (MCL 333.2455)
- » That an individual is a "carrier" and a "health threat to others" (MCL 333.5203)


.... and as a result, issues orders or takes other action

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Nonlegal response to protect the public

- » **Educating the public**
- » **Recommending voluntary measures (e.g. home quarantine)**
- » **Advisories and warnings**
- » **Directing pharma countermeasures**
- » **Providing health care delivery**



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Medical Director's Role & Responsibilities

Medical Expertise and Direction	<ul style="list-style-type: none"> • Formulation of medical public health policy • Advise LHO on matters related to medical specialty judgment • Medical expert for enforcement, in court
Practice of Medicine	<ul style="list-style-type: none"> • Standing orders • Diagnosis and treatment • Development and implementation of medical policies and procedures
Duties Delegated by LHO	<ul style="list-style-type: none"> • "Local health officer" means the individual in charge of a local health department or his or her authorized representative

MCL 333.2202; Mich. Admin. Code R. 325.13001

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Local Health Department's Power to Adopt Rules

Michigan Public Health Code: MCL 333.2441-2442

- » Adopt regulations that are necessary and proper
- » Must be approved by governing entity
- » Must be at least as stringent as similar state requirements
- » LHD regulations supersede conflicting local ordinances
- » Notice of public hearing required
- » Has force of law
- » Violation is a misdemeanor; may be enforced in court

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Local governing entity role and responsibilities

- » Provides for a local health dept; can unite with other Bds of Commissioners to form a district department
- » Submits organizational plan to MDHHS
- » Appoints Bd of Health
- » Appoints health officer for county health dept
- » Approves or disapproves public health regulations
- » Fixes and requires fees for county health dept services
- » May adopt schedule of monetary civil penalties for violation of specified sections of Code, PH regulations, or HO's orders; must provide appeals process
- » Receives local public health funding; must comply with requirements for state funding of local public health services
- » Appropriates funds for local health dept

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Public Health Law in Practice

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Using law to protect the public's health

- CAN I?** Legal question: Do I have authority?
- MUST I?** Legal question: Does law leave me no choice?
- SHOULD I?** Policy question: How should I exercise my discretion?

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Using law to protect the public's health

CAN I? Legal question: Do I have authority?

POWER . . .

- » Do I have the power?
- » What is the scope of my power?
- » What interventions can I use?
- » Consider power to act vs. power to implement and enforce
- » Who else has power?

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Using law to protect the public's health

MUST I? Legal question: Does law leave me no choice?

DUTY . . .

- » Am I mandated to take action?
- » Am I mandated to take a particular action?

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Using law to protect the public's health

SHOULD I?

Policy question: How should I exercise my discretion?

PROFESSIONAL JUDGMENT
Based on discretionary power ...

- Should I act?
- How should I act?
- When should I act?
- What should I consider in exercising my discretion to act, and the nature of my actions?
- What are the policy considerations?

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Should I?

Consider facts, principles, and law

Be able to articulate basis for decision

Show that you considered/weighted alternatives

Does decision make sense?

Is it reasonable?
vs.
Decisions that are "arbitrary" and "capricious"

Making choices vs. abusing discretion

Repeat: Doing nothing is doing something – make sure doing nothing is a conscious choice

Arbitrary - not considered, ignores the facts, whimsical

Capricious - impulsive and unpredictable

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Justifying Public Health Intervention

- Harm to self (weakest justification)
- Harm to others
- Protecting vulnerable populations
- Role of the market
- Role of litigation

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Who does what when? Overlapping Powers

Considerations:

- Statutory language
- Specific vs general powers
- Tradition
- Best able / suited to address / join forces
- Agreement among agencies
- Non-legal actions

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Should I? Ethical Considerations

- Autonomy** Respect for individual's right to make own choices
- Non-Maleficence** First, do no harm
- Beneficence** Do good
- Justice** Treat all people equally and equitably

Law defines what an agency can do.
Ethics define what an agency should do.

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Decision-Making Ethical Considerations

- » Precautionary principle
- » Population-level utility
- » Public health necessity / efficacy
- » Fairness of goals and strategy
- » Transparency / accountability
- » Political feasibility and community acceptance

See Baum et al., *Looking ahead: Addressing Ethical Challenges in Public Health Practice*, 35 J. Law, Med., & Ethics 657 (2007), doi: 10.1111/j.1748-720X.2007.00188.x ; Gostin et al., *Ethical and Legal Challenges Posed by Severe Acute Respiratory Syndrome*, 290 JAMA 3229 (2003), doi:10.1001/jama.290.24.3229.

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Limitations on Public Health Authority

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Limitations on Public Health Authority

Police Powers ≠ Police State

Jurisdictional

- Separation (branches)
- Allocation (levels)
- Assignment (agencies)
- Territorial
- Statutory
- Preemption

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Limitations on Public Health Authority

Police Powers ≠ Police State

Constitutional

- Liberty
- Due Process
- Protection Against Search & Seizure
- Equal Protection
- Right to Privacy
- Freedom of Association
- Freedom of Religion
- Just Compensation



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Role of the Courts

Courts interpret the law as applied to particular facts

- » Ensure government actions are consistent with constitution, law, due process requirements
- » Role in enforcement of public health orders
- » Historically, courts have upheld reasonable exercises of police power to protect public health:
 - Jacobson v. Mass.*, 197 US 11 (1905)
 - McNeil v. Charlevoix County*, 275 Mich. App. 686 (2007)
 - Nikolao v. Lyon*, 875 F.3d 310 (6th Cir. 2017)

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COVID-19 Legal Issues: Past, Present, Future

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Past

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Themes

1. Legal authority
2. State-local coordination
3. Politics
4. Enforcement
5. Access to legal counsel
6. Distrust in government
7. Staffing and funding deficits

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Key Legal Issue: § 2453

Emergency Order to Control an Epidemic: A local health officer may issue an order to protect the public's health during an epidemic.

- Health officer determines that control of an epidemic is necessary to protect the public health
- Order may prohibit gathering of people "for any purpose" and establish procedures to follow to ensure continuation of **essential public health services** and enforcement of health laws
- Emergency procedures shall not be limited to the PHC
- LHD may provide for individual detention and treatment of individuals with communicable disease under Part 52
- **See also MCL 333.2253 (state authority)**

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Key Legal Issue: Quarantine Authority

Warning Notice (MCL 333.5203): A local health officer can issue a warning notice to an individual who is a carrier and a health threat to others, requiring cooperation with disease control measures.

Emergency Order to Control an Epidemic (MCL 333.2453): A local health officer may issue an order to protect the public's health during an epidemic.

Imminent Danger Order (MCL 333.2451): A local health officer can issue an order to avoid, remove, or correct an imminent danger.

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Key Legal Issue: Selective Enforcement

- **Generally, government officials such as police officers, prosecutors, or regulators exercise enforcement discretion, i.e. they have the power to choose whether or how to punish a person who has violated the law.**
- **However, the biased use of enforcement discretion, such as that based on racial prejudice or corruption, would be an abuse of power**
- **Factors to consider in deciding whether to take enforcement action**

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Key Legal Issue: Standing Orders

- **Standing orders in response to COVID-19: Non patient specific order + protocol; e.g. for laboratory tests and vaccines**
- **Authority Chief Medical Executive vs LHD Medical Director to issue standing orders**
 - CME responsible for the medical content of public health policies and programs, disseminates public health information, etc. MCL 333.2202; MCL 333.26369
 - Medical Health Officer or Medical Director responsible "for **developing and carrying out** medical policies, procedures, and **standing orders** and for advising the administrative health officer on matters related to medical specialty judgments." R325.13001(d)

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CME Issues Standing Order for COVID Testing

- **MDHHS Director Hertel issues 2253 epidemic order (Feb 2, 2021)**
 - Testing critical to pandemic response
 - Necessary to establish procedures for certain physicians to issue standing orders for COVID tests
 - Will enable tests to be administered at locations that lack medical staff, increasing testing
 - Authorizes CME, Medical Health Officers, Medical Directors to issue standing orders for COVID testing
 - Still in effect
- **CME issues standing order for COVID testing**
 - Requires person administering test to be appropriately trained
 - Establishes testing procedure that person administering test must follow
 - Establishes tests authorized under the order

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Standing Orders - Concerns

- What establishes a doctor-patient relationship? i.e., when is close oversight and follow up care required?
- What is potential exposure to liability?
 - A local health officer or an employee or representative of a local health department is **not personally liable** for damages sustained in the performance of local health department functions, except for wanton and wilful misconduct. MCL 333.2465(2)
 - MDHHS approved mass vaccination programs: Public health staff and volunteers **not liable** for act or omission or adverse reaction except for gross negligence or wilful and wanton misconduct. MCL 333.9203
 - A local health department shall demonstrate ability to **defend and indemnify employees** for civil liability sustained in the performance of official duties except for wanton and wilful misconduct. MCL 333.2431

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Present & Future

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Present

- No broadly applicable COVID-19 epidemic orders in place
- Local public health authority under the PHC is unchanged
- Litigation hasn't meaningfully progressed beyond trial courts
- Changes are at the practical level:
 - Greater scrutiny
 - Organized resistance

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Legislature Can Alter Public Health Authority

Public Act 87 of 2021 (i.e., FY 22 state budget)

- » Art. 6, § 250 prohibits LHD from issuing or enforcing mask mandates for minors
- » Art. 6, § 1222(4) took away funds for essential local public health services if an emergency order under 333.2453 was in effect Oct. 1, 2021

Interpretations varied

- » Governor stated unconstitutional, unenforceable
- » LHD responses differed

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Legislative Action

Enacted & Pending Bills Limiting Public Health Authority*

Law/BA & Description	1. Emergency Orders	2. Bills in Process	3. A.	4. B.	5. R.	6. E.	7. Other	8. Status
Michigan								
Law								
PA 87 (2021) repeals the emergency powers of the governor w/ 1845 per 2021 and adds PA 87 (2021) which substituted the governor's authority in order of emergency with the emergency powers of the commissioner responsible which are able to protect life and property during the emergency.								Proposed by Public Health Law Network. Adopted by Governor. Effective 10/1/2021.
PA 87 (2021) prohibits local health director may not issue orders "during a constitutional emergency" that cause distress to business operations, or prohibit qualified scientific entities, agencies that local directors may cause distress to in general operating of general during the emergency.								Emergency orders regarding mask mandates under the Public Health Act (333.2453) are unconstitutional. (2021) Pending.

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Future: COVID-19 Resistance and Long-term Implications


Health officials did an outstanding job under the circumstances

Resistance inevitable

- » Not a new phenomenon
- » Historical analogy to 1918-1920 flu pandemic
- » Opposition to smallpox vaccination mandate

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Resistance to COVID-19

But I did not predict the scope, depth, and fury of the resistance

- » Explicit threats of violence
- » “We will find them, and we will kill them.”
- » Resulted in numerous resignations of dedicated, talented public health professionals

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Why did it Build, or Why are the Resisters Winning?

Legitimate

- » Economic and legal aspects of lockdowns
- » Libertarian/civil liberties concerns
- » Concerns about governmental overreach

Illegitimate

- » Political posturing/opposition to mandates
- » A society malign to collective interests
- » Culture of individual liberty without responsibility for the common good

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Why did it Build, or Why are the Resisters Winning?

- » Rampant distrust of government
- » Rampant scientific denialism
- » Failure of elected officials to protect health officers
- » Paucity of viable enforcement strategies
- » Judicial reluctance to support strong enforcement measures
- » Social media


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Why did it Build, or Why are the Resisters Winning?

- » Problems with school closures
- » Ongoing messaging failures
 - » Inconsistencies
 - » Failure to communicate scientific uncertainty
- » Inevitable public fatigue
- » Co-opting of our bodies, our choice rhetoric
- » Patients’ rights movement starting in 1970


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Post-Pandemic Implications

- » Substantial rise in anti-vaxxers
- » Attacks on vaccine mandates, especially for children (MMR) and vaccines generally (HPV)
- » Laetrile redux? Polio redux?
- » Do your own research as attack on expertise
- » Once on the fringes, other fringe ideas plausible or normal

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Post-Pandemic Implications

- » Importance of social media in amplifying substructures/connectedness (i.e., QAnon)
- » Hollowing out of public health authority
- » Retirements of experienced health officers
- » Impediments to public health preparedness
- » Ongoing attempts to constrain FDA
 - » Abigail Burrows litigation
 - » Expansion of compassionate use doctrine

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Policy Challenges

- » Evaluate public health effects of shifts in authority
- » Work with law enforcement to generate new MOUs
- » Develop new enforcement strategies
- » Address distributional inequities in prevention, vaccine distribution, etc.
- » Address fundamental messaging problems

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Policy Challenges

- » Addressing concerns about recruiting/retaining public health professionals
- » Limiting political interference with public health practice without compromising political accountability
- » Restoring the public's trust
 - » Advocate for legislative changes
- » Protecting school vaccine mandates

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Some Final Questions

Is the resistance now embedded or just temporal?

Is therapeutic choice an emerging social movement?

Is an adequate enforcement strategy feasible?

Is *Jacobson v. Massachusetts* endangered?

Wither public health?

- » Workforce under duress
- » Legislative attacks
- » Can it be insulated from political interference?

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Lightning Round: Other Emerging Issues

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Reproductive Health

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Abortion

- **Dobbs v Jackson Women's Health Organization** overturned *Roe v Wade* (June 24, 2022)
- **Michigan 1931 law** prohibits all abortions except those performed "to preserve the life of [a] women" MCL 750.14
- **Courts:** Enforcement of 1931 law enjoined based on Michigan Constitution
 - *Whitmer v Linderman* (Oakland County Circuit Court)
 - *Planned Parenthood of Michigan v Attorney General* (Court of Claims)

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The Network for Public Health Law **Protecting abortion information**

- **Executive Directives and Orders**
- ED 2022-05: Prohibits state agency cooperation for investigation/proceeding regarding abortion if legal where obtained
- EO 2022-4: Governor will not assist in extraditing individuals related to providing/obtaining abortion
- **Michigan reporting law:**
- Individual's name or personal identifiers shall not be reported
- State agency shall not match databases that would identify an individual
- MDHHS and its employees prohibited from disclosing information that would identify patient, individual or facility that performed abortion; violation a felony

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The Network for Public Health Law **Abortion & contraception**

- **LARA guidance:** Pharmacists may prescribe contraceptives as delegated by physician
- **Nov 8 ballot initiative:** Would amend Michigan Constitution to guarantee reproductive freedom including right to abortion and other reproductive health services

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The Network for Public Health Law **Minors & reproductive health**

Abortion: Judicial bypass
Family planning services

- Generally
- Title X
- Medicaid
- Explanation of Benefits

STI and HIV

- Minors may consent to diagnosis and treatment of STI and HIV
- Law does not cover prevention of STI and HIV such as HPV vaccine, PEP and PREP

Resource: Michigan Laws Related to Right of a Minor to Obtain Health Care without Consent or Knowledge of Parents www.networkforphl.org/michigan

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Environmental Threats

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Key Environmental Issues

- » PFAS
- » Blood lead levels (water and buildings)
- » Clean and safe drinking Water (EGLE)
- » Dioxane exposures
- » Sanitation (EGLE delegates to LHDs)
- » Sanitation appeals
- » Environmental inspections (restaurants and permits)

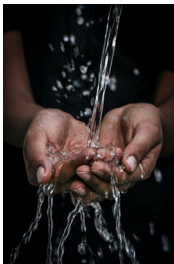


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Environmental Health in Michigan October 17, 2022

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Environmental Health Authority

- » Environmental health “deals with the protection of human health through the management, control, and prevention of environmental factors which may adversely affect the health of individuals”
Public Health Code, Mich. Comp. Laws § 333.12101.
- » Michigan’s Public Health Code regulates environmental health services and activities
Public Health Code, Mich. Comp. Laws § 333.1101.
- » Article 12 of the Code gives the Michigan Department of Environment, Great Lakes, and Energy (EGLE) the authority to serve as Michigan’s environmental health agency

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Public Health Authority Over Environmental Health

- » While EGLE is the delegated environmental health agency for Michigan...
- » The Michigan Department of Health and Human Services retains authority over environmental health to have "general supervision of the health and life of the people of this state," including "making investigations and inquiries as to . . . the causes, prevention, and control of environmental health hazards, nuisances, and sources of illness."

Public Health Code, Mich. Comp. Laws § 333.2221(a), (d)(iii)

- » MDDHS and local health departments partner with local, state, and federal partners to address environmental hazards, and are still an integral part of the environmental health response

Environmental Health in Michigan October 17, 2022

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Environmental Health Responsibilities and Duties

- » MDHHS and local health departments have a duty to investigate the causes, prevention, and control of environmental health hazards, nuisances, and sources of illness

Public Health Code, Mich. Comp. Laws § 333.2221(a), (d)(iii); § 333.2433(1)

- » MDDHS shall "continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards."

Public Health Code, Mich. Comp. Laws § 333.2221(1)

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Limits Under the Law

- » MDHHS can identify environmental health issues, investigate environmental health hazards, and work to reduce harms through research, community outreach, and education, but EGLE is responsible for facilitating Michigan's approach to environmental health issues
- » For safe drinking water, EGLE focuses on the source, LHDs focus on the health consequences
- » Lack of focus on prevention
- » Gaps, overlap, ambiguous lines of authority exposed during the Flint Water Crisis remain
- » Problems of inter-agency and intra-agency coordination/cooperation

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Limits Under the Law

- » Governor's attempt to address the coordination concerns, especially for safe drinking water
- » Executive Directive 2021-9

Reexamination of the regulatory structure
Education and community engagement
Data collection and sharing practices

"In consultation with MDHHS, EGLE must...."
"In consultation with EGLE, MDHHS must...."

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Resources

- » NPHL Issue Brief: [Legal Interventions For Environmental Hazards and Other Public Health Threats](#)
- » NPHL Issue Brief: [Mosquito Spraying to Reduce Spread of Eastern Equine Encephalitis Virus in Michigan: Legal, Ethical, and Practical Challenges \(2020\)](#)
- » NPHL Report: [Learning from the Flint Water Crisis: Protecting the Public's Health During a Financial Emergency \(2018\)](#)
- » [Michigan Environmental Health for Health Care Providers](#)
- » Public Health Code, Mich. Comp. Laws § 333.1101.

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Public Health Law 401: Health Officer Considerations and Strategies

Lisa Peacock, MPH, MSN, RN, WHNP-BC
Presented October 17, 2022

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Michigan Public Health Code – Act 368 of 1978

333.2451 Imminent danger
333.2453 Epidemic; emergency order and procedures, involuntary detention and treatment

The powers and duties of the Health Officer – we have always said we rarely have to formally exercise them but when we do it is because of something dire and there is not another way to effectively protect the public's health. There is not only power but also duty.

- » Education and support = first path to compliance
- » Covid-19 pandemic brought orders of many kinds:
 - Governor's Executive Orders
 - State Health Department Epidemic Orders
 - Local Orders

91 [Health Officer Considerations and Strategies] [October 17, 2022]

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Practical Considerations

When a local public health order becomes necessary there are some important points to remember as there is a high likelihood you will have to defend in court:

- » Clear and concise legal language – work closely with a public health attorney
- » Order should be based on clear criteria – list your facts and findings in the order as well as the criteria you will use to lift it
- » Don't include what you don't know but DO include the criteria/data you will be monitoring.

92 [Health Officer Considerations and Strategies] [October 17, 2022]

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“Hard Power” vs. “Soft Power”

While a public health order clearly represents “hard power”, “soft power” is critical in the everyday work of public health:

- » Leaves decision-making in the hands of the general public
- » Not effective without trust
- » Clear and consistent voice of authority on public health issues

93 [Health Officer Considerations and Strategies] [October 17, 2022]

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But HOW?

Be loud and proud about matters of importance to health – COMMUNICATION IS KEY!

- » Point out past public health successes ie: seatbelts and reduced death from injury, reduction in death from infectious disease, health policy changes such as tobacco control
- » Build trust during “normal” times – be approachable, available, and responsive to community concerns
- » Speak out frequently on health topics, help the public to become familiar with their local health department

94 [Health Officer Considerations and Strategies] [October 17, 2022]

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But HOW?

Know and live the principles of risk communication:

- » This is not just for emergencies! Train all staff and retrain regularly – engage your PIO and use their expertise
- » Be transparent and reassuring – not enough information raises suspicions about “hiding” something. People need to feel safe and know that you will tell them if they need to worry
- » Be positive whenever possible – the public will take you more seriously if you give a warning
- » Speak out frequently on health topics, help the public to become familiar with their local health department
- » Frequently step into the shoes of a citizen: What is the risk to my health? How will it affect me? What can be done to reduce my risk?

95 [Health Officer Considerations and Strategies] [October 17, 2022]

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But HOW?

Use the media to engage and educate! Claim the narrative around public health issues – be proactive in messaging so the media will use your messaging rather than developing their own!

96 [Health Officer Considerations and Strategies] [October 17, 2022]

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But HOW?

The media is your friend!

- » Be available for interview requests
- » Respect their deadlines
- » Get to know them – this develops shared trust
- » Respond to questions in writing whenever possible for accuracy of quotes
- » Organize your thoughts into small sound-bites or impactful quotes or statements
- » Just like the public, developing trust and relationships during “normal times” will lay a foundation for times of crisis.

97 [Health Officer Considerations and Strategies] [October 17, 2022]

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The Board...

Working with a Board of Health/County Commissioners can be very rewarding and also very challenging, it is important to understand the challenges to work effectively together:

- » Know the role of the local governing entity as defined by the PH Code. Key functions include:
 - Provide a local health department that meets the requirements of the PH Code
 - Provide funds and approve the budget for operation of the LHD
 - Appoint a full-time qualified Health Officer
 - Adopt regulations
 - Fix and require payment of fees for public health services
 - Demonstrate the provision of all required services

98 [Health Officer Considerations and Strategies] [October 17, 2022]

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The Board...

- » Understand the role/expectations of the county commissioner
- » Typically no training for this role other than what you provide!
- » Their terms are short and public health is complex
- » The same principles of building trust and relationship apply as with the public and the media!
- » Get to know them – this not only develops shared trust but allows you to build on their strengths (financial or governmental experience, healthcare experience).

99 [Health Officer Considerations and Strategies] [October 17, 2022]

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Board of Health Training and Communication

Orientation, training and ongoing communication with a Board of Health/County Commissioners is a critical responsibility of the Health Officer. Key steps for effective orientation include:

- » Orientation every year for every board member – lots of complex information, needs regular review
- » Divide trainings into shorter sessions – use real-life examples to illustrate concepts, relate to current issues relevant to them
- » Recruit directors or staff to present – promotes diversity in presentation and messaging

100 [Health Officer Considerations and Strategies] [October 17, 2022]

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Board of Health Training and Communication

Training and relationship building doesn't stop with orientation! Ongoing communication is critical.

- » Consistent and steady communication – attend their meetings more often that you think you need to. Don't wait to be asked – if something important comes up make a call to touch base.
- » District Health Departments have unique challenges – be purposeful about communication with multiple county administrators and boards of commissioners. Being spread thin between multiple county governments and not being a direct part of county government structure is challenging.
- » Again, recruit directors or staff to present – promotes more frequent contact with the health department and brings unique perspective
- » Always relay the impact of PH programs and services on the local population by creatively summarizing and presenting compelling data

101 [Health Officer Considerations and Strategies] [October 17, 2022]

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Board of Health Training and Communication

An important goal is for Board of Health members to become ambassadors and an important source of accurate information to other county officials and their constituents.

Be available and accessible – encourage them to call you when questions or concerns arise in the community so that you can assist them.

102 [Health Officer Considerations and Strategies] [October 17, 2022]

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Other partners, agencies, and government

Public Health 3.0 places the local health department at the center of the community through expert convening, collaboration, as well as data collection and dissemination.

The public health system includes everyone in every sector – hospitals, schools, businesses, government, other partners, and most importantly every citizen. All have a role to play even if they don't know it!

- » **Consistent and steady communication** – attend their meetings more often than you think you need to. Don't wait to be asked – if something important comes up make a call to touch base.
- » **District Health Departments have unique challenges** – be purposeful about communication with multiple county administrators and boards of commissioners. Being spread thin between multiple county governments and not being a direct part of county government structure is challenging.
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103 [Health Officer Considerations and Strategies] [October 17, 2022]

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Other partners, agencies, and government

So how do we engage others in this role?

- » **What are the natural connections?**
- » **Utilize informal communication where those paths and networks exist**
- » **Don't let the health department be invisible** – take services to them (ie: COVID and flu vaccine offered in county offices, jails, attend community events, be active in local collaborations, and committees, create easy pathways for county government to reach health department staff)
- » **Empower community partners** – arm them with public health information and ask for help!
- » **As always, communication is one of the most powerful tools we have** – consistency, frequency, accuracy.

104 [Health Officer Considerations and Strategies] [October 17, 2022]

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Other partners, agencies, and government

What about when challenges arise such as political interference or lack of law enforcement support?

- » **Unfortunately, these can be very difficult situations and we certainly can't control the actions of others.**
- » **What we CAN do:**
 - Be clear and direct about what you need from law enforcement especially related to safety concerns for staff and the public.
 - Enlist the help of the Board of Health/County Commissioners – be very open and clear about safety concerns.
 - Be over-cautious with staff presence in communities – personal phone calls to local law enforcement officials to increase awareness and hopefully their presence
 - Maximize/utilize the relationships your Emergency Preparedness Coordinator has cultivated – often great point of contact with local law enforcement/emergency mgmt.

105 [Health Officer Considerations and Strategies] [October 17, 2022]

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Conclusions

The pandemic and the charged political atmosphere around it have presented public health leadership with difficult challenges. In the end, the best we can do is to be as prepared as possible by returning to the key principles.

- » **Build public trust** – in the face of differing opinions in the community (often very public ie: social media, open meetings, etc.) many/most will follow our leadership if they trust us
- » **Don't be distracted by the alternative sources of information the public has access to** – stick to clear, consistent, accurate information
- » **Engage expert legal counsel with experience/training in public health law when applying the Public Health Code.** You may very well have to defend your actions in court.
- » **Play devils advocate, ask yourself the questions those who doubt your actions will ask.**

106 [Health Officer Considerations and Strategies] [October 17, 2022]

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Thank you!

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