



The Network
for Public Health Law

Ideas. Experience. Practical answers.

Public Health Law 301

Using Law to Protect the Public's Health

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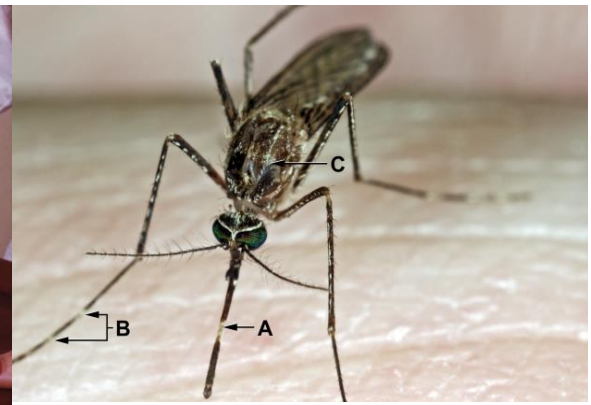
University of Michigan School of Public Health

Presented July 31, 2019

Battle Creek, Michigan

Law can protect the public

- Air quality
- Water quality
- Sanitation
- Injury prevention
- Safe food
- Workplace safety
- Environmental controls to prevent disease
- Mandatory vaccination

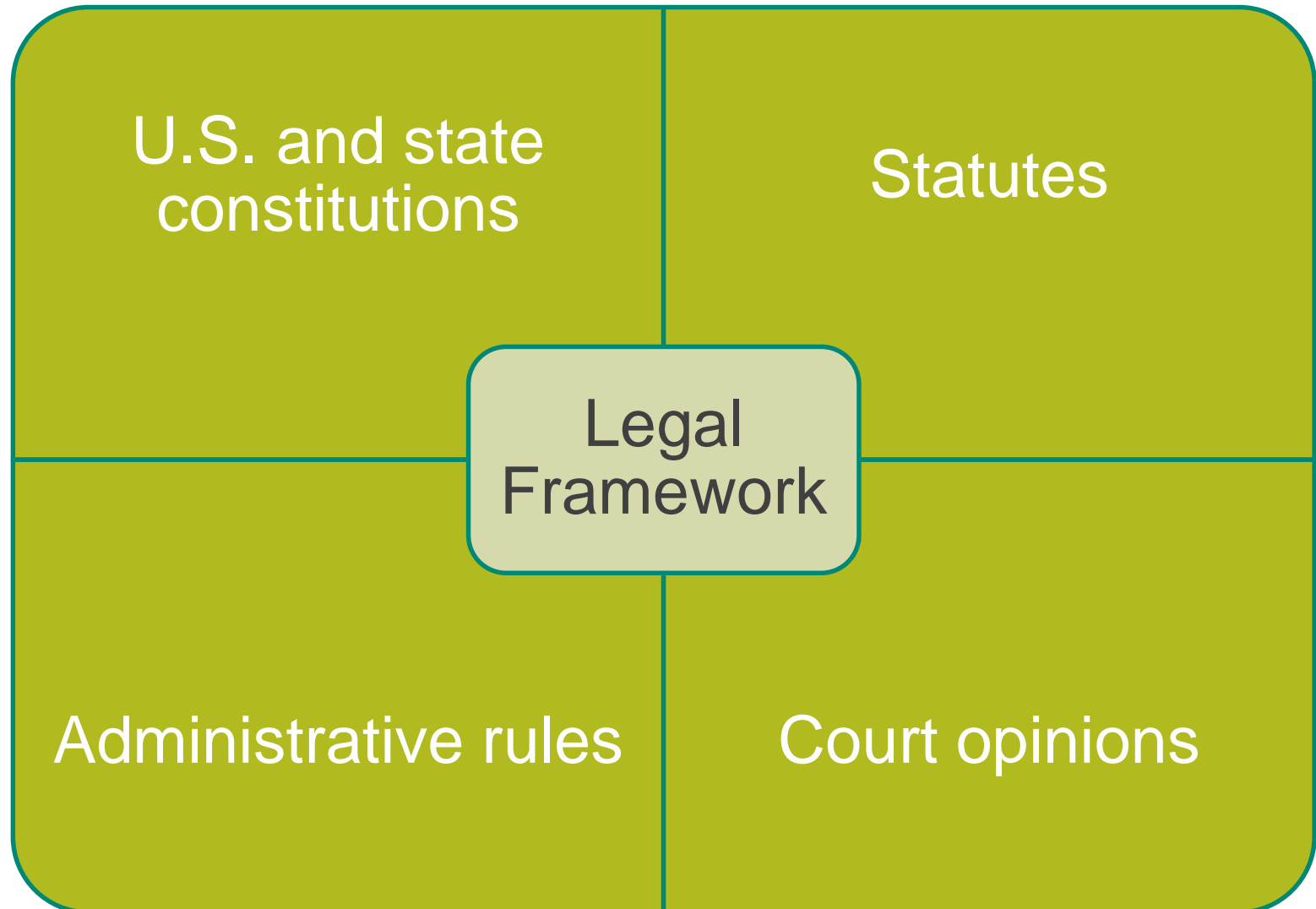


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 - A. To identify and apply law
 - B. To explore parameters of decision-making
 - C. To apply tools
6. **Wrap-up**

Public Health Legal Framework

- **4** sources of law
- **3** branches of government
- **3** levels of government



Legal Framework for Routine Public Health Practice and Emergency Response

U.S. Constitution



Providing for health and general welfare is state function (“police powers”)

Federal govt provides \$ with strings

Federal govt has authority to address cross-border threats and issues

Separation of powers

3 Branches

Legislative

Make law;
Appropriate \$

Executive

Implement law;
Make law

Judicial

Interpret law;
Make law;
Protect from
other two
branches

Restriction by legislative branch on executive branch

MCL 24.232 Limits state rulemaking

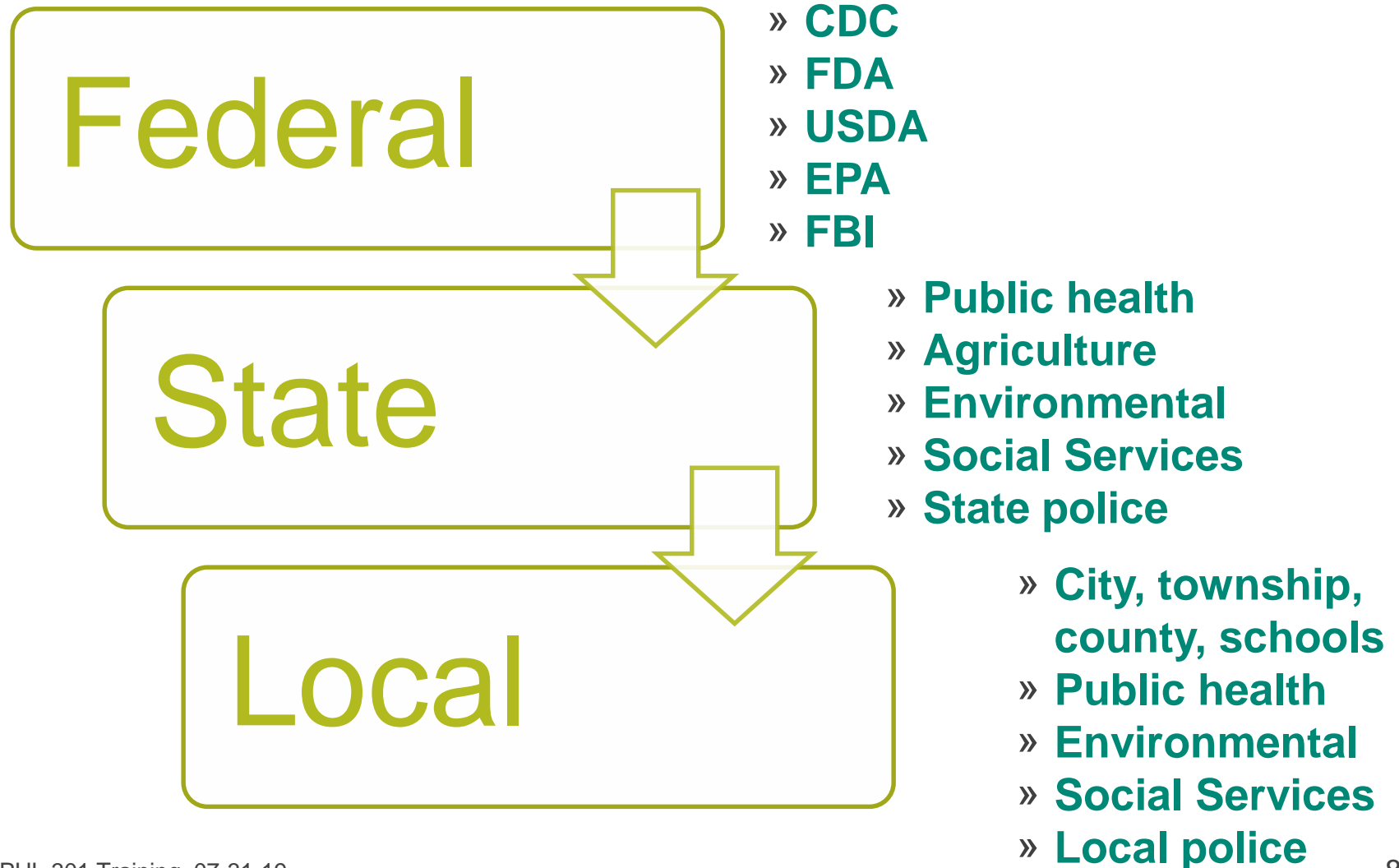
If the federal government has mandated that state promulgate rules:

State agency shall not adopt or promulgate a rule more stringent than the applicable federally mandated standard

- Exception: The director of the agency determines that there is a clear and convincing need to exceed the applicable federal standard
- Exception: Emergency rules are promulgated under APA process

Allocation of powers

3 levels + many agencies



Making Order out of Chaos

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?

Organization of Public Health in Michigan

Constitution

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

Statutes

The Michigan Public Health Code Rocks!



Establishes state and local health departments

Defines their powers

Provides structure to set standards

Authorizes actions to enforce standards / protect public

13

Over 40 years old!

Michigan Public Health Code

- **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.)**

Public Health Code, available at www.legislature.michigan.gov (select “Chapter Index,” then Chapter 333).



MICHIGAN LEGISLATURE

Michigan Compiled Laws Complete Through PA 170 of 2018
House: Adjourned until Wednesday, July 25, 2018 10:00:00 AM
Senate: Adjourned until Wednesday, July 25, 2018 10:00:00 AM

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Legislature


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 The 2017-2018 Michigan Manual is available for [Purchase!](#) 



Recent Bill Activity (current news cycle has 63 items) [[List all recent bill activity](#)]

- [HB 4176 of 2017](#) Vehicles; equipment;
use of amber flashing lights on

Legislative Bill Search for 2017-2018 Session

 House bills begin with 4001, Senate bills begin with 1

 You can use a wild card, e.g., "limit*"

(For Example: Select 'weapons' to show related bills even if 'weapons' is not found in the text of the bill.)

Michigan Compiled Laws Search

Additional Laws to Protect the Public

- » **Food Law of 2000**
- » **Safe Drinking Water Act**
- » **Housing Law of Michigan**
- » **Natural Resources & Environmental Protection Act**
- » **Occupational Safety & Health Act**
- » **Local Ordinances**



Statute

Public Health Code

Specific Powers & Specific Threats



- Communicable diseases
- Chronic diseases
- Bathing beaches
- Lead abatement
- Methamphetamine labs
- Clean indoor air (smoking)
- Body art facilities

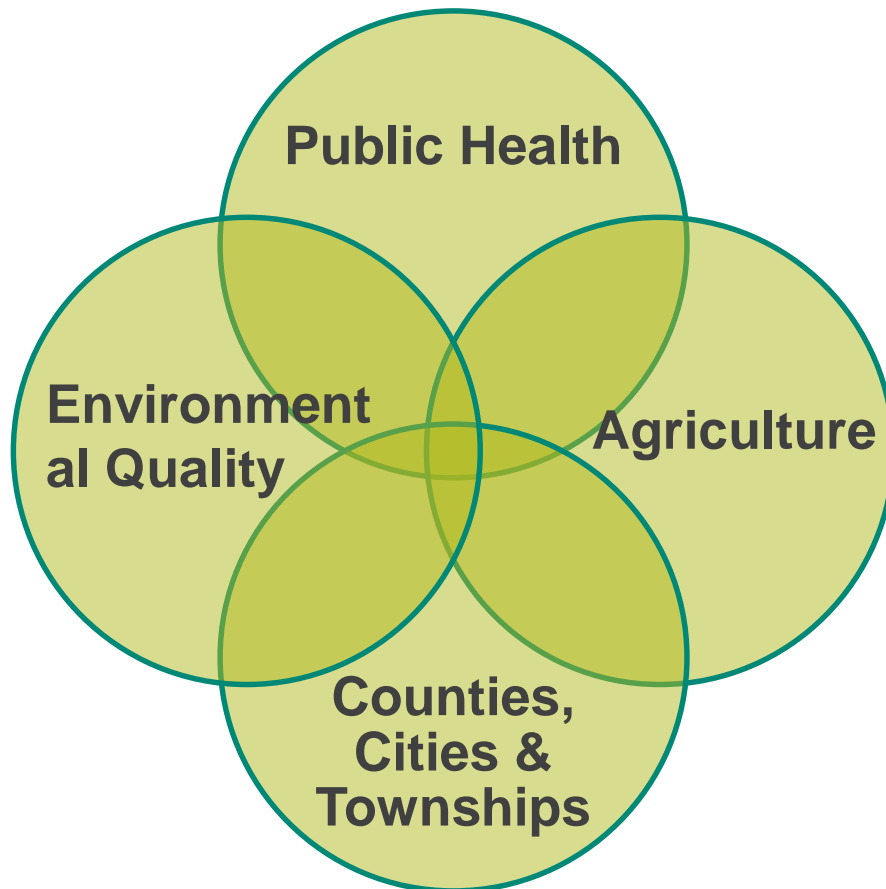
General authority to protect the public

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



Who does what when? Overlapping Powers



Examples:

- Animal Control
- Raw milk
- Food safety
- Safe & habitable housing
- Concentrated animal feeding operation (CAFOs)
- Other environmental threats to public health

State Rules

State Agency Power to Adopt Rules

- » **Agency's written regulation, statement, standard, policy, ruling, or instruction**
- » **Rulemaking power established by statute**
- » **Rulemaking process defined by Administrative Procedures Act**
- » **Rules have the effect of law**



DTMB
Office of Good Government

Search 

OFFICE OF GOOD GOVERNMENT

OPT

Select the Department

View Code by Department

If you know the Michigan Department or Agency Administrative rule or proposed rule change, you can access the information using the "Department Index" or the "Search by Department" links. Under each department, a list of all relevant administrative code sections can be found for that department.

Select a Department

- [Agriculture and Rural Development](#)
- [Attorney General](#)
- [Civil Rights](#)
- [Corrections](#)
- [Education](#)
- [Environmental Quality](#)
- [Health and Human Services](#)

**State Administrative Rules
(select department)**
**[https://www.michigan.gov/
opt/0,5880,7-338-
35738_5698-118524--
,00.html](https://www.michigan.gov/opt/0,5880,7-338-35738_5698-118524--,00.html)**

Procedures for the control of actual or suspected case of communicable disease

Local health officer may:

- » **Institute appropriate isolation or other barrier precautions; advise attending physician of appropriate measures**
- » **Initiate exclusion a student or individual from school or group programs**
- » **Exclude any individuals from school or group programs who lack documentation of immunity to disease until LHO deems that further risk of disease spread is unlikely**

Communicable Disease Rules, Mich. Admin. Code R. 325.175

Procedures for the control of disease, continued

Rule also:

- » **Requires attending physician to arrange for appropriate barrier precautions, treatment, and isolation of patient to control communicable disease**
- » **Upon reasonable suspicion that a student has a communicable disease, authorizes a school official to exclude a student for a period sufficient to obtain a determination by a physician or local health officer as to the presence of a communicable disease.**

Communicable Disease Rules, Rule 175

Court Opinion

Local health officer can override school superintendent or board determination

People ex rel. Hill v. Board of Ed. of Lansing, 224 Mich. 388 (1923)

Court upheld authority of local health department to close a school because of disease outbreak even though the local school board disagrees.

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**

The Power of Local Public Health

» **McNeil v. Charlevoix County, 484 Mich. 69 (2009)**
(workplace smoking):

- Law to be liberally construed to protect the public
- PHC granted LHD power to adopt rules
- Does not matter that LHD does not have specific power to regulate smoking; has general powers, including power to adopt rules to properly safeguard the public health

» **Local government leads, state government follows**
examples

- BODY ART FACILITIES
- TOBACCO – Clean Indoor Air

Local public health regulations supersede local ordinances

MCL 333.1115: ... [A]n applicable local health department regulation shall control over a less stringent or inconsistent provision enacted by a local governmental entity for the protection of public health.

MCL 333.2441: ...Regulations of a local health department supersede inconsistent or conflicting local ordinances.

Limitations on Public Health Authority

Broad & Flexible Powers: Any legal limits?

Police Powers \neq Police State

Jurisdictional

Separation (branches)

Allocation (levels)

Assignment (agencies)

Territorial

Statutory

Pre-emption

What is Pre-emption?

- Higher level of government can pre-empt actions of lower level
- Congress can reserve power to the federal government
- State government can override local municipalities
- Law might assign function / regulatory program to a specific entity
- Public health regulation may override city and township ordinances

Preemption is a Continuum . . .

Floor Preemption

Higher level of government establishes minimum requirements; expressly allows lower levels to enforce more stringent requirements

333.2441 Local adoption of regulations

Local health regulations shall be at least as stringent as the standard established by state law applicable to the same or similar subject matter.

MCL 333.1115 Controlling provisions.

A state statute or MDHHS rule shall control over a less stringent or inconsistent provision enacted by a local governmental entity for the protection of public health.

Preemption is a Continuum . . .

Ceiling Preemption

Prohibits lower levels of government from requiring more than or different from what the higher level law requires

MCL 445.591 REGULATION OF AUXILIARY CONTAINERS

Peempts local ordinances regulating the use, disposition, or sale of plastic bags and other containers used for carrying food or other merchandise from a retail store or food establishment.

Broad & Flexible Powers: Any legal limits?

**Government has awesome powers
AND MAJOR RESPONSIBILITIES**

Constitutional

Liberty

Due Process

Protection Against Search & Seizure

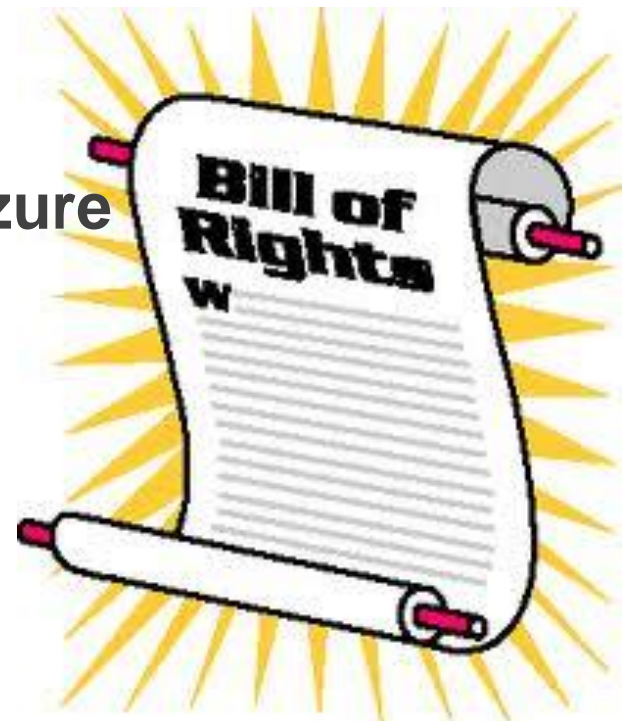
Equal Protection

Right to Privacy

Freedom of Association

Freedom of Religion

Just Compensation



Public Good vs. Individual

Quarantine, Isolation, & Immunization

The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right to 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.

Jacobson v Massachusetts, 197 US 11 (1905)

Caution

Jacobson vs Massachusetts

Caution, as noted by the Court:

“The police power of a State, whether exercised by the legislature, or by a local body acting under its authority, may be exerted in such circumstances or by regulations so **arbitrary and **oppressive** in particular cases as to justify the interference of the courts to prevent wrong and oppression.”**

Exercising Public Health Powers in Michigan

Roles, powers & duties

Local Public Health

Our First and Primary Responders

- **LHD:** Required. Primarily responsible for health of people within its jurisdictions
- **State:** Provides leadership and specialized services, but can take action regarding local matter if LHD unable or unwilling to respond; can respond to an imminent danger anywhere in the state
- **State:** May take full charge of administration of state and local laws to address conditions that are a menace to the public health

MCL 333.2224, 333.2235, 333.2251, 333.2437

State vs. local public health

- **Parallel Powers**
- **LHD:** Primarily responsible for health of people within its jurisdictions
- **State:** Provides leadership and specialized services, but can take action regarding local matter if LPH unable or unwilling to respond; can respond to an imminent danger anywhere in the state

MCL 333.2224, 333.2235, 333.2251, 333.2437

Health Department Authority to Protect Public

- **Local health department has duty to protect health, power to investigate, prevent and control disease and environmental hazards**
- **Local health officer is the “administrative officer” of the BOH and LHD – takes actions and makes determinations to carry out LHD’s functions to protect public, prevent and control disease, and environmental hazards**

MCL 333.2428, 333.2433

Health Officer makes determination:

- » **That an imminent danger to the health or lives of individuals exists in the area served by the local health department (MCL 333.2451)**
- » **That control of an epidemic is necessary to protect the public health (MCL 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

Medical Director's Role & Responsibilities

Medical Expertise and Direction

- Formulation of medical public health policy
- Advise LHO on matters related to medical specialty judgment
- Medical expert for enforcement, in court

Practice of Medicine

- Standing orders
- Diagnosis and treatment
- Development and implementation of medical policies and procedures

Duties Delegated by LHO

- “Local health officer” means the individual in charge of a local health department or his or her **authorized representative**

Inspection or Investigation Authority

- **LHDs are authorized to inspect or investigate:**
 - **Any matter, thing, premises, place, person, record, vehicle, incident, or event**
- **LHD investigators to be provided with medical and epidemiological info pertaining to individuals exposed or may have been exposed to a disease of public health significance**
- **LHD apply for inspection or investigation warrant**
- **Warrant may command law enforcement to assist LHD in the inspection or investigation**

MCL 333.2242, 333.2445, 333.2446

Actions to protect the public

- » **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**



Public Health Emergency orders - examples

Isolation

Individual or group quarantine

Prohibit gathering of people

Mass vaccination

religious objection exception

Close school; prohibit unvaccinated students from attending school

Ration medicines or medical equipment

Prohibit entry

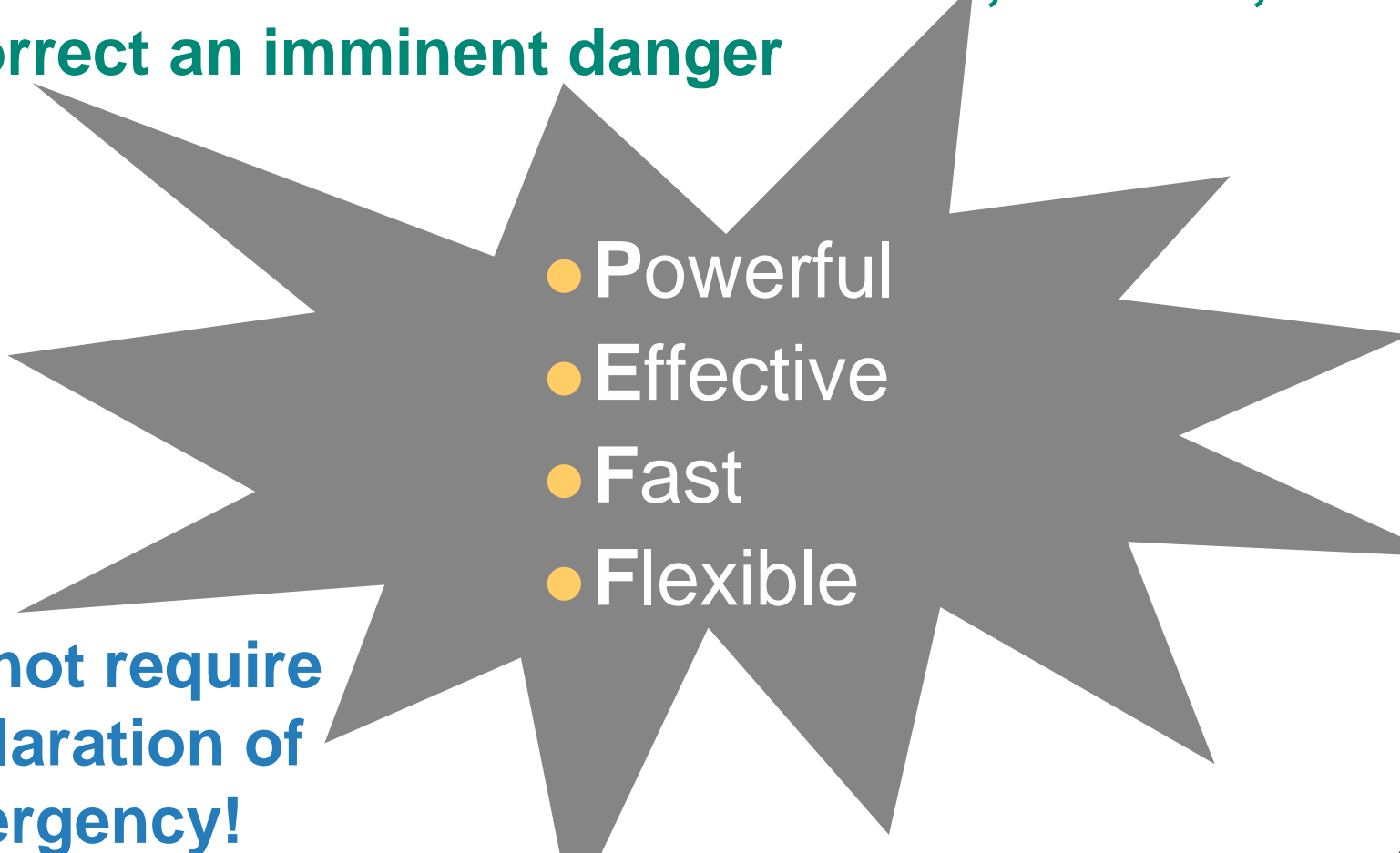
Require cleanup of a nuisance

Nonlegal response to protect the public

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



Imminent danger orders: **A public health officer can issue an order to avoid, remove, or correct an imminent danger**

- 
- Powerful
 - Effective
 - Fast
 - Flexible

**Do not require
declaration of
emergency!**

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

- **“Imminent danger”** means a condition or practice which could reasonably be expected to cause death, disease or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.
- The order **may**: (1) specify action to be taken or (2) **prohibit the presence of individuals** in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.

LPH used imminent danger order to require post exposure prophylaxis of vulnerable population against immediate health threat

Local Health Dept Order to Control Spread of Hepatitis A in Nursing Home



ST. CLAIR COUNTY HEALTH DEPARTMENT

EMERGENCY PUBLIC HEALTH ORDER

IMMINENT DANGER and CORRECTIVE ACTION

This order is made pursuant to Section 2451 of the Michigan Public Health Code, being MCL 333.2451. The Health Officer of St. Clair County Health Department has determined the following conditions exist that constitute a hazard or danger to the health of individuals: **Consumption of imported frozen strawberries potentially contaminated with Hepatitis A within a congregate setting. See attached recall notice.**

This condition puts the following affected at risk:

Medilodge of Port Huron, 5635 Lakeshore Rd, Fort Gratiot Twp, MI 48059

- **Residents, staff, visitors and family who may have consumed uncooked strawberries on 10-21-2016 from the affected product lot.**

This condition could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided. This situation constitutes an imminent danger to the health or lives of the residents of St. Clair County, Michigan.

It is therefore ordered that the following actions be undertaken immediately:

- a) **Identification of those potentially exposed to suspect product.**

- b) **Post Exposure Prophylaxis (PEP) for Hepatitis A.**

- c) **Education of affected staff on Hepatitis A disease and vaccination.**

Additionally, the following long-term actions may be considered:

- a) **Testing and identification of symptomatic patients for Hepatitis A disease.**
- b) **Cohorting and/or isolation of symptomatic patients throughout the period of communicability.**
- c) **Exclusion of staff and volunteers who refuse prophylaxis and are directly involved in patient care or food service.**
- d) **Other infection control measures deemed necessary by medical health officer.**

A copy of this order shall be delivered to the **Medilodge Administrator, Dr. Daniel Souphis – Medical Director, Liz King – SCCHD Nursing and Community Health Director, Steve Demick – SCCHD EH Director. The Medilodge Administrator or others acting at his direction shall post a copy of this order in conspicuous locations (e.g. on bulletin boards) throughout its facility located at 5635 Lakeshore Road, Fort Gratiot Township.**

If you do not comply with this order, court action to compel compliance may be initiated in accordance with MCL 333.2451.

Medical Health Officer or Authorized Agent
St. Clair County Health Department

Date: _____

Notary

Imminent danger order used to obtain information



- » **State health dept ordered airline to provide crew and passenger names and contact information**
- » **Purpose: to notify individuals of exposure to measles and provide them with information on reducing possibility of infection**

Imminent danger order used to address vaccine shortage



2004 seasonal flu vaccine shortage

State ordered all health care providers to limit influenza vaccinations to persons in high risk categories

Imminent danger & abatement order used to require hospital to address legionella hazard

- » MDHHS issued order on June 12, 2019, against McLaren Health System in Flint
- » Orders hospital to correct nuisance, unsanitary condition, or cause of illness causing an imminent threat to the public health
- » Requires hospital to implement water restrictions to prevent exposure
- » Requires hospital to notify current and past patients of exposure
- » Requires hospital to provide test results and other data to MDHHS and allow public health to investigate without interference
- » Requires hospital to implement required corrective action

Public Health Decision-making

As the dust settles ...

Are you a hero or did you fail?



IN THE CIRCUIT COURT
FOR THE COUNTY OF Oz

John Doe
Personal Representative
of Jane Doe, deceased

Civil Case
No. 2018-56

V

Dorothy Gale, M.P.H. and
Oz County Health Department



Complaint

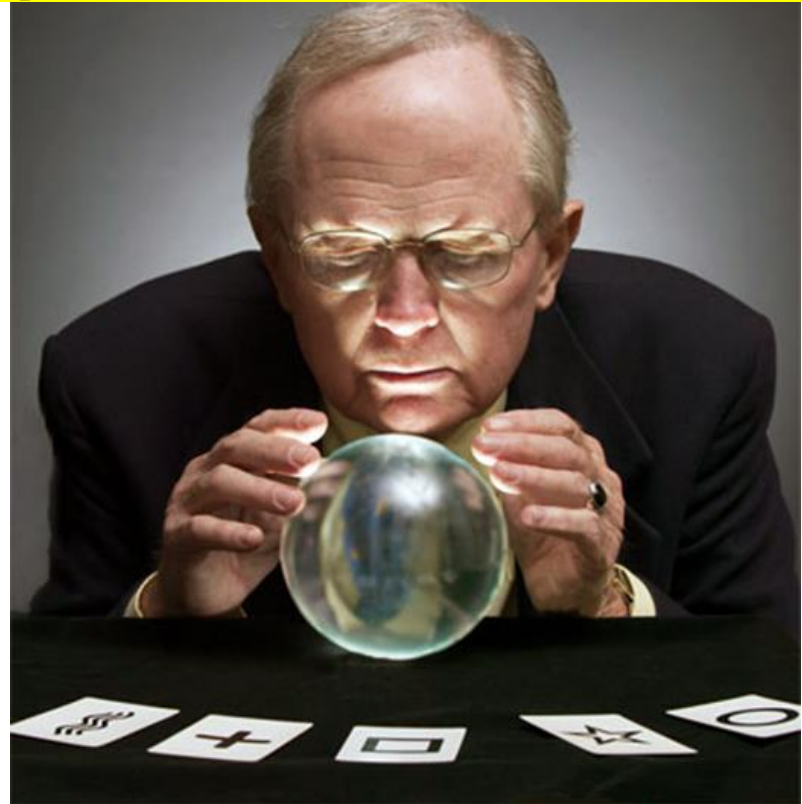
NOW COMES John Doe, personal representative of Jane Doe, deceased, and for his complaint, states:

1. Plaintiff John Doe is the personal representative of Jane Doe, deceased.
2. Jane Doe was a resident of Oz County.

... or did someone claim you failed?

Hindsight is 20/20

It's easy to know the right thing to do after something has happened, but it's hard to predict the future.



... If only it were this easy

Failure to warn allegations

- » Flint water crisis – MI health officer and others criminally charged for legionella deaths
- » Quincy Veterans Home – IL state health officer investigated for legionella deaths
- » North Marion County – FL state officials accused of delaying notice of PFAS contaminated well water because of impending election

Duty

Am I mandated to take action?

Am I mandated to take a particular action?

Mandatory functions

- » **Mandated by law**
- » **Mandated by funding source (\$ with strings)**

Discretionary functions

- » **Involves exercise of judgment or discretion**

For mandatory duties, often an agency has a great deal of discretion in determining **how** to fulfill its obligation

Mandatory + Discretion

Statutory powers and responsibilities

The Department of Public Health **shall**:

- Promote and safeguard the public health
- Prolong life
- Prevent and control health hazards
- Prevent and control the spread of disease

Must I? All or nothing?

"[I]t is conceded by petitioners that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities.... **Nor must a State choose between attacking every aspect of a problem or not attacking the problem at all.**"

Youngberg v. Romeo, 457 U.S. at 457 U. S. 317 (1982)

Must I? Everyone or no one?

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, is usually considered a legal abuse and a threat to the rule of law.**

Based on discretionary power

Should I?

Must be used reasonably, impartially.

Policy considerations:

» **Resources** » **Impact** » **Population health vs.**
» **Feasibility** » **Priorities** **private disputes**

Uniformity, consistency, and proportionality

Strength of evidence, strength of legal authority

Public opinion

Politics – relevant?

Doing “nothing” is doing “something” (risk assessment)

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.

**Making
choices
vs. abusing
discretion**

Consider facts, principles, and law

Be able to articulate basis for decision

Show that you considered/weighed alternatives

Does decision make sense?

Is it reasonable?

vs.

Decisions that are “arbitrary” and “capricious”

**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

Public Health Decision-Making Tool

Situation - What are the facts? What is the threat?

Consequences - What are the consequences?

Likelihood - What are the chances of occurrence?

Mitigation - How can the threat be addressed?

Certainty - Should you take action now? Should you wait?

Communication - What do you communicate to the public and when do you communicate it?

https://www.networkforphl.org/_asset/49l35q/PH-Decision-Making-Tool.docx

Scenario 1: Measles Outbreak at a Day Care Facility

Jennifer Bernstein, JD, MPH
Deputy Director, Mid-States Region

Scenario

A 1-year-old child is taken to the emergency department at their local hospital with a high fever, a skin rash made up of large, flat blotches and inflamed eyes.



Scenario

The rash appeared on the child's face the day before the ED visit and has subsequently spread. The medical team recognizes the symptoms of measles and initiates testing and quarantine protocols, as well as notifying the local health department.

Investigation

The LHD initiates testing and genotyping to confirm the case as well as developing a coverage history through family interviews. It is determined that the child attends daycare full time in the infant wing of the facility. No child at the daycare has a vaccine waiver, though all but two of the children in the infant wing are under 1-year-old and have not received the MMR vaccine. All other children at the facility have received a single MMR vaccine dose.

Informing the public

- » What information should be shared with the general public?
- » What information should be shared with identified contacts that are likely to have been exposed?
- » Consider what information is within the health department's power to share and what information should be kept confidential.

Ethical and practical considerations: Informing the public

- » What the law allows
- » Privacy vs. protecting health
- » Managing communication to the public
- » Answering questions about health impacts
- » Correcting misinformation

HIPAA, 45 CFR 164.512(b)(1)(i)

» The Privacy Rule permits covered entities to disclose protected health information, without authorization, to public health authorities who are legally authorized to receive such reports for the purpose of preventing or controlling disease, injury, or disability.

Communicable Disease Rules, R 325.181

- » Medical and epidemiological information which **identifies an individual** and which is gathered in connection with an investigation is **confidential** and is not open to public inspection without the individual's consent or the consent of the individual's guardian, unless public inspection is necessary to protect the public health as determined by a local health officer or the director.

Informing the public

- » Inform public regarding locations, including business names, dates and times of potential exposure
- » Provide count of overall measles cases
- » Inform public regarding symptoms of measles and what to do if they suspect infection
- » Provide information regarding measles vaccinations
- » **DO NOT** name an individual or give other identifying information about that person

Informing identified contacts

- » Inform identified contacts regarding the specific incidence of exposure including the location, date and time of actual exposure
- » Provide information regarding symptoms of measles and what to do if they suspect infection
- » Provide information regarding measles post-exposure prophylaxis for non-symptomatic susceptible contacts
- » **DO NOT** name an individual or give other identifying information about that person

Scenario, cont.

Several local news sources have filed Freedom of Information Act (FOIA) requests to obtain additional information about the measles case.

How do we proceed?

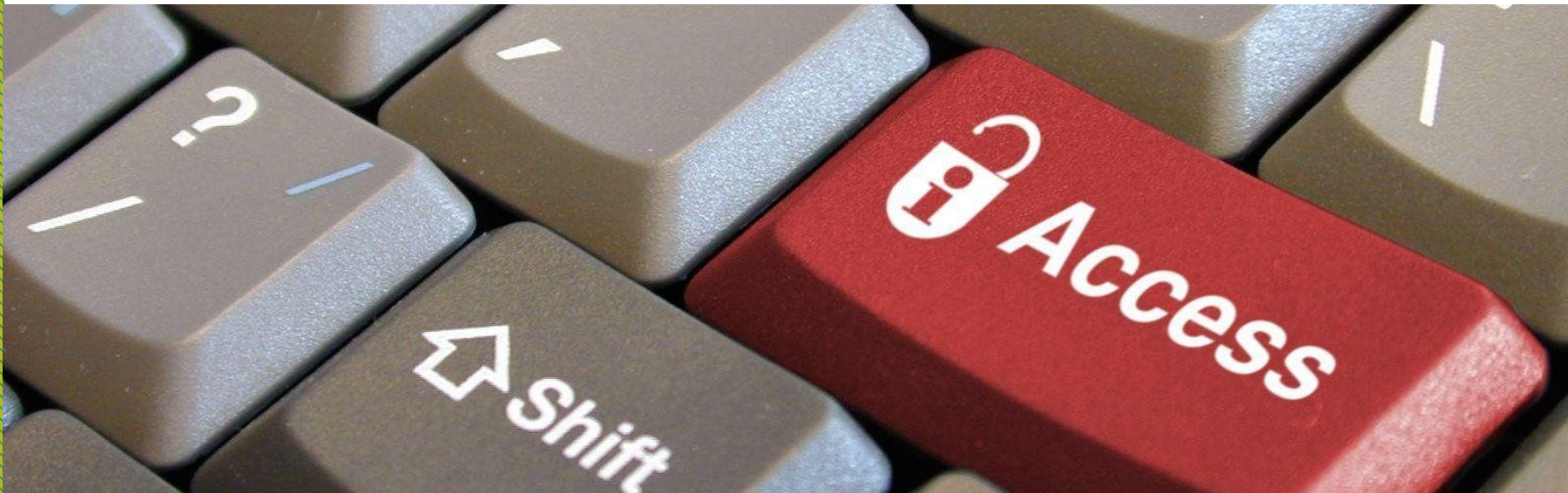
Process for a FOIA request



Analyze the request and determine if the request is permissible or if the information falls within an exception under FOIA.

Intent of FOIA

»The FOIA regulates and sets requirements for the disclosure of certain public records of certain public bodies in the state.



Public body

- » “Public body” includes a county, city, township, village, inter-county, inter-city, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency.
- » Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

Public record

»“Public record” means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function from the time it is created.

Public record, cont.

Though definition says, “writing,” it does not matter what form the record is in. Includes:

- » Handwritten, typewritten, printed, photostat, photograph, photocopy and every other means of recording
- » Letters, words, pictures, sounds, or symbols, or any combination
- » Papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording
- » It does not include computer software.

Create FOIA policies and procedures

- » Gives notice to the public regarding FOIA requests
- » Addresses common questions + issues
- » Sets expectations around time and cost
- » Streamlines the process for HD staff

Consideration: Does the county already have a process in place? Forms?

Sample FOIA request form

Washtenaw County
Building Inspection Department
705 N Zeeb Road • Ann Arbor, MI 48103
Phone: 734-222-3900 • Fax: 734-222-3930
washtenaw.org/buildinginspection




Washtenaw County
Health Department

Washtenaw County Health Department
Environmental Health Division
705 N Zeeb Road • Ann Arbor, MI 48103
Phone: 734-222-3800 • Fax: 734-222-3930
washtenaw.org/envhealth

FREEDOM OF INFORMATION ACT (FOIA)

REQUEST FOR INFORMATION
(MCLA 15.321 et seq; MSA 4.1801(1). Et seq)

Date of Request: _____

I, the undersigned, hereby request a copy of the following records from Washtenaw County. Please list address, township, parcel number and approximate year of permit, if known. Attach additional pages as needed.

I understand that I will be charged a fee for copying costs, unless proof of inability to pay due to indigence is provided. If the scope of this request requires more than fifteen (15) minutes of labor, a fee will be charged for the search, examination, review, and, if appropriate, the deletion and separation of exempt from nonexempt information as provided in Section 14 of the Freedom of Information Act. The fee is being charged because the failure to do so would result in unreasonably high costs to the County. A fee may also be waived if the County determines the request is in the public interest. I hereby agree to pay the charge for the furnishing of this information in advance of receiving the files.

Signature of Applicant _____

Printed Name of Applicant _____

Street Address _____

City, State, Zip _____

Phone _____

I would like to receive these records by:

☐ Pick up when ready

☐ Regular mail

☐ Fax: _____

☐ Email: _____

FOR OFFICE USE ONLY

Request received by: _____

Date received: _____

Request assigned to: _____

Date assigned: _____

Due date: _____

10 day extension date: _____


Total fees paid: _____

Date completed: _____

Comments: _____

<https://www.washtenaw.org/DocumentCenter/View/4485/Freedom-of-Information-Act-FOIA-Request-Form-PDF?bidId=>

Sample FOIA procedures

 WASHTENAW COUNTY PROCEDURE		
TITLE: Freedom of Information Act (FOIA) Procedures & Guidelines	Governing Policy: Freedom of Information Act Policy & Act	Effective Date 7/1/15

A. Appointment of FOIA Coordinator: In accordance with Section 6 of the Freedom of Information Act (FOIA), MCL 15.236, the Chair of the County Board of Commissioners is the County's FOIA Coordinator and has Designated additional FOIA Coordinators for the County. The names of the FOIA Coordinator and Designated FOIA Coordinators are available on the FOIA Website (http://www.ewashtenaw.org/government/departments/risk_management/freedom-of-information-act-foia)

B. Submission of FOIA Request: FOIA requests to the County may be submitted by any of the following means:

EMAIL: foia@ewashtenaw.org

MAIL: Washtenaw County
ATTN: FOIA Coordinator
PO Box 8645
Ann Arbor, MI 48107-8645

FAX: 734-222-6758

Online: (http://www.ewashtenaw.org/government/departments/risk_management/freedom-of-information-act-foia)

Verbal: Verbal requests will be accepted for information that is available on the County's public website. The response to a verbal request will be informing the requestor of the pertinent website address.

Requests should specify the desired records and include a name, phone number, mailing address and email if available. Additional identifying information may be requested in order to complete a search for the requested records.

C. Immediately Forward FOIA Request: Any employee of Washtenaw County who receives a written request for a public record must immediately forward that request to the Freedom of Information Act (FOIA) Coordinator. If a County employee receives an electronic written request for a public record that is delivered to a spam or junk folder, the employee must record the date and time the written request was delivered to the spam or junk-mail folder and date and time the employee first became aware of the written request. The employee must forward those dates and times to the FOIA Coordinator with the written request.

<https://www.washtenaw.org/DocumentCenter/View/3976/Washtenaw-County-Procedure-for-Freedom-of-Information-Act-FOIA-PDF>

MUST I?

- **Legal question:** Does law leave me no choice?

Law requires agency to **disclose information**

Michigan Freedom of Information Act

- » **Must provide public record unless exemption applies**
- » **FOIA permits, but does not require, a public body to withhold records from public disclosure if an exemption applies**
- » **Not required to create records**
- » **Failure to respond to request is a denial**

MUST I?

- **Legal question:** Does law leave me no choice?

Does law require agency to protect information?

Michigan Freedom of Information Act Exemption

A public body may exempt from disclosure as a public record under this act any of the following:

- **Records or information specifically described and exempted from disclosure by statute.**

MUST I?

- **Legal question:** Does law leave me no choice?

Many laws require agency to protect information

» **E.g., Public Health Code and communicable disease rules protect the confidentiality of information gathered about individuals**

Communicable Disease Rules, R 325.181

- » Medical and epidemiological information which **identifies an individual** and which is gathered in connection with an investigation is **confidential** and is not open to public inspection without the individual's consent or the consent of the individual's guardian, unless public inspection is necessary to protect the public health as determined by a local health officer or the director.

Public health & FOIA exemptions

- » Information of personal nature if disclosure is an unwarranted invasion of an individual's privacy
- » Medical, counseling, or psychological facts which would reveal an individual's identity
- » Information subject to such privileges as physician-patient, or other privilege recognized by statute or court rule

Public health & FOIA exemptions

- » Advisory, nonfactual communications within/between public bodies that are preliminary to final agency determination where public interest in frank communications outweighs interest in disclosure
- » Information compiled and provided by another public body, if reason to exempt information continues

**SHOULD
I?**

- **Policy question:** How should I exercise my discretion?

- » **No FOIA request – E.g., should you identify the locations / businesses in a press release regarding outbreak / investigation?**
- » **No law either requires or prohibits disclosure**
- » **Does your LHD have a policy?**
- » **Weigh pros and cons of disclosure**
 - Latency period, ongoing threat of exposure

When to Communicate to the Public?

COMMUNICATION

Balance: Will notice make a difference for those notified? What, if any, reasons are there for lack of transparency? What is in the interest of the public's health? Keep the public health mission paramount over any political pressure/expediency.

Shapeshift: When would YOU want to know as a resident, patient, parent, consumer...

Anticipate the reaction/perception: What could be the legitimate criticism of lack of transparency and delay or lack of notice?

How to Communicate to the Public?

COMMUNICATION

Coordinate with other relevant agencies, stakeholders, those who need to know to assist (e.g. BoH, providers and provider associations)

Know that risk communication requires expertise: work with knowledgeable agency staff or consultants to develop the messaging

Work with the media to assure the correct message

Prepare for public reaction and a plan to keep communicating in a timely way on the situation

Scenario, cont.

Though the health department did not disclose information that was restricted by law, much of this information has shown up on various social media outlets. Concerned citizens have made calls to the health department to verify these social media reports.

Ethical and legal questions

- Because the information is now publically available, does this allow the health department to disclose this information?
- How should the health department proceed?

Public information

- No public information exception under state or federal law.
- Health department must continue to maintain confidentiality for all patient information absent patient consent.

Scenario, cont.

After testing, it was determined that the child had not contracted measles, but had a reaction to her MMR vaccination that gave her the symptoms of measles. The child was not contagious.

- How should the health department proceed in this case?
- What information should be provided to the public?

False positive

- Legal obligation for confidentiality remains in place and the health department cannot disclose any identifying information to the public.
- Imperative to educate the public on vaccine reactions and stress the continued safety of vaccines.
- Inform direct contacts as soon as possible regarding false positive results, especially if still within the time window for infection.

Social Media and Correcting Misinformation

COMMUNICATION

Identify misinformation in agency documents, news reports, health provider communications, social media posts or comments, etc.

Know that misinformation brings risk to the public's health

Work with the media and health providers to correct the message and provide accurate information to the public

Decide on an approach for social media content. Possible actions: provide corrective information on the post, *delete inaccurate information from the post**, request author remove or correct misinformation, *request site administrator remove the misinformation**.

Social media comments



Your health department wants to provide opportunities for interaction with the community by allowing the public to post comments on its website.

But you are concerned that individuals might post comments that are contrary to the public health message, e.g. anti-vaccine comments that are not based on science.

Can your health department “control the message” by deleting comments that undermine public health’s mission?

Social media comments



Comments



Like



Comment



Share

The law has not completely kept pace with the realities of social media. A recent US 2nd Circuit ruling stated, “the First Amendment does not permit a public official who utilizes a social media account for all manner of official purposes to exclude persons from otherwise-open dialogue because they expressed views with which the official disagrees.”

The ruling hinged on the legal concept of “open forum.” Essentially, the government cannot pick and choose who has access to an open forum and the government cannot censor what any individual says in such a forum. Though there is still conflict between Circuits because social media platforms are not “open forums” in the traditional sense.

Scenario 2

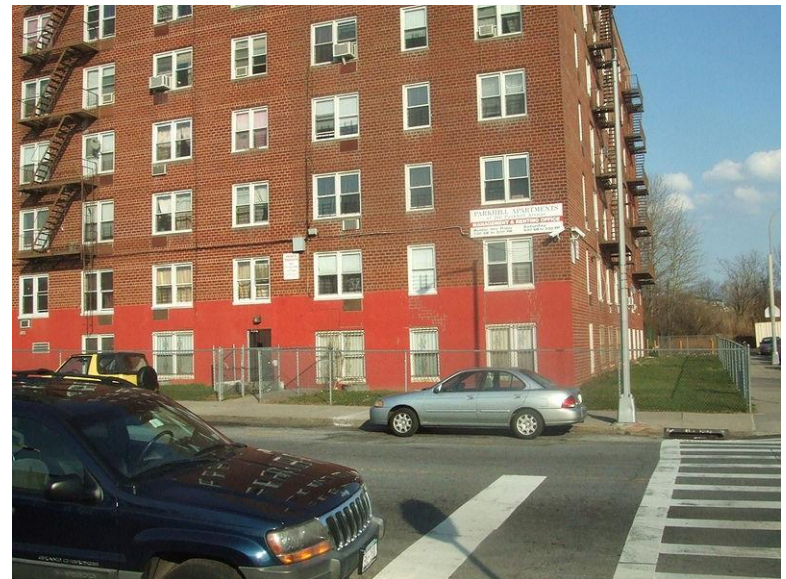
Public Health Role in Addressing Uninhabitable Housing Conditions

Colleen Healy Boufides, JD
Deputy Director, Mid-States Region

Scenario 1a

A LHD receives a call from a community member who has noticed that residents of a nearby apartment complex are drawing tubs of water from the adjacent river, apparently for use in their homes. The community member learned from a resident that the water in their building had been turned off.

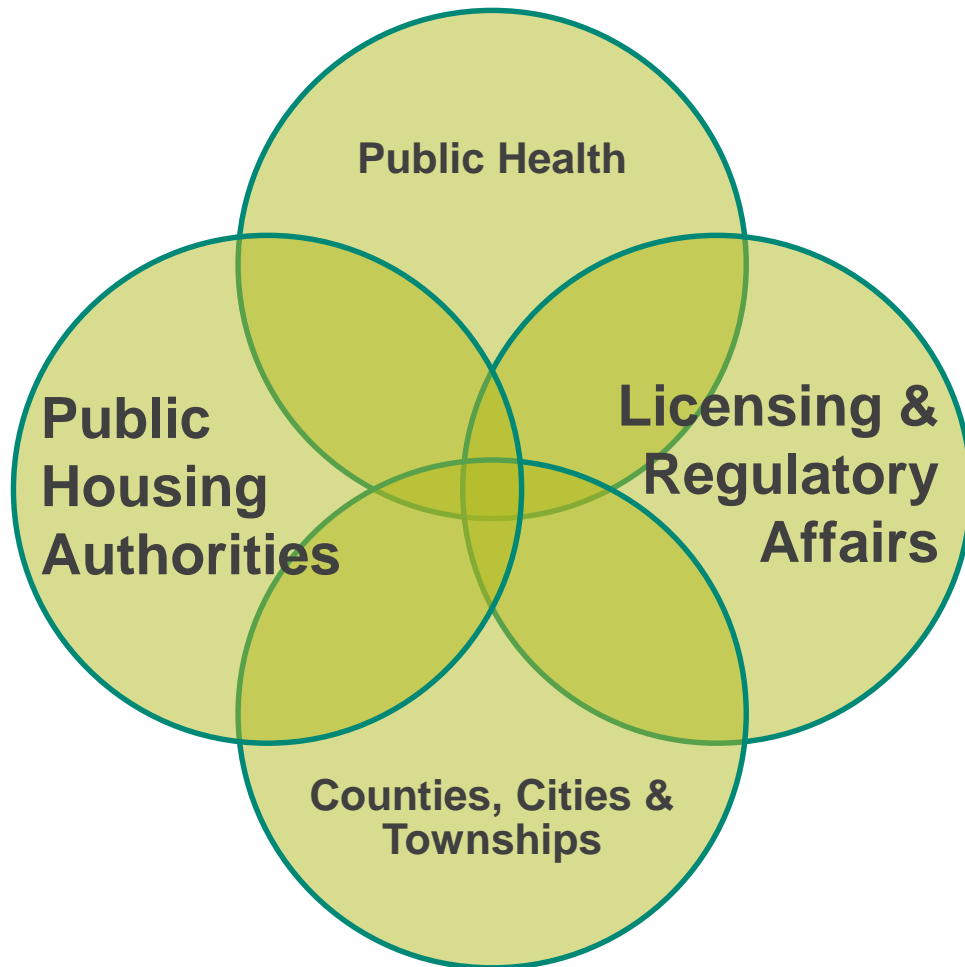
Who has authority to respond to this situation?



Who has authority to respond?

- » **City housing code enforcement agency?**
- » **Local health department?**
- » **MDHHS?**
- » **Federal Department of Housing & Urban Development?**
- » **Other?**

Overlapping Powers: Housing



Considerations:

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

Housing Law of Michigan

- » **MCL 125.401 et seq.** (Act 167 of 1917)
- » AN ACT to promote the health, safety and welfare of the people by regulating the maintenance, alteration, health, safety, and improvement of dwellings...

Applicability:

- » Applies to all dwellings in cities, villages, and townships with population $\geq 100,000$
- » Unless specifically adopted by local legislative body, applies only to “multiple dwellings” in cities, villages, and townships with population $\geq 10,000$ but $< 100,000$
- » Dwelling: building/structure/vehicle occupied in whole or in part as a living or sleeping place for 1+ human beings, either permanently or transiently

Historical Context

- » **Enacted before the Public Health Code, when cities and villages handled public health functions**
 - » Housing Law frequently references actions to be taken by “the health officer or such other appropriate public official as the mayor may designate”
- » **In 1978, PH Code reorganized public health to counties + the city of Detroit**
 - » Part 122 (Housing) of PHC envisioned LHDs taking over housing enforcement + state HD setting standards
 - » State HD never set standards; Part 122 repealed in 1981
- » **Housing Law of 1917 remains in effect.**

Heritage Hill Ass’n v. Kinsey, 146 Mich. App. 803 (1985)

Who is responsible for enforcing the Housing Law?

- » **Designated official / agency of the city, township, or village in which the dwelling is situated. See MCL 125.402(19), 125.523.**
- » **Municipalities may provide for joint administration and enforcement where practicable. MCL 125.523.**

Who is responsible for complying with the Housing Law?

- » **Owner of premises is responsible for complying with all applicable provisions.**
- » **Occupant is responsible for complying with provisions specifically applicable to him/her.**

Definitions (MCL 125.402)

» **Classes of dwellings:**

- » Private dwellings: occupied by and designed with kitchen for 1 family
- » 2 family dwellings: occupied by and designed with kitchens for 2 families
- » Multiple dwellings: occupied other than as private or 2 family dwelling

Definitions cont. (MCL 125.402)

» **Classes of multiple dwellings:**

- » Class a: Apartments, flats, etc. Each unit is designed to be occupied permanently as a residence and includes kitchen and bathroom
- » Class b: Hotels, hospitals, jails, etc. Generally occupied transiently; rooms occupied singly and without attempt to provide kitchen for individual occupants
- » Rooming house: Rooms in excess of those required by immediate family are leased or rented to non-family members without providing separate kitchen (treated as multiple dwelling if >3 rooms rented in this way)

Definition: Sub-standard dwelling

» “[A] dwelling of any class which is not so equipped as to have each of the following items: running water, inside toilets; or a dwelling which has either inadequate cellar drainage, defective plumbing, and inside room having no windows therein, improper exits or defective stairways so as to make such dwelling a fire hazard.”

MCL 125.402(1a)

Housing Law standards

- » **Repairs and Drainage (plumbing, heating, ventilation, electrical wiring) (MCL 125.471)**
- » **Water supply (MCL 125.472)**
- » **Cleanliness of dwellings, free of vermin – responsibilities for owner & occupants (MCL 125.474)**
- » **Adequate lighting + exit signs in public halls (MCL 125.465)**
- » **Receptacles for garbage (MCL 125.478)**
- » **Prohibited uses – housing farm animals, storing junk (MCL 125.479)**
- » **Fire prevention (MCL 125.482), alarms (MCL 125.482a)**
- » **Overcrowding (MCL 125.483)**

Certificate of Compliance

- » Units in multiple dwellings or rooming houses **shall not be occupied** unless a certificate of compliance has been issued by the enforcing agency.
- » Inspections shall be made before first occupancy of multiple dwellings and rooming houses.
- » Certificate may be suspended and affected areas vacated if hazardous conditions arise while occupied.

MCL 125.529, 125.530.

Other Inspections

- » **Enforcement agency is not required by Housing Law to inspect a dwelling (multiple or other) unless it receives a complaint from a lessee.**
- » **Local gov't may adopt an ordinance that provides for inspections for reasons other than a complaint (e.g., based on previous violations, geography, etc.). If it does, must comply with Housing Law requirements.**
- » **Floor preemption: local gov'ts may adopt housing standards, enforcement mechanisms, remedies, and penalties if they are at least as stringent as Housing Law**

MCL 125.526, 125.408

Housing Law Enforcement

- » If violation is not corrected after notice, enforcing agency may bring an action to enforce law or to abate or enjoin violation. MCL 125.534
- » Where dwelling is infected with contagious disease, dangerous to life or health of occupants, or unfit for habitation, enforcement agency may order dwelling vacated. MCL 125.485
- » Housing officer may order abatement of a public nuisance dangerous or detrimental to life or health. MCL 125.486

Can I? LHD General Powers

- » **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**

CAN I?

Legal question: Do I have authority?

LHD (general public health powers)

- » **Inspect or investigate:** To assure compliance with laws enforced by LHD, it may inspect or investigate “any matter, thing, premise, place, person, record, vehicle, incident, or event.” MCL 333.2446
- » **Imminent danger order:** Order an authorized person to immediately take action to avoid, correct, or remove the imminent danger. MCL 333.2451
 - » Order may: (1) specify action to be taken or (2) prohibit the presence of individuals in locations or under conditions where the imminent danger exists.

CAN I?

Legal question: Do I have authority?

LHD (general public health powers)

- » **Order to abate a nuisance:** Order the property owner to avoid, correct, or remove the harmful condition. MCL 333.2455
 - » Person who caused the violation is liable to the owner of the premises for expenses incurred to remove the condition.
- » **Injunctive action:** Health officer may maintain injunctive action to correct a violation of a law/rule/order which the officer has the duty to enforce, or to correct a condition which adversely affects the public health. MCL 333.2465
- » **Local health regulations**

MUST I?

Legal question: Does law leave me no choice?

MCL 333.2433(1) requires a LHD to continually and diligently endeavor to prevent disease and promote the public's health, including through prevention and control of environmental health hazards and health problems of particularly vulnerable population groups.

For mandatory duties, often an agency has a great deal of discretion in determining *how* to fulfill its obligation.

Housing Law

Public Health Code

Order to vacate infected and uninhabitable dwellings (MCL 125.485)

Order to correct imminent danger (may prohibit presence of individuals) (MCL 333.2451)

Order to abate a nuisance (MCL 125.486)

Order to abate a nuisance (MCL 333.2455)

Illegal drug manufacturing site (MCL 125.485a)

Illegal drug manufacturing site (MCL 333.12103)

Action to enforce act / enjoin violation; may seek preliminary injunction for imminent danger to occupants or public (MCL 125.534(1), (3))

Injunctive action to correct condition that adversely affects public health (MCL 333.2465)

Scenario 1a cont.

The city housing code enforcement agency is not taking action.

OR

The apt. complex is located in a small city or township that is not subject to the housing code and does not have its own housing code.

What options does the LHD have?



Involve / support other Agencies

HUD
MSHDA
Local PHA

- Funding generally tied to habitability
- Search for housing supported by federal, state, local funding:
<http://housing.state.mi.us/>

LARA

- Is the facility licensed?
- E.g., Mobile Home Park, Nursing Home



Affordable Rental Housing Directory (ARHD)

ARHD is a data sharing agreement between HUD, MSHDA, and USDA-RD to provide a listing of each agency's rental rental housing data within the State of Michigan.

Type the text to your search in the inputs below:
(you can type in multiple input boxes)

Property Name	<input type="text"/>	<input type="button" value="Search"/>
Management Name	<input type="text"/>	
Owner Name	<input type="text"/>	
Property City	<input type="text"/>	
Property County	<input type="text"/>	
Property Zip	<input type="text"/>	
Program	<input type="text"/>	
Source of Data	<input type="text"/>	

Welcome to the Affordable Rental Housing Directory (ARHD) Web site. This web site provides access to a comprehensive listing of rental housing within the State of Michigan that has received financing from federal , state, or local housing agencies. Site functions include the ability to search, query, and export data.



Other Housing web sites:

[Michigan Housing Locator](#)
[Quality Apartment Search](#)
[Multi-Family Housing Rentals](#)

Other Resources:

[Michigan School Districts](#)
[Michigan Cities and Villages Information](#)
[Census Bureau](#)

Tenant actions (under the Housing Law)

- » The owner or occupant of the premises on which a violation exists may bring an action to enforce the Housing Law. MCL 125.534
- » If needed, the court may appoint a receiver to repair & rehabilitate the premises. MCL 125.535.
- » A tenant can sue an owner for damages caused by an unsafe, unsanitary, or unhealthful housing condition (if they provided notice and condition was not corrected) and may request injunctive and other appropriate relief. MCL 125.536.
- » + many others in common law and other statutes



https://www.michiganbar.org/public_resources/legalaid

Legal & Law Related Programs by County

If you cannot afford a lawyer . . . you may still be able to get help.

Contact information for legal aid, law-related organizations, community services, and dispute resolution programs that offer services in your area can be found using the search below.

To search for an organization that might be able to help you, select the type of "Service" that you need help with and the "County" where you live. Special note: If the issue you need help with is a court matter, make sure you select the county where the courthouse is located that is listed on your court papers.

For example, if you need help with a landlord/tenant issue and you live in Macomb County, you would select Landlord/Tenant in the Service menu, and Macomb in the County menu, then click Submit.

Michigan Law Related Organizations Search

Update Your Program Information

Service

All

County

All

Welcome **Self-Help Tools** Organizations & Courts

Guide to Legal Help



Home » Self-Help Tools



Housing

Displaying 1 - 10 of 45



Guide to Housing

Can't find what you're looking for? Try our Guide to Legal Help for housing questions.



Security Deposit Help for Tenants

This toolkit tells tenants what they need to know about security deposits. It can also help you if your landlord has not returned your security deposit after you moved.



I Am Being Evicted for Non-Payment of Rent (Non-Subsidized Housing)

This toolkit tells you what you need to know if you are being evicted for not paying your rent. Use a different toolkit if you live in subsidized housing or in a mobile home park.



Toolkits (11)



Forms (4)



Articles (30)

Filter by Legal Issue



Evictions (29)



Tenant Rights (12)



Subsidized Housing (9)



Leases (8)



Security Deposit (7)



Discrimination (6)



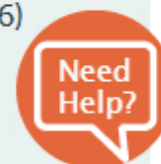
Lockouts (6)



Foreclosure (4)



Mobile Home (4)



X

<https://michiganlegalhelp.org/>

CAN I?

Legal question: Do I have authority?

LHD (general public health powers)

- » **Order to abate a nuisance:** Order the property owner to avoid, correct, or remove the harmful condition. MCL 333.2455
- » **Imminent danger order:** Order an authorized person to immediately take action to avoid, correct, or remove the imminent danger. MCL 333.2451
- » **Injunctive action:** Health officer may maintain injunctive action to correct a violation of a law/rule/order which the officer has the duty to enforce, or to correct a condition which adversely affects the public health. MCL 333.2465

MUST I?

Legal question: Does law leave me no choice?

MCL 333.2433(1) requires a LHD to continually and diligently endeavor to prevent disease and promote the public's health, including through prevention and control of environmental health hazards and health problems of particularly vulnerable population groups.

For mandatory duties, often an agency has a great deal of discretion in determining *how* to fulfill its obligation.

Must I? All or nothing?

Youngberg v. Romeo

"[I]t is conceded by petitioners that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities.... Nor must a State choose between attacking every aspect of a problem or not attacking the problem at all."

457 U. S. 317 (1982)

Based on discretionary power

Should I?

Must be used reasonably, impartially.

Policy considerations:

» **Resources** » **Impact** » **Population health vs.**
» **Feasibility** » **Priorities** **private disputes**

Uniformity, consistency, and proportionality

Strength of evidence, strength of legal authority

Public opinion

Politics – relevant?

Doing “nothing” is doing “something” (risk assessment)

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.

Scenario 1b

The LHD receives complaints from a mobile home park resident about sewage backups, resulting in the discharge of sewage onto the ground.

What options does the LHD have?



Mobile Home Commission Act

- » **Prohibits operation of a mobile home park without a license. Requires department to establish a Mobile Home Code including process and minimum standards for obtaining and maintaining a license.** MCL 125.2316, 125.2305, Mich. Admin. Code R. 125.1101.
- » **Licensing requirements enforced by Department of Licensing & Regulatory Affairs.** MCL 125.2302(d), 125.2336-2348.

- **EGLE rules govern mobile home parks' water supply and sewage collection and disposal systems.** EGLE may investigate to determine compliance with rules and may contract w/ LHDs to perform services. MCL 125.2302(d)(ii); 125.2306. See Mich. Admin. Code R. 325.3311 et seq., 325.3313-3314.
- **Act explicitly recognizes that a LHD may issue an imminent danger order under the Public Health Code if a condition of the park is an imminent threat to the public's health. This includes requiring the mobile home park "to **cease operation or prohibiting the presence of individuals** at all or part of the park."** MCL 125.2348b

Bay County Example

- » LHD conducted investigations to confirm complaint; contacted park manager
- » EGLE contacted LHD after receiving complaints; also investigated and sent a letter to park ordering correction of violations
- » LHD contacted LARA re mobile home park's license; recommended suspending or revoking license [learned that license was also revoked]
- » LHD learned that mobile home park was under receivership; sent order to receiver citing violations of county sanitary code and ordering correction

Dear [REDACTED]

The Bay County Health Department (BCHD) has received numerous complaints regarding the discharge of sewage to the surface of the ground at the above referenced address.

An investigation was originally done in 2016 due to the sewage system having blockages near units [REDACTED] which were discharging large quantities of sewage to the surface of the ground and into the storm drain. That particular situation was resolved however more problems are ongoing in regards to the surfacing of sewage and other public health problems in the park. During the summer of 2018 this department received phone calls regarding a backup of sewage at [REDACTED]. Two site visits were made to determine the validity of the complaint. Remnants of a sewage discharge were discovered. During that time complaints were also made to the Department of Environmental Quality (DEQ) regarding the same violation. The DEQ responded to the complaint and observed an ongoing discharge during the date of their site visit July 30, 2018. A letter was sent to the park on October 23, 2018 by the DEQ outlining the violation along with several requirements to correct the violation. Since then no efforts to correct the cause of the backups have been made.

Complaints continued to be called into this department regarding the backup of sewage outside [REDACTED]. Phone calls were made by this department to [REDACTED] Park Manager, several times informing her of the requirement to continue with pumping of any sections of the sewage system experiencing back-ups. On April 10, 2019 another site visit was made. During that visit a large amount of sewage was discovered adjacent to [REDACTED] in the area of the sewer clean outs. Also discovered during the visit included a sump pump inside of a sewer manhole, pumping sewage a few hundred feet into another sewer manhole. This is located along [REDACTED] and running south behind several mobile homes then discharging into another sewer manhole.

Discharge of sewage to the ground is a public health hazard and a violation of the Bay County Sanitary Code. Also having open sewer manholes and the pumping of sewage from one to another is a Public Health Hazard and also poses some physical hazards of falling into an open sewer manhole.

[The Bay County Sanitary Code states:

4-2 OVERFLOW AND IMPROPER DISPOSAL OF SEWAGE

Under no condition may the overflow from a septic tank or the sewage form a Premises (existing or hereafter constructed) be discharged or deposited upon the surface of the ground or into any lake, river, stream, county drain, ditch, storm sewer, or farm field tile.

6-13 PENALTY

Except as otherwise expressly provided by these regulations, any person who fails to comply with any provision of these regulations, shall be in violation of this code and charged with a misdemeanor. Upon conviction thereof, the person shall be punished by a fine not exceeding the sum of \$200.00 or by imprisonment in the county jail not exceeding 90 days, or by both such fine and imprisonment in the discretion of the court. Each day compliance is not met constitutes a separate violation of this Code.

Upon receipt of this letter if not already completed you are ordered to complete the following;

1. Clean up the sewage and contaminated soil next to [REDACTED].
2. Remove the sump pump from the sewer manhole along with the discharge hose and install the manhole covers back into place.
3. In the future, problems such as plugged lines shall be immediately addressed to prevent sewage from surfacing.
4. Problems within the sewage system within the park need to be completed. This will need to be coordinated with the DEQ in which a plan should already be in place based on the requirements in the DEQ letter sent on October 23, 2018.

Failure to comply with the requirements set forth in this order may result in penalties and closure of the mobile home park.

This department will continue to monitor the park to determine compliance in the future.

If you have any questions regarding this letter please do not hesitate to contact me at (989) 895-4107.



Note: Thanks to Bay County Health Department. Letter reformatted & redacted for use in this presentation.



Ingham County Example

Life O'Riley Mobile Home Park Condemned

By Alyssa Fenske | Posted: Tue 10:52 AM, Feb 25, 2014 | Updated: Tue 4:46 PM, Feb 25, 2014



LANSING, Mich. – Ingham County Health Department has issued a condemnation order for the Life O' Riley Mobile Home Park and Campground, 6726 Washington Avenue, Lansing, MI 48911, due to an imminent public health threat. The leading issue for the condemnation order is the history of the failing sewage disposal system, including numerous illicit discharges of sewage and other public health issues as they relate to water supply and solid waste disposal.

The owner of the Life O'Riley Mobile Home Park and Campground has 10 days from the posting of this order to cease all operations and close down the mobile home park and campground. All residents of the mobile home park and campground will have to relocate within those 10 days. If a resident owns their mobile home unit and it can be moved, the owner of the mobile home unit can move it to another mobile home park. ICHD is condemning the mobile home park/campground, not individual mobile home units.

The City of Lansing and other community partner agencies have put together resources to assist residents with emergency housing and to find alternative long-term housing. The Life O'Riley Mobile Home Park and Campground can be reopened when the facility owner/manager can demonstrate to ICHD that all issues identified in the order have been corrected.

There will be a community meeting today, Tuesday, February 25, 2014, from 2:00-5:00 PM for residents at Cristo Rey Catholic Church, located at 201 West Miller Road, to voice their concerns, ask questions, and to assist in the relocation of individuals and families. Please see the attached flyer for additional information.

If you have any questions regarding the condemnation order, please contact ICHD at 517-887-4312. If you have questions regarding relocation or housing, please contact the City of Lansing at 517-483-4477.

Scenario 1c

A LHD receives a complaint from a community member about a rundown house in their neighborhood.

Who has authority to respond to this complaint?



Dangerous Buildings (MCL 125.538-39)

» **Unlawful for an owner or agent to maintain a “dangerous building,” defined as having 1 or more of the following defects/conditions:**

- » Exit does not conform to local fire code
- » Structural integrity is damaged such that it does not comply with building or housing code and/or may cause injury to person/property and/or is unsafe for use
- » Attractive nuisance
- » Building intended for dwelling is unfit for human habitation
- » Vacant, dilapidated, open at door or window
- » Remains unoccupied for 180+ days and not listed for sale/lease with licensed real estate broker (exceptions apply)

Dangerous Buildings (MCL 125.540)

- » **Enforcing agency shall issue a notice that the building or structure is a dangerous building.**
- » Person to whom notice is directed has opportunity to show cause why hearing officer should not order that building be demolished / made safe / properly maintained.
- » Hearing officer shall enter order specifying appropriate actions; owner may appeal to local legislative body / board of appeals, then to circuit court.
- » Local body may perform required actions and assess cost to owner, including by placing a lien on the property (MCL 125.541, 541a)

CAN I?

Legal question: Do I have authority?

» **Is there a public health threat?**

- » Public health threat vs. aesthetics / blight / zoning violation
- » Neighbor dispute vs. public health threat

Can I? LHD General Powers

- » **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**

CAN I?

Legal question: Do I have authority?

LHD (general public health powers)

- » **Order to abate a nuisance:** Order the property owner to avoid, correct, or remove the harmful condition. MCL 333.2455
- » **Imminent danger order:** Order an authorized person to immediately take action to avoid, correct, or remove the imminent danger. MCL 333.2451
- » **Injunctive action:** Health officer may maintain injunctive action to correct a violation of a law/rule/order which the officer has the duty to enforce, or to correct a condition which adversely affects the public health. MCL 333.2465

MUST I?

Legal question: Does law leave me no choice?

SHOULD I?

Policy question: How should I exercise my discretion?

» **Is there another agency that is better suited to deal with this issue?**

» Is the municipality in which the home is located subject to the Housing Law and/or does it have applicable housing, zoning, or blight ordinances?

Public health & housing resource

See, **Michigan Manual for the Prevention and Control of Bed Bugs** for discussion of public health threats and regulation of housing, residences, and facilities available at

https://www.michigan.gov/documents/emergingdiseases/Bed_Bug_Manual_v1_full_reduce_326605_7.pdf

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Scenario 3: Area water investigation of dioxin in private wells

Denise Chrysler, JD
Director, Mid-States Region

Scenario

- » **Community concerns about water quality in Otsego area and potential adverse health effect**
- » **Concern due to industrial waste generated by (now closed) paper mill**
- » **March 2018: Resident used social media to conduct health survey**
- » **March 2018: Interagency meeting (EPA, MDHHS, EGLE, LPH)**
- » **March 2018: Federal and state agencies and local health dept held town meeting to listen to community concerns**

Scenario, continued

- » **April 2018: MDHHS committed to conduct a comparison of cancer prevalence rates in the Otsego area by zip code with rates in Allegan County, State of Michigan, and U.S.**
- » **April 2018: EGLE committed to sampling private wells in area**
- » **July 2018: EGLE completed sampling of 56 private wells; samples submitted to laboratory**

Scenario, continued

- » **Lab analysis covered extensive list of potential contaminants commonly found in paper sludge generated by paper companies, including 3 dioxin/dioxin-like chemicals**
- » **Municipal water supplies in area of concern also submitted samples for analysis; based on results MDHHS concluded no public health hazard associated with continued use of municipal water supplies**

Scenario, continued

- » **Sept 2018: Preliminary lab results indicated 16 wells of 56 in Allegan County had detectable levels of two types of dioxins**
- » **Further analysis required that includes 29 dioxin/dioxin-like chemicals to calculate the total toxic equivalency (TEQ) for all samples, which is the measure for determining whether water sampled is safe to drink**
- » **TEQ analysis would take six weeks**
- » **Question: what should local health department do while results of analysis pending?**

Local health department response

Sept 2018:

- » **Recommended that 16 households with detectable levels detectable concentrations of two dioxins in their wells seek an alternative water supply until all of the laboratory results were received the the potential health risks of drinking groundwater could be determined**
- » **Offered bottled water to 16 households if unable to provide for their own alternative water supply**

Managing incident

- » **LHD activated emergency response plan and implemented incident command structure; LHO incident commander**
- » **Opened public health operations center / county emergency operations center partially activated**
- » **Communications: Press releases, website, hot line for community and media questions and concerns, open houses so residents could speak to agency experts**
- » **Notification: MDHHS toxicology notified private well owners of their test results mid-October**

Incident wrap-up

- » **Town meeting scheduled for October 20, 2018 to allow agencies involved to address concerns of community, share results and discuss next steps**
- » **MDHHS conclusion: Based on laboratory analysis and TEQ, no public health hazard associated with continued use of these private water systems**

Observations

- » **Good communication, cooperation, coordination among several agencies**
- » **Incident command structure facilitated investigation and response**
- » **Communication and transparency critical**
- » **Access to experts to inform PH decisions**
- » **Communicating with public while insufficient information (access to experts)**
- » **Relationships – protecting public requires community trust of LPH**



Challenges & Push-back

- » **Authority questioned**
- » **Decisions questioned**
- » **Asserting authority while maintaining relationships**
- » **Political pressure**
- » **Professional judgment: making decisions with insufficient information: On what side do you want to err?**

Public health practice and lawyers

- » **Goal: Accessible, available lawyers with expertise in public health law**
- » **Involve lawyers early and often**
- » **Learn how to work effectively with lawyers**



How lawyers think

» **Duty: protect client**

It depends.

» **Law: fact-based and nuanced**

» **Requires interpretation**

» **Judgment calls**

» **Risk averse**



Cooperation: Getting to Yes!



- » **Build relationships**
- » **Come prepared with factual information (Network PH Decision-Making Tool)**
- » **This is what we want to do . . .**
- » **How do we best do it?**

Take-Aways

- » **More than one governmental entity may have authority to address a health threat**
- » **LPH has general responsibility to protect people from disease and environmental hazards even when it is not the regulatory agency**
- » **Local health officer makes determinations and takes action informed by experts and professional judgment**
- » **There may be no right answer, only choices – the choice should make sense and the basis should be documented**

Thank you!

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