

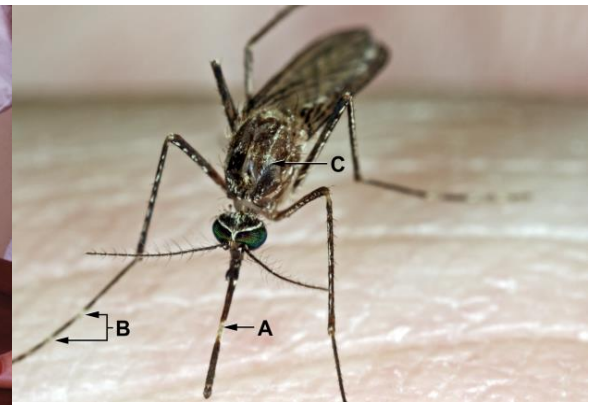
# 101 Training Public Health Law & Ethics

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The Network – Mid-States Region  
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Michigan Premier Public Health Conference

# Law can protect the public

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



# Agenda

1. **Introduction**
2. **Public Health Legal Framework**
3. **Organization of Public Health in Michigan**
4. **The Local Health Officer – Roles, Responsibilities & Powers**
5. **Public Health Decision-making**
6. **Local Public Health Roundtable**
7. **Wrap-up**

# Introduction & Public Health Legal Framework

# Public Health Legal Framework

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

## Legal Framework

U.S. and State  
Constitutions

Statutes

Administrative  
Rules

Court Opinions

Executive Orders



# U.S. Constitution

## Legal Framework for Routine Public Health Practice and Emergency Response

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



- Federal govt has authority to regulate interstate commerce
- Federal govt has authority to address cross-border threats and concerns
- Federal govt provides \$ with strings

# Separation of powers

## 3 Branches

### Legislative

Make law;  
Appropriate \$

*Coming up:* Using appropriations to revise public health powers

### Executive

Implement law;  
Make law

### Judicial

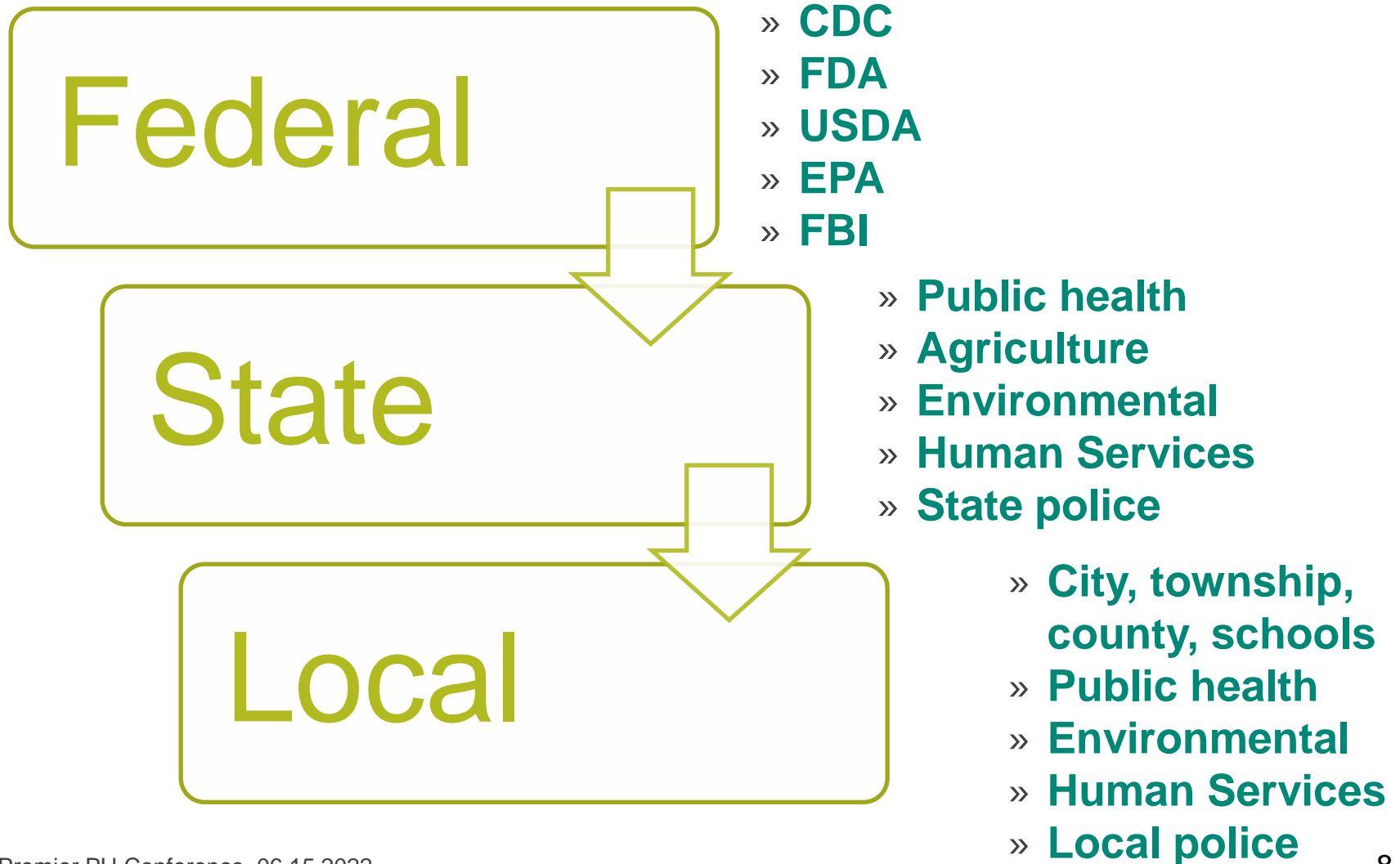
Interpret law;  
Make law;  
Protect from other two branches

*Citizens legislative initiative* (Const Art 2, Sec 9): 340,000 voters can put proposed law on ballot; legislature can enact with simple majority and Governor cannot veto



# 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?

# 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?
- » Who else has power?
- » Power to act v power to implement and enforce

# 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?
- » What if “politics” and confrontations and threats prevent me from doing my job?

# 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?



# 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**

**Over 43 years old!**

## **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.**

## 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.mi.gov](http://www.legislature.mi.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

- [Bills](#)
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- [Initiatives/Alternativ](#)
- [Measures](#)
- [Joint Resolutions](#)
- [Journals](#)
- [Legislators](#)
- [Public Act \(Signed](#)

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

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**



# State agencies responsible for the public's health . . .

» **General Powers to protect and improve the public's health**



» **Regulatory programs to protect the public's health**



**Certain regulatory programs delegated to local public health**



**Michigan.gov**

OFFICE OF  
**GOVERNOR**

- » Emergency Management Act, MCL 30.401, et. seq.
- » Emergency Powers of the Governor Act of 1945
- » *In re Certified Questions*, 506 Mich. 332 (2020)
  - » EMA – Governor may exercise authority only for 28 days, unless approved by the legislature
  - » EPGA – was an unconstitutional delegation of authority (repealed 2021)
  - » Ruling did not affect state or local public health powers
- » Pending legislation may affect EMA

# Public Health Code

## Specific Powers & Specific Threats



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



# General authority to protect the public

LHDs have 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**

See, MCL § 333.2433

## State Agency Power to Adopt Rules

» **Rulemaking power established by statute**

» **Rule:**

- Agency's written regulation, statement, standard, policy, ruling, or instruction
- Implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency

» **Rulemaking process defined by Administrative Procedures Act, MCL 24.201, et. seq.**

» **Rules have the effect of law**





## MI Administrative Code

### Search for Administrative Codes by Department and Bureau and/or Rule Numbers

Select options below to view MI Administrative Code

Department:

Bureau:

Rule Number:

Search

<https://ars.apps.lara.state.mi.us/AdminCode/AdminCode>

Select department and bureau.

# 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 of 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

## **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 body**
- » **Must be at least as stringent as similar state requirements**
- » **LHD regulations supersede conflicting local ordinances**
- » **Notice of public hearing required**

## 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**

# Legislative Action

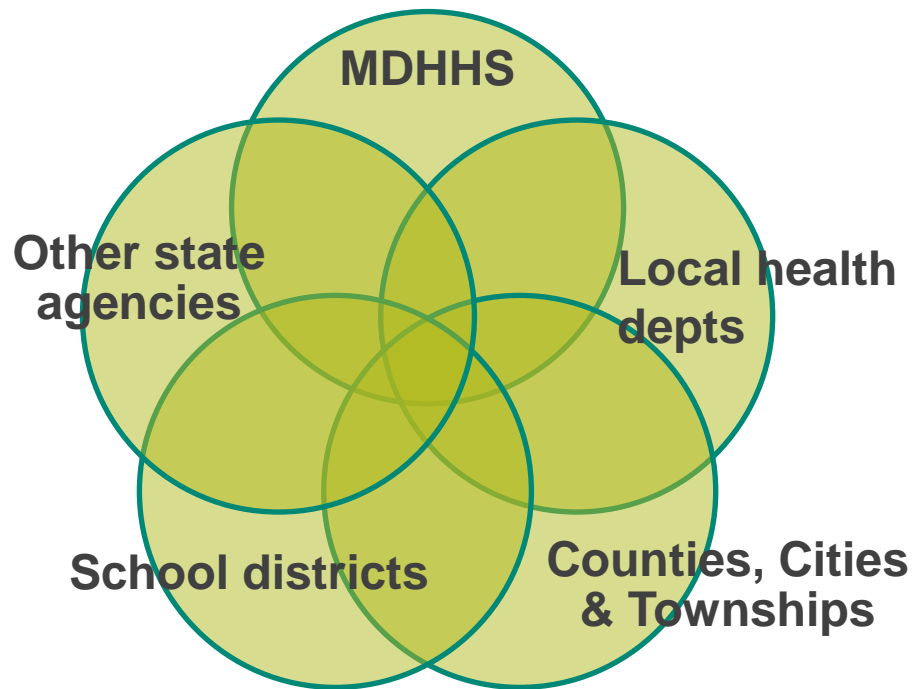
## Enacted & Pending Bills Limiting Public Health Authority\*



Law/Bill & Description	1. Emerg. Orders	2. Shifts in Authority	3. Vaccines	4. Testing	5. Masks	6. Places	7. Other	8. Status
<b>Michigan</b>								
<p><b>LAW</b>  <a href="#">PA 77 OF 2021</a> - repeals the emergency powers of the governor act, 1945 pa 302 (mcl 10.31 - 10.33), which authorized the governor to proclaim a state of emergency with no time limit and to promulgate reasonable orders and rules to protect life and property during the emergency</p>	a,b	i						<p>Proposed by voter initiative.</p> <p>Adopted by Senate 7/15/2021. Adopted by House 7/21/2021.</p> <p>Voter initiated laws are not subject to the governor's veto power.</p> <p>Effective 3/30/2022.</p>
<p><a href="#">HB 4049</a> - provides that state health director may not issue orders "during a coronavirus epidemic" that close schools to in-person instruction, or prohibit qualified sporting events; provides that local directors may close schools to in-person learning if certain criteria are met.</p>	d	X (State health department to local health departments)				X		<p>Governor Vetoed, legislature failed to override veto. Re-referred to the House Appropriations Committee 03/09/21. Still Pending</p>



## 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

# Who rules?

## State Department vs. State Department

### **333.1114 Prohibited construction of code.**

(1) This code shall not be construed to vest authority in the department [of health and human services] for programs or activities otherwise delegated by state or federal law or rules to another department of state government.

# Who rules?

**State vs. local government  
(counties, cities, townships, school  
districts, etc.)**

## **MCL 333.1115:**

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

# Who rules?

## Local health department vs. other local government entities (cities, townships, school districts, etc.)

### 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.

## LHD vs. School Board

MCL 380.11a, 380.401a, 380.601a, and 380.382 authorize schools:

- » to provide for the safety and welfare of students at school or school sponsored events (including en route to or from)

Schools also have authority under Public Health Code:

- » to monitor compliance with immunization requirements (MCL 380.1177; R. 325.176); and
- » to exclude students reasonably suspected to have a communicable disease (R. 325.173)

### 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 (6<sup>th</sup> Cir. 2017)*



## Hill v Board of Education

224 Mich. 388 (1923)

- » Court upheld authority of local health department to exclude unvaccinated students and staff because of disease outbreak **even though the local school board disagrees.**
- » Court **upheld** local health department's **exercise of its broad powers** to exclude unvaccinated students and staff; specific legislative authority was unnecessary; local public health's **decision was a proper exercise of local public health discretion.**

## COVID-19 Litigation

- » Litigation at local, state, federal level
- » [Judicial Trends in Public Health \(link\)](#)
- » Lack of PHC knowledge and understanding
- » [Public Health Law Bench Book 2016 \(michigan.gov\)](#)
- » Precedent of trial court decisions

# **The Local Health Officer**

## Roles, responsibilities & powers

## Local Public Health

### Our First and Primary Responders

- **LHD:** Required. Primarily responsible for health of people within its jurisdictions
- **State & LHD:** Parallel powers & responsibilities
- **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

## Health Department Authority Exercised by Local Health Officer

- » "Local health officer" means the individual in charge of a local health department or his or her authorized representative.
- » Local health officer is the “administrative officer” of the board of health and the local health department – takes actions and makes determinations to carry out LHD’s functions to protect public and prevent disease

MCL 333.1105, 333.2428, 333.2433

## Health Officer makes determinations:

- » 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**



# 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**



# 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**



# 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**

**Mask mandates**

**Ration medicines or medical equipment**

**Prohibit entry**

**Require cleanup of a nuisance**

# Interference with Health Officer

## » **Obstruction of person enforcing health law.**

A person shall not wilfully oppose or obstruct a department representative, health officer, or any other person charged with enforcement of a health law in the performance of that person's legal duty to enforce that law. (MCL 333.1291)

## » **Violation of local health regulation or local health officer order**

A person who violates a regulation of a local health department or order of a local health officer under this act is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$200.00, or both. (MCL 333.2443)

# 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**



# Board of Health

- » **Bd of Commissioners may appoint a BOH for single county health department – mostly advisory; may serve as appeals body for local public health actions**
- » **District BOH required, must include 2 members from each county board of commissioners; appoints the health officer**

MCL 333.2413, 333.2415, 333.2428



## 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

## Imminent Danger Order (MCL 333.2451): A local 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.

## **Order to Control Epidemic (MCL 333.2453): A local health officer can issue an emergency order to protect the public.**

(1) If a local health officer determines that control of an epidemic is necessary to protect the public health, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local governmental entity, during the epidemic **to insure continuation of essential public health services and enforcement of health laws.** **Emergency procedures shall not be limited to this code.**

(2) A local health department or the department may provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in sections 5201 to 5238.

# 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

# 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 Health Decision-making



# 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?

**[for health officials] “I” = “You”**

## 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?**

### **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. private disputes**
- » **Feasibility**
- » **Priorities**

Uniformity, consistency, and proportionality

Strength of evidence, strength of legal authority

Public opinion

Politics – relevant?

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

**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**



# Decision-Making 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.**

# 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](https://doi.org/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.

# Public Health Decision-Making Tool

## Use this tool as a guide to:

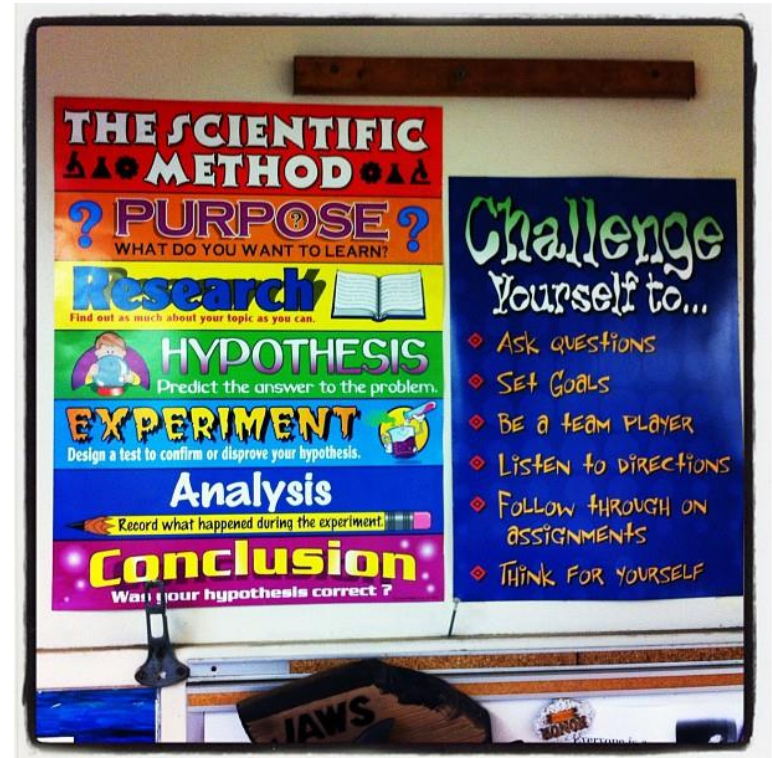
- **Assess the situation**
- **Evaluate the threat**
- **Consider the options**
- **Communicate the risks**

## And to:

- Record these steps
- Share “Up” -- Provide situation updates, facts and analysis, basis for decisions with other agencies/commissioners//governor’s office, and those with the gift of 20/20 hindsight.

Available to download as a fillable form at <https://www.networkforphl.org/resources/public-health-decision-making-tool/>

# Set up:



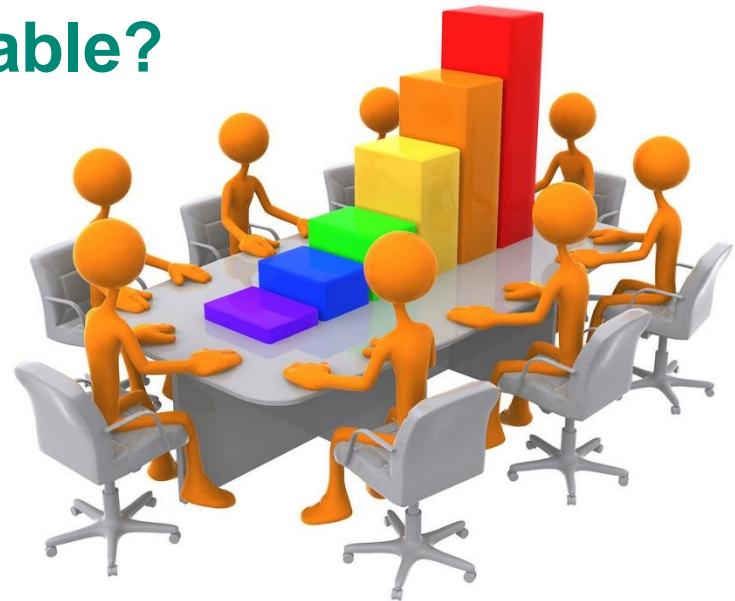
**People + Methodology**

# Set up: People

» **Is everyone you need at the table?**

Expertise + Authority

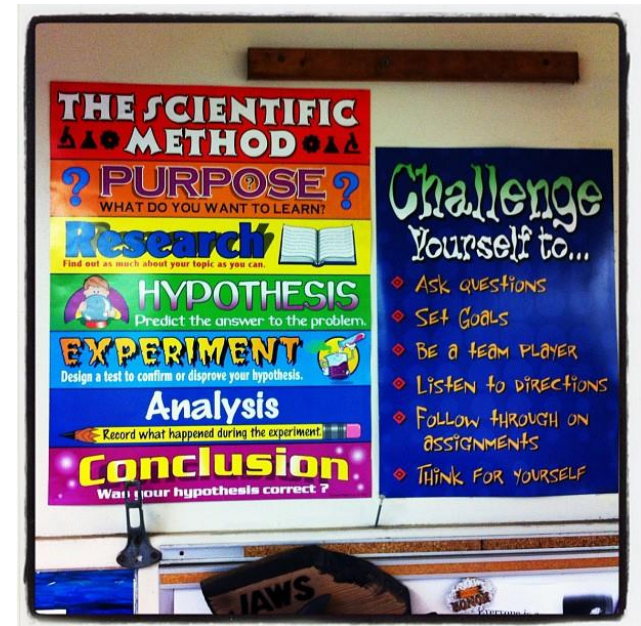
» **Do you know the motivation for everyone you are relying on for input?**





# Set up: Methodology

- » Encourage questions
- » Be careful to not get rooted in a decision made early in the process
- » Assume you will receive FOIA requests & subpoenas and have to defend your decision
- » Consider utilizing incident command structure
  - » Designate one official note taker
  - » Document decisions & assignments in one place





## District Health Department 2: PFAS Response

**2015: DoD & MDEQ test for PFAS at Wurtsmith Air Force Base (Oscoda, MI)**



**Jan. 2016: Test results show no exceedance, but uncertainty about toxicity and duration/amt of exposure**



**LHD noted vulnerable populations, evolving science, and potential health risks**

## Assess the Situation: Facts

### SITUATION

**What are the facts?** Describe the facts as known/understood at this time.

- **Focus on asking the right questions**
- **Do not assume the answer**
- **Start at the beginning every time:**
  - Validate information you have
  - Assume quick evolution of facts/circumstances

SITUATION

Based on these facts: **What is the threat?** What is the potential “danger” or “threat”? (List each, may include, for example, potential disease(s) or condition(s)).

- **Define the potential pathways for exposure, extent of exposure, potential / likely evolution of threat**
- **Identify missing information**

## Evaluate the Risk

### CONSEQUENCE

### What are the consequences?

If danger or threat occurs, what are potential consequences? (i.e. “list of horrors”).

- **Consider impact on different populations—especially those most vulnerable.**

**LIKELIHOOD**

## **What are the chances of occurrence?**

Determine the likelihood of the occurrence of each danger or threat based on current evidence.

- **Low or uncertain likelihood is only one factor in deciding how to respond.**
- **What other facts are needed to increase certainty?**

## Consider the Options

### MITIGATION

### **How can the threat be addressed?**

What measures or mitigation might be used to address each potential danger or threat?

- **What have others done in similar situations to mitigate impact or likelihood of reoccurrence?**
- **Consider the range of actions; pros and cons**



## Act Now?

### CERTAINTY

### Should you take action now?

What is potential harm in implementing measures or mitigation **prematurely**? (i.e. risk associated with acting based on current evidence). List the pros and cons of acting versus waiting. What additional evidence would be helpful? What is the timeframe to obtain it?

- **Is there another action that we should be considering?**
- **How will we measure success?**
- **How will we know when we're "done"?**
- **What resources are needed to execute & maintain the chosen course of action?**

## Wait?

### CERTAINTY

### Should you wait before taking action?

What is potential harm in **delaying** measures or mitigation? (i.e. risk associated with waiting to obtain additional evidence.) List the pros and cons of acting versus waiting.

- **If I don't take action today, will I be held accountable for not acting?**
- **Not acting should be a decision, not a default**
- **Ask: What don't we know today that we should know?**

## 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

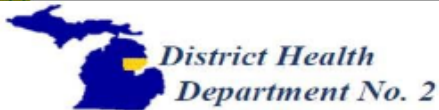
**Coordinate** with other relevant agencies, stakeholders, those who need to know to assist (e.g. Board of Health, legislators, providers and provider associations)

**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

## DHD2 Health Advisory (February 26, 2016)



1-800-504-2650

MENU 

The Advisory below was provided to specific residents whose well water results detected PFC contamination. The testing was conducted by the Department of Defense and Michigan Department of Environmental Quality.

**Health Advisory:** February 26, 2016 RE: PFC's Detected in Ground Water

Dear Homeowner,

As a precautionary measure, District Health Department No. 2 is issuing a Health Advisory to specific residents who received recent water test results from the Michigan Department of Environmental Quality (MDEQ). Based on the results detecting PFC's in your well groundwater, and the limited scientific data available on PFC's, District Health Department No. 2 is advising you to **seek an alternate water supply** for drinking and the preparation of food. The Michigan Department of Health and Human Services (MDHHS) and District Health Department No. 2 advise as a precautionary measure that residents do not consume the water in any way. If you have questions regarding this advisory, please contact Christina Bush, MDHHS Toxicologist at 1-800-648-6942 or via email at bushc6@michigan.gov. You may also contact District Health Department No. 2 at 1-800-504-2650.

This advisory is issued by:

Denise M. Bryan, M. P. A. Health Officer District Health Department No. 2

# Observations

- » **Incident command structure facilitated investigation and response**
- » **Communication and transparency critical**
- » **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

*“What decision – if you are wrong – will cause you the least regret?”*

Michael Lewis, THE PREMONITION: A PANDEMIC STORY (2021).

# Take-Aways

- » **More than one governmental entity may have authority to address a health threat**
- » **Public health has general responsibility to protect people from disease and environmental hazards even when it is not the regulatory agency**
- » **Health officers make 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**

# Attorneys are necessary to ensure that actions comply with law and to assist with determining a “legal pathway” to protect the public



## Getting to yes:

- Build relationships
- Come prepared with factual information
- This is what we want to do...How do we best do it?

# 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)

# Roundtable Discussion

Linda S. Vail, MPA, Health Officer  
Ingham County Health Department

Pamela B. Hackert, MD, JD, MPH, Medical Health Officer  
Genesee County Health Department

Marcia Mansaray, MSc, Deputy Health Officer  
Ottawa County Department of Public Health

# Thank you!

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