

Emergency Legal Preparedness Concerning Ebola: A Primer

As of December 1, 2014

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- **Brief Overview of the 2014 Ebola Outbreak**
- **International Legal Response Efforts**
 - World Health Organization
 - Foreign Governments
- **U.S. Legal Preparedness/Response**
- **Major Emerging Legal Challenges**
- **Emergency Legal Preparedness Resources**

2014 Ebola Quick Facts

- **Transmission:** direct contact with blood or bodily fluids*, or exposure to contaminated objects of *symptomatic* persons;
- **Symptoms:** fever, headache, joint/muscle aches, weakness, diarrhea, vomiting, stomach pain, lack of appetite, abnormal bleeding (symptoms appear between 2-21 days post-exposure)
- **Fatality rate:** may exceed 40% of known cases although some data from WHO suggest the rate may far exceed this estimate



* Ebola virus may persist in seminal fluid up to 82 days after becoming symptomatic, WHO **recommends** male survivors are to abstain from sex for 3 months

2014 Ebola Epidemiology

- The Ebola outbreak was detected in southeastern regions of Guinea in March 2014. At the time, 49 cases and 29 deaths were reported to WHO.
- As of November 23, 2014, a total of **15,935 cases and 5,689 deaths** were reported in Guinea, Liberia, Mali, Nigeria, Senegal, Sierra Leone, Spain, and the U.S.
- As of November 19, 2014, an additional **66 cases and 49 deaths** are confirmed from a different viral strain in the Democratic Republic of Congo (DRC). As of November 21, 2014 WHO declared the **outbreak over**.
- On October 6, 2014, the **first known case of Ebola contracted outside of Africa** was reported in Spain.
- Continued global spread of Ebola is projected absent rapid interventions.



Image source: directrelief.org



Image source: guardianlv.com

Source: Centers for Disease Control and Prevention



August 1, 2014: “If the situation continues to deteriorate, the consequences can be catastrophic in terms of lost lives but also severe socio-economic disruption and a high risk of spread to other countries.”

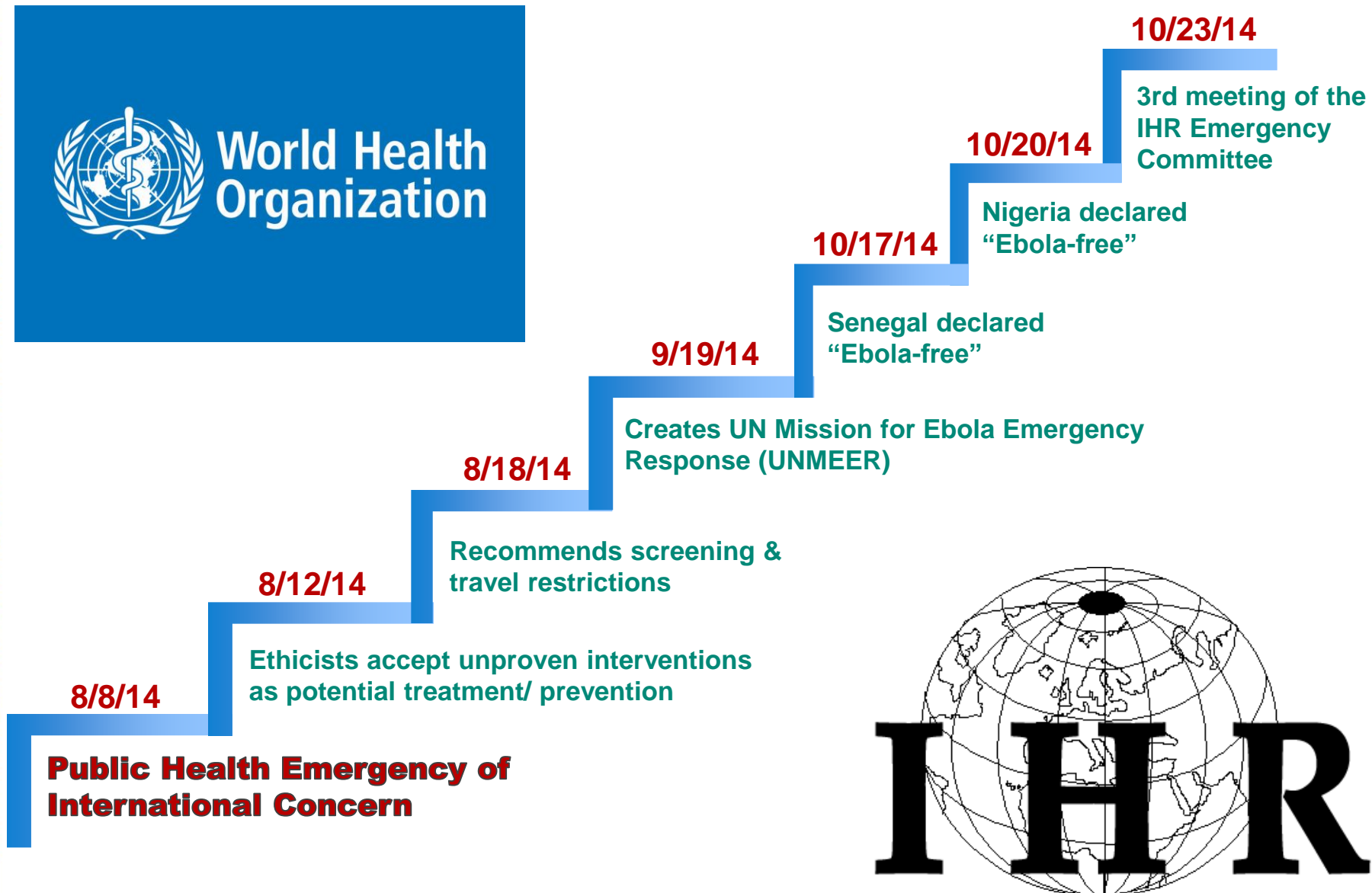
September 18, 2014: “This is likely the greatest peacetime challenge that the United Nations and its agencies have ever faced . . . This is not just an outbreak [or] a public health crisis. This is a social crisis, a humanitarian crisis, an economic crisis, and a threat to national security well beyond the outbreak zones.”

November 3, 2014: “The Ebola outbreak . . . is the most severe acute public health emergency seen in modern times. . . . [H]eads of state . . . rightly attribute the outbreak’s unprecedented severity to the failure to put basic public health infrastructures in place.”



Source: telegraph.co.uk

WHO Responses



Declarations of Emergency

Sierra Leone



State of Public Emergency
[7/31/14]

Liberia



State of Emergency
[8/6/14]

Nigeria



National Emergency
[8/8/14]

Guinea



National Health Emergency
[8/13/14]

Ebola-related Emergency Measures

EMERGENCY MEASURES	GUINEA	LIBERIA	NIGERIA	SIERRA LEONE
Closures (borders, schools, markets)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Compulsory Leave		<input type="checkbox"/>		<input type="checkbox"/>
Cordon Sanitaire	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Curfews		<input type="checkbox"/>		<input type="checkbox"/>
Disinfection	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Improved Sanitation	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Isolation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lockdown				<input type="checkbox"/>
Price Controls		<input type="checkbox"/>		
Quarantine	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Screening	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Surveillance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Testing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Travel Restrictions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	11	14	8	14

Guinea



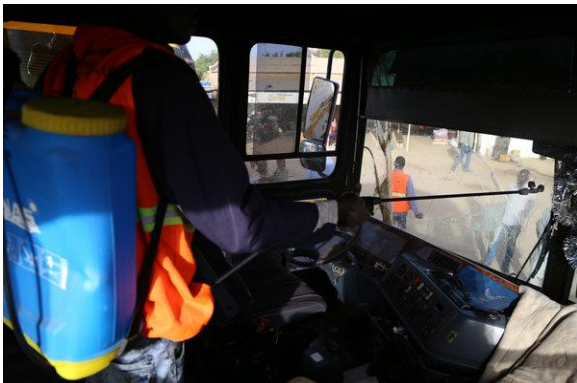
HCWs educate on Ebola prevention

Liberia



Riot police enforce quarantine

Mali



Disinfection of public transportation

Sierra Leone



Increased sanitation procedures

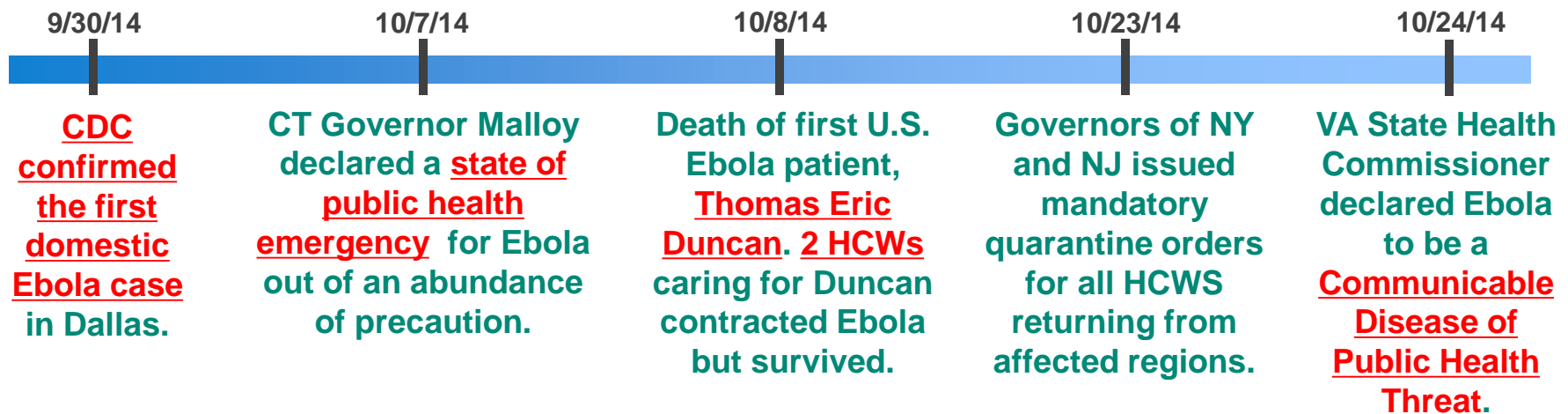
Select Foreign Ebola Responses

- United Kingdom: issued a travel advisory for affected countries; began screening air passengers from at risk countries at Heathrow airport.
- Ivory Coast: closed its land borders with Guinea & Liberia.
- Spain: set up a special 'crisis committee' to handle Europe's 1st Ebola case.
- Columbia: denied visas to anyone who has visited Sierra Leone, Liberia, Guinea, Nigeria or Senegal in the past 4 weeks.
- Jamaica: banned residents of Guinea, Liberia and Sierra Leone as well as persons who have transited through these countries.
- Venezuela, Cuba, Bolivia and Ecuador: banned travelers from Ebola nations.
- Rwanda: denied entry to visitors who traveled to Guinea, Liberia, Senegal, or Sierra Leone; required those in the U.S. or Spain to report their medical condition for the first 21 days of their visits.
- Australia: canceled non-permanent and temporary visas held by people from affected countries; will not process new visa applications.
- Canada: will not issue visas to residents of countries with widespread Ebola transmission.

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U.S. Preparedness & Response

- 6 Americans infected and diagnosed with Ebola in West Africa have been brought to U.S. for treatment; an additional 4 persons were diagnosed in the U.S.
- Contact tracing by federal, state, and local authorities identified hundreds of others at slight risk of exposure, leading to voluntary quarantines.



- No formal *federal* emergency declarations or other state/local declarations, although authorities in several jurisdictions have considered them.

President Barack Obama

August 1, 2014 “[EVD] is something that we take very seriously . . . We feel confident that the procedures we’ve put in place are appropriate . . .”



October 28, 2014
“[S]tarting to see some progress in Liberia . . . this disease can be contained. It will be defeated. Progress is possible.”

August 6, 2014 “[EVD] is controllable if you have a strong public health infrastructure in place . . . this is not an airborne disease; this is one that can be controlled and contained very effectively if we use the right protocols”

October 6, 2014 “[A]s we saw in Dallas, we don’t have a lot of margin for error. If we don’t follow protocols and procedures . . . we’re putting folks in our communities at risk.”

Presidential Ebola Response Plan

4 Goals: (1) control the outbreak; (2) limit secondary effects on local communities and their economies; (3) coordinate a larger global response; and (4) strengthen public health infrastructure in affected countries.

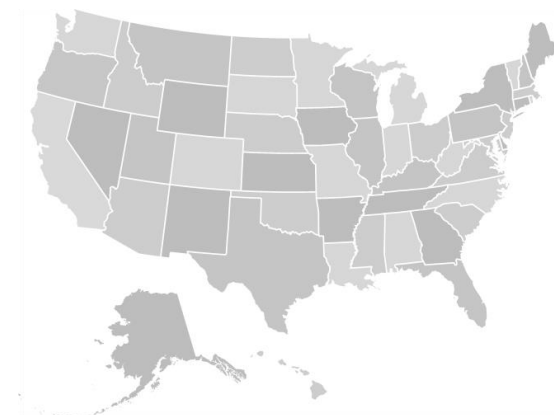
International response

- Personnel: Up to 4,000 military and uniformed personnel to Liberia, 21-day quarantine **ordered** for all military personnel serving in Ebola stricken regions
- Healthcare Workers: Aid; Training; Recruitment; Organization
- Targeted Distribution: Treatment facilities; Protection, Testing, and Home Health Care kits; PPE; Medical supplies; Information and education



Domestic response

- Enhanced surveillance and laboratory testing in states
- ASPR/CDC **guidance and checklists** for states, hospitals, HCWs, flight crews, and Customs & Border Protection Officers
- U.S. military **30-person "quick-strike team"** will provide direct treatment to Ebola patients inside the U.S.



Federal Public Health Responses



- 5 U.S. airports began Ebola screenings on 10/16/14
- Began active post-arrival monitoring for returning travelers on 10/27/14
- Interim guidance on managing patients, handling specimens, monitoring exposures & PPE use for HCW managing Ebola patients
- Resources for Parents, Schools, and Pediatric Healthcare Professionals



- Emergency Use Authorizations (EUAs) issued for 5 experimental assay tests
- Granted request for compassionate use exception for TKM-Ebola
- Granted Emergency Investigational New Drug Applications (EIND) for brincidofovir (CMX001)



- Announced beginning of a human safety study for possible Ebola vaccine
- Support and research on effective diagnostic and therapeutic techniques
- Announced human testing of a second Ebola vaccine is underway

Effective Ebola Response

FIVE COMPONENTS OF EFFECTIVE EBOLA RESPONSE

Incident management



Effective incident management/EOC functioning in the 3 countries and every district within them

Treatment



Expand isolation and treatment capacity

Burial support



Rapidly ensure safe burial

Infection control in all health care systems



Training, supplies, and public health monitoring

Communications



Communicate clearly, simply, and frankly at all levels to change behaviors

CDC Risk Categories for Travelers

Monitoring symptoms and controlling movement of individuals with potential Ebola exposure should be based on an escalating risk level classification.

High Risk

- Exposure to, or processing of, blood or bodily fluids of a symptomatic patient without appropriate PPE
- Direct contact with a dead body, without appropriate PPE – in an intense transmission country
- Living in same household and providing direct care to a symptomatic patient

Some Risk

- Direct contact with a symptomatic patient, in an intense transmission country with appropriate PPE
- Close contact with a symptomatic patient for a prolonged period of time without appropriate PPE

Low Risk (but not zero)

- Travel to an intense transmission country
- Briefly in same room, no contact, with a symptomatic patient
- Skin contact with a low risk patient
- Traveling on the same aircraft as a symptomatic patient

No Risk

- Contact with an asymptomatic patient, or an asymptomatic individual having contact with a patient
- Travel to an intense transmission country >21 days prior, or one without intense transmission

CDC Risk Category Based Actions

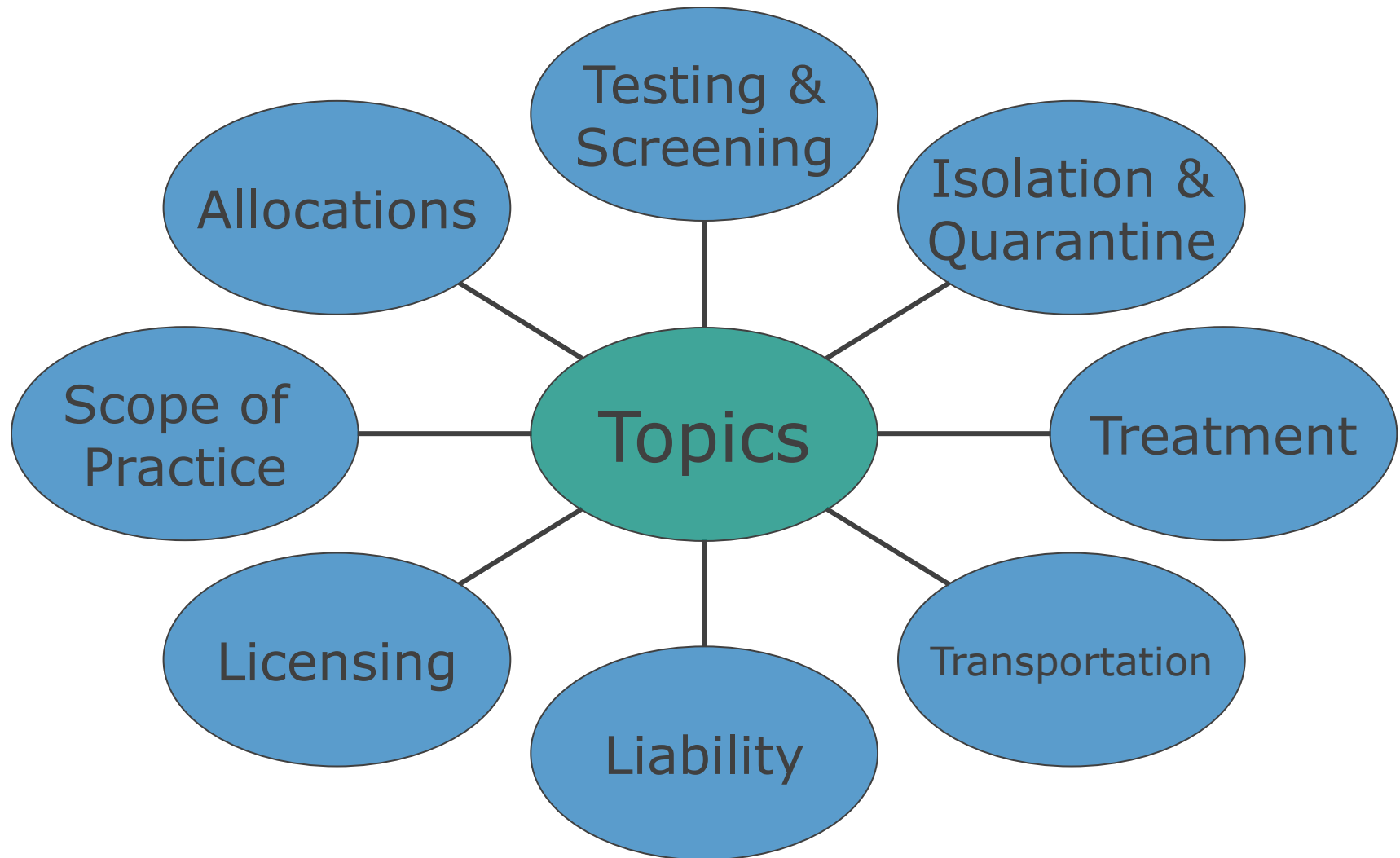
RISK LEVEL	PUBLIC HEALTH ACTION		
	Monitoring	Restricted Public Activities	Restricted Travel
HIGH risk	Yes- Direct Active Monitoring	Yes	Yes
SOME risk	Yes- Direct Active Monitoring	Case-by-case assessment	Case-by-case assessment
LOW risk	Yes- Active Monitoring for some; Direct Active Monitoring for others	No	No
NO risk	No	No	No

Image source: [cdc.gov](https://www.cdc.gov)

- Symptomatic individuals - high risk ~ should be appropriately evaluated; isolation orders *may* be issued; federal public health travel restrictions *will* be issued.
- Symptomatic individuals in some risk or low ~ should be appropriately evaluated; isolation orders and federal public health travel restrictions *may* be issued.
- Many states follow CDC guidance, but do not have to, leading some to diverge.

State Divergences from CDC Guidelines

State	Issue Date	Direct Active Monitoring for All Travelers	Public Setting & Travel Restrictions	Separate Category for HCWs	Mandatory Home Confinement/Quarantine
<u>CA</u>	10/29/14				✓
<u>FL</u>	10/25/14	✓			✓
<u>GA</u>	10/27/14			✓	✓
<u>IL</u>	10/27/14			✓	✓
<u>IN</u>	10/29/14	✓			
<u>LA</u>	10/30/14		✓		
<u>ME</u>	10/28/14				✓
<u>MD</u>	10/27/14	✓	✓		✓
<u>NH</u>	10/28/14	✓			✓
<u>NJ</u>	10/31/14				✓
<u>NY</u>	10/26/14			✓	✓
<u>OH</u>	10/31/14	✓	✓	✓	✓
<u>TX</u>	11/4/14				✓
<u>VA</u>	10/27/14		✓	✓	✓
TOTALS		5	4	5	12



Select Legal Issues

Privacy

*Potential infringements of health
Information/bodily privacy*

Liability

*Of HCWs, hospitals,
officials, volunteers?*

Testing & Screening

*Due process procedures and
4th Amendment protections*

Social Distancing

*What's lawful as contrasted
with what actually works?*

Emerging Legal Issues

- Status, timing, and tracking of federal, state, and local emergency declarations
- Roles and responsibilities of federal, state, and local public health officials
- Nature of consent for use of experimental treatments
- Federal and state authority to require testing, isolation, or quarantine
- EMTALA issues for hospitals seeking to transfer prospective Ebola patients
- Potential liability related to missteps or omissions in treatment or isolation of Ebola patients
- Worker's compensation or disability benefits for HCWs who contract Ebola
- Authority to impose formal travel restrictions
- Interjurisdictional deployment of volunteer HCWs and Ebola response teams
- Protections for job loss related to imposition of quarantine or isolation
- Employer restrictions on employees' personal and business travel
- Extent to which employees may refuse to work due to Ebola concerns
- Potential indemnification of pharmaceutical companies producing Ebola vaccines
- Schools barring students and staff due to travel related Ebola risks
- Application of HIPAA Privacy rules in Emergency Situations



Select Ebola-related Legal Actions



October 24, 2014: Class action filed against [iBIO, INC.](#) alleging it issued materially false and misleading statements to investors regarding experimental Ebola drug Zmapp.



October 28, 2014: Stephen Opayemi sued [Milford Public Schools](#) to allow his third grade daughter to return to school after a 10-day trip to Nigeria.



October 29, 2014: Class action filed against [Kimberly Clark, Corp.](#) alleging the company falsely claimed its surgical gowns offered protection against exposure to Ebola.



October 31, 2014: Maine Department of Health and Human Services sought order against nurse [Kaci Hickox](#) to enforce direct active monitoring and other steps “necessary to protect other individuals from the dangers of infection.” The court rejected the order based on a lack of clear and convincing evidence.

- Network for Public Health Law ~ Emergency Legal Preparedness Response
- Georgetown Law O'Neill Institute ~ The Ebola Outbreak: A Global Conversation and Resources
- UPMC ~ Center for Health Security
- CDC ~ Emergency Preparedness and Response
- ASTHO ~ Ebola Virus Disease: Information for States and Territories
- NCSL ~ State Quarantine and Isolation Statutes
- NW Center for Public Health Practice ~ Public Health Law Training Database
- NACCHO ~ Emergency Legal Preparedness Training Kit
- CHEST ~ Legal Preparedness: Care of the Critically Ill and Injured During Pandemics and Disasters: CHEST Consensus Statement

Acknowledgements

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- » *Questions, comments* – ask the Network for guidance or assistance on legal or policy issues
- » james.hodge.1@asu.edu

- **Dr. Kent Brantly is from Fort Worth, TX, serving as a medical missionary with Samaritan's Purse.**
- **Contracted Ebola in Liberia**
- **Flown to Emory University Hospital in Atlanta for treatment on August 2, 2014**
- **Arrived able to walk and in stable condition**
- **Treatment: early IV fluids; ZMapp, an experimental anti-viral not yet tested on humans**
- **Outcome: survived**



Thomas Eric Duncan

- **Thomas Eric Duncan was a native Liberian, visiting family in Dallas, TX. He was the first patient to be diagnosed on U.S. soil.**
- **Contracted Ebola in Liberia**
- **Received treatment at Texas Health Presbyterian Hospital in Dallas on September 28, 2014**
- **Arrived in “serious condition”**
- **Treatment: Brincidofovir*, an oral anti-viral undergoing testing with more common viral infections**
- **Outcome: Fatal**

* ZMapp supplies were reportedly exhausted at the time of Duncan’s treatment.



Ashoka Mukpo

- **Ashoka Mukpo is a a freelance cameraman for NBC. He currently resides in Providence, RI.**
- **Contracted Ebola in Liberia**
- **Flown to Nebraska Medical Center in Omaha for treatment on October 6, 2014**
- **Arrived strong and without extreme symptoms**
- **Treatment: constant fluids; blood transfusion from Ebola survivor Dr. Kent Brantly; and Brincidofovir**
- **Outcome: survived**



- **Dr. Martin Salia was a surgeon. He was a native of Sierra Leone and a permanent U.S. resident.**
- **Contracted Ebola in Sierra Leone**
- **Flown to Nebraska Medical Center in Omaha for treatment on November 15, 2014**
- **Arrived in “extremely critical” condition**
- **Treatment: convalescent plasma serum from a previously recovered Ebola patient; ZMapp*; supportive care for organ failure**
- **Outcome: Fatal**

* Mapp Pharmaceutical contacted the hospital and stated they had some ZMapp available and offered to supply it for Dr. Salia’s treatment.

