Public Health Decision-Making During the COVID-19 Pandemic

1:00 – 2:00 p.m. EST | April 23, 2020
How to Use WebEx Q & A

1. Open the Q&A panel
2. Select “All Panelists”
3. Type your question
4. Click “Send”
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- Areas of expertise:
  - Development and execution of marketing strategies
  - Management of organizational membership programs
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- J.D., University of Michigan Law School
- Research interests/areas of expertise:
  - Data sharing to improve community health
  - Newborn screening samples and research
  - Immunization
  - Bed bugs
Presenter

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- J.D., University of Pittsburgh School of Law
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- Research interests/areas of expertise:
  - Health equity
  - Health care delivery
  - Public health agency structure, organization, and accreditation
Public health decisions should be based on timely and reliable data and science. But, information absent + a moving target

» Who is infected?
» Who is infectious?
» How does disease spread?
» What control measures work?
» Who has recovered? Who has died?
» Who is immune from re-infection?
» What resources do we have, who has them, & how do we get more?
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 & ethics question: How should I exercise my discretion?
Using law to protect the public’s health

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?
Using law to protect the public’s health

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

**DUTY . . .**

» Am I mandated to take action?

» Am I mandated to take a particular action?
Using law to protect the public’s health

Policy & ethics 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?
Based on discretionary authority

Must be used reasonably, impartially.

Considerations:

» Resources  » Impact  » Proportionality
» Feasibility  » Priorities

Uniformity & consistency

Strength of evidence, strength of legal authority

Public opinion

Political considerations – relevant? (e.g. relationships)

Doing “nothing” is doing “something” (risk assessment)
### Decision-Making Ethical Considerations

<table>
<thead>
<tr>
<th>Ethical Consideration</th>
<th>Description</th>
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<tbody>
<tr>
<td>Autonomy</td>
<td>Respect for individual’s right to make own choices</td>
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<tr>
<td>Non-Maleficence</td>
<td>First, do no harm</td>
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<tr>
<td>Beneficence</td>
<td>Do good</td>
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<tr>
<td>Justice</td>
<td>Treat all people equally and equitably</td>
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<tr>
<td>Fidelity</td>
<td>Keep promises; be faithful to the community’s trust</td>
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<td>Veracity</td>
<td>Be honest</td>
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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/
Assess the Situation: Facts

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
Evaluate the Risk

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

▸ Consider impact on different populations—especially those most vulnerable.
Consider the Options

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?  Wait?

Should you take action now or wait?
What is potential harm in implementing measures or mitigation **prematurely**? In **delaying** measures or mitigation?

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?
- What resources are needed to execute & maintain the chosen course of action?
- Not acting should be a decision, not a default.
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<tr>
<th><strong>Balance:</strong></th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Shapeshift:</strong></td>
<td>When would YOU want to know as a resident, patient, parent, consumer…</td>
</tr>
<tr>
<td><strong>Anticipate the reaction/perception:</strong></td>
<td>What could be the legitimate criticism of lack of transparency and delay or lack of notice?</td>
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Application: Scenario 1

Releasing names, addresses of positive COVID-19 cases to first responders

- Legal authority to disclose
- Probably no duty to warn
- Best professional judgment
Factors to Consider

- Individual’s right to privacy
- Protecting health and safety of first responders (i.e., to determine type of PPE needed)
- Whether disclosure would protect general public by preventing/controlling spread of COVID-19
- Alternatives short of disclosure / mitigating risks
- Potential for broader identification of individuals
- Potential for stigma/discrimination against a community or neighborhood

Question to first responders: What will you do differently if you know someone tested positive?
Application: Scenario 2

- In politically moderate state:
  - Broad stay-at-home guidance in place for three weeks
  - Governor wants your support to remove restrictions now
  - Your models indicate it would increase morbidity/mortality
- As Chief Health Officer, how do you respond?
Factors to Consider

- Economics
  - Loss of businesses
  - Continued unemployment
  - Mental health consequences
  - Second wave morbidity/mortality

- Individual liberties

- Health system and testing capacity

- Health equity

- Science and politics

- If not now, when?

- Your job
Application: Scenario 3

- State takes over fiscally distressed city in your health department’s county
- Emergency manager appointed unilaterally decides to switch drinking water source to save money
- New water source probably contaminated, but state withholds data
- No direct authority to override decision
- What action, if any, do you take?
Factors to Consider

- Responsibilities to community
- Health consequences of inaction
- Retaining community’s trust
- Availability of direct action
- Using bully pulpit
- Political implications of intervening
- Your job
**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”

Doing nothing is doing something – make sure doing nothing is a conscious choice
Arbitrary - not considered, ignores the facts, whimsical
Capricious - impulsive and unpredictable
There may be no right answer, only choices – the choice should make sense, reflect ethical principles, and the basis should be documented.

Questions?

I ❤️ LAWYERS
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Thank you for attending

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COVID-19: Real-Time Guidance, Resources & Information

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