

Public Health Law Communicable Disease



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NOVEMBER 20, 2014

General Legal Authority

- Broad powers derive from *State ex rel Nowotny v. City of Milwaukee (1909)*
 - “A health officer who is expected to accomplish any results must necessarily possess large powers and be endowed with the right to take summary action, which at times must trench closely upon despotic rule. The public health cannot wait upon the slow processes of legislative body or the leisurely deliberation of court. . .”

General Legal Authority

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- **Broad powers must be balanced against individuals' rights**
 - the right to be free from restrictions is overcome only when the exercise of governmental power is necessary
 - choose least restrictive measure that will assure public's health
 - least restrictive measure will depend upon the threat to the public's health

General Legal Authority

- **Intrusion on civil liberties**
 - **ACLU press release during H1N1:**

“ . . . Government actions designed to control communicable diseases raise serious civil liberties concerns, such as the loss of one’s physical freedom to assemble, travel and work. Public health actions that single groups or individuals because of their ethnicity or country of origin also raise serious civil liberties concerns.”

General Legal Authority

- **The broad power affirmed in *Nowotny* is codified in our statutes today**
 - Department of Health Services has power to do “what is reasonable and necessary for the prevention and suppression of disease”
s. 250.04(1)
 - Department “may authorize and implement all emergency measures necessary to control communicable disease”
s. 252.02(6)

General Legal Authority

- Local health officers “may do what is reasonable and necessary for the prevention and suppression of disease”
s. 252.03(2)
- Local health officers “shall promptly take all measures necessary to prevent, suppress and control communicable diseases. . .”
s. 252.03(1)

General Legal Authority

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Local Public Health

Local boards of health shall assure the enforcement of state public health statutes and rules

s. 251.04(1)

- ✦ Violation of laws relating to public health

s. 252.25

- ✦ Violation of laws relating specifically to communicable disease

s. 252.19

- ✦ Refer to Corporation Counsel/District Attorney

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- **Public health law related to communicable disease**
 - **Wisconsin Statutes Chapter 252**
 - ✦ Includes general and specific authority related to communicable disease
 - **DHS 145, Wisconsin Administrative Code**
 - ✦ Includes reporting requirements and procedure for issuing orders

Communicable Disease

- **Department of Health Services**
 - Establish systems of disease surveillance and inspection
s. 252.02(1)
 - May issue orders guarding against the introduction of communicable disease in the state
s. 252.02(4)
 - Remove person with communicable disease from buildings or conveyances with s. 66.0119 special inspection warrant
 - ✦ order vessel, conveyance, train stopped as long as necessary
s. 252.02(1)
 - May forbid public gatherings when deemed necessary to control outbreaks or epidemics, including in schools and churches
s. 252.02(3)
 - Close schools
s. 252.02(3)

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- **Local Health Officer**

- Act as state agent to remove person with CD from buildings or conveyances with s. 66.0119 special inspection warrant
s. 252.02(1)
- May forbid public gatherings when deemed necessary to control outbreaks or epidemics
s. 252.03(2)
- Close schools – implied through general authority and through the definition of a ‘school day’ in s. 115.01(10)
- No person may interfere with investigation of place or occupants
s. 252.03(4)

Communicable Disease

- **Reporting**

- Health care provider, laboratory and anyone having reason to believe the existence of a CD must report to local health officer
s. 252.05
 - ✦ Includes CDs listed in Appendix A of DHS 145 and any other infectious disease which the state epidemiologist deems to be a threat to the public
 - ✦ Ebola expressly included via November 4, 2014 declaration
- Report must include information required in DHS 145 and any other information required by public health
- DA shall prosecute violations of duty to report
s. 252.05(11)

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- **Local Health Officer shall immediately investigate and cause examinations to be made as necessary upon report or appearance of a communicable disease**

s. 252.03(1)

- If the local health officer is not a physician, one must be consulted if there is doubt as to the diagnosis or if advice is needed

- **Shall order additional lab tests if:**

- Dispute regarding disease determination, or
- Potential public health significance, or
- More testing will aid investigation

s. 252.05(9)

Communicable Disease

- **Local health officer shall use reasonable means to confirm a case or suspected case, shall ascertain possible sources of infection and exposures to infection, shall require restrictions or other control measures.**

s. 252.06(3); DHS 145.05(1)

- **The Department, in cooperation with local health officer, shall use special surveillance and control measures to control an unusual occurrence of a CD**

DHS 145.05(4)

Communicable Disease

- If a person is *known* to have, or is *suspected* of having, a contagious medical condition that poses a threat, the Department or local health officer may issue one or more of seven directives
 - DHS 146.06(4)
 - Applies to the reportable diseases listed in Appendix A of DHS 145 and those the state epidemiologist declares to be reportable

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- A person is considered to have a *known* contagious medical condition which poses a threat if:
 - The person has been medically diagnosed and
 - Exhibits any one of the following six behaviors:

DHS 145.06(2)

 - ✦ Person **has transmitted** the disease or shown a careless disregard of transmission;
 - ✦ Past behavior shows substantial likelihood that person **will transmit** or past statements credibly show an intent to transmit;
 - ✦ **Refuses to follow** medical regimen of examination or treatment to make the disease non-contagious;

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- ✦ Is **unable to follow** a medical regimen of examination or treatment to make the disease non-contagious because:
 - AODA issues
 - Low intellectual functioning
 - Organic or psychiatric disorders of thought, perception, mood, orientation or memory
 - A minor or court-declared incompetent
- ✦ Has **misrepresented facts** of medical history or behavior that increases the threat of transmission; or
- ✦ Any **other willful act**, omission or course of conduct that increases the threat of transmission

Note: threats of transmission must be epidemiologically-based

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- A person is suspected of having a contagious medical condition which poses a threat if:
 - The person exhibits any of the six behaviors and
 - Demonstrates any of the following which is unrefuted by medical evidence:
 - ✦ Has been linked epidemiologically to exposure to a known case;
 - ✦ Has lab findings indicative of a CD; or
 - ✦ Exhibits symptoms medically consistent with a CD

DHS 145.06(3)

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- **Seven possible directives in DHS 145.06(4):**
 - Participate in education or counseling
 - Participate in treatment for known or suspected condition
 - Undergo tests and exams to identify, monitor and evaluate disease
 - Notify or appear before local health official to verify status, for testing or for direct observation of treatment
 - Stop conduct or employment that is a threat to others
 - Reside in an isolated or segregated setting
 - Be placed in an appropriate institutional treatment facility

Communicable Disease

- **The case for the monitoring and/or travel restrictions related to Ebola is based on:**
 - The Department's and local health officer's general authority to prevent the introduction of Ebola – s. 252.02 and s. 252.03
 - The Department's and local health officer's authority as it relates to unusual occurrences of disease – DHS 145.05(4)
 - The findings of risk connected to having been in countries with widespread Ebola transmission is the epidemiological link to exposure that can classify a person as a suspect case – DHS 145.06(3)
 - Authority to order examinations to identify and monitor, to directly observe tests and status, and to control conduct – DHS 145.06(4)

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- **A court order is not necessary if a person voluntarily complies with a directive**
- **If a person fails to comply, the local health officer may petition a court to order compliance**
DHS 145.06(5)
- **The court petition must include facts to establish:**
 - The directive was in writing
 - The directive included the reasons and evidence for the directive
 - The person had the opportunity to seek counsel
 - The remedy proposed is the least restrictive which will protect the public's health

Communicable Disease

- **The reasons for the directive must be proved by clear and convincing evidence that:**
 - The person has, or is suspected of having, a CD
 - The CD is in Appendix A or separately declared
 - The person known to have a CD exhibited one of the six behaviors
 - The person suspected of having a CD exhibited one of the six behaviors and one of the three criteria

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- **Issues specific to isolation and quarantine**
 - May isolate a patient and order quarantine of contacts as may be necessary and as consistent with DHS 145
 - s. 252.06(1)
 - ✦ Isolation = separation of persons who have a specific infectious illness
 - ✦ Quarantine = separation of persons who, while not yet ill, have been exposed

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- If deemed necessary, forbid direct contact with a patient in isolation or quarantine by anyone other than:
 - ✦ Local health officer and representative
 - ✦ Attending physicians and nurses
 - ✦ Clergy
 - ✦ Immediate family
 - ✦ Those with special permit from local health officer

s. 252.06(4)(a)

Communicable Disease

- Local health officer may use others to execute orders and guard places of quarantine or restrictions if an intent to violate the order is shown
 - s. 252.06(5)
 - ✦ Quarantine guards shall be sworn in, shall have ‘police powers’ and may use all necessary means to enforce the orders
 - ✦ Advantages to using law enforcement officers:
 - Already trained in police powers and reasonably detaining/restraining others
 - May arrest; it is a crime to willfully violate or obstruct the execution of a public health law or order – s. 252.25

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Guidance for Ebola

- Individuals who have a travel history to the specific West African countries involved in the outbreak, but do not have symptoms of Ebola, are not contagious. These individuals do not pose an infection risk to the public, nor law enforcement.
- Minimal, if any, force should be needed in situations involving individuals who are being monitored and who are not symptomatic.
- Law enforcement may be requested to have a visible presence if there is concern that an individual may not be compliant with public health requests.
- If an incident arises involving a monitored individual who is **not** symptomatic that requires law enforcement to have direct personal contact with the individual, he/she should be treated/handled as any other non-infectious individual under the same circumstances.
- Law enforcement should not engage a symptomatic individual without consultation with public health and appropriate PPE. Please work closely with your local public health agency to establish necessary lines of communication to assure that consultation access is available.

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- If necessary, local health officer may remove a person to a separate place who needs to be quarantined/restricted if removal would not endanger the person's health
 - s. 252.06(6)
- May order removal to hospital or other place of a person confined in jail, prison, mental health institute or other place of detention if the person has a disease deemed dangerous to other residents or neighbors
 - s. 252.06(6)
 - ✦ Detain securely
 - ✦ Return upon recovery
 - ✦ Copy of removal order to court that committed/processed person

Communicable Disease

- Expenses for necessary medical care, food and other articles of care are the responsibility of the infected person
 - County/municipality in which the infected person resides is responsible for the following expenses:
 - ✦ Quarantine guards
 - ✦ Maintaining quarantine and isolation of quarantined area
 - ✦ Examinations and tests directed by the local health officer
 - ✦ Medical care, food and other articles of care provided to a dependent person, as defined under general relief laws
- s. 252.06(10)

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- **Communicable disease authority as it relates to property and animals:**
 - May direct persons who own or supervise property or animals and their environs, which present a threat of transmission of a CD, to abate the threat of transmission
DHS 145.06(6)
 - Department may issue orders for the disinfection of 'things' such as buildings and conveyances that are infected or suspected of being infected
s. 252.02(4)
 - Department may appoint an agent to execute these orders
 - ✦ If the property is privately owned, costs incurred by the agent are paid by the state
 - ✦ If the property is publicly owned (eg., jail or school), costs incurred by the agent are paid by the unit of government controlling the property
s.252.02(5)

Communicable Disease

- **Authority regarding human health hazards may apply**
 - Human health hazard includes a substance or condition that has the potential to cause acute illness, to endanger life or spread infectious disease, or to injure the public's health
s. 254.01(2)
 - Local health officer shall order abatement of HHH on private premises under the procedures in s. 254.59

Complementary Laws

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- **Liability Protections**

- Non-employee physician who provides medical oversight services to local public health, free of charge, is state agent of the department of health services

s. 251.07

- Volunteer who registers with state or local agency to assist during disaster or imminent threat of disaster is considered employee of agency

s. 323.41

- No declaration of emergency needed
- Indemnification and legal representation

Complementary Laws

- **Federal Health Insurance Portability and Accountability Act (HIPAA)**
 - Limits the use and disclosure of personal health information
 - PHI may be disclosed without the individual's authorization under specified exceptions such as:
 - ✦ uses and disclosures “required by law”
 - ✦ uses and disclosures for public health activities
 - ✦ disclosures for judicial and administrative proceedings

Complementary Laws

- **HIPAA - Required by law - 45 CFR 164.512(a)**
 - 'Required by law' means a mandate in federal, state, or local law that compels an entity to use or disclose PHI
45 CFR 164.103
 - The mandate must be enforceable in a court of law
 - Do disclosures required by public health *orders* fall under this exception?

Complementary Laws

- **HIPAA - Public health activities – 45 CFR 164.512(b)**
 - May disclose to public health authorities to perform public health activities
 - ‘Public health authority’
 - ✦ federal, state, local or tribal agency responsible for public health matters, and its employees, agents and contractors
45 CFR 164.501
 - ‘Public health activities’
 - ✦ Prevent or control disease or injury
 - ✦ Conduct surveillance, investigation and intervention
 - ✦ Notify person exposed to communicable disease or at risk of contracting or spreading communicable disease, if authorized by law to make notification

Complementary Laws

- **HIPAA – Administrative/judicial proceedings – 45 CFR 164.512(e)**
 - **May disclose in response to:**
 - ✦ **Court order or order of an administrative tribunal**
 - ✦ **Subpoena, discovery request, or other lawful process if there is satisfactory assurance that:**
 - **HIPAA qualified protective order received/requested, *or***
 - **Reasonable efforts made to notify subject of PHI of the request**

Complementary Laws

- **State privacy protections**
 - Patient health care records are confidential except to the extent they could be disclosed without consent under HIPAA s. 146.82
 - ✦ Reports of communicable disease under ch. 252 are treated as patient health care records
 - ✦ A covered entity may re-disclose information if it is a release that would be permitted under the statute
 - ✦ An entity that is not a covered entity may re-disclose for the same purpose for which the information was received
 - Specific protection of health information
 - ✦ HIV status – s. 252.15(3m)
 - ✦ Sexually transmitted disease – s. 252.11(7)
 - ✦ Mental health/AODA – s. 51.30; 45 CFR Part 2

Presenter Contact Information

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