

AGREEMENT regarding joint field investigations following a suspected bioterrorist incident between the City of New York Department of Health and Mental Hygiene having an office located at 125 Worth Street, New York, New York 10013, the City of New York Police Department having an office located at 1 Police Plaza, New York, New York 10038, and the Federal Bureau of Investigation having an office located at 26 Federal Plaza, New York, New York 10278.

Introduction

In the event of a suspected or confirmed bioterrorist (“BT”) event, it is essential that public health and law enforcement agencies coordinate their investigations closely, so that shared objectives (e.g., determining where and when a release may have occurred) can be reached. For the New York City Department of Health and Mental Hygiene (DOHMH), determining the time and place of a BT event allows interventions such as mass prophylaxis to focus on those individuals most likely to have been exposed and who are at-risk of preventable infection. In the event of the intentional introduction of a biological agent, identification of the crime scene and those potentially infected would represent a major step toward apprehending those responsible for the crime. When the public health and law enforcement sectors collaborate soon after a possible bioterrorist event has been identified, critical information can be uncovered and shared more efficiently and quickly.

These guidelines apply to the following potential scenarios – (a) investigation of the initial reports of a patient(s) with a potential, but not yet confirmed infection that may represent the first indication that an intentional biological release has occurred, or (b) once a BT event is either suspected or confirmed in the city, interviewing other persons who may have the illness of concern, to determine when and where they may have been exposed (NOTE: Following a covert release, this epidemiologic information would be essential to identify the time and place of the attack).

Legal References

Section 11.03(b) of the NYC Health Code authorizes DOHMH to:

“...conduct such investigation as may be necessary to ascertain sources or causes of infection, to discover contacts and unreported cases, and shall take such steps as may be necessary to prevent morbidity and mortality.”

Section 3.01(c) of the Health Code provides DOHMH with the authority to take whatever actions are necessary to protect the public:

“Subject to the provisions of this Code or other applicable law, the Department may take such action as may become necessary to assure the maintenance of public health, the prevention of disease, or the safety of the City and its residents...”

After a potential bioterrorist event has been detected, DOHMH will be responsible for fielding investigators who will characterize the epidemiology of the incident.

Section 11.07(c) of the NYC Health Code authorizes DOHMH to share confidential patient information with other parties in order to protect public health:

Subsections (a) and (b) of this section shall not prevent authorized personnel of the Department from furnishing appropriate information to a physician or institution providing examination or treatment to a person suspected of or affected with a disease or condition, to an agency approved by the Department for prevention, treatment or social care, or to any person when necessary for the protection of health. A person, institution or agency to whom such information is furnished or to whom access to records has been given, shall not divulge any part thereof so as to disclose the identity of the person to whom such information or record relates, except insofar as such disclosure is necessary for the treatment of a case or carrier or for the protection of the health of others.

Section 435 of the New York City Charter provides that the Police Department: "...shall have the power and it shall be their duty to preserve the public peace, prevent crime, ... guard the public health ..."

Section 14-119 of the New York City Administrative Code provides that the Police Department shall cooperate with DOHMH: "It shall be the duty of the (Police) Department, and of its officers and members of the force, as the (Police) Commissioner shall direct, to promptly advise the Department of Health and Mental Hygiene of all threatened danger to human life and health. ..."

Section 14-120 of the New York City Administrative Code provides that the Police Department shall assign personnel to assist the Department of Health and Mental Hygiene: "The (Police) Commissioner, upon the requisition of the Department of Health and Mental Hygiene, shall detail suitable officers to the service of such Department of Health and Mental Hygiene for the purpose of the enforcement of the provisions of the health code. ..."

As a terrorist event is a federal crime, the Federal Bureau of Investigations (FBI) is the lead agency for the multi-agency, multi-jurisdictional law enforcement response and has primary jurisdiction over the criminal investigation. FBI will coordinate law enforcement activities with New York Police Department (NYPD) through the Joint Terrorism Task Force (JTTF).

Protocol Assumptions and Principles

This protocol establishes a means for DOHMH, NYPD and FBI ("the parties") to collaborate in joint investigations during the initial phase of the epidemiologic and possible criminal investigations of a suspected or confirmed BT event. It rests on the following shared understandings and principles:

1. All activities and data sharing that occur as part of this protocol will comply with all applicable laws, rules and regulations (including the NYC Health Code, NYC Administrative Code, NYS Sanitary Code, Federal Privacy Act and the Health Insurance Portability and Accountability Act) that govern when routinely collected public health and law enforcement data can be shared with other parties.
2. The joint investigation will focus on interviews (e.g., patients, relatives and potential contacts) that will address primarily where and when exposures to suspected or confirmed biological agents may have occurred. Data collected will be shared and protected in accordance with all applicable laws and regulations.
3. Absent unusual circumstances as agreed upon between all of the parties, joint investigation interviews will occur in a location adequately removed from potentially contaminated areas or crime scenes.
4. All parties recognize the potential “chilling effect” that the presence of law enforcement officers may have on patients being interviewed, on the medical professionals with whom DOHMH routinely works and upon whom traditional public health surveillance – through mandated disease reporting – depends. Efforts will be made to minimize those effects (e.g., law enforcement personnel interviewing patients will not be wearing uniforms). It is understood that joint investigations remain essentially a public health epidemiologic investigational activity, that DOHMH is not an agent of law enforcement when conducting such investigations, and that all confidential medical information discussed or obtained in the course of such investigations shall be deemed subject to the provisions of NYC Health Code Section 11.07(c).
5. When possible, FBI and NYPD personnel will be assigned to train with DOHMH field investigation teams beforehand to facilitate familiarity among team members.
6. When possible, FBI and NYPD personnel will be assigned to work with the same DOHMH field investigation teams for the duration of a joint investigation.
7. FBI and NYPD will be responsible for evaluating and addressing the security needs of DOHMH field investigation teams.

Deployment

When the decision has been made to conduct a joint field investigation, the following will occur:

1. Absent unusual circumstances as agreed upon between all of the parties, if the subject of the interview is hospitalized, DOHMH will inform the facility’s on-call administrator that public health and law enforcement personnel will be interviewing a patient(s) at their facility. Whenever possible, the interview will be

conducted in a manner that minimizes disruption to normal hospital operations and patient care. FBI and NYPD will deploy the minimum number of personnel needed to perform the interview(s).

2. DOHMH, FBI and NYPD teams will collect needed equipment and meet at an agreed upon staging area for a briefing and transport to the hospitals or other facilities where individuals will be interviewed.
3. Absent unusual circumstances as agreed upon between all of the parties, when arriving at a facility, DOHMH, FBI and NYPD personnel will inform the on-call administrator.
4. While at the hospital, DOHMH team members will independently identify other patients who may have illness consistent with the disease of concern by reviewing additional medical records and/or interviewing medical staff. Absent unusual circumstances as agreed upon between all of the parties, FBI and NYPD will not be present while DOHMH conducts these activities, in order to protect the confidentiality of other patients at the hospital or medical care setting who are not yet known to have the disease of concern.
5. Whenever joint interviews are conducted, DOHMH, FBI and NYPD team members will introduce and identify themselves and explain that they need to ask a series of questions to help determine where and when the subjects may have been infected.
6. During the joint interview, DOHMH questions will be limited to those pertaining to the illness of concern and how the subject may have been exposed or infected. To the extent possible under the circumstances and as agreed upon between all of the parties, confidential medical information will not be discussed in the joint interview and will be maintained by DOHMH. Absent unusual circumstances as agreed upon between all of the parties, DOHMH personnel will review medical records and interview patients and health care providers independently to collect confidential medical information that is needed for the public health investigation. The subject of the interview will not be physically examined when law enforcement personnel are present in the room.
7. Absent unusual circumstances as agreed upon between all of the parties, DOHMH staff will interview the subject of the interview first, while the FBI and NYPD personnel are present in the room. The data collection tool that will be used will be a DOHMH-prepared questionnaire. After completing the DOHMH interview, the FBI and NYPD personnel will interview the patient, while the DOHMH staff remains in the room.
8. If the subject of the interview requests that either party leave the room before or during the interview, this will occur, although DOHMH, FBI or NYPD personnel

may decide to return to interview this person at a later time.

9. After the interview, DOHMH, FBI and NYPD joint investigation team members will review the collected data and share information as appropriate.
10. If requested by FBI and NYPD, and agreed upon by DOHMH, copies of all completed questionnaires will be shared with FBI and NYPD, as appropriate and consistent with all applicable laws. Records containing confidential information will be maintained at DOHMH, FBI and NYPD in a secure manner that is agreed upon by the parties.
11. During the period of the joint investigation, FBI and NYPD may assign liaisons to DOHMH, and vice versa.
12. During the period of the joint investigation, the parties will inform each other in a timely fashion of any information that may have an impact on the joint investigation. If DOHMH determines a possible time and/or location of a biological agent's release, it will inform FBI and NYPD immediately, and vice versa.
13. The parties will consult to determine the best course of action regarding when to conclude the joint investigation.
14. If it is mutually agreed by the parties that the investigation of a BT event is concluded or no longer suspected, all confidential DOHMH, NYPD and FBI documents will be maintained in a secure manner that is agreed upon by the parties.
15. It is understood that any DOHMH information or documents that may have been provided to the FBI and/or the NYPD in the course of a joint investigation shall remain confidential and will be separately maintained by the FBI and/or the NYPD, respectively. Such information or documents shall not be used or redisclosed for any purpose other than one directly related to the suspected or confirmed BT event that generated the subject joint investigation, without the specific approval of the DOHMH commissioner or his/her designee. Similarly, all FBI or NYPD information or documents, which are provided to DOHMH in the course of a joint investigation, shall remain confidential and will be separately maintained by DOHMH. They shall not be used or redisclosed for any purpose other than one directly related to the BT event which generated the subject joint investigation, without the specific approval of an authorized representative of the FBI or of the NYPD, respectively.

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their duly authorized officers. This agreement shall be effective as of the date of the last signature hereon.

**THE CITY OF NEW YORK
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

BY: _____
Thomas R. Frieden, M.D., M.P.H.
Commissioner
Dated:

**THE CITY OF NEW YORK
POLICE DEPARTMENT**

BY: _____
Raymond W. Kelly
Commissioner
Dated:

FEDERAL BUREAU OF INVESTIGATION

BY: _____
Pasquale J. D'Amuro
Assistant Director-in-Charge
New York Office
Dated: