



On the Cover

Few concepts are more important in healthcare antitrust analysis and in counseling healthcare clients than integration. The article, "The Importance Of Integration In Healthcare Antitrust Counseling: *Yakima And Susquehanna*," by Jeff Miles, Ober Kaler Grimes & Shriver, examines this concept in the context of recent FTC enforcement actions.

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Community Public Health Legal Preparedness:

Bridging the Gap between Public Health and Health Care Attorneys

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In early 2001—months before the September 11th terrorist attacks and the October 2001 anthrax mailings—researchers from West Virginia University interviewed West Virginia county health directors to determine the level of collaboration between their public health departments and local hospitals on public health emergency preparedness.¹ Fewer than half of the respondents had provided basic emergency contact information to area hospitals and only 20% had received reciprocal information.² Although approximately three-quarters of the county health directors had attended bioterrorism-related training, only 14% of the training was in conjunction with hospitals.³ The researchers concluded that the county health directors and their public health agencies had weak relationships with area hospitals and little collaboration in planning for public health emergencies.

Recent events have underscored the importance of the above findings and demonstrated ways by which the healthcare community plays a critical role in responding to public health emergencies. For example, hospitals and other healthcare providers played a key role in the response to the 2001 anthrax attacks and the 2003 outbreak of Sudden Acute Respiratory Syndrome (SARS). Moreover, many healthcare providers were affected by the federal smallpox vaccination program and by the national response to this year's influenza outbreak. Even though public health emergencies frequently tax the healthcare delivery system, many jurisdictions mirror what was found in West Virginia: too many local public health authorities

are essentially disconnected from their local hospitals and other healthcare providers.

In the legal realm, a similar disconnect exists between public health lawyers, especially those who advise state and local public health departments, and healthcare attorneys, those whose clients include physicians, hospitals and health systems, health maintenance organizations, health insurers, managed care companies, nursing facilities, and home care providers.

The gap between public health lawyers and healthcare attorneys is historic and deeply embedded. According to Rod G. Meadows, an Atlanta-based healthcare attorney, “Most health care lawyers have traditionally identified only four segments of health care law: 1) litigation—which generally involves medical malpractice or contract disputes; 2) regulatory—which involves numerous specialties including state certificate of need work and federal fraud and anti-kickback; 3) transactional—which includes mergers and acquisitions, physician-institution joint ventures, and payor contracts; and 4) general counsel/corporate governance—which includes a broad spectrum of legal advice and counsel.”⁴ Meadows also notes, however, that recent public health events have increased the appreciation that healthcare attorneys have for the role of public health. These same events have taught public health lawyers that healthcare attorneys are essential partners in preparing for and responding to public health emergencies.

The elements of public health legal preparedness were outlined by Dr. Anthony Moulton, Co-Director of the Public Health Law Program at the Centers for Disease Control and Prevention (CDC), and colleagues, in a recent article published in *The Journal of Law, Medicine, and Ethics* entitled, "What is Public Health Legal Preparedness?"⁷⁵ In the article, the authors point out that public health legal preparedness has four core elements: "i) *laws*, ii) the *competencies* of those who make, implement, and interpret those laws; iii) *information* critical to those multi-disciplinary practitioners; and iv) *coordination* across sectors and jurisdictions."⁷⁶

To achieve legal preparedness, healthcare attorneys must possess a clear and fundamental understanding of basic public health law—which includes and extends to cover principles such as: public health legal authorities, the role of legal counsel in implementing these authorities, and how to coordinate with local health departments during emergencies.

The realities are, however, that many healthcare lawyers have never had an opportunity to learn about basic public health law and the legal issues that come into play during public health emergencies. As a result, some healthcare counsel may have only limited familiarity with applicable law when they are initially called upon to advise their clients on these issues. To help remedy this situation, the CDC Public Health Law Program has formed the *Community Public Health Legal Preparedness Initiative* as one possible approach to assisting such legal counsel in strengthening their means for helping their clients—especially hospitals and other healthcare providers—to achieve optimal preparedness for public health emergencies in their communities.

The objective of the *Community Public Health Legal Preparedness Initiative* is to begin to more effectively bridge the gap between public health lawyers and healthcare attorneys. The Initiative envisions a teaching program that can be adapted and replicated in jurisdictions throughout the United States. The program will focus on the role played by hospitals and other healthcare providers during public health emergencies, with special attention to the legal aspects of public health emergency preparedness. More specifically, the Initiative seeks to: 1) inform non-government healthcare attorneys about the laws pertinent to public health emergencies in their own jurisdictions, 2) clarify the legal issues their clients may face in a public health emergency, and 3) form working partnerships between the public health and healthcare attorneys in each jurisdiction.

The Initiative has already designed and piloted a model program, which was presented in Atlanta, Georgia, in early 2003. Convened by the Health Law Section of the Georgia Bar Association and CDC's Public Health Law Program, the workshop was attended by more than 60 healthcare and public health attorneys. It included a structured, one-day training session on legal preparedness for public health emergencies, including emergencies resulting from bioterrorism and naturally occurring events. In a second, half-day follow-up meeting, participants identified jurisdiction-specific issues and future opportunities for collaboration.

On the first day of the pilot program, the morning session included presentations on public health law, the historic role of attorneys in public health, public health surveillance, outbreak investigations, emergency public health powers, federal guidance on public health emergencies, and public health infrastructure. The afternoon comprised break-out sessions, led by local private healthcare attorneys, on the impact of public health emergencies on hospitals and healthcare systems, including medical privacy, legal issues involving control of persons and property, and liability and indemnification.

For many healthcare attorneys, the Georgia program was the first opportunity to meet counterparts in public health. A primary goal of the program was to introduce these two groups of lawyers to each other and to foster discussion on the laws and legal procedures that would be used in an emergency. A secondary goal was to develop jurisdiction-specific products, which may include a concise "desk summary" of relevant state emergency health laws, articles for state and national publications, and a strategy for promoting communication on these issues between the public health and healthcare legal communities. Three additional pilot programs are scheduled for the spring of 2004—in Tulsa, Oklahoma, Houston, Texas, and North Carolina.

CDC expects to publish a complete guide, tentatively titled *Community Public Health Legal Preparedness Manual*, for national dissemination, in both print and electronic editions, by early fall 2004. The manual will include organizational and learning materials that public health and healthcare attorneys can use to design their own *Community Public Health Legal Preparedness* programs, as well as a detailed template that can be customized to reflect local laws and practices. In addition, the *Community Public Health Legal Preparedness Initiative* will be highlighted in sessions at the 3rd Annual Partnership Conference on Public Health Law, convened by CDC and the American Society

for Law, Medicine, and Ethics, which will be held on June 14-16, 2004, in Atlanta, Georgia.

The American Bar Association (ABA) has warned that “[b]efore disaster strikes, legal counsel should be prepared for the role they may be asked to play. Anticipating issues, policies, and legal questions that may arise, identifying the various actors with which they may be involved, and knowing how counsel may need to relate to and advise [their clients] are obvious starting points.”⁷ The CDC Community Public Health Legal Preparedness Initiative aims to accomplish exactly what the ABA has prescribed.

For more information on the *Community Public Health Legal Preparedness Initiative*, please contact Montrece

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To find out more about the 3rd Annual Public Health Law Conference, to subscribe to the CDC Public Health Law News, or for more information on public health law, please visit CDC’s Public Health Law Program Web site at www.phppo.cdc.gov/od/phlp.

Ms. Ransom is an Attorney Analyst with the Public Health Law Program, CDC. Ms. Ransom has served as a Presidential Management Fellow at the CDC in the Financial Management Office/Congressional and Legislative Branch and with the DeKalb County (Georgia) Board of Health.

1 See K.N. Treat, J.M. Williams, P.M. Furbee, W.G. Manley, F.K. Russell, C.D. Stamper Jr. “Hospital Preparedness For Weapons of Mass Destruction: An Initial Assessment,” *Annals of Emergency Medicine* 2001; 38:562-5.

2 *Id.*

3 *Id.*

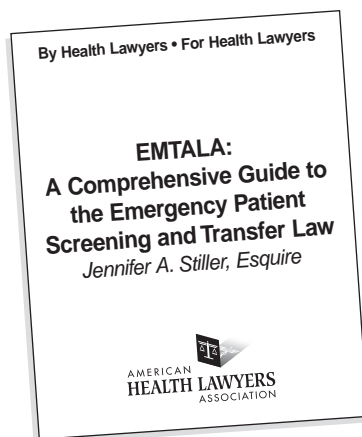
4 M. Mudron, C. Honssinger, R.G. Meadows, L.H. Spencer, “Health Care and Public Health Lawyers: Reclaiming the Historical Role,” *Journal of Law, Medicine, and Ethics*, Special Supplement to Volume 31:4 (Winter 2003): 56-57.

5 A.D. Moulton, R.N. Gottfried, R.A. Goodman, A.M. Murphy, R.D. Rawson, “What is Legal Preparedness?” *Journal of Law, Medicine, and Ethics*, 31 (2003): 672-683.

6 *Id.*

7 American Bar Association, State and Local Government Law Section, Task Force on Emergency Management and Homeland Security, *Draft Checklist for State and Local Government Attorneys to Prepare for Possible Disasters*, (March 2003): at 4, available at www.abanet.org/statelocal/disaster.pdf (accessed on January 26, 2004).

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