

# Legal authority during public health disaster: case study discussion questions an...

[Law](#), [Criminal Justice](#)



Disasters most commonly elicit the response of city, local, state, and federal aid agencies to meet the mitigation of destruction during various phases of an emergency event. Public health legal authority, during a hazardous substance discharge, may call for both public and private agency involvement. Thrusting personnel and materials in the area must operate under the auspices of inter-jurisdictional protocol and legal authority. The objectives in this written exercise are to alert the learner, in anticipation of future professional behavior, about gaining an understanding for legal protocols in public health/hazardous emergencies while maintaining the highest levels of public safety during a disastrous event – involving dangerous substance discharges. In an effort to explore questions pertaining to the assigned case study, this essay seeks to posit descriptions, and explanations for procedural legal authorities in an emergency response situation.

### **Background: Question 1 & 2**

At the outset it is important to present a brief overview of the definition of law, in matters of public health authorizations and preparedness. Kamoie et al. (2008) states that law can be defined “ as a rule of conduct derived from federal or state constitutions, statutes, local laws, judicial opinions, administrative rules and regulations, international codes, or other pronouncements by entities authorized to prescribe conduct in a legally binding manner” (p. 23). In the event of a mass-casualty bio-chemical event a Governor can declare an emergency under the legal authority of health agency directives, for types comprising “ natural disaster,” or those associated with public health disease/emergencies, according to a document

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Fact Sheet published by The Association of State and Territorial Health Officials (Emergency Declarations, Authorities”). Since according to Kamoie et al. (2008) law is a key component of the legal public health core. So as the situation warrants, the Governor may declare such given an assessment of the dire urgency in bio-chemical type of disaster. Although, under the Public Health Service (PHS) Act the Feds may establish such declaration. The criteria and procedures for requesting emergency response aid from state/local jurisdictions obviously varies from region to region. However, the general process allows the Governor to: (a) declare the status of emergency for a specific period of time, (b) act within state rules/regulations, and (c) coordinate/request help from neighboring states usually under authority of federal agencies gathering logistical, financial, and “ technical assistance” (“ Emergency Declarations, Authorities”). The extent of help and exact funding from federal government, must be coordinated.

### **October 1, Train Derailment: Questions 3 & 4**

When multiple jurisdictions are affected by a disaster of the burgeoning greenish-yellow toxic chem-cloud formations (from the train wreck), communications are the key to releasing authorities. Inevitably, the CDC will be involved at the federal level. But as Kamoie et al. (2008) note, “ at the state level, the primary legal authority to respond to emergencies has been the police power,” to act as arms of the state to regulate protections for “ the health, safety, and welfare of citizens” (p. 24). This might be viewed as a first-line of immediate security. Of course, common sense dictates that some of the key legal concerns regarding first responders and volunteers, would

be their safety and legal qualifications. But, just as the case of 9/11 demonstrated, first responders at the local level are on the scene initially. In critical ways, they are the key link to administering crucial communications to multi-jurisdictional authorities and federal agencies.

The local sheriff's office will most likely coordinate the police powers and localized actions of authority to secure the area from onlookers, and interested panicked people from further clogging up the access pathways to the areas immediately affected. In coordination of HAZMAT teams, in consideration of the gas plumes quickly proliferating and spreading, a series of communications systems will be implemented, with local Fire Department and local Public Works Department. As demonstrated in a real-life case as documented by the National Transportation Safety Board (NTSB), in a similar train accident, fire, "heat, smoke, and fumes had restricted access to the tunnel for several days" ("Railroad Accident Brief, 2004, p. 1). The conditions involved a similar flooding, with multiple millions of gallons of water having burst from a water main. As in the case pertaining to our case study question, the situation cited in this Railroad Accident Brief which occurred in Baltimore, Maryland, the train of course was in motion at the time of derailment, having had "eight fully loaded tank cars containing hazardous materials" - all of which were "regulated by the U. S. Department of Transportation (DOT)" ("Railroad Accident Brief, 2004, p. 1). As indicated in the initial paragraph of this Question-Section, communications in these types of public health emergencies are critical. Chief dispatchers and communication centers necessitate a variety of coordinated responses including: site evaluations, assessment of toxins, analysis of potential for

explosions, prevention of further damage/injuries, and charting clear legal permissions for authorizations to act.

## **October 1, Health Consequences at Valley High School: Questions 5 & 6**

Competencies and responses are at urgency levels when students begin to experience symptoms of toxic poisoning, especially with maximal exposure to chemical contamination from the nearby train derailment. Given the factor that deaths have already ensued, with a plethora of 9-11 calls to the local hospital, obviously the situation calls for immediate action. The Governor must proceed along the proper criteria for declaration of a state of emergency in the area specifically constituting a public health emergency. The actual local procedures for the Governor may demonstrate an urgent approval by the legislative body and/or State executive officers (“Emergency Declarations, Authorities”). Also, within the rubric of the situation it may additionally be necessary to declare an emergency of several types, in the areas of both public health and disaster depending upon how that particular State jurisdiction is established to respond.

What constitutes a public health emergency? According to federal authorities, a public health emergency is defined by the statute under portion 319 of the Public Health Service (PHS) Act as aforementioned. The situation is described as involving disease or any type of urgent public health disorder, which may also include “significant outbreaks of infectious disease or bioterrorist attacks” (“Public Health Emergency Declaration,” 2015). The federal government extensively lists all such examples which may include, but not be limited to, tornadoes, floods, flu outbreaks, hurricanes, or

anything threatening to spread contaminants of disease or toxins.

Mutual aid agreements can be used both during an absent an emergency declaration, but smartly responding to the situation within common-sense legal awareness. In the clear absence of an officially authorized emergency declaration, there are options for improvement of legal competencies. In a scholarly journal article on this aspect, Gebbie et al. (2008) that four key issues may outline a framework. Authors Gebbie et al. (2008) explain that the first such area considers an expansion of sectors requiring “ competency in public health law and public health legal preparedness” (p. 53). In other words, since legal ramifications can be complex, as well as the involvement of professionals in critical public health roles, each sector of stakeholders should have identifiable competencies. For example, in the case of the people actually dying within four hours of the train accident, the National Guard may need to exercise evacuation at some point, and the CDC and Red Cross may need to exercise their organizational responses. Therefore, mutual aid agreements can be used and applied in the absence of a declared state of emergency, by adhering to local laws so deemed enforceable on the local or State level on the basis and scope of best practices under the locally deemed jurisdictional statutes. Use of all readily available assessment tools, diagnoses, legal/police protections, and quarantines so available must be coordinated by such mutual aid agreements.

### **October 1, Further Information: Question 7a, 7b, & 7c**

At this point, it is understood that the Fire Chief himself has been nearly overwhelmed by the fumes after arrival on the scene. It is also clear at this

junction that communications have been impaired. The legal and operational considerations which influence the decision to call for an evacuation is due to the ' Red-Alert' situation. In the case of the nursing home facility being unable to move their elderly for 24 hours, demands that communications seek another immediate route. Since the disaster has, thus far, rendered contamination covering two states an emergency outreach utilizing the communications system (temporarily) of the third adjacent state – which has not, up to this point been affected. The legal and competencies factors should be considered when deciding upon a shelter-in-place for evacuation. For example, reliance upon the professional expertise of the nursing home director who insists that the elderly dwellers cannot be moved before 24 hours, demonstrates his practical certified competency in his field. Another key factor to be considered, is whether the third state (which has not been affected) can lend help with communications while possibly creating an emergency horizontal community of responders. Gebbie et al. (2008) suggest this method to “ stimulate the development of best legal practices in public health emergency preparedness for specific communities and specific types of emergency events” (p. 55). Granted, it would have been wise to have formed the coalition before disaster struck, but an urgent cooperative effort is actually beneficial to the entire hinterland, so as to retard the spread of disaster.

The requirements of the elderly and other special-needs populations must be addressed in terms of speed, safety hazards in moving them, and the quality of evacuation location shelters once there. The requirements are addressed by assessing their numbers, and the availability of suitable evacuation

locations, and competent medical or care teams, in addition to police protections – until the National Guard may be authorized and deployed. Choosing between mandatory or voluntary evacuation orders is a common-sense call. For example, in the case of Valley High School students, they need to be evacuated immediately – due to the severe and present implications of illness and because of their dangerous proximity in terms of exposure to fumes. Also, they are young and able-bodied enough to more quickly respond to evacuation than the elderly. An alternative measure may need to seal off the nursing home, and administer oxygen masks temporarily until they can be moved.

## **October 1, Review of Legal Authorities for Evacuation: Question 8**

According to FEMA, on the federal level the agencies so designated enforce or authorize an evaluation or actual shelter-in-place order are as follows.

FEMA, DHS, and the Departments of Agriculture, Commerce, Defense, Energy, Health & Human Services, Justice, Transportation, Veterans Affairs, GSA (General Service Administration), American Red Cross, and two others (“Mass Evacuation Index”). Obviously, if no emergency has been declared yet by the Governor in a dire situation the Red Cross may be the best road for immediate action.

## **October 1, Governor Requests Plan Review & Coordination: Questions 9 & 10**

Continuity of the courts and justice system must infallibly and meticulously maintained, despite any emergency disaster situation of the most hazardous



nature. The way such legal system of courts and jurisprudence are ensured is to follow the step-by-step guide plan which include typical goals of reducing disruptions to operations, continue court essential function, preserve rule of law, minimize loss of life, help secure preservation of equipment/facilities, and designate specified personnel so that clarity of who is in charge is maintained (“Continuity of Court”). State and national coalitions are in place.

In terms of supplying medical services on the spot, and preservation of an orderly atmosphere at medical care facilities in proximity of the disaster, team members of planning work together with the agency (such as The Red Cross, or FEMA). According to the same aforementioned report, they proceed to “identify possible service providers,” which for example may be the local Department of Health & Human Services division (p. 25). In this way, the logistics can be sufficiently ironed out and kept orderly, by assignment of obtaining additional staff, properly communication channels, and assurance of staff roles and competencies. Competencies are very important in this type of case. When one considers the seriousness of a train and multiple-vehicle derailment over water with leakage of dangerously toxic chemicals, that are airborne, timely coordination and competencies are key.

In fact, in the literature, one journal article breaks down the importance of improving competencies in a public health emergency situation while maintaining focus on legal protocols. Gebbie et al. (2008) indicate that “disseminating competency information to key target audiences,” and “improving measurement and evaluation of practice impact” are two vital areas which must be adamantly addressed in terms of framework for the

agenda at hand during such emergency (p. 52). Obviously, when the communications were experiencing trouble in the immediate area of the emergency disaster outbreak in our case study, it was learned that to act quickly with flexibility by using the communication infrastructure of the unaffected state. Once that gap had been closed and control of the situation ensures a smooth recovery of communications, rescue and legal stakeholders may proceed. In this context, the law can function better and decide if isolation or quarantine stipulations must be implemented, in accordance with the right professionals and those authorized to play critical roles in the situation.

## **October 1, Mass Evacuation Order & Concern for Displaced Persons: Questions 11 & 12**

At this point, the Emergency Operations Center along with the Governor has decided to order a mass evacuation. Given assistance by local law enforcement agencies, a house-to-house will be conducted. It is important to know the local legal requirements in the jurisdiction to apply public health emergency management care like food, water, shelter, and medical care. The CDC has mandates for the handling of such. Accordingly, the local government and personnel must abide by the Federal Code of Health and Safety Code Section 34070-34072. This mandates contractual provision for “recognized community organizations” to step up to the plate with provisional shelter, care, and food (“ Guide for Local”). The coalition partnership works and functions cooperatively with the Red Cross to help citizens, until (or if) national disaster responders may be mobilized.

Local businesses need safety protections as well. Each local jurisdiction may

have slightly differing guidelines in place, in terms of the minute details. But the CDC outlines in its guide the general procedures for ensuring that homes and businesses are safe particularly before allowance that people return home. Local law enforcement agencies and the Fire Department play key roles in assessing the situation, while the probability of federal troop intervention may be deployed to help, depending on governmental agreements in planning.

### **Conclusion:**

However, the key concern about displaced persons in the hour of this kind of tragedy, has relevant information outlined in the Department of Homeland Security (DHS) Appropriations Act, P. L. 109-295 as pertains to Section 689 for those individuals with disabilities. A FEMA administrator is required to ensure that accommodations are met for this group of citizens that they may access communications, find emergency help in programs, be they shelter or recovery centers – including “ mass feeding areas” as codified by the section. Legally, strong language admonishes that such individuals not be discriminated against due to their skin color, race, sex/age, or poverty status – as FEMA can be held judicially responsible for review.

### **References**

Association of State and Territorial Health Officials – ASTHO. (2015).

Emergency Declarations and Authorities [Data file]. Retrieved from

<http://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Emergency-Declarations-and-Authorities-Fact-Sheet/>

<https://assignbuster.com/legal-authority-during-public-health-disaster-case-study-discussion-questions-answered-case-studies-examples/>

- CDC. gov. (2015). A guide for local jurisdictions in care and shelter planning [Data file]. Retrieved from [http://www.cdc.gov/nceh/ehs/Docs/Guide\\_for\\_Local\\_Jurisdictions\\_Care\\_and\\_Shelter\\_Planning.pdf](http://www.cdc.gov/nceh/ehs/Docs/Guide_for_Local_Jurisdictions_Care_and_Shelter_Planning.pdf)
- FEMA. (2015). Mass Evacuation Incident Index [Data file]. Retrieved from [http://www.fema.gov/pdf/emergency/nrf/nrf\\_massevacuationincidentannex.pdf](http://www.fema.gov/pdf/emergency/nrf/nrf_massevacuationincidentannex.pdf)
- Gebbie, K. M., Hodge, J. G., Meier, B. M., Barrett, D. H., Keith, P., Koo, D., & Winget, P. (2008). Improving Competencies for Public Health Emergency Legal Preparedness. *Journal of Law, Medicine & Ethics*, 3652-56. doi: 10.1111/j. 1748-720X. 2008. 00261. x
- Kamoie, B. Pestronk, R. M., Baldrige, P., Fidler, D., Devlin, L., Mensah, G. A., & Doney, M. (2008). Assessing Laws and Legal Authorities for Public Health Emergency Legal Preparedness. *Journal of Law, Medicine & Ethics*, 3623-27. doi: 10.1111/j. 1748-720X. 2008. 00256. x
- NCSC – National Center for State Courts. (2015). Continuity of Court Operations [Data file]. Retrieved from <http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Emergency%20Preparedness/toolkit.ashx>
- National Transportation Safety Board. (2004). Railroad Accident Brief [Data file]. Retrieved from <http://www.ntsbgov/investigations/AccidentReports/Reports/RAB0408.pdf>
- U. S. Department of Health and Human Services. (2015). Public Health Emergency Declaration [Data file]. Retrieved from <http://www.phe.gov/Preparedness/legal/Pages/phedeclaration.aspx>
- <https://assignbuster.com/legal-authority-during-public-health-disaster-case-study-discussion-questions-answered-case-studies-examples/>