

The EXPRESS Report

The Working Newsletter for Public Health Law Association Members
volume 1 June 2004

Promoting healthy people in healthy communities through dialogue, partnerships, education and research in public health law

President's Column

Undereath the pine trees in my backyard is an ever-expanding, multi-generational family of giant ferns. I love this time of year because the slow motion spectacle of ferns unraveling always fascinates me. Sleeping in a tightly wrapped, dark brown, stiff bundle all winter, over the course of several weeks in Spring they unroll themselves to become the light green, translucent, frondy feathers which dance in the slightest breeze all summer.



With this inaugural issue of your Public Health Law Association's soon-to-be quarterly newsletter, our Association continues to unroll itself. Just an idea two years ago, the Association now has corporate form and contract staff assistance with administrative and program development. Four popular teleconferences on issues of great interest have been held with more scheduled in the coming months. A new website will shortly be unveiled. Your Board is about to renew its composition at the Public Health Law conference in Atlanta this June and new officers will be elected at the Board's July meeting.

The Association will embark on a planned membership drive within the next month. I hope you will become a member. Members asked for an Association with international membership within which those in the heterogeneous worlds of government, academe, corporate and public practice can improve the public's health through the common denominator of law.

You can help improve the public's health by joining the Association and encouraging your colleagues to join.

Membership information can be found elsewhere in this newsletter. The Board can also use your ideas and energy. We need representatives in every country to promote membership and volunteers who will work with our Membership and Marketing Committee are needed. If you'd just like to help out in a more limited venue: a state or province or smaller political subdivision, that's fine, too!

The Board is in the process of identifying a subject for a "best practice" manual. If you have ideas about the topic for such a manual, let us know. If you'd like to submit an article for a future newsletter describing some of the interesting work you now pursue, share that too. If you have a suggestion about a future topic for a teleconference call, forward that on. If you'd like to offer an idea for a new product or service which would benefit members, the Board is open to suggestions.

You can reach the Board at the following e-mail address: board@phla.info

Help us enroll our Public Health Law Association, populate the world's garden with an ever-expanding family of members, and improve the public's health.

With best regards,

Robert M. Pestronk

PHLA Launches Its 2004 Educational Teleconference Series: "The Methamphetamine Crisis"

Montrece McNeill Ransom, JD. Attorney Analyst; Public Health Law Program, CDC, Atlanta, GA

On May 10, 2004, the Public Health Law Association and the Public Health Law Program, CDC, launched the 2004 Public Health Law Educational Teleconference Series with a teleconference providing an overview of the methamphetamine crisis. Methamphetamine is a potent, Schedule II psycho-stimulant that dramatically affects the central nervous system, and is easily made in clandestine laboratories with relatively inexpensive, over-the-counter ingredients. These factors, coupled with

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"The Methamphetamine Crisis" continued...

its high rate of addictiveness and high profit potential, make methamphetamine a drug readily abused. Initially concentrated among white males and most prevalent on the West coast, methamphetamine is rapidly becoming a national problem.

The May 10th teleconference provided a multidisciplinary perspective, outlined prevention and treatment initiatives, reviewed recent legislative measures, and addressed the environmental and public health issues associated with efforts to clean up former methamphetamine labs. Presenting the public health perspective was Dr. Fay Boozman, Director of the Arkansas Department of Public Health. From a clinical perspective, Dr. Richard Rawson, a leading thinker in the area of methamphetamine abuse, discussed his work as Associate Director for the University of California Los Angeles' Integrated Substance Abuse Program and focused, in particular, on effective treatment for methamphetamine addiction. Presenting on state legislation were both Blake Harrison, Senior Policy Specialist for the National Conference of State Legislatures, and Steve Mange, Senior Policy Advisor for Illinois Attorney General, Lisa Madigan.

This 2-hour teleconference attracted an estimated 300 listeners from across the nation, and representing a wide spectrum of disciplines. Questions and comments made by listeners-including an environmental epidemiologist in Kentucky concerned with assessing the health risks of clandestine methamphetamine labs and a practitioner who works in the Texas Department of Family and Protective Children Services looking for information on the use of cognitive behavioral therapy as a method for treating methamphetamine addiction-demonstrated just how widespread the methamphetamine crisis has become and how timely this teleconference was.

To access the transcript for the PHLA Methamphetamine Teleconference and for more information on future PHLA Educational Teleconferences, please visit www.phla.info.

Michigan Completes Unique Legal Tabletop

Peter Coscarelli, Office of Public Health Preparedness
HazMat Response and Exercise Coordinator
Michigan Department of Community Health, Lansing, Michigan

On February 24, 2004, the Office of Public Health Preparedness, Michigan Office of Attorney General office and Michigan Supreme Court sponsored a tabletop exercise focusing on legal issues related to a smallpox outbreak.

The exercise was largely successful and gave all the participants and observers an increased level of awareness to the potential legal issues related to a smallpox outbreak in the State of Michigan.

Exercise participant and observers represented a broad range of disciplines: Michigan Office of Attorney General and Michigan Supreme Court System - 8; Federal participants (FEMA, FBI, HHS, US Customs, CDC, Department of State, US

Attorney General) - 10; State participants (MDCH - BOL, BPE, OPHP, MSP EMD, MSP OPS, MVA) - 18; Local participants (LHD, LHD legal, hospital, hospital legal, MCA,) - 13; Canadian participants (EMD operations, EMD exercise, City of Windsor Fire, Canadian Boarder Security) - 8

Summaries of the evaluations are as follows: Total number of participants and observers - 79; Total number of evaluations completed - 62; Overall exercise rating - (scale 1-10 high) - 8.3; Number of questions to be resolved by AG office - 38

Strong Points:

1. On the pre-exercise evaluation - 72% of the attendees indicated that they had some previous knowledge of the legal issues related to a smallpox outbreak. On the post exercise evaluation - 100% indicated that the exercise increased their knowledge of the complex legal issues involved. Since one objective of the exercise was to increase participant's knowledge of legal issues, the exercise's outcome was successful.
2. The main exercise objective was to assist the AG office in identifying the legal questions and situations that confront public health, hospitals and emergency responders. During the post exercise meeting with the design committee, the AG office confirmed that they received numerous questions and situations that need to be addressed for all health partners
3. All participants at each table felt that the exercise allowed for great interaction and discussions on legal issues that affected their agency whether at a local, state, federal or Canadian table."
4. The scribes that were supplied at the tables enabled the participants to focus on the discussions and ensured that the important issues and questions were noted.
5. The Attorney General's office activated their EOC and tested their communication and legal references' procedures during the tabletop.
6. AG agreed to publish answers to questions on the web for all partners

Issues that created difficulties: (identified by the design team during the post exercise meeting)

1. The local and state participant tables were too large with too many people. This caused difficulty in hearing everyone during discussions and encouraging small group discussions, creating too much extra noise. It was decided that a larger room would be more beneficial as opposed to smaller tables.
2. The table facilitators reported that the pre-exercise facilitators' meeting did not inform them well enough of the anticipated outcomes we were looking for from the participant tables. In future exercises, more time will be devoted to training of exercise facilitators.

The Office of the Attorney General is compiling the legal answers and situations from the questions that were generated during the exercise and the final report will be posted on their website. The expected posting date is May, 2004. When OPHP is advised that the posting is completed, a notice will be sent out to all participants and OPHP partners via the Guardian Update.

It is expected that legal issues may require legislative changes to assure full protection to Michigan's citizens. The Attorney Generals' and MDCH staff will continue to work collectively to address these issues.



Illinois Legislature Passes Landmark Public Health Powers Bill

House Bill 5164, sponsored by State Representative Sara Feigenholtz and State Senator Barack Obama, recently passed both chambers of the Illinois General Assembly by unanimous votes. If signed into law by Governor Blagojevich, it will take effect immediately. House Bill 5164 is a legislative initiative designed to improve the State's ability to respond to potential bioterrorism events and other potential public health emergency situations, such as outbreaks of dangerously contagious or infectious diseases. House Bill 5164 was drafted by members of the Public Health Emergency Preparedness Legal Team, a group of attorneys from federal, state, and local governments and other entities that was convened by the Illinois Department of Public Health to assist in reviewing legal issues that might arise during the Congressionally-mandated TOPOFF 2 (Top Officials) Full Scale Exercise.

This exercise was held in the metro-Chicago area in May 2003. A legislative working group of the larger Legal Team took the lessons learned from the TOPOFF 2 Full Scale Exercise and drafted legislation to improve upon Illinois' public health preparedness and response. In addition, the legislative working group collaborated with third parties, such as the American Civil Liberties Union (ACLU), the American Society for the Prevention of Cruelty to Animals (ASPCA), the Illinois State Medical Society, the Illinois Trial Lawyers' Association, the Illinois Attorney General's Office, and the City of Chicago Department of Public Health.

House Bill 5164 amends various Illinois statutes relating to public health preparedness powers. First and foremost, HB 5164 would authorize the Illinois Department of Public Health to order a person or a group of persons to be quarantined or a place to be closed and made off limits to the public on an immediate basis without prior notice without prior consent or a court order if, in the reasonable judgment of the Department, immediate action is required to protect the public from a dangerously contagious or infectious disease. Currently, consent or a court order is required before the Department may order isolation, quarantine or closure of a facility.

House Bill 5164 additionally provides for the following expanded public health powers: (1) authorizes orders for physical examinations, tests, vaccination, collection of laboratory specimens, medications, other treatments, observation and monitoring, subject to certain conditions; (2) provides for authority over animals to prevent the spread of a dangerously contagious or infectious disease in the human population; (3) authorizes rules providing for the safe disposal of human remains; (4) provides for emergency access to medical records; (5) authorizes development of a Statewide system for syndromic data collection; (6) authorizes information sharing between and among public health and law enforcement authorities; (7) authorizes public health preparedness planning activities by the Department and provides for coordination with other entities; (8) authorizes emergency modifications of scope of practice for licensed or certified professionals; (9) authorizes hospital disaster privileges; and (10) clarifies the availability of workers' compensation coverage for injuries, death or disease arising from administration of vaccines, such as the smallpox vaccine, in limited circumstances. In crafting the bill's various provisions, care was taken to balance the needs of government with appropriate civil liberties protections.

A copy of House Bill 5164 may be viewed at the Illinois General Assembly's website www.legis.state.il.us by typing in the following "HB5164" in the bill number search area.

PHLA Member Spotlight:

Susan Allan, M.D., J.D., M.P.H., FACPM
Interview by Megan Boelter

Dr. Susan Allan has been the Health Director for Arlington County, Virginia, since October 1987. Her education includes a medical degree from Harvard Medical School, a law degree from Harvard Law School, and a master of public health degree from Johns Hopkins. She is board certified in Preventive Medicine/General Public Health, and is a Fellow of the American College of Preventive Medicine. She has made presentations to the Institute of Medicine on smallpox policy and has spoken widely on lessons learned from the anthrax experience. She is active in many capacities with the National Association of County and City Health Officials, and is currently a member of NACCHO's Bioterrorism Committee. She was a member of the Institute of Medicine's "Committee on Leading Health Indicators for Healthy People 2010," and of the "Committee on Educating Public Health Professionals for the 21st Century."

Megan Boelter: Dr. Allan, how does law play a role in your career as the health director of a large, metropolitan health department?

The law is built into everything I do. It allows us, as public health practitioners, to frame questions more effectively to a state or county attorney's office in order to find a cooperative solution to dilemmas that may arise.

What sparked your initial decision to become a charter member of the Public Health Law Association?

At the 2003 Public Health Law Conference, I saw how the special roles of the association played out-enthusiasm, eagerness, and camaraderie.

Would you encourage others to join? If so, why?

Certainly. A lot of us are used to working in isolation. The *sense of energy and potential of the Public Health Law Association is so strong that it is worth jumping on board. It is important to work on building a community of like-minded people who recognize law as a multi-faceted, multi-dimensional area that is, and should be, representative of the many faces of public health.*

As a member of PHLA, what areas or issues would you like to see the Association focus on in the near future?

I think we need to emphasize the importance of taking a "systems approach" to respond to diseases and public health needs. For example, when it comes to budgeting for public health programs, as a society we tend to focus on a "silver bullet" approach with all efforts focused on one disease, objective, or health-related solution. We could work more effectively if we were to look to the bigger picture, and attempt to integrate various strategies used to improve health - the law serving as a means to bring several components together - money, resources, services. ...continued page 4



member spotlight continued...

Appropriations bills tend to provide a great deal of funds related to public health, but there is generally very little public health value extracted from such funding. The money can be allocated differently, because there are many instances when it is not used to the extent that it could potentially serve in public health when only geared to a single piece of the puzzle.

Awards for Excellence in Public Health Law

The Board of Directors of PHLA has established the "Awards for Excellence in Public Health Law" program, and will give the first of these awards at an evening reception on June 15, 2004, during the public health law conference, "The Public's Health and the Law in the 21st Century."

Gene W. Matthews, former Legal Advisor to the Centers for Disease Control and Prevention, will receive the "Distinguished Career Award" this year, in recognition of his long and dedicated service to CDC and his tireless efforts to enhance the field of public health law.

The Turning Point Public Health Statute Modernization Collaborative will be this year's recipient of the "Distinguished Achievement in Public Health Law Award." After three years of work, the Collaborative recently distributed the "Turning Point Model State Public Health Act", a tool for state, local and tribal governments to use in improving their public health statutes and administrative rules.

The Distinguished Career Award acknowledges individuals whose career has been devoted to using, creating and/or encouraging the use of law to improve the public's health. This award will only be given when merited and may not be given annually.

The Distinguished Achievement Award will be given annually to an individual, organization or group to acknowledge outstanding achievement during the preceding calendar year in the development, use or application of law as a means to promote healthy people in healthy communities.

PHLA's Board appointed an awards committee consisting of Fran Veverka, Health Commissioner in Delaware, Ohio; Michelle Larkin, Program Officer for the Robert Wood Johnson Foundation; Jill Moore, Assistant Professor of Public Law and Government, in the School of Government at the University of North Carolina Chapel Hill and Angie McGowan, EIS Officer with CDC. Lori Spencer, a PHLA Board member, and an attorney with Sutherland Asbill & Brennan LLP in Atlanta, chaired the committee, which solicited nominations and selected the recipients for the 2004 awards.

PHLA Nominations: "Coming Your Way Soon"

In February of 2004, the PHLA Board of Directors formed a Nomination Committee chaired by Nancy Dillingham. With the support of Jean O'Connor and Montrece Ransom, the Committee developed a series of recommendations for strengthening the PHLA Board structure. The committee

surveyed existing Board members and proposed to increase the number of Board seats from nine to eleven. It also recommended that two of the current seats be designated as one-year terms, three of the current seats be designated as two year terms, and the remainder as three year terms. This will result in three or four seats expiring each year. New Board members filling each vacancy will take a three year term, consistent with the bylaws. The Board of Directors adopted these recommendations at its May meeting.

In order to implement these recommendations, the Committee will recommend a list of prospective board members for nomination at the June 15 PHLA General Assembly. This will allow the organization to fill four vacant seats and to consider a slate of Board officers for 2004-2005.

Public Health Law Calendar of Events

Please check at the indicated web sites for up-to-date information and send suggestions for additions to the calendar to: board@phla.info.

2004

June 14-16: Third annual conference "The Public's Health and the Law in the 21st Century," Atlanta, GA .

https://www.aslme.org/aslmesecure/info/description.php?conf_id=24

June 20-28: Annual meeting of the National Association of Attorneys General, Santa Monica, CA. <http://www.naag.org>

June 28-30: Annual meeting of the American Health Lawyers Association, New York, NY. <http://www.ahla.org>

July 14-16: Annual meeting of the National Association of County and City Health Officials, St. Paul, MN: Public health law session, 11:00 - 12:30, July 15. <http://www.naccho.org>

July 20-21: CDC-American Medical Association, First National Conference on Public Health Readiness, Washington, DC: "Medico-Legal Issues" session, 10:30-12:30, July 21.

July 28-31: Annual meeting of the National Association of Local Boards of Health, Denver, CO; "Is Your Board Legally Prepared for SARS?"; session, 3:30-4:45 pm, July 29. <http://www.nalboh.org> **August 6-11:** Annual meeting of the American Bar Association, Atlanta, GA; Public health law session, sponsored by the ABA's Science and Technology Section, "Will Your Client Survive the Next Outbreak?" 9:30 - Noon, Aug. 7. <http://www.abanet.org>

Sept. 28-Oct. 1: Annual meeting of the Association of State and Territorial Health Officials, St. Paul, MN; concurrent session on public health law (title and date to be announced).

Nov. 6-10 Annual meeting of the American Public Health Law Association, Washington, DC; public health law sessions to be announced.

Selected Programs in Public Health Law

The following is an initial, incomplete list of programs active in public health law research, policy development, and training. We intend to maintain a current, expanded directory to such programs and invites nominations for additional programs.

Center for Law and the Public's Health:

<http://www.publichealthlaw.net>

Center for Public Health Law Partnerships:

<http://www.publichealthlaw.info>

Health Law and Policy Institute:

<http://www.law.uh.edu/healthlaw/main>

Hirsh Health Law and Policy Program: <http://gwumc.edu/sphhs/hirsh>

Program in Law, Science, and Public Health:

<http://biotech.law.lsu.edu/cphl/index.htm>

Public Health Advocacy Institute: <http://phaionline.org>

Public Health Law Program: <http://www.phppo.cdc.gov/od/phlp>

Technical Assistance Legal Center: <http://tal.cphi.org>

Tobacco Control Legal Consortium:

<http://www.wmitchell.edu/tobaccolaw/tclc.html>