

Building Legal Preparedness for Public Health Emergencies

April 19-20, 2005
East Lansing, Michigan
Kellogg Conference Center



presented by:

**National Association of Attorneys General;
Michigan State University, School of Criminal Justice;
Michigan Attorney General Mike Cox**

in collaboration with:

**The Public Health Law Program;
U.S. Centers for Disease Control and Prevention**

with the generous support of:

The Alfred P. Sloan Foundation



Department of
Attorney General

**Disaster Management-A View from the
Perch of the State Attorney General**

**MIKE COX, MICHIGAN
ATTORNEY GENERAL**

Presented by: Robert Ianni,

Director of Homeland Security and Special Projects

April Training Conference

Who came?

75 lawyers representing Attorney General offices, state and local health agencies, and emergency response agencies from 32 states.

Purpose of the Conference

To provide information and legal tools to state lawyers who may be called upon to provide legal counsel before, during, or following an acute public health emergency.

Areas of Interest Covered

1. Role of the Attorney General
2. Emergency Management Law
3. Role of the Judiciary
4. Lessons Learned from 9-11, Anthrax
5. Continuity of Operation
6. Conducting Legal Training Exercises
7. Tabletop Exercise

Legal Product Distributed

1. Legal Manual
2. Exercise Manual
3. CDC Public Health Emergency Law Notebook
4. DHS Continuity of Operations CD
5. Nevada Legal Preparedness CD

Summary of Shared Information

Role of the Attorney General

1. Representation of State Interests
2. Legal Advice on Disaster Response
3. Assist Local Authorities
4. Coordinate State Criminal Investigations

Represent State Interests

- Implies representation of public interest
- Risk management responsibility
- Legal advisor to the Governor
- Enforce emergency response decisions of commanders and state officials

Legal Powers and Authority

1. Review state law to ensure that adequate and sound authority exists to effectively respond to any emergency.
2. Prepare enforceable executive orders during an emergency.
3. Use persuasion first and legal compulsion last to secure public compliance.

Minimizing Liability

- Training
- Liability for acting
- Liability for failure to act
- Use approved documents

Emergency Management Law

- Tort liability
- Immunity
- Constitutional violations
- Representation
- Declaration prerequisites
- Emergency powers

Emergency Management Law, cont.

- National Guard
- Evacuation
- Commandeering/destroying property
- Trespass
- Mutual aid

Emergency Management Law, cont.

Additional issues to consider:

- Volunteers
- Criminal enforcement
- Price gouging/hoarding
- Documentation of actions

Tort Liability

- Duty
- Breach of duty
- Reasonable man test
- Failure to plan, warn, prevent, respond, etc.
- Proximate cause—reasonable foreseeability
- Injury/damages

Tort Liability, cont.

- Intentional, willful, wanton, gross negligence
- Strict liability
- Defenses
- Need to identify potential claims as they arise and to take immediate action to protect state/government

Immunity

- Sovereign immunity
- Statutory
- Waiver
- Executive orders

Civil Rights Violations, 42 USC 1983

- State immunity laws not applicable
- High standard of proof--more than mere negligence

Emergency Declarations

1. Know statutory prerequisites
2. Most powers reside in Governor
3. Power broad and wide sweeping.

Evacuation and Property Taking

1. Who can order?
2. What degree of force can be used?
3. What is the duty to prevent looting?
4. Constitutional taking of property
5. Trespassing
6. Use of administrative and court orders

Mutual Aid

1. Liability and immunity
2. Cost responsibility
3. Who can trigger?
4. Who is in charge?
5. MOUs, EMAC

Price Gouging and Hoarding

1. Use of local law enforcement and consumer protection agencies
2. Act quickly
3. Use mass media

Documentation of Actions

- Make record as you go
- Assign recordkeeping responsibilities
- Use video, photos to preserve state point of view

Emergency Response Ethics

- Lead by example
- Cooperation is result of ethical behavior
- Effective Character Traits
 1. Honesty
 2. Courage
 3. Compassion
 4. Fairness
 5. Respect

Common Ethical Concerns

1. Conflicts of interest
2. Confidentiality
3. Misuse of government assets
4. Misbehavior in public
5. Discriminating practices
6. Use of media

Role of the Judiciary

1. Courts needed to enforce statutes, orders, and act as neutral arbitrator
2. Essential to maintain public confidence

Judicial Preparedness

- ✓ Who will be the judge?
- ✓ Where will court be held?
- ✓ How will record be made?
- ✓ How will appeals be processed?
- ✓ Are court personnel protected from danger?
- ✓ Are judges knowledgeable in emergency and public health law?

9-11 and Anthrax Lessons

- Displaced office and personnel
- Health and safety issues of staff
- Death certificates
- Property condemnation
- Returning property

Other Legal Lessons Learned

- Need for cooperation
- Creation of information sharing protocols
- HIPAA concerns
- Create chain of command
- Oct. 2004 joint investigation MOU (FBI, NYPD, NYC-DOH)

Maintaining Office Continuity

Objectives of COOP, cont.

1. Ensures performance of essential functions
2. Reduces exposure to risk
3. Ensures succession of leadership
4. Reduces or mitigates operation disruptions

Objectives of COOP, cont.

5. Identify alternate facilities
6. Protect essential equipment, records, assets
7. Provides for timely and orderly recovery
8. Provides regular training, testing, and e
exercising

Necessity for Attorney General Training

“In preparing for battle, I have always found that plans are useless but planning is indispensable.”

Dwight Eisenhower

Purpose of Training

- Test equipment, plans, procedures, etc.
- Identify critical personnel
- Clarify roles and responsibilities
- Improve inter-agency coordination and cooperation
- Identify and correct deficiencies
- Improve performance

THANK YOU



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