

**Public Health Law**  
A Health Officer Practice Guide for  
Communicable Disease Control In  
California

**Understanding and Applying  
the Practice Guide Tool**

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California

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***Creation of the Document***

- Collaborative project of the Public Health Law Work Group.
- Drafted by several Deputy County Counsels, and Deputy City Attorneys and legal counsel from California State Department of Health Services.
- Edited by several Health Officers.
- Reviewed by representatives of the California Conference of Local Health Officers, County Health Executives Association of California and the California Department of Health Services.
- Supported by funds from the Centers for Disease Control and Prevention's Cooperative Agreement for Public Health Preparedness.

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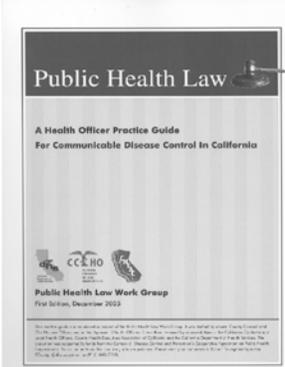
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The image shows the front cover of the 'Public Health Law' practice guide. The title 'Public Health Law' is at the top in a dark box. Below it, the subtitle reads 'A Health Officer Practice Guide For Communicable Disease Control in California'. The cover features logos for the California Department of Health Services, the California Conference of Local Health Officers (CCLHO), and the County Health Executives Association of California (CHEA). At the bottom, it says 'Public Health Law Work Group' and 'First Edition, December 2013'. There is also a small paragraph of text at the bottom of the cover.

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### ***Roll out of the Practice Guide***

At a joint meeting of the California Conference of Local Health Officers and the Association of County Counsels in the Spring of 2006, an all day working session was held:

- Didactic Overview
- Small mixed workgroups addressed scenarios where legal issues were prominent
- Participants used the Practice Guide hands-on
- The sessions were taped and recently broadcast

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### ***General Topic Areas*** *(Sections II-VII)*

- General Authority of the Health Officer.
- Constitutional Parameters Impacting Authority of the Health Officer.
- Enforcement of Health Officer Authority.
- Interjurisdictional Coordination and Cooperation.
- Confidentiality of Health Information.
- Media Resources and Management.

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## ***Specific Topic Areas***

*(Sections VIII-XIII)*

- Limiting the Movement of Individuals and Groups.
- Involuntary Investigation, Examination, Decontamination, Treatment/Vaccination.
- Inspection, Seizure, Disinfection, and Destruction of Real and Personal Property.
- Rationing of Resources.
- Commandeering.
- Conscription.

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## **Authorites Cited**

- California Statutes:
  - **Business and Professions code**
  - **Civil code**
  - **Government code (17 sections)**
  - **Health and safety code (51 sections)**
  - **Penal code (12 sections)**
- California regulations (22 sections, Title 17)
- California Constitution
- California cases
- Federal statutes and regulations
- Federal cases
- United States Constitution

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**General Authority**

(Section II, B)

Position and Appointment:

- Each County Board of Supervisors is required to appoint a Health Officer.
- Each city governing body is required to appoint a Health Officer, except where the city has arranged for the county to exercise the powers of the City Health Officer.

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**Disease Reporting**

(Section II, C)

For Investigations and reporting Health Officers must:

- Report specific diseases to DHS as set forth in regulation.
- Investigate reported cases-includes examination investigation of the source.
- Control the spread of the disease.

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**Authority to Control Communicable Disease**

(Section II, D)

Health and Safety Code section 120175:

"Each Health Officer knowing or having reason to believe that any case of the diseases made reportable by regulation of the department, or any other contagious, infectious or communicable disease exists, or has recently existed, within the territory under his or her jurisdiction, shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases".

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***Reason to Believe***

(Section II, D)

Health Officers must have:

- More than a mere suspicion that the person is case or contact of a communicable disease.
- Probable cause to believe that the person is infected.
- Suspected Case=Probable Cause.

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***Measures As May Be Necessary to Prevent Spread of Disease***

(Section II, D)

The Health Officer is:

- Required to take measures as may be necessary to prevent the spread of the disease.
- Can use discretion to determine what measures to use except where directed by DHS regulations.
- Must be able to demonstrate that the measures taken are necessary.

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***Possible Actions Under the General Authority***

(Section II, D)

- Isolation of Persons.
- Quarantine of Persons, Animals, Buildings.
- Examination, Treatment, Vaccination.
- Disinfection, Decontamination, and Destruction of Property.
- Evacuation, Closure of Areas and Public Gathering Places.
- Rationing of Materials.
- Mandatory Hygiene Measures.

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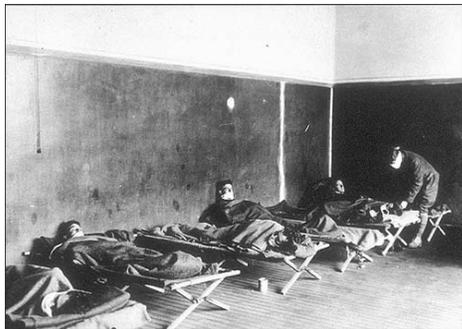
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***Declarations of Local Emergency***

(Section II, G)

- Only for releases of hazardous waste in most counties.
- Must be ratified by governing body within specified number of days.

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### ***Constitutional Parameters***

(Section III, A)

- Protecting public health is an exercise of "police power."
- Police power is limited by the protections contained in the United States and California Constitutions as interpreted by the courts.

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### ***United States and California Constitutional Requirements:***

(Section III, B)

- Life, liberty, or property shall not be deprived without due process of law.
- Due process rights protect individuals from excessive "government intrusion."
- Orders should not be arbitrary, oppressive or unreasonable.
- Due process requires "fundamental fairness" in governmental action. Fundamental fairness has two major components:
  - Adequate justification for the anticipated action ("substantive due process").
  - Steps used in carrying out the anticipated action ("procedural due process").

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***Health Officers Should Have Adequate Justification***

(Section III, B)

- Are there sufficient facts to support the action?
- Is the proposed action appropriately tailored to fit the particular circumstances?
- Balancing Test -The necessity of the order vs. the extent of the infringement of rights.
- Need more justification if the individual interests are more significant.
- What is sufficient in one set of circumstances may not be sufficient in another.
- Make every effort to minimize the impact on personal liberty.

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***What Procedural Safeguards and Process Are Due?***

(Section III, B)

- Fair Notice.
- Opportunity to Challenge the Order.
- The Order is the "notice" and should set forth:
  - Duration,
  - Conditions,
  - Facts and legal basis to support it,
  - Methods, if any, by which a person may register objections,
  - Potential penalty for violation,
  - Be calculated to reach the individuals subject to it.

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***Officer Actions Involving Searches and Seizures***

(Section III, B)

- Orders that involve the seizure, destruction or search of personal and real property, must be reasonable under the circumstances.
  - Is there statutory authority ?
  - Can you get the owner/occupier's consent?
  - Is a warrant needed?
  - Are there exigent circumstances?

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***Interjurisdictional  
Coordination and Cooperation***

(Section V, A)

State Department of Health Services can:

- Impose quarantine, isolation and take other necessary actions to prevent the spread of disease.
- Issue orders that the Health Officers must enforce.
- Require Health Officers to establish places of quarantine, and to quarantine persons and places.

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***Interjurisdictional  
Coordination and Cooperation***

(Section V, B)

United States Public Health Service:

- Controls the introduction of disease from other countries.
- Maintains quarantine stations at ports of entry.

Centers for Disease Control and Prevention (CDC):

- May take measures as may be necessary to prevent the interstate spread of disease.

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***Interjurisdictional  
Coordination and Cooperation***  
(Section V, E)

Law Enforcement:

- Criminal enforcement for violation of Health Officer orders by peace officers.
- Training and protection from liability.
- Advise peace officers on protective measures to avoid infection.
- At infectious crime scenes, Health Officer must cooperate with law enforcement.

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***Interjurisdictional  
Coordination and Cooperation***  
(Section V, F & G)

Health Officers:

- Must notify other Health Officers if you think the disease originated in their jurisdiction.

Indian Tribal Lands:

- State sovereignty does not end at border.
- Are state interests outside the reservation implicated?

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***Interjurisdictional  
Coordination and Cooperation***  
(Section V, H)

University Of California:

- Health Officers have jurisdiction on UC Campuses.
- UC Police have concurrent jurisdiction with Sheriffs and local Police Departments.

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**Confidentiality of Health Information**  
(Section VI, A)

- California Confidentiality of Medical Information Act ("CMIA").
- Health Insurance and Portability and Accountability Act of 1996 ("HIPAA").
- Patient Health Information (PHI) is protected whether or not the patient is living.
- Release of (PHI) can be oral in writing.
- PHI can be released to state and local health officials for purposes of preventing or controlling disease.

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**Only Minimum Necessary Amount of PHI Can Be Released**  
(Section VI, B)

- HIPAA does not specify what information constitutes "minimum necessary" information.
- Use judgment as to what information can be released on a case by case basis.
- Balance patients' privacy rights and the need to release the PHI.

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**Release of Individually Identifiable Information**  
(Section VI, B)

- Do not disclose the name or other identifiable information unless that information is necessary.
- CMIA and HIPPA similarly define "individually identifiable" information. It includes:
  - Patient's name,
  - Address,
  - E-mail address,
  - Telephone number,
  - Social security number,
  - Or other information that "alone or in combination with other publicly available information, reveals the individual's identity."
- Size of community or number of patients may have an impact.

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***Media Resources and Management***

(Section VII)

Media can help disseminate information to the public:

- Facts about a threatened or actual disease outbreak,
- Facts about the disease,
- Steps that the public should take,
- Health Officer orders or specific instructions,
- Can enlist the public's help and cooperation.

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***Responding to Media Requests for General Information***

(Section VII)

- No legal duty to give information until a Public Records Act request is made.
- Balance patients' privacy rights and the community's need to know.
- Don't disclose the name or other identifiable information unless necessary.
- If the media knows the identity of the patient and the hospital, refer media to the hospital.
- If the media knows the identity of the decedent, only the information that is in the death certificate can be released or commented on.

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***Preparedness Points***

(Section VII, C)

- Set up an internal process to be used in communicating with the media.
- Designate one person to regularly coordinate responses to requests from media.
- Tell the media ahead of time who is the designated media person.
- Train staff in dealing with the media, especially in crisis communication.
- Keep other county administrators up-to-date when talking to the press.
- Coordinate with these agencies in regard to media contact.

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***Limiting the Movement of  
Individuals***  
(Section VIII, A)

Isolation and Quarantine:

- Isolation - The separation of sick individuals from those who are not sick.
- Quarantine - Restriction of the movement of persons who have been exposed to an infectious agent to prevent their contact with persons not exposed.

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***Limiting the Movement of  
Individuals***  
(Section VIII, A)

Isolation and Quarantine

- Both may be imposed.
- The Health Officer may determine the place of quarantine (including jails if necessary and appropriate) and establish places if needed.

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***Limiting the Movement of  
Individuals & Groups***

(Section VIII, A)

Practical Considerations:

- Orders vs. Agreements.
- Who will enforce, and how?
- Support services to encourage compliance.
- Protecting support providers from exposure.
- Medical needs of persons under quarantine.
- Procedures for hearings.
- Contents of orders - subject, directive, duration.

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***Limiting the Movement of  
Groups***

(Section VIII, B)

Closures of Public Gatherings:

- If there is an identifiable calamity menacing public health, the Health Officer may order closure of the area under the Penal Code.
- If closure of gatherings in general is necessary to prevent the spread of disease, the Health Officer may order them.
- Constitutional consideration - freedom of assembly - orders cannot be arbitrary.

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***Limiting the Movement of  
Groups***

(Section VIII, C & D)

- Evacuation of infected areas or buildings.
- A closure of whole areas, rather than specific gatherings within an area.
- Authorized under Penal Code where there is a calamity menacing the public health.
- Violation is a misdemeanor.
- May be authorized as a measure necessary to prevent the spread of disease.
- Curfews?

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***Involuntary Investigation, Examination and Testing***

(Section IX, A)

Health Officers:

- May investigate, examine and test people and animals, under specified circumstances where it is necessary to protect the public health.
- May perform these functions when requested by DHS.
- Have the authority to order examinations of allegedly infected persons to verify the existence of the disease.
- Have discretion re type of exam --statutory language reads "to make such exams as are deemed necessary."

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***Involuntary Decontamination, Disinfection and Treatment***

(Section IX, B)

- May order it if necessary to control or prevent the spread of the disease, condition or outbreak.
- Type of treatment is left to the Health Officer's discretion.
- Must be necessary and appropriate to address the circumstances of the situation.

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***Preparedness Points***

(Section IX, D)

- Prepare sample court documents in anticipation of a need to implement involuntary individual or mass vaccination orders.
- Meet with the courts, counsel, the public defender, District Attorney, and members of the medical community.
- Provide education and planning for mass/large scale immunization or vaccination events.
- Solicit health care volunteers, pharmaceutical cache acquisition and storage, as well as dispensary location.

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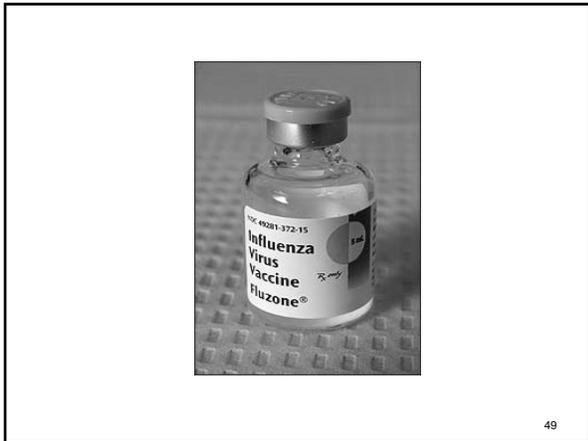
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***Rationing***  
(Section XI, A)

- Health Officer has no express authority.
- May ration under general authority if necessary to prevent the spread of disease.
- Under a declared local emergency, may ration as a preventive measure.
- Can range from orders limiting the use of a resource to actual resource redistribution.

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***Preparedness Points***  
(Section XI)

- Establish lines of communication with pharmaceutical companies, distributors, local pharmacies, and local health care providers.
- Coordinate with state and federal agencies that have specific regulatory and enforcement powers in areas such as air quality, food and drug, and water.

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## ***Commandeering and Conscription***

(Section XII)

- Generally a power exercised only during a declared state of emergency.
- Commandeering vs. Closure - taking property requires just compensation; using police powers does not.
- Forcing people to work for you may require that you compensate them.

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