Public Health Law Bench Book for Michigan Courts

Prepared by Michigan Attorney General Mike Cox with printing and distribution assistance from the Michigan Department of Community Health and the Centers for Disease Control and Prevention

Acknowledgements and Disclaimers

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Preface

In 1905, the United States Supreme Court's landmark *Jacobson v Massachusetts*[1] ruling recognized the judiciary as both an enforcer of governmental public health policies and an arbiter of the conflicts between individual liberties and public interests that arise from governmental public health action. Despite this central role, most members of the judiciary have received little, if any, formal public health law training.

Due to a lack of support and attention, the American public health system went into decline during the latter third of the 20th century. The 9/11 terrorist attacks, the global epidemic of Severe Acute Respiratory Syndrome (SARS), and the spread of avian flu starkly illustrated that many prevailing public health laws and systems were incommensurate with emerging public health threats - both manmade and natural. Thus, in recent years, increased attention has been devoted to public health legal preparedness: assessing and updating current public health laws and educating the people who enforce and interpret these laws. Such increased attention seeks to ensure adequate and efficient responses to both traditional and emerging public health threats.

Public health law is primarily state law, and its judicial interpretation is complicated by several considerations. First, the majority of public health cases addressing infectious diseases or other conditions requiring the intervention of county or local health departments date back to at least the early 20th century. Thus, the applicability of this case law to modern public health challenges in a global community is questionable. Second, public health experts in court proceedings often use complex scientific terms and methods that must be applied to a public health context. For example, in law, the following four definitions could each be used to describe the term "quarantine," depending on the context in which the word is used: (a) the right of a widow to remain in her deceased husband's principal home for a period of forty days following his death; (b) the holding of potentially contaminated ships and other vessels of transportation away from the general public for a specified period of time (originally, forty days); (c) the segregation of plants and animals to prevent the spread of agricultural diseases; or (d) the placement of a prisoner into solitary confinement. While several of these definitions are clearly health-related, none specifically captures the most common public health usage of the term "quarantine" to describe the limitation of a healthy individual's activities after (s)he has been exposed to a communicable disease in order to prevent the disease from spreading during its period of communicability. Third, the application of many public health laws is complicated by the fact that the authorizing statutes predate current rules of evidence and procedure. Fourth, although public health orders are civil in nature, they often have significant impact on the liberty, property, and economic

[1] 197 US 11 (1905).

rights of individuals. Throughout the last half-century, the courts have developed a large body of law guiding the curtailment of individual rights by the state in the criminal context. However, no analogous body of law exists in the public health context, and the applicability of criminal law to public health situations in which an individual has not engaged in criminal activity is legally problematic. Finally, in the event of a public health emergency, the deliberative nature of the judicial process may be strained to keep pace with the rapid response and containment measures sought by members of the public health community.

This Bench Book was created as a significant part of the current public health emergency legal preparedness initiative underway at the Public Health Law Program of the Centers for Disease Control and Prevention (CDC). It is intended to protect the health and safety of communities by improving legal preparedness for both public health emergencies and more routine public health cases. In addition, it is our hope that this Bench Book will increase communication between the judiciary and public health agencies at the community, state, and national levels about a variety of public health issues. Although courts have historically been vital protectors of the public's health (e.g., authorizing sanitary inspections, enjoining nuisances, enforcing vaccination requirements), relationships between public health agencies and the judiciary remain rare. In this new era of bioterrorism, emerging infectious diseases, and potential pandemics, courts play an even more critical role in protecting the public's health. This Bench Book is a reference tool that judges may use as they confront the range of public health issues that come into their courtrooms.

We recognize that it would be impracticable to address each and every aspect of the legal system potentially impacted by public health concerns. Bench books are not tomes of law; rather, they are readily accessible legal references for judges to use in the courtroom, providing, for example, procedural frameworks, statutory texts, summaries of relevant case law, and model orders. We have chosen, therefore, to focus this Bench Book on four topical areas in which the intersection of public health and the law is particularly salient: (1) searches, seizures, and other such government actions to ensure the public health; (2) judicial proceedings centered on permissibility of limiting certain individual liberties in order to protect the public health; (3) operation of the courts amid public health threats; and (4) the role of the courts during a state of emergency triggered by public health concerns. As such, this Bench Book will not address in detail the important regulatory functions undertaken by many state and local public health departments (e.g., licensing of health care institutions, Medicaid administration, provision of clinical services, etc.).

Before delving into these four topical areas, we have devoted the opening chapters of the Bench Book to an overview of issues regarding the legal nature and

authority of each of the institutions whose intersection is at the heart of this document – the Michigan judiciary and the Michigan public health system. These introductory chapters consider questions such as: Which Michigan courts have jurisdiction over public health matters? What does Michigan's public health system look like? and Who are the leaders of the Michigan public health system, and what authority do they have? The Bench Book concludes with a series of model court orders to implement key public health powers of the state and localities. Appended materials further address various aspects of public health law and practice. They include a Public Health Primer (Appendix A) and a Public Health Glossary (Appendix B) prepared by the Indiana Bench Book team led by Judge Linda Chezem. It is our hope that Michigan judges will find this Bench Book a valuable tool in their courts' public health legal preparedness.

October 2007

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D. *People, ex rel Hill v Board of Education of the City of Lansing*, 224 Mich 388; 195 NW 95 (1923).

1.00 Jurisdiction of Public Health Issues

1.10 Federal v. State

1.11 The United States Constitution and Public Health

> *We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.* U.S. CONST. prmbl.

A. *Federal Constitution Generally Silent.*
The preamble's stated purpose of promoting the "general Welfare" is the closest the federal Constitution comes to addressing public health. The remainder of the Constitution, including the Amendments, provides no role for the federal government in matters of public health. The silence, viewed in conjunction with the Tenth Amendment's reservation of undelegated powers to the states, indicates that the federal government's public health powers extend only to the boundaries permitted by its defense, interstate commerce, and tax powers.[2] In addition, the federal government is responsible for protecting the public health in discrete geographic areas directly under its control (*e.g.*, military bases).

B. *Exemplary Federal Public Health Powers.*
Pursuant to its itemized powers, the federal government may, for example, assume responsibility for public health emergencies precipitated by acts of war or terrorism.

1.12 States as Primary Actors

In all other cases, the states bear the primary responsibility for preventing and responding to threats to the public's health.[3]

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[2] *Caroline Products Co. v. Evaporated Milk Assn*., 93 F.2d 202, 204 (CA 7, 1937) ["While the police power is ordinarily said to be reserved by the states, it is obvious that it extends fully likewise to the federal government in so far as that government acts within its constitutional jurisdiction…The police power referred to extends to all the great public needs…Its dimensions are identical with the dimensions of the government's duty to protect and promote the public welfare." (Internal citations omitted).]

[3] *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905) ["The safety and health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect. They are matters that do not ordinarily concern the national government."] *and Compagnie Francaise de Navigation a Vapeur v. State Board of Health*, 186 U.S. 380, 387 (1902) ["That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress is beyond the question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question."]

Moreover, states will almost certainly be required to provide significant assistance and resources during public health emergencies falling within the federal government's jurisdiction.

A. ***The Michigan Constitution***

1. **The Purpose of state government includes protection of the public welfare.** *We the people of the State of Michigan, grateful to the Almighty God for the blessings of freedom and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this Constitution*. Mich. Const 1963, prmbl.

2. ***All political power is inherent in the people***. *Government is instituted for their equal benefit security and protection*. Mich. Const 1963, art. I, § 1.

3. **The public health and general welfare of the people of the State are hereby declared to be matters of primary public concern.** *The legislature shall pass suitable laws for the protection and promotion of public health.* Mich. Const 1963, art. IV, § 59.

B. Sources of a State's Public Health Authority.

The power of a state to protect the public's health is derived from two sources of authority—the police power and the *parens patriae* power.

1. **The police power.** The "police power" is the power to promote the public safety, health, and morals by restraining and regulating the use of liberty and property.[4]

2. **The** ***parens patriae power.*** The *parens patriae* power is the power of the state to serve as guardian of persons under legal disability, such as juveniles or the insane.[5]

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[4] *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) ["Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, matters of local concern, the State traditionally have had great latitude under their police powers to legislate as to the protection of lives, limbs, health, comfort, and quiet of all persons."] (Internal citations omitted.); Black's Law Dictionary 1156 (6th ed. 1990); Ernst Freund, The Police Power: Public Policy & Constitutional Rights iii (1976).

[5] *Heller v. Doe*, 509 U.S. 312, 332 (1993) ["[T]he state has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable to care for themselves…."] (Internal citations omitted.); *Alfred L Snapp & Son, Inc. v. Puerto Rico,* 458 U.S. 592, 607 (1982) ["In order to maintain [a *parens patriae*] action, the State must articulate an interest apart from the interests of particular private parties, *i.e.*, the State must be more than a nominal party. The State must express a quasi-sovereign interest…. [A} state has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general."]; Black's Law Dictionary 1114 (6th ed. 1990).

1.20 State and Local Venue Determinations

1.21 Courts of Jurisdiction

A. Court Jurisdiction over Public Health Matters

1. Supreme Court Jurisdiction. The Supreme Court has jurisdiction and power over:

(a) any matter brought before it by any appropriate writ to any inferior court, magistrate, or other officer;

(b) any question of law brought before it in accordance with court rules, by certification by any trial judge of any cause pending or tried before him;

(c) any case brought before it for review in accordance with the court rules promulgated by the supreme court. MCL 600. 215.

2. Appellate Court Jurisdiction.

(a) The Court of Appeals has jurisdiction on appeals from the following orders and judgments which shall be appealable as a matter of right:

(i) All final judgments from the circuit court, court of claims, and recorder's court, except judgments on ordinance violations in the traffic and ordinance division of recorder's court and final judgments and orders described in subsection (2).

(ii) Those orders of the probate court from which an appeal as of right may be taken under section 861.

(b) The Court of Appeals has jurisdiction on appeal from the following orders and judgments which shall be reviewable only upon application for leave to appeal granted by the Court of Appeals:

(c) A final judgment or order made by the circuit court under any of the following circumstances:

(i) In an appeal from an order, sentence, or judgment of the probate court under section 863(1) and (2).

(ii) In an appeal from a final judgment or order of the district court appealed to the circuit court under section 8342.

(iii) An appeal from a final judgment or order of a municipal court.

(iv) In an appeal from an ordinance violation conviction in the traffic and ordinance division of recorder's court of the city of Detroit if the conviction occurred before September 1, 1981.

(d) An order, sentence, or judgment of the probate court if the probate court certifies the issue or issues under section 863(3).

(e) A final judgment or order made by the recorder's court of the city of Detroit in an appeal from the district court in the thirty-sixth district pursuant to section 8342(2).

(f) A final order or judgment from the circuit court or recorder's court for the City of Detroit based upon a defendant's plea of guilty or nolo contendere.

(g) Any other judgment or interlocutory order as determined by court rule. MCL 600.308

3. Circuit Court Jurisdiction. Generally, the circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the Supreme Court; and jurisdiction of other cases and matters as provided by rules of the Supreme Court. Mich. Const 1963, art.VI, §13.

(a) Circuit Court; Jurisdiction and Power

(i) The Circuit Court has Jurisdiction and Power;

- Possessed by courts of record at the common law, as altered by the State Constitution of 1963, the laws of this state, and the rules of the Supreme Court.
- Possessed by courts and judges in chancery in England on March 1, 1847, as altered by the state constitution of 1963, the laws of this state, and the rules of the Supreme Court.
- Prescribed by the rules of the Supreme Court.

(ii) The circuit court has exclusive jurisdiction over condemnation cases commenced under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(iii) In a judicial circuit in which the circuit court is affected by a plan of concurrent jurisdiction adopted under chapter 4, the circuit court has concurrent jurisdiction with the probate court or the district court, or both, as provided in the plan of concurrent jurisdiction, except as to the following matters:

- The probate court shall have exclusive jurisdiction over trust
- The district court shall have exclusive jurisdiction over small claims and civil infraction actions.

(iv) The family division of circuit court has jurisdiction as provided in chapter 10. MCL 600.601.

(b) Circuit Courts; Original Jurisdiction

Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state. MCL 600.605.

4. Probate Court Jurisdiction. Generally, in each county organized for judicial purposes there shall be a probate court. The Legislature may create or alter probate court districts of more than one county if approved in each affected county by a majority of the electors voting on the question. The Legislature may provide for the combination of the office of probate judge with any judicial office of limited jurisdiction within a county with supplemental salary as provided by law. The jurisdiction, powers and duties of the probate court and of the judges thereof shall be provided by law. They shall have original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law. Mich Const 1963, art. VI, §15.

(a) Power and Jurisdiction

(i) The probate court has jurisdiction and power as follows:

- As conferred upon it under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102.
- As conferred upon it under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.
- As conferred upon it under this act.
- As conferred upon it under another law or compact.

(ii) In a judicial circuit in which the probate court is affected by a plan of concurrent jurisdiction adopted under chapter 4, the probate court has concurrent jurisdiction with the circuit court or the district court, or both, as provided in the plan of concurrent jurisdiction, except as to the following matters:

- The circuit court shall have exclusive jurisdiction over appeals from the district court and from administrative agencies authorized by law.
- The circuit court shall have exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963.
- The circuit court shall have exclusive jurisdiction to hear and decide matters within the jurisdiction of the court of claims under chapter 64.
- The district court shall have exclusive jurisdiction over small claims and civil infraction actions. MCL 600.841.

(b) Concurrent Jurisdiction with Circuit Court

The jurisdiction conferred by this chapter shall not be construed to deprive the circuit court in the proper county of concurrent jurisdiction as originally exercised over the same matter. MCL 600. 845.

5. District Court Jurisdiction

(a) Power and Jurisdiction

In a district court district in which the district court is affected by a plan of concurrent jurisdiction adopted under chapter 4, the district court has concurrent jurisdiction with the circuit court or the probate court, or both, as provided in the plan of concurrent jurisdiction, except as to the following matters:

(i) The circuit court shall have exclusive jurisdiction over appeals from the district court and from administrative agencies as authorized by statute.

(ii) The circuit court shall have exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963.

(iii) The circuit court shall have exclusive jurisdiction to hear and decide matters within the jurisdiction of the court of claims under chapter 64.

(iv) The probate court shall have exclusive jurisdiction over trusts and estates. MCL 600.8304.

1.22 Venue

A. Proper Venue.

1. Determinations

Except for actions provided for in sections 1605, 1611, 1615, and 1629, venue is determined as follows:

(a) The county in which a defendant resides, has a place of business, or conducts business, or in which the registered office of a defendant corporation is located, is a proper county in which to commence and try an action.

(b) If none of the defendants meet 1 or more of the criteria in subdivision (a), the county in which a plaintiff resides or has a place of business, or in which the registered office of a plaintiff corporation is located, is a proper county in which to commence and try an action.

(c) An action against a fiduciary appointed by court order shall be commenced in the county in which the fiduciary was appointed. MCL 600.1621.

2. Actions by the Attorney General

The county in which the seat of state government is located is a proper county in which to commence and try the following actions:

(a) when the action is commenced by the attorney general in the name of the state or of the people of the state for the use and benefit thereof;

(b) when venue cannot be laid under any other of the venue provisions. MCL 600.1631.

B. Change of Venue

1. Motion in an Action Based on Tort

(a) Subject to subsection 2, in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:

(i) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:

- The defendant resides, has a place of business, or conducts business in that county.
- The corporate registered office of a defendant is located in that county.

(ii) If a county does not satisfy the criteria under subdivision (i), the county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:

- The plaintiff resides, has a place of business, or conducts business in that county.
- The corporate registered office of a plaintiff is located in that county.

(iii) If a county does not satisfy the criteria under subdivision (i) or (ii), a county in which both of the following apply is a county in which to file and try the action:

- The plaintiff resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.
- The defendant resides, has a place of business, or conducts business in that county, or has its corporate registered office located in that county.

(iv) If a county does not satisfy the criteria under subdivision (i), (ii), or (iii), a county that satisfies the criteria under section 1621 or 1627 is a county in which to file and try an action.

(b) Any party may file a motion to change venue based on hardship or inconvenience.

(c) For the purpose of this section only, in a product liability action, a defendant is considered to conduct business in a county in which the defendant's product is sold at retail. MCL 600.1629.

2. If a party brings a motion for a change of venue in an action based on tort alleging improper venue, the court shall award expenses and costs as follows:

(a) If the motion is granted, the court shall, after opportunity for a hearing, require the party who opposed the motion to pay to the moving party the reasonable expenses, including reasonable attorney fees, incurred in obtaining the order and to pay the statutory filing fee applicable to the court to which the action is transferred unless the court orders the change of venue for the convenience of the parties and witnesses or when an impartial trial cannot be had where the action is pending.

(b) If the motion is denied, the court shall, after opportunity for a hearing, require the moving party to pay to the party who opposed the motion the reasonable expenses, including reasonable attorney fees, incurred in opposing the motion, unless the court maintains venue for the convenience of the parties and witnesses. MCL 600.1653.

2.00 Health Agencies and Boards

2.10 Michigan Department of Community Health

2.11 Composition

A. Director of Public Health.

1. Appointment and Term.

The governor shall appoint the director of public health by the method and for a term prescribed by section 508 of Act No. 380 of the Public Acts of 1965, being section 16.608 of the Michigan Compiled Laws. MCL 333.2202. When a single executive is the head of a principal department, unless elected as provided in the constitution, he shall be

appointed by the governor by and with the advice and consent of the senate and he shall serve at the pleasure of the governor. MCL 16.608.

2. Qualifications.

The director shall be qualified in the general field of health administration. Qualification may be demonstrated by either of the following:

(a) Not less than 8 years administrative experience of which not less than 5 years have been in the field of health administration.

(b) A degree beyond the level of baccalaureate in a field related to public health or administration, and not less than 5 years of administrative experience in the field of health administration. As used in this section, "administrative experience" means service in a management or supervisory capacity. MCL 333.220b.

(c) Physician. If the director is not a physician, the director shall designate a physician as chief medical executive of the department. The chief medical executive shall be a full-time employee and shall be responsible to the director for the medical content of policies and programs. MCL 333.2202.

(d) Salary. The director shall receive an annual salary appropriated by the legislature and payable in the same manner as salaries of other state officers. MCL 333.2204.

(e) Full Time Status. The director's full time shall be devoted to the performance of the functions of the director's office. MCL 333.2204.

(f) Expenses. The director shall receive expenses necessarily incurred in the performance of official functions. MCL 333.2204.

2.12 Authority of Department

A. The Department of Community Health may:

1. Engage in research programs and staff professional training programs.

2. Advise governmental entities or other persons as to the location, drainage, water supply, disposal of solid waste, heating, and ventilation of buildings.

3. Enter into an agreement, contract, or arrangement with governmental entities or other persons necessary or appropriate to assist the department in carrying out its duties and functions.

4. Exercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.

5. Accept gifts, grants, bequests, and other donations in the name of this state. Funds or property accepted shall be used as directed by its donor and in accordance with the law,

rules, and procedures of this state.

6. Either directly or by interagency contract, develop and deliver health services to vulnerable population groups. MCL 333.2226.

B. Organized Programs:

1. Pursuant to section 51 of article 4 of the state constitution of 1963, the department shall continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups; development of health care facilities and agencies and health services delivery systems; and regulation of health care facilities and agencies and health services delivery systems to the extent provided by law.

2. The department shall:

(a) Have general supervision of the interests of the health and life of the people of this state.
(b) Implement and enforce laws for which responsibility is vested in the department.
(c) Collect and utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health.
(d) Make investigations and inquiries as to:
  (i) The causes of disease and especially of epidemics.
  (ii) The causes of morbidity and mortality.
  (iii) The causes, prevention, and control of environmental health hazards, nuisances, and sources of illness.
(e) Plan, implement, and evaluate health education by the provision of expert technical assistance and financial support.
(f) Take appropriate affirmative action to promote equal employment opportunity within the department and local health departments and to promote equal access to governmental financed health services to all individuals in the state in need of service.
(g) Have powers necessary or appropriate to perform the duties and exercise the powers given by law to the department and which are not otherwise prohibited by law.
(h) Plan, implement, and evaluate nutrition services by the provision of expert technical assistance and financial support. MCL 333.2221.

C. Biennial Plan for Rural Health:

The center for rural health created under section 2612, in consultation, shall prepare a biennial plan for rural health. The center for rural with the department and professional associations representing health facilities and health professions health, in consultation with the department,

shall submit the plan to the standing committees in the Senate and House of Representatives with jurisdiction over matters pertaining to public health. MCL 333.2223.

D. Promotion of Local Health Services:

Pursuant to this code, the department shall promote an adequate and appropriate system of local health services throughout the state and shall endeavor to develop and establish arrangements and procedures for the effective coordination and integration of all public health services including effective cooperation between public and nonpublic entities to provide a unified system of statewide health care. MCL 333.2224.

E. Furnishing Information:

1. To assist the department in its duties and functions, officials of this state and persons transacting business in this state shall furnish the department with information relating to public health which may be requested by the department.

2. The department shall report periodically to the governor and legislature as to the activities carried on under this code. MCL 333.2231.

F. Health Education:

1. The department shall:
   (a) Exercise overall leadership in recognizing the importance of public health education objectives in the planning, developing, and carrying out of public health programs within the department's jurisdiction.
   (b) Encourage local health departments to give priority to community health education activities as (an essential part of local health programs.
   (c) Develop and apply standards for the evaluation of public health education activities both at the state and local level and in cooperation with other public and private agencies.
   (d) Collect and disseminate information about public health education activities and research in this state.

2. As used in this section, "health education" means that dimension of health care that directs attention of individuals to their health behavior with the goal of enabling the individuals to make reasoned decisions about their own health practices and those within the various communities in which the individuals live, work, and play. The basic components of reasoned health decision-making education include both:
   (a) The acquisition of accurate, unbiased, authoritative knowledge of subjects such as human biology, efficacy of early prevention, disease detection and control, nutritional practices, detection and control of environmental hazards, alternative health practices and the consequences of each, and the affective assessment of an individual's own beliefs on health outcomes.
   (b) The acquisition of the behavior skills required to carry out the desired alternative. MCL 333.2237.

G. Inspection:

1. To assure compliance with laws enforced by the department, the department may inspect, investigate, or authorize an inspection or investigation to be made of any matter, thing, premises, place, person, record, vehicle, incident, or event.

2. The department may apply for an inspection or investigation warrant under section 2242 to carry out this section. MCL 333.2241.

H. Warrant Requirements

1. An affidavit is required for the issuance of a warrant. Upon receipt of an affidavit made on oath establishing grounds for issuing a warrant pursuant to section 2243, a magistrate shall issue an inspection or investigation warrant authorizing the department applying for the warrant to conduct an inspection or investigation. MCL 333.2242.

2. There must be grounds for issuing a warrant. A magistrate shall issue an inspection or investigation warrant if either of the following exists:

(a) Reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular thing, premises, place, person, record, vehicle, incident or event.
(b) There is reason to believe that noncompliance with laws enforced by the state or local health department may exist with respect to the particular thing, premises, place, person, record, vehicle, incident, or event. MCL 333.2243.
(c) Finding a cause: The magistrate's finding of cause shall be based on the facts stated in the affidavit. The affidavit may be based upon reliable information supplied to the applicant from a credible individual, named or unnamed, if the affidavit contains affirmative allegations that the individual spoke with personal knowledge of the matters contained in the affidavit. MCL 333.2244.
(d) Assistance of law enforcement: An inspection or investigation warrant may be directed to the sheriff or any law enforcement officer, commanding the officer to assist the state or local health department in the inspection or investigation. A warrant shall designate and describe the location or thing to be inspected and the property or thing to be seized. The warrant shall state the grounds or cause for its issuance or a copy of the affidavit shall be attached to the warrant. MCL 333.2245.
(e) Execution of the warrant:
The officer to whom an inspection or investigation warrant is directed or a person assisting the officer may break an outer or inner door or window of a house or building, or anything therein, to execute the warrant, if, after notice of his or her authority and purpose, the officer is refused admittance, or when necessary to liberate the officer or person assisting the officer in execution of the warrant. MCL 333.2246.
(f) Malicious procurement.

A person who maliciously and without cause procures an inspection or investigation warrant to be issued and executed is guilty of a misdemeanor. MCL 333.2247.

I. Imminent Danger to Health or Lives

1. Definition of Imminent Danger
"Imminent danger" means a condition or practice exists which could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided. MCL 333.2251.

2. Notification
Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director immediately shall inform the individuals affected by the imminent danger and issue an order which shall be delivered to a person, authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. MCL 333.2251.

3. Order
The order shall incorporate the director's findings and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger. MCL 333.2251.

4. Noncompliance
Upon failure of a person to comply promptly with a department order issued under this section, the department may petition the circuit court having jurisdiction to restrain a condition or practice which the director determines causes the imminent danger or to require action to avoid, correct, or remove the imminent danger. MCL 333.2251.

5. Director's Duty
If the director determines that conditions anywhere in this state constitute a menace to the public health, the director may take full charge of the administration of state and local health laws, rules, regulations, and ordinances applicable there. MCL 333.2251.

J. Epidemic Emergency

If the director determines that control of an epidemic is necessary to protect the public health, the director, by emergency order, may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code. MCL 333.2253.

K. Rulemaking

1. The department may promulgate rules necessary or appropriate to implement and carry out the duties or functions vested by law in the department.

2. If the Michigan supreme court rules that sections 45 and 46 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.245 and 24.246 of the Michigan Compiled Laws, are unconstitutional, and a statute requiring legislative review of administrative rules is not enacted within 90 days after the Michigan supreme court ruling, the department shall not promulgate rules under this act. MCL 333.2233.

L. Enforcement Mechanisms

1. Injunctive Action
Notwithstanding the existence and pursuit of any other remedy, the department, without posting bond, may maintain an injunctive action in the name of the people of this state to restrain, prevent, or correct a violation of a law, rule, or order which the department has the duty to enforce or to restrain, prevent, or correct an activity or condition which the department believes adversely affects the public health. MCL 333.2255.

2. Misdemeanor and Penalty
Except as otherwise provided by this code, a person who violates a rule or order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than $200.00, or both. MCL 333.2261.

3. Monetary Civil Penalties
(1) The department may promulgate rules to adopt a schedule of monetary civil penalties, not to exceed $1,000.00 for each violation or day that a violation continues, which may be assessed for a specified violation of this code or a rule promulgated or an order issued under this code and which the department has the authority and duty to enforce. MCL 333.2262.

4. Citations
If a department representative believes that a person has violated this code or a rule promulgated or an order issued under this code which the department has the authority and duty to enforce, the representative may issue a citation at that time or not later than 90 days after discovery of the alleged violation. The citation shall be written and shall state with particularity the nature of the violation, including reference to the section, rule, or order alleged to have been violated, the civil penalty established for the violation, if any, and the right to appeal the citation pursuant to section 2263. MCL 333.2262.

5. Administrative Hearing
(a) Notice of Citation: The citation shall be delivered or sent by registered mail to the alleged violator. MCL 333.2262.

(b) Petition: Not later than 20 days after receipt of the citation, the alleged violator may petition the department for an administrative hearing, which shall be held within 60 days after receipt of the petition by the department. The administrative hearing may be conducted by a hearings officer who may affirm, dismiss, or modify the citation. MCL 333.2263.
(c) Finality of Decision: The decision of the hearings officer shall be final, unless within 30 days after the decision the director grants a review of the citation. Upon review, the director may affirm, dismiss, or modify the citation. A civil penalty shall become final if a petition for an administrative hearing is not received within the time specified. MCL 333.2263.
(d) Procedures: Hearings and appeals under this section shall conform to the administrative procedures act of 1969. MCL 333.2263.
(e) Civil Penalty: A civil penalty imposed shall be paid to the state treasury for deposit in the general fund. A civil penalty may be recovered in a civil action brought in the county in which the violation occurred or the defendant resides. MCL 333.2263.

2.20 Local Health Departments

2.21 Composition of Local Health Departments

A. County Health Department:
Except if a district health department is created pursuant to section 2415, the local governing entity of a county shall provide for a county health department which meets the requirements of this part, and may appoint a county board of health. MCL 333.2413.

B. District Health Department.
1. Creation:
Two or more counties or a city having a population of 750,000 or more and 1 or more counties, by a majority vote of each local governing entity and with approval of the department, may unite to create a district health department. MCL 333.2415.
2. Composition:
The district board of health shall be composed of 2 members from each county board of commissioners or in case of a city-county district 2 members from each county board of commissioners and 2 representatives appointed by the mayor of the city. With the consent of the local governing entities affected, a county or city may have a greater number of representatives. MCL 333.2415.

C. City Health Department.
1. Creation:
A city having a population of 750,000 or more may create a city health department which shall be considered a local health department for purposes of this code, if the requirements of section 2422 to 2424 are met. If a city creates a health department, that department and its local governing entity shall have the powers and duties of a local health department or local governing entity as provided by this part. MCL 333.2421.

D. Local Health Officer.

1. Appointment:
A local health department shall have a full-time local health officer appointed by the local governing entity or in case of a district health department by the district board of health. MCL 333.2428.
2. Qualifications:
The local health officer shall possess professional qualifications for administration of a local health department as prescribed by the department. MCL 333.2428.
3. Relation to Local Health Department:
The local health officer shall act as the administrative officer of the board of health and local health department and may take actions and make determinations necessary or appropriate to carry out the local health department's functions under this part or functions delegated under this part and to protect the public health and prevent disease. MCL 333.2428.

2.22 Requirements of Local Health Departments

A. Generally, a local health department shall:

1. Have a plan of organization approved by the department.
2. Demonstrate ability to provide required services.
3. Demonstrate ability to defend and indemnify employees for civil liability sustained in the performance of official duties except for wanton and willful misconduct.
4. Meet the other requirements (below). MCL 333.2431.

B. Report
Each local health department shall report to the department at least annually on its activities, including information required by the department. MCL 333.2431.

C. Review of Plan
In reviewing a plan for organization of a local health department, the department shall consider the fiscal capacity and public health effort of the applicant and shall encourage boundaries consistent with those of planning agencies established pursuant to federal law. MCL 333.2431.

D. Waiver
The department may waive a requirement of this section during the option period specified in section 2422 based on acceptable plan development during the planning period described in section 2424 and thereafter based on acceptable progress toward implementation of the plan as determined by the department. MCL 333.2431.

2.23 Powers of Local Health Departments

A. Generally:

1. A local health department shall continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including

prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups; development of health care facilities and health services delivery systems; and regulation of health care facilities and health services delivery systems to the extent provided by law. MCL 333.2433.

2. A local health department shall:

(a) Implement and enforce laws for which responsibility is vested in the local health department.
(b) Utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health.
(c) Make investigations and inquiries as to:
(i) The causes of disease and especially of epidemics.
(ii) The causes of morbidity and mortality.
(iii) The causes, prevention, and control of environmental health hazards, nuisances, and sources of illness.
(d) Plan, implement, and evaluate health education through the provision of expert technical assistance, or financial support, or both.
(e) Provide or demonstrate the provision of required services as set forth in section 2473(2).
(f) Have powers necessary or appropriate to perform the duties and exercise the powers given by law to the local health officer and which are not otherwise prohibited by law.
(g) Plan, implement, and evaluate nutrition services by provision of expert technical assistance or financial support, or both. MCL 333.2433.

3. This section does not limit the powers or duties of a local health officer otherwise vested by law. MCL 333.2433.

B. Additional Powers:

1. A local health department may:
(a) Engage in research programs and staff professional training programs.
(b) Advise other local agencies and persons as to the location, drainage, water supply, disposal of solid waste, heating, and ventilation of buildings.
(c) Enter into an agreement, contract, or arrangement with a governmental entity or other person necessary or appropriate to assist the local health department in carrying out its duties and functions unless otherwise prohibited by law.
(d) Adopt regulations to properly safeguard the public health and to prevent the spread of diseases and sources of contamination.
(e) Accept gifts, grants, bequests, and other donations for use in performing the local health department's functions. Funds or property accepted shall be used as directed by its donor and in accordance with the law, rules, and procedures of this state and the local governing entity.
(f) Sell and convey real estate owned by the local health department.
(g) Provide services not inconsistent with this code.

(h) Participate in the cost reimbursement program set forth in sections 2471 to 2498.
(i) Perform a delegated function unless otherwise prohibited by law. MCL § 333.2435.

2.30 Relationships between State and Local Health Departments

Authority to assume powers of local health departments. The department, in addition to any other power vested in it by law, may exercise any power vested in a local health department in an area where the local health department does not meet the requirements of this part. MCL 333.2437.

3.00 Searches, Seizures, and Other Government Actions to Ensure Public Health

Frequently, protection of the public's health necessitates government intrusion upon individual liberties, such as privacy and bodily integrity. For example, public health agencies and officials must sometimes conduct searches and seizures of persons and property to control disease and other threats to public health. Similarly, public health agencies and officials may require access to and dissemination of personal information. In all such cases, both public and private interests are balanced to determine the appropriate scope of state action justified by public health and safety concerns.

This tension between public safety and individual liberties is also reflected in the context of criminal procedure. To the extent that public health law surrounding these issues remains underdeveloped, it is tempting to turn to criminal law analogies for guidance. The application of criminal procedure principles to public health action is, however, often complicated by numerous factors, including the differing philosophies underlying the two bodies of law and the lack of societal condemnation attached to many persons deemed threats to public health. Thus, while this bench book will identify criminal law analogies potentially relevant to a court's public health decisions, it does so with the caution that serious consideration should be given to the nuances of cited state and federal criminal jurisprudence before applying those decisions in the context of public health.

3.10 Searches and Seizures Generally

3.11 Constitutional Analysis

A. ***The United States Constitution***

1. **No unreasonable searches and seizures.**
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. amend. IV.

2. **Definitions.**

(a) **Search.** A search occurs when government action infringes upon an expectation of privacy that society recognizes as reasonable.[6]

(b) **Seizure.**

i. **Of individual.** A seizure of an individual occurs when government action meaningfully interferes with an individual's freedom of movement.[7]

- **Duration of interference irrelevant.** Government's meaningful interference with an individual's freedom of movement constitutes a seizure, "however brief." *See* id. at 696.

ii. **Of property.** A seizure of property occurs when government action meaningfully interferes with an individual's possessory interest in that property.[8]

(c) **Government action.** The Fourth Amendment applies to all acts of all state officials, including both civil and criminal authorities.[9]

(d) **State hospital employees are government actors.** Staff at state hospitals is considered government actors, subject to Fourth Amendment requirements.[10]).

(e) **Probable cause.** Probable cause exists when, under circumstances, there are reasonable grounds for a belief of guilt that is particularized with respect to the person, place, or items to be searched or seized.[11]

3. **Applicability of Fourth Amendment outside criminal context.** The Fourth Amendment's protections apply to non-criminal searches and seizures, such as health and safety inspections.[12]

4. **Applicability of Fourth Amendment to physical evidence obtained from individual.** The Fourth Amendment is implicated when the government seeks to obtain physical evidence from an individual.

(a) **Detention to obtain evidence as seizure.** The detention of an individual necessary to produce the evidence sought is a seizure it if amounts to a meaningful interference with the individual's freedom of movement. [13]

(b) **Obtaining and examining evidence as search.** Both obtaining physical evidence from an individual and examining that evidence are searches if these

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[6] *United States v. Jacobsen*, 466 U.S. 109,113 (1984); *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

[7] *Michigan v. Summers*, 452 U.S. 692, 696 (1981).

[8] *Jacobsen*, supra, 466 U.S. at 113.

[9] *New Jersey v. T.L.O.*, 469 U.S. 325, 335 (1985).

[10] *Ferguson v. City of Charleston*, 532 U.S. 67, 76 (2001

[11] *Maryland v. Pringle*, 540 U.S. 366, 370-71 (2003).

[12] *Torres v. Puerto Rico*, 442 U.S. 465, 473 (1979); *Marshall v. Barlow's Inc.,* 436 U.S. 307, 312 (1978); *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 533-34 (1967).

[13] *Skinner v. Railway Labor Executives' Assn.,* 489 U.S. 602, 616 (1989); *Schmerber v. California,* 384 U.S. 757, 767 (1966).

acts infringe upon an expectation of privacy that society recognizes as reasonable.[14]

(c) **Physical characteristics exposed to public not protected by Fourth Amendment.** Because an individual has no reasonable expectation of privacy in physical characteristics constantly exposed to the public, such as vocal tones, facial features, and fingerprints, the Fourth Amendment is inapplicable to government action to obtain such evidence.[15]

(d) **Obtaining physical evidence via significantly invasive or newly emerging medical procedures unreasonable in certain circumstances.** The Supreme Court has held on at least one occasion that obtaining physical evidence from an individual via surgical intrusion is an unreasonable search.[16]

i. **Case-by-case analysis.** The reasonableness of invasive medical intrusions must be determined on a case-by-case basis. *See* id. 760.

ii. **Factors relevant to reasonableness inquiry.** The following factors should be considered when determining the reasonableness of invasive medical intrusions:

- The existence of probable cause to believe relevant medical information will be revealed;
- Whether a warrant will be revealed;
- The extent to which the intrusion may threaten the health or safety of the individual;
- The extent of the intrusion upon the individual's dignitary interests in privacy and bodily integrity;
- The community's interest in accurately determining presence of disease or other medical threats; and
- The availability of other evidence. *See* id., 760-65.

5. **Applicability of Fourth Amendment to information obtained without physical intrusion of premises or persons.** The Fourth Amendment applies to information obtained from premises or persons even when no physical intrusion is required to obtain information.[17]

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[14] *Ferguson,* supra, 532 U.S. at 76 (urine tests are searches subject to the Fourth Amendment); *Cupp v. Murhphy,* 412 U.S. 291, 295 (1973) (fingernail scraping constitutes search subject to Fourth Amendment); *Schmerber*, supra, 384 U.S. at 767 (compelled blood draw analyzed for alcohol content constitutes search subject to Fourth Amendment). A further discussion of these issues may be found, *infra*, at Section 3.31.

[15] *United States v. Dionisio*, 410 U.S. 1, 14-15 (1973) (voice exemplars); *United States v. Doe,* 457 F.2d 895, 894 (2d Cir. 1972) ("[T]here is no 'reasonable expectation of privacy' about one's face."); *Davis v. Mississippi,* 394 U.S. 761, 727 (1969) (fingerprints).

[16] *Winston v. Lee*, 470 U.S. 753 (1985) (surgical instruction in chest area to retrieve bullet unreasonable under Fourth Amendment).

[17] *Kyllo v. Unites States*, 533 U.S. 27 (2001) (holding use of thermal imaging scanner to obtain information about temperature within defendant's home constituted a search subject to Fourth Amendment protections despite fact that scan occurred from streets outside home).

(a) **Character of premises highly relevant to analysis.** The character of the premises at issue may well be determinative when analyzing the applicability of the Fourth Amendment to information obtained without physical intrusion of premises.[18]

(b) **Character and extent of information obtained relevant to analysis.** The acquisition of information about an individual's lawful activities is likely to constitute a search subject to the Fourth Amendment.[19]

(c) **Character of technology may be relevant to analysis.** The acquisition of information using technology *not in general public use* may be more likely to constitute a search subject to the Fourth Amendment.[20]

6. **Reasonableness analyzed.** The permissibility of government action is assessed by balancing the intrusion upon the individual's Fourth Amendment interests (*e.g.*, dignity, privacy, and personal security) against the promotion of legitimate government interests.[21]

(a) **Context-specific inquiry.** The reasonableness of a search or seizure depends upon the context in which it takes place.[22]

(b) **No "least intrusive" requirement.** The reasonableness of a search or seizure does not depend on whether the government uses the least intrusive means practicable.[23]

(c) **Warrant generally required.** As a general rule, government searches of and seizures conducted without a valid warrant are presumed to be unreasonable.[24].

(i) **Character of individual interests involved not dispositive.** The consent or warrant requirement applies to searches of and seizures on both residential and commercial property. [25]

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[18] *Compare Kyllo*, supra, 533 U.S. 27 (thermal imaging scan of home is search subject to Fourth Amendment) *with Dow Chemical Co. v. United States*, 476 U.S. 227 (1986) (aerial surveillance of industrial complex not search).

[19] *Illinois v. Caballes*, 125 S.Ct. 834, 838 (2005) (holding use of dog sniff to detect illegal narcotics during legal traffic stop was not a search subject to the Fourth Amendment, noting that "[c]ritical to [the Kyllo] decision was the fact that the device was capable of detecting lawful activity… the legitimate expectation that information about perfectly lawful activity will remain private is categorically distinguishable from respondent's hopes or expectations concerning the non detection of contraband in the trunk of his car.").

[20] *Kyllo*, supra, 533 U.S. at 34 ("We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area constitutes a search—*at least where (as here) the technology in question is not in general public use."* (Internal citations omitted.)).

[21] *T.L.O.,* supra, 469 U.S. at 337; *Delaware v. Prouse,* 440 U.S. 648, 653-54 (1979).

[22] *T.L.O.,* supra, 469 U.S. at 337.

[23] *See, e.g.*, *Vernonia School District v. Acton*, 515 U.S. 646, 663 (1995).

[24] *Camara,* supra, 387 U.S. at 528-29

[25] *Camara*, supra, 387 U.S. 523 (search of residence); *See v. City of Seattle*, 387 U.S. 541 (1967) (search of commercial property).

(ii) **Valid warrants.** To be valid, a warrant must be based upon probable cause, as determined by a neutral magistrate.[26]

- **No guilt by association.** Probable cause to search or seize an individual is not satisfied merely by the existence of probable cause to search another in proximity to the individual or the premises upon which the individual is located. [27]

(d) **Exceptions to warrant requirement potentially applicable in the public health context.** The general requirement that searches and seizures must be conducted pursuant to a valid warrant is subject to several notable exceptions:

(i) **Consent.** A knowing and voluntary consent by an individual with actual or apparent authority over the premises to be searched or items to be seized obviates the need for a valid warrant.[28].

- **Voluntariness of consent is fact-specific.** The voluntariness of an individual's consent to a search or seizure is evaluated with reference to all surrounding circumstances.[29]

- **Scope of consent limits search or seizure.** A warrantless, consent search or seizure is limited to the scope of provided in the consent. [30]

(ii) **Special needs.** The warrant requirement is inapplicable when special needs, beyond the ordinary need for law enforcement, are implicated.[31]

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[26] *Pringle,* supra, 540 U.S. 366.

[27] *Ybarra (ii) Illinois*, 444 U.S. 85, 91 (1979).

[28] *Illinois v. Rodriguez,* 497 U.S. 177, 181 (2000); *Hannoy,* supra, 789 N.E.2d at 982

[29] *Ohio v. Robinette,* 519 U.S. 33, 40 (1996) (providing relevant factors for analysis).

[30] *Florida v. Jieno,* 500 U.S. 248, 252 (1991); *Hannoy*, supra, 789 N.E.2d at 982.

[31] *Board of Education v. Earls,* 536 U.S. 822, 829 (2002) (upholding warrantless, random drug testing of students participating in public school's extracurricular activities); *Acton,* supra, 515 U.S. at 653 (upholding random drug testing of student athletes in public schools*) National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665-66 (1989) (upholding warrantless drug testing of railroad employees involved in train accidents or found to be in violation of certain safety rules); *Love v. Superior Court of San Francisco*, 226 Cal. App. 3d. 736 (1990) (upholding warrantless AIDS testing of prostitutes to protect the health of state citizens). *But See Chandler v. Miller,* 520 U.S. 305 (1997) (rejecting Georgia's "special needs" justification for warrantless, suspicionless drug testing of all candidates for certain state offices); *Willis v. Anderson Comm. School Corp.,* 158 F3d 415 (CA 7, . 1998) (holding school district's drug testing of all students suspended for fighting violated Fourth Amendment; "special needs" exception inapplicable given feasibility of suspicion-based testing program); *Glover v. Eastern Neb. Comm. Office of Retardation*, 867 F.2d 461 (CA 8, 1989) (holding agency's requirement that all employees working with mentally retarded submit to hepatitis and HIV tests violated Fourth Amendment given virtually non-existent risk of disease transmission from clients to employees).

- **Test.** Under the "special needs" exception, a search or seizure must be reasonable under all the circumstances. This determination is made by balancing the individual's privacy interests against the government's legitimate interests, as previously indicated, *supra*, at Section 3.11(A)(6), with consideration of the *context-specific factors* identified below.[32]

* **Nature of the privacy interest affected by government action.**
    ** Relevant factors:
        *** Legitimate privacy expectations of the affected individual: Certain populations of individuals are presumed to have reduced expectations of privacy. [33]
        *** Relationship between the affected individual and the government; and
        *** Existence of voluntary individual conduct that triggers government action.

* **Character of the government intrusion on the individual's privacy interest.**
    ** Relevant factors:
        *** Manner in which the search or seizure is conducted;
        *** Level of confidentiality afforded private information obtained during the search or seizure; and
        *** Degree to which the use of private information obtained during the search or seizure is limited.

* **Nature and immediacy of concerns giving rise to government action and the efficacy of the action in addressing those concerns.**
    ** Relevant factors:
        *** Practicability of the warrant and probable cause requirements;
        *** Importance of government concern;
        *** Implicated health and safety issues;
        *** Need of government to prevent great harm;

[32] *Earls*, supra, 536 U.S. at 830-38; *Acton*, supra, 515 U.S. at 652-64.
[33] *United States v. Knights*, 532 U.S. 112 (2001) (probationers); *Dunn v. White*, 880 F.2d 1188 (10th Cir. 1989) (prisoners); *People v. Adams*, 597 N.E.2d 574 (Ill. 1992) (persons convicted of certain offenses).

*** Heightened government responsibility with respect to affected individual(s); and

*** Degree to which government action is narrowly tailored to address concern.

** **Close review of government needs and action appropriate.** The Court is permitted to conduct a "close review" of evidence relevant to the government's asserted "special needs" and the efficacy of the government action.[34]

****Extensive entanglement of law enforcement inconsistent with "special needs" exception.** To qualify for the special needs exception, the primary and immediate purposes of government action cannot involve the generation of evidence for law enforcement purposes.[35]

**** *But mandatory reporting requirements for medical personnel not Fourth Amendment violation even if information ultimately provided to law enforcement.*** Mandatory legal and ethical reporting schemes for information obtained by medical personnel during the ordinary course of treatment do not violate the Fourth Amendment, even if that information is ultimately provided to law enforcement.[36]

- **No probable cause requirement**. The probable cause standard is often unsuited to circumstances outside the criminal context, such as those covered by the "special needs" exception.[37]. The practicability of the probable cause requirement is considered in the balancing test provided above, *supra*, at Section 3.11(A)(6)(d)(ii)(A). Specifically, the probable cause standard is often unsuited to determining the reasonableness of administrative searches when government action seeks to:

* Prevent the development of hazardous conditions; or

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[34] *Ferguson,* supra, 532 U.S. at 81; *Chandler*, supra, 520 U.S. at 319-22.

[35] *Ferguson,* supra, 532 U.S. at 82-82 (rejecting city's claim that warrantless, nonconsensual drug testing of pregnant women suspected of using cocaine was justified by "special needs" exception, given city prosecutors and police were extensively involved in testing program development and implementation and program used threat of arrest and prosecution to force women into treatment); *Acton,* supra, 515 U.S. at 658 (noting results of student drug tests are not provided to law enforcement or used for disciplinary purposes in upholding school testing scheme under "special needs" exception).

[36] *Ferguson*, supra, 532 U.S. at 78, 80-81.

[37] *Von Raab*,supra, 489 U.S. at 667-68

* Detect latent or hidden violations that rarely generate articulable grounds for searching any particular place or person.[38]

- ***And*** **individualized suspicion not always necessary.** Pursuant to the "special needs" exception, a finding of individualized suspicion may not be necessary in the face of sufficient government safety and administrative interests.[39]

* **Conditions under which individualized suspicion requirement not necessary.** The requirement of individualized suspicion may be suspended when:

** The privacy interests implicated by the search or seizure are minimal;

** An important government interest furthered by the search or seizure would be placed in jeopardy by a requirement of individualized suspicion; and

** Other safeguards are available to assure that the affected individual's reasonable expectation of privacy is not subject to the discretion of the official(s) in the field.[40]

* **Membership in suspicious class or group subject to heightened risk may be sufficient.** In cases where individualizes suspicion is impracticable, membership in a suspicious class may provide sufficient justification for a search or seizure pursuant to the "special needs" exception.[41]

(iii) **Administrative inspections.** Administrative inspections implicate the individual interests protected by the Fourth Amendment and may be conducted only upon issuance of a valid warrant. [42]

- **Modified probable cause standard.** Administrative warrants may issue upon a modified "probable cause" standard, which is satisfied by a showing of:

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[38] *Earls,* supra, 536 U.S. at 828.

[39] *Earls,* supra, 536 U.S. at 829 ("In certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the searches without any measure of individualized suspicion."); *Skinner,* supra, 489 U.S. at 624.

[40] *Skinner*, supra, 489 U.S. at 624; *T.L.O.*, supra, 469 U.S. at 342 n.8.

[41] *Dunn,* supra, 990 F.2d at 1195 ("[I]n the area of public health, this court has suggested that testing of all those within a suspicious class sometimes may be justified."); *Adams,* supra, 597 N.E.2d at 582 (upholding mandatory HIV testing of prostitutes and noting HIV provides few articulable grounds for testing other than "categories of risk.").

[42] *Barlow's Inc.,* 436 U.S. at 316-20 (requiring warrant for OSHA inspection of business); *Camara*, supra, 387 U.S. at 534 (requiring warrant for housing code inspection of apartment building).

* Specific evidence of an existing violation; or
* Reasonable legislative or administrative standards for conducting an inspection of a particular individual or establishment.[43]

(iv) **Pervasively regulated business.** Warrantless searches of certain industries are permitted based upon the theory that their extensive history of government oversight and pervasive regulation prevents those engaged in the industry from holding any reasonable expectations of privacy in their merchandise.[44]

- **Test.** Warrantless inspections of pervasively regulated businesses are deemed reasonable if the following criteria are met:
  * A substantial government interest informs the regulatory scheme pursuant to which the inspection is made;
  * The warrantless inspection is necessary to further the regulatory scheme; and
  * The regulatory inspection program provides a constitutionally-adequate substitute for a warrant in terms of the certainty and regularity of its application (*i.e.*, the regulatory scheme performs the two basic functions of a warrant: (i) it advises the owner of the premises that a search of defined scope is being made pursuant to the law and (ii) it limits the discretion of the inspecting officers).[45]
- **Exception limited to business in "unique circumstances."** The pervasively regulated business exception to the warrant requirement is narrowly construed; the mere fact that a business is involved in interstate commerce or subject to federal regulation and/or supervision is insufficient to trigger the exception. Rather, the critical element is the *"long tradition of government supervision, of which any person who chooses to enter such a business must already be aware…. The businessman in a regulated industry in effect consents to the restrictions placed upon him."* [46]

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[43] *Barlow's Inc.,* supra, 436 U.S. at 320-21 (holding warrant for OSHA inspection could properly issue upon showing of administrative plan derived from neutral sources (*e.g.*, desired frequency of inspections of certain types of businesses)); *Michigan v. Tyler*, 436 U.S. 499, 506 n.5 (1978) (holding warrant for housing code inspection could properly issue upon showing of factors such as the nature of the building, the condition of the entire area, and the passage of time rather than specific knowledge of the condition of a particular dwelling).

[44] *New York v. Burger,* 482 U.S. 692 (1987) (junkyard owners); *Donovan v. Dewey*, 452 U.S. 594 (1981) (federally regulated stone quarries); *United States v. Biswell,* 406 U.S. 311 (1972) (federally licensed firearms dealers); *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (federally licensed alcoholic beverage dealers).

[45] Burger, supra, 482 U.S. at 702-03.

[46] *Barlow's Inc.,* supra, 436 U.S. at 313; *see also Burger,* supra, 482 U. S. at 704-07 (noting "extensive" provisions regulating automobile junkyard businesses and existence of junk shop

- **Extent to which involvement of law enforcement is consistent with exception.** Provided that statute/regulatory scheme is properly administrative (*i.e.*, serves legitimate regulatory purposes), the following factors lack "constitutional significance":
  * Penal laws in the jurisdiction address the same problem and serve the same goals;
  * Evidence of a crime may be discovered in the course of enforcing the administrative scheme; and
  * Police officers, rather than administrative inspectors, conduct the inspections.[47]

(v) **Checkpoints and other "blanket searches" for limited purposes related to safety.** Government actors may conduct warrantless, suspicionless checkpoints to ensure public safety and prevent illegal immigration.[48]

- **Test.** The reasonableness of warrantless, suspicionless checkpoints is determined by balancing "the nature of the threatened [privacy] interests and their connection to the particular law enforcement practices at issue."[49]
  * **Gravity of threat to public safety not dispositive but certainly relevant.** The gravity of the threat to public safety is not alone dispositive when determining means appropriate for use by law enforcement. [50] However, urgent

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regulations for over 140 years). *Cf. Wright,* supra, 371 U.S. at 1302 (upholding warrantless inspection of massage parlor, noting "[i]t is a business which is being inspected and one which has a history of regulation, albeit not as extensive as the liquor or firearms industries, and as a member of a regulated business, a licensee does impliedly consent to inspections at any and all reasonable times and places by obtaining a license." (Internal citations omitted.)).

[47] *Burger,* supra, 482 U.S. at 712-17; *Ferguson*, supra, 532 U.S. at 83 n.21. *But see United States v. Johnson,* 994 F.2d 740, 742-43 (10th Cir. 1993) (holding warrantless inspection of taxidermy shop initiated by and participated in by federal anti-smuggling agent violated Fourth Amendment and pervasively regulated business exception did not apply; "an administrative inspection may not be used as a pretext solely to gather evidence of criminal activity").

[48] *Edmond,* supra, 531 U.S. at 47-48 (noting validity of searches at places where the need to enforce public safety is particularly acute (*e.g.* borders, airports, government buildings)); *Chandler,* supra, 520 U.S. at 323 ("We reiterate, too, that where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may ranks as 'reasonable'—for example, searches now routine at airports and at entrances to courts and other official buildings."); *Prouse,* supra, 440 U.S. at 663 (suggesting verification of licensing, registration, and vehicle inspection requirements at roadblock-type stops is permissible means of promoting highway safety).

[49] *Edmon*, supra, 531 U.S. at 42-43.

[50] Id. at 42.

public safety considerations must be considered in all Fourth Amendment deliberations.[51]

* **Inquiry into checkpoint program purposes appropriate.** The Court may inquire into and assess the primary programmatic purpose(s) of warrantless, suspicionless checkpoint programs when assessing their validity under the Fourth Amendment.[52]

- **Use of Checkpoints to obtain evidence of ordinary criminal wrongdoing impermissible.** The use of motor vehicle checkpoints for the primary purpose of uncovering evidence of criminal wrongdoing violates the Fourth Amendment.[53].

(vi) **Reasonable searches incident to lawful arrests.** A warrantless search incident to a lawful arrest may be permissible if reasonable under the circumstances.[54]

- **Threat to officer safety or survival of evidence usually necessary.** A search incident to a lawful arrest must be justified by a need to ensure the arresting officer's safety or prevent the destruction of evidence.

(vii) **Investigatory stops based on reasonable suspicion.** A warrantless investigatory stop of an individual (and associated "pat-down") is permissible if based upon reasonable suspicion.[55]

- **Reasonable suspicion defined.** Reasonable suspicion exists when, based on specific and articulable facts considered together with the rational inferences drawn from those facts, there is a particularized and objective basis to suspect criminal activity.[56]

(viii) **Exigent circumstance.** A warrantless search or seizure may be permissible if the delay associated with obtaining a warrant is likely to lead to *injury, public harm,* or the destruction of evidence.[57]

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[51] *Goldsmith,* supra, 183 F3d at 663 ("When urgent considerations of the public safety require compromise with the normal principles constraining law enforcement, the normal principles may have to bend. The Constitution is not a suicide pact.")

[52] *Edmond*, supra, 531 U.S. at 45-46.

[53] Id. at 453-54

[54] *See*, *e.g.*, *Schmerber*, supra, 84 U.S. at 770-71 (warrantless, nonconsensual blood draw held reasonable incident to lawful arrest given probable cause to believe defendant had been driving while intoxicated, delay associated with securing warrant may have led to destruction of evidence, and the intrusion was of a minor nature). *Cf.* Cupp, supra, 412 U.S. at 295-96 (warrantless scraping of fingernails held reasonable search incident to station house detention given threat of evidence destruction and limited nature of intrusion).

[55] *Terry v. Ohio*, 392 U.S. 1 (1968).

[56] Id. at 21.

[57] *Mincey v. Arizona,* 437 U.S. 385, 393-94 (1978); Tyler, supra, 436 U.S. at 509 (fire constitutes exigency sufficient to render warrantless entry reasonable); *Schmerber*, supra, 384 U.S. at 770-71.

- **Search limited in scope by circumstances.** A warrantless search justified by exigent circumstances is limited in scope to the exigencies that justify its initiation.[58]

(e) **State bears burden to prove exception justified.** The State bears the burden of proving that a departure from the warrant requirement is justified.[59]

(i) **Preponderance of evidence required.** The State must prove such a departure is justified by a preponderance of the evidence. *See* id.

B. ***The Michigan Constitution***

1. **No unreasonable searches and seizures.**
The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state. Mich. Const 1963, art. 1, § 11.

2. **Analysis distinct from that of Fourth Amendment claims.** The court's analysis of unreasonable search and seizure claims made with reference to Article I, Section 11 of the Michigan Constitution is separate and distinct from that undertaken for federal constitutional claims, despite the nearly identical wording of the federal and state provisions.

(a) **Michigan Constitution provides the same protection.** Michigan's constitutional prohibition against unreasonable searches and seizures is to be construed to provide the same protection as that secured by the Fourth Amendment of the federal constitution, absent, compelling reason to impose a different interpretation.[60]

(b) **No greater protection.** Article I, Section 11 of the Michigan Constitution does not provide greater degree of protection than United States Constitution.[61]

3. **Definitions.**

(a) **Search.** A search occurs when an expectation of privacy that society considers reasonable is infringed.[62]

(i) **Expectation of privacy.** An individual's expectation of privacy in an object or area is deemed reasonable under Michigan law if:

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[58] *Mincey*, supra, 437 U.S. at 393.

[59] *United States v. Matlock*, 415 U.S. 164 (1974).

[60] *People v Green;* 260 Mich App 392*;* 677 NW2d 363 (2004*); People v. Carter,* 250 Mich. App. 510; 655 NW2d 236 (2002).

[61] *Kivela v. Department of Treasury*, 449 Mich. 220; 536 NW2d 498 (1995).

[62] *People v. Mack*, 100 Mich App 45; 298 N.W.2d 657 (1980).

- The individual has exhibited an actual, subjective expectation of privacy in the object or area; and
- The expectation of privacy is one which society would recognize as reasonable.[63]

(b) **Seizure.**

(i) **Of individual.** A seizure of an individual occurs when government action intrudes upon the individual's privacy and meaningfully interferes with the individual's freedom of movement. [64]

(c) **Probable cause.** Probable cause exists upon a showing of a probability of or the existence of specified items in a certain place. [65]

4. **Standing requirement.** An individual must establish ownership, control, possession, or interest in the premises searched or property seized in order to challenge government action under Article I, Section 11.[66]

5. **Reasonableness analyzed.** Government conduct is permissible if, in the totality of the circumstances, the conduct is reasonable.[67]

(a) **Fact-specific inquiry.** The reasonableness of the behavior of state agents is determined on a case-by-case basis.[68]

(b) **Burden on state.** When analyzing search and seizure issues under Article I, Section 11, the state bears the burden of proving the search or seizure was reasonable.[69]

(c) **Homes afforded greatest protection.** Houses and premises of citizens are afforded the highest protection under Mich Const 1963,Article I, Section 11.

(d) **Warrant generally required.** As a general rule, government searches and seizures must be conducted pursuant to a valid warrant to be reasonable.[70]

(i) **Valid warrants.** A valid warrant must be issued by a neutral magistrate and be based upon probable cause, supported by oath or affirmation.[71]

(e) **Exceptions to warrant requirement potentially applicable in the public health context.** The general requirement that searches and seizures must be conducted pursuant to a valid warrant is subject to the same exceptions discussed, *supra*, at Section 3.11(A)(6)(d) for the Fourth Amendment.

(f) **Application of totality of circumstances balancing test for reasonableness consistent with federal law.** As applied, the balancing test for reasonableness

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[63] Id. at 659
[64] *People v. Williams,* 63 Mich App 398; 234 N.W.2d 541, 544 (1975).
[65] *People v. Coffey*, 61 Mich App 110; 232 N.W.2d 320, 321 (1975).
[66] *People v. Goeppner,* 20 Mich App 425; 174 N.W.2d 143, 146 (1969).
[67] *People v. Julliet*, 439 Mich 34; 475 N.W.2d 786, 790 (1991).
[68] *People v. Martin*, 99 Mich App 570; 297 N.W.2d 718, 719 (1980).
[69] *People v. Wade*, 157 Mich App 481; 403 N.W.2d 578, 585 (1975).
[70] *People v. De La Mater*, 213 Mich 167; 182 N.W.57, 62 (1921).
[71] Id. at 62.

under Article I, Section 11 of the Michigan Constitution is generally consistent with the principles of federal law discussed, *supra*, at Section 3.11(A).[72]

3.12 Search Warrants

As a general rule, the procedures for obtaining and executing search warrants in the public health context are identical to those applicable in the criminal context. However, given the highly sensitive nature of the information that may be revealed in the course of a public health search or seizure (*e.g.* an individual's medical information) and the unpredictable, time-sensitive nature of public health emergencies, several of these procedures require special consideration.

A. *Procurement of a Warrant After Hours*

1. **Affidavits not made in person.** An affidavit for a search warrant may be made by any electronic or electromagnetic means of communication, including by facsimile or over a computer network, if both of the following occur:

   (a) The judge or district court magistrate orally administers the oath or affirmation to an applicant for a search warrant who submits an affidavit under this subsection.

   (b) The affiant signs the affidavit. Proof that the affiant has signed the affidavit may consist of an electronically or electromagnetically transmitted facsimile of the signed affidavit or an electronic signature on an affidavit transmitted over a computer network. MCL 780.651.

2. **Oath given electronically.** If an oath or affirmation is orally administered by electronic or electromagnetic means of communication under this section, the oath or affirmation is considered to be administered before the judge or district court magistrate. MCL 780.651.

3. **Approved warrant transmitted by electronic means.** The peace officer or department receiving an electronically or electromagnetically issued search warrant shall receive proof that the issuing judge or district court magistrate has signed the warrant before the warrant is executed. Proof that the issuing judge or district court magistrate has signed the warrant may consist of an electronically or electromagnetically transmitted facsimile of the signed warrant or an electronic signature on a warrant transmitted over a computer network. MCL 780.651.

B. *Confidentiality*

1. **Warrant applications and issued warrants are not public records.** An affidavit and warrant are nonpublic information except as provided. MCL 780.651.

2. **Preventing the information from becoming public.** On the fifty-sixth day following the issuance of a search warrant, the search warrant affidavit contained in any court file

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[72] *People v. Rice*, 192 Mich App 512; 482 N.W.2d 192 (1992).

or court record retention system is public information unless, before the fifty-sixth day after the search warrant is issued, a peace officer or prosecuting attorney obtains a suppression order from a magistrate. MCL 780.651

(a) **There must be a showing that suppression is necessary.** A suppression order is issued upon a showing under oath that suppression is necessary to:
(i) Protect an ongoing investigation; or
(ii) The privacy of a victim or witness; or
(iii) The safety of a victim or witness. MCL 780.651.

(b) **Method of obtaining suppression.** The suppression order may be obtained ex-parte in the same manner that the search warrant was issued. MCL 780.651.

(c) **Expiration of suppression.** An initial suppression order issued under this subsection expires on the fifty-sixth day after the order is issued. MCL 780.651.

(d) **Subsequent suppression.** A second or subsequent suppression order may be obtained in the same manner as the initial suppression order and shall expire on a date specified in the order. MCL 780.651.

3.20 SEARCHES AND INSPECTIONS OF PREMISES

In addition to the general principles surrounding searches, discussed, *supra*, at Section 3.10, Michigan law contains several provisions specifically addressing searches of premises in various public health contexts.

3.21 Inspections to Prevent and Contain Infectious Diseases

A. *Right to Enter and Inspect Private Property.* To assure compliance with laws enforced by the department, the department may inspect, investigate, or authorize an inspection or investigation to be made of any matter, thing, premises, place, person, record, vehicle, incident, or event. MCL 333.2241.

1. **Warrant required.** The department may apply for an inspection or investigation warrant under section 2242 to carry out this section. MCL 333.2241.

2. **Affidavit required for issuance of warrant.** Upon receipt of an affidavit made on oath establishing grounds for issuing a warrant pursuant to section 2243, a magistrate shall issue an inspection or investigation warrant authorizing the department applying for the warrant to conduct an inspection or investigation. MCL 333.2242.

3. **Grounds for issuance of warrant.** A magistrate shall issue an inspection or investigation warrant if either of the following exists:
a. Reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular thing, premises, place, person, record, vehicle, incident, or event.

b. There is reason to believe that noncompliance with laws enforced by the state or local health department may exist with respect to the particular thing, premises, place, person, record, vehicle, incident, or event. MCL 333.2243.

4. **Finding of cause.** The magistrate's finding of cause shall be based on the facts stated in the affidavit. The affidavit may be based upon reliable information supplied to the applicant from a credible individual, named or unnamed, if the affidavit contains affirmative allegations that the individual spoke with personal knowledge of the matters contained in the affidavit. MCL 333.2244.

5. **Warrant direction to law enforcement.** An inspection or investigation warrant may be directed to the sheriff or any law enforcement officer, commanding the officer to assist the state or local health department in the inspection or investigation. A warrant shall designate and describe the location or thing to be inspected and the property or thing to be seized. The warrant shall state the grounds or cause for its issuance or a copy of the affidavit shall be attached to the warrant. MCL 333.2245.

6. **Execution of warrant.** The officer to whom an inspection or investigation warrant is directed or a person assisting the officer may break an outer or inner door or window of a house or building, or anything therein, to execute the warrant, if, after notice of his or her authority and purpose, the officer is refused admittance, or when necessary to liberate the officer or person assisting the officer in execution of the warrant. MCL 333.2246.

3.22 Inspections to Ensure Compliance with Sanitary Standards

A. ***Right to Inspect Public Buildings and Institutions.***
B. ***Right to Inspect Dwellings.***
C. ***Right to Inspect Public and Private Land for Pest and Vectors.***

3.23 Food Establishment Inspections

A. ***"Food Establishment" Defined.***
B. ***Requirements for Food Establishments***
C. ***Right to Enter and Inspect Food Establishments.***
D. ***Procedures Upon Discovery of Violations***
E. ***Statewide Food Regulation Scheme.***

3.24 Inspection Reports

A. ***Completion of Report Required.***

3.30 SEARCHES OF PERSONS

In addition to the general principles surrounding searches, discussed, *supra*, at Section 3.10, Michigan law contains several provisions specifically addressing searches of persons in various public health contexts.

3.31 Procurement of Physical Evidence from an Individual's Body

As discussed, *supra*, at Section 3.11(A)(4), the procurement of physical evidence from an individual's body constitutes a search if it infringes upon an expectation of privacy that society recognizes as reasonable.

A. *Types of Bodily Intrusions Deemed Searches.* Michigan law has explicitly recognized the following bodily intrusions as searches subject to the protections of the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Michigan Constitution:

1. **Blood.** The taking of blood for the purpose of analysis.[73]

2. **Urinalysis.**[74]

3. **Penile swabs.** [75]

4. **Teeth imprints.** [76]

5. **Fingernail scrapings.**[77]

B. *Factors Relevant to Search Determination.* In determining whether a bodily intrusion constitutes a search subjection to constitutional protections, Michigan courts have considered the following factors:

1. **The degree of touching** by government officials required to obtain physical evidence
   (a) **Probing beneath body surface not a prerequisite to search.**
   It is not necessary that an intrusion involve probing beneath the body's surface in order to be deemed a search.

2. **The degree of fear, humiliation, and anxiety created** by intrusion; and

3. **The nature of information revealed** by the physical evidence. id.

3.32 Medical Testing

The state health director and local health officers are empowered to seek the cooperation of individuals to prevent the spread of communicable diseases. In so doing, the director and local health officers must implement the least restrictive, but medically necessary, procedures to

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[73] *Lebel v Swincicki,* 93 NW2d 281; 454 Mich 427 (1958).
[74] *People v. Miller*, 98 N.W.2d 524; 357 Mich 400 (1959).
[75] *People v. Elston*, 614 N.W.2d 595; 462 Mich 751 (2002)
[76] *People v. Marsh*, 441 N.W.2d 33; 177 Mich. App 161 (1989).
[77] *People v. Wesley*, 103 Mich. App 241; 303 N.W.2d 194 (1981).

protect the public's health. These procedures will vary by disease and may include confirmatory medical testing.

A. ***Testing for Communicable Diseases and Diseases Dangerous to Health.***

1. **Authority to test.** To protect the public health in an emergency, upon the filing of an affidavit by a department representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. MCL 333.5207

2. **Standard of determination.** A court must make a determination that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. MCL 333.5207.

(a) **"A health threat to others."** An individual who is the carrier of a communicable disease represents a health threat to others when:

(i) The individual has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection;
(ii) Engages in behavior that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others;
(iii) There is a substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so;
(iv) The individual makes affirmative misrepresentations of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection. MCL 333.5201.

B. ***Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS).***

1. **HIV infected test subject.** Except as otherwise provided, a person or governmental entity that obtains from a test subject a test result that indicates that the test subject is HIV infected or from a test subject who has already been diagnosed as HIV infected a test result ordered to evaluate immune system status, to quantify HIV levels, or to diagnose acquired immunodeficiency syndrome shall, within 7 days after obtaining a diagnostic test result or, for a nondiagnostic test result, within a time frame as determined by the department, report to the appropriate local health department or, if requested by the local health department, to the department on a form provided by the department or through electronic methods approved by the department all of the following information, if available:

(a) The name and address of the person or governmental entity that submits the report.
(b) The name, address, and telephone number of the health care provider who diagnosed the test subject or who ordered the test.
(c) The name, date of birth, race, sex, address, and telephone number of the test subject.
(d) The date on which the specimen was collected for testing.
(e) The type of test performed.
(f) The test result.
(g) If known, whether or not the test subject has tested positive for the presence of HIV or an antibody to HIV on a previous occasion.
(h) The probable method of transmission.
(i) The purpose of the test.
(j) Any other medical or epidemiological information considered necessary by the department for the surveillance, control, and prevention of HIV infections. Information added by the department under this subdivision shall be promulgated as rules. MCL 333.5114.

2. **Anonymity.** An individual who undergoes a test for HIV or an antibody to HIV in a physician's private practice office or the office of a physician employed by or under contract to a health maintenance organization or who submits a specimen for either of those tests to that physician may request that the report made by the physician under this section not include the name, address, and telephone number of the test subject. Except as otherwise provided in section 5114a, if such a request is made under this subsection, the physician shall comply with the request and submit the specimen to the laboratory without the name, address, or telephone number of the test subject. MCL 333.5114.

3. **Health department may not maintain roster.** A local health department shall not maintain a roster of names obtained under this section, but shall maintain individual case files that are encoded to protect the identities of the individual test subjects. MCL 333.5114.

4. **Individuals applying for marriage license.** If either applicant for a marriage license undergoes a test for HIV or an antibody to HIV, and if the test results indicate that an applicant is HIV infected, the physician or a designee of the physician, the physician's assistant, the certified nurse midwife, or the certified nurse practitioner or the local health officer or designee of the local health officer administering the test immediately shall inform both applicants of the test results, and shall counsel both applicants regarding the modes of HIV transmission, the potential for HIV transmission to a fetus, and protective measures. MCL. 333.5119. As used in this section:
(a) "Certified nurse midwife" means an individual licensed as a registered professional nurse under part 172 who has been issued a specialty certification in the practice of nurse midwifery by the board of nursing under section 17210.
(b) "Certified nurse practitioner" means an individual licensed as a registered professional nurse under part 172 who has been issued a specialty certification as a nurse practitioner by the board of nursing under section 17210.

(c) "Physician" means an individual licensed as a physician under part 170 or an osteopathic physician under part 175.
(d) "Physician's assistant" means an individual licensed as a physician's assistant under part 170 or part 175. MCL 333.5119.

5. **Infected minor may act as though reached age of majority.** Subject to section 5133, the consent to the provision of medical or surgical care, treatment, or services by a hospital, clinic, or physician that is executed by a minor who is or professes to be infected with a venereal disease or HIV is valid and binding as if the minor had achieved the age of majority. The consent is not subject to later disaffirmance by reason of minority. The consent of any other person, including a spouse, parent, or guardian, or person in *loco parentis*, is not necessary to authorize the services described in this subsection to be provided to a minor. MCL 333.5127.

6. **Informing of infected minor.** For medical reasons a treating physician, and on the advice and direction of the treating physician, a physician, a member of the medical staff of a hospital or clinic, or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or person in *loco parentis* as to the treatment given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information. MCL 333.5127.

7. **Financial Responsibility for treatment of a minor.** A spouse, parent, guardian, or person in loco parentis of a minor is not financially responsible for surgical care, treatment, or services provided under this section. MCL 333.5127.

3.40 Information Collection and Sharing

The collection and analysis of health information is an essential function of any public health system. *See* An Introduction to Public Health available at Appendix A. However, the government's collection and use of person medical information implicates both the Fourth Amendment's protections against unreasonable invasions of privacy and the Fourteenth Amendment's Due Process protections, the latter of which are addressed, *infra*, at Section 4.30. In addition to the general principles surrounding the collection of medical information during searches of premises and persons discussed, *supra*, at Sections 3.10 - 3.30, Michigan law contains several provisions specifically addressing the collection and distribution of personal medical information.

3.41 Public Health Surveillance

There are two types of surveillance. In *passive surveillance*, health departments gather information about disease occurrence within a population primarily through disease reporting by hospitals, physicians, and other community sources. A discussion of Michigan reporting requirements is provided *infra*, at Section 3.42. In *active surveillance*, health departments take measures to identify all cases of disease, primarily by contacting and soliciting information from

physicians, hospitals, clinics, laboratories and other sources. Active surveillance is most commonly used to identify cases of infectious disease.

A. ***Comprehensive Health Information System.***

1. **Establishment.** The department shall establish a comprehensive health information system providing for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of both purposefully collected and extant health-related data and statistics, including the training of producers and users of the data and statistics in a manner involving the collaboration at the policy and technical levels of major state and local health operational, planning, professional, and university groups and agencies which require the data in their work. MCL 333.2616.

2. **Statistics.** The health information system shall include statistics relative to:
(a) The causes, effects, extent, and nature of illness and disability of the people of this state, or a grouping of its people, which may include the incidence and prevalence of various acute and chronic illnesses and infant and maternal morbidity and mortality.
(b) The impact of illness and disability of the people of this state on the economy of this state and on other aspects of the well-being of its people or a grouping of its people.
c. Environmental, social, and other health hazards and health knowledge and practices of the people of this state.
(d) Determinants of health and nutritional practices and status, including behavior related to health.
(e) Health resources, which may include health care institutions.
(f) The utilization of health care, which may include the utilization of ambulatory health services by specialties and types of practice of the health professionals providing the services, and services of health facilities and agencies defined in section 20106 and other health care institutions.
(g) Health care costs and financing, which may include the trends in health care prices and costs, the sources of payments for health care services, and federal, state, and local governmental expenditures for health care services. MCL 333.2617.

3. **Publications.** The department shall publish and make available periodically to agencies and individuals health statistics publications of general interest, publications bringing health statistics into focus on priority programmatic issues and health profiles. An annual report on the health information system shall be made available to the governor and the legislature and to collaborating agencies. A summary report of each area described in sections 2616 and 2617 shall be included in the annual report not less than once each 5 years. The department shall include in the report a statement of the limitations of the data used in terms of their quality, accuracy, and completeness. MCL 333.2618.

B. ***Cancer Registry.*** Michigan law authorizes the Michigan Department of Public Health to establish a cancer registry.

1. **Establishment.** The department shall establish a registry to record cases of cancer and other specified tumorous and precancerous diseases that occur in the state, and to record information concerning these cases as the department considers necessary and appropriate in order to conduct epidemiologic surveys of cancer and cancer-related diseases in the state. MCL § 333.2619.

2. **Reporting of cases.** Each diagnosed case of cancer and other specified tumorous and precancerous diseases shall be reported to the department pursuant to subsection (4), or reported to a cancer reporting registry if the cancer reporting registry meets standards established pursuant to subsection (4) to ensure the accuracy and completeness of the reported information. A person or facility required to report a diagnosis pursuant to subsection (4) may elect to report the diagnosis to the state through an existing cancer registry only if the registry meets minimum reporting standards established by the department. MCL § 333.2619.

3. **Maintaining records.** The department shall maintain comprehensive records of all reports submitted pursuant to this section. These reports shall be subject to the same requirements of confidentiality as provided in section 2631 for data or records concerning medical research projects. MCL § 333.2619.

4. **Rules.** The director shall promulgate rules which provide for all of the following:
a. A list of tumorous and precancerous diseases other than cancer to be reported pursuant to subsection (2).
b. The quality and manner in which the cases and other information described in subsection (1) are reported to the department.
c. The terms and conditions under which records disclosing the name and medical condition of a specific individual and kept pursuant to this section are released by the department. MCL § 333.2619.

5. **Does not compel submission.** This section does not compel an individual to submit to medical or department examination or supervision. MCL § 333.2619.

6. **Contracting.** The department may contract for the collection and analysis of, and research related to, the epidemiologic data required under this section. MCL § 333.2619.

7. **Reporting of collected information.** Within 2 years after the effective date of this section, the department shall begin evaluating the reports collected pursuant to subsection (2). The department shall publish and make available to the public reports summarizing the information collected. The first summary report shall be published not later than 180 days after the end of the first 2 full calendar years after the effective date of this section. Subsequent annual summary reports shall be made on a full calendar year basis and published not later than 180 days after the end of each calendar year. MCL § 333.2619.

C. ***Immunization Registry.***

1. **Establishment.** The department shall establish a registry, to be known as the "childhood immunization registry", to record information regarding immunizations performed under this part. The department shall enter information received under sections 2821 and 9206 in the registry. MCL § 333.9207.

2. **Confidentiality of information.** The information contained in the childhood immunization registry is subject to the confidentiality and disclosure requirements of this section and sections 2637 and 2888 and to the rules promulgated under section 9227. The department may access the information contained in the childhood immunization registry when necessary to fulfill its duties under this part. MCL § 333.9207.

3. **Uses for information.** The department shall use the information in the childhood immunization registry only for immunization purposes. The department shall delete information in the childhood immunization registry pertaining to an individual child immediately upon the child reaching the age of 20. MCL § 333.9207.

4. **Reporting of information.** Unless the parent, guardian, or person in loco parentis of the child who received the immunizing agent objects by written notice received by the health care provider prior to reporting, a health care provider shall report to the department each immunization administered by the health care provider, pursuant to rules promulgated under section 9227. If the parent, guardian, or person in loco parentis of the child who was immunized objects to the reporting requirement of this subsection by written notice received by the health care provider prior to notification, the health care provider shall not report the immunization. MCL § 333.9206.

D. ***Birth Defects Registry.***

1. **Maintain comprehensive records.** The department shall maintain comprehensive statewide records of all information reported to the birth defects registry. The information reported shall be subject to the same requirements of confidentiality as provided in section 2631 for data or records concerning medical research projects. MCL § 333.5721.

2. **Rules shall provide for.** The director shall promulgate rules which provide for all of the following:

(a) A list of birth defects, including, but not limited to, congenital and structural malformations, and biochemical or genetic diseases, and other relevant information to be reported.
(b) The quality and manner in which the incidents of birth defects and other information is to be reported.
(c) The terms and conditions under which records maintained under this section, including any records containing the name and medical condition of a specific individual, may be released by the department. MCL § 333.5721.

3. **No compulsion for testing.** This section does not compel an individual to submit to medical examination or supervision by the department or otherwise. MCL § 333.5721.

4. **Department may contract.** The department may contract for the collection and analysis of, and research related to, the data required under this section. MCL § 333.5721.

5. **Evaluation of information.** Within 2 years after June 11, 1987, the department shall begin evaluating the information reported to the birth defects registry. The department shall publish and make available to the public reports summarizing the information collected. The first summary report shall be published not later than 180 days after the end of the first 2 full calendar years after June 11, 1987. Subsequent annual summary reports shall be made on a full calendar year basis and published not later than 180 days after the end of each calendar year. MCL § 333.5721.

E. ***Policy for Conducting and Supporting Research.***

1. **Establishment.** The department shall establish a comprehensive policy pursuant to and consistent with section 2611(2) for the conduct and support of research and demonstration activities related to the department's responsibility for the health care needs of the people of this state. MCL § 333.2621.

2. **The activities will include.** The department shall conduct research and demonstration activities related to the department's responsibility for the environmental, preventive, and personal health needs of the communities and people of this state, including:
   (a) The causes, effects, and methods of prevention of illness.
   (b) The determinants of health, including behavior related to health.
   (c) The accessibility, acceptability, availability, organization, distribution, utilization, quality, and financing of health care, especially those services for the medically needy. MCL § 333.2621.

3. **Demonstration projects.** The department may conduct and support demonstration projects to carry out subsection (2). MCL § 333.2621.

4. **Determining the value of programs.** The department shall conduct or support the conduct of scientific evaluations of the effectiveness, efficiency, and relevance of programs conducted or supported by the department. MCL § 333.2621.

5. **Publication and dissemination of information.** The department may:
a. Publish, make available, and disseminate, promptly and on as broad a basis as practicable, the results of health services research, demonstrations, and evaluations conducted and supported under this section.
b. Provide indexing, abstracting, translation, publication, and other services leading to a more effective and timely dissemination of information as to health services, research, demonstrations, and evaluations conducted or supported under this section to public and

private entities and persons engaged in the improvement of health and to the general public. MCL § 333.2622.

F. ***Procedure Protecting Confidentiality***

1. **Protecting confidentiality.** The department shall establish procedures pursuant to section 2678 to protect the confidentiality of, and regulate the disclosure of, data and records contained in a departmental data system or system of records. MCL § 333.2637.

2. **Confidentiality should be consistent with other policies.** The procedures established under subsection (1) shall be consistent with the policy established under sections 2611 and 2613. MCL § 333.2637.

3. **Data not disclosed unless confidentiality maintained.** Except as provided in section 2640, the procedures established under subsection (1) shall specify the data contained in a departmental data system or system of records that shall not be disclosed unless items identifying a person by name, address, number, symbol, or any other identifying particular are deleted. MCL § 333.2637.

4. **Persons receiving data shall not disclose.** The procedures established under subsection (1) shall regulate the use and disclosure of data contained in a departmental data system or system of records released to researchers, other persons, including designated medical research projects as described in section 2631, or governmental entities. A person who receives data pursuant to this section shall not disclose an item of information contained in the data except in conformance with the authority granted by the department and with the purpose for which the data was originally requested by the researcher. The director may contract with researchers or other persons to implement and enforce this subsection. A contract made pursuant to this subsection shall do both of the following:

    (a) Require the department to provide monitoring to assure compliance with this section.
    (b) Provide for termination if this section or the contract is violated. MCL § 333.2637.

5. **Department employees shall not disclose information.** An officer or employee of the department shall not disclose data contained in a departmental data system or system of records except as authorized in the procedures adopted pursuant to this section. MCL § 333.2637.

6. **Department shall review procedures.** The department periodically shall review the procedures adopted under this section. MCL § 333.2637.

7. **Persons who violate procedure shall no longer have access to information.** A person whose contract is terminated pursuant to subsection (4)(b) is not eligible to make a subsequent contract with the department. MCL § 333.2637.

3.42 Disease Reporting/Disease Notification

Michigan law contains several provisions which require reporting. The types of reporting requirements vary. Some are obligations on health departments to report to individuals, others are obligations on health care providers to report to health departments.

A. ***Reporting of Disease.***

1. **Local health department shall communicate with individuals.** Upon a determination that an imminent danger to the health or lives of individuals exists in the area served by the local health department, the local health officer immediately shall inform the individuals affected by the imminent danger and issue an order which shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. The order shall incorporate the findings of the local health department and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger. MCL § 333.2451.
(a) **Meaning of imminent danger.** "Imminent danger" means a condition or practice which could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided. MCL § 333.2451.

B. ***Warning Notice***

1. **Nature of warning.** Upon a determination by a department representative or a local health officer that an individual is a carrier and is a health threat to others, the department representative or local health officer shall issue a warning notice to the individual requiring the individual to cooperate with the department or local health department in efforts to prevent or control transmission of serious communicable diseases or infections. The warning notice may also require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier. MCL § 333.5203.

2. **Written and oral warnings.** A warning notice issued under subsection (1) shall be in writing, except that in urgent circumstances, the warning notice may be an oral statement, followed by a written statement within 3 days. A warning notice shall be individual and specific and shall not be issued to a class of persons. A written warning notice shall be served either by registered mail, return receipt requested, or personally by an individual who is employed by, or under contract to, the department or a local health department. MCL § 333.5203.

3. **Warning includes notice of possible judicial action.** A warning notice issued under subsection (1) shall include a statement that unless the individual takes the action requested in the warning notice, the department representative or local health officer shall

seek an order from the probate court, pursuant to this part. The warning notice shall also state that, except in cases of emergency, the individual to whom the warning notice is issued has the right to notice and a hearing and other rights provided in this part before the probate court issues an order. MCL § 333.5203.

C. ***State Department of Health.***

1. **Power of the department generally.** The department is given the power to establish reporting requirements that it deems appropriate. There are several provisions which provide this power.

(a) **Establishment of requirements.** Establish requirements for reporting and other surveillance methods for measuring the occurrence of diseases, infections, and disabilities and the potential for epidemics. Rules promulgated under this subdivision may require a licensed health professional or health facility to submit to the department or a local health department, on a form provided by the department, a report of the occurrence of a communicable disease, serious communicable disease or infection, or disability. The rules promulgated under this subdivision may require a report to be submitted to the department not more than 24 hours after a licensed health professional or health facility determines that an individual has a serious communicable disease or infection. MCL § 333.5111.

(b) **The department shall implement reporting procedures.** Implement this part and parts 52 and 53 including, but not limited to, rules for the discovery, care, and reporting of an individual having or suspected of having a communicable disease or a serious communicable disease or infection, and to establish approved tests under section 5125 and approved prophylaxes under section 5127. MCL § 333.5111.

(c) **Confidentiality of reporting communicable diseases.** The department shall promulgate rules to provide for the confidentiality of reports, records, and data pertaining to testing, care, treatment, reporting, and research associated with communicable diseases and serious communicable diseases or infections. The rules shall specify the communicable diseases and serious communicable diseases or infections covered under the rules and shall include, but are not limited to, hepatitis B, venereal disease, and tuberculosis. The rules shall not apply to the serious communicable diseases or infections of HIV infection, or acquired immunodeficiency syndrome. The department shall submit the rules for public hearing under the administrative procedures act of 1969 by November 20, 1989. MCL § 333.5111.

2. **Chronic diseases.** The chronic disease program shall include the prevention of chronic diseases; the early detection and reporting of cases; and surveillance, treatment, education, rehabilitation, and maintenance of patients suffering from chronic diseases. The availability of services under this program is subject to appropriations. MCL § 333.5412.

3. **Birth Defects.** Each diagnosed incidence of a birth defect, including a congenital or structural malformation, or a biochemical or genetic disease**,** and any information

relevant to incidents of birth defects, shall be reported to the department. The reporting shall begin not later than the next calendar year after June 11, 1987. MCL § 333.5721.

3.43 Disease Investigation and Contact Tracing

Upon diagnosis of a patient infected with communicable disease, a disease investigation begins. A trained disease investigator, who is usually an employee of the local health department, interviews the patient, the patient's family members, physicians, nurses and anyone else who may have knowledge of the patient's recent contacts and activities. The goal of this investigation is to identify persons who may have been exposed to the disease, as well as persons, animals, or places that may have been the source of the disease. Identified contacts are then screened for the disease and treated as necessary. The investigative process is ideally repeated until the source of the disease (referred to as the "index case" if a person) is identified and all known contacts have been screened.

The type of contacts screened depends upon the nature of the disease in question. Investigation of a sexually transmitted disease (*e.g.* HIV/AIDS) only requires screening of the sexual partners of infected individuals. In contrast, a disease that is spread by respiratory droplets, such as tuberculosis, may require extensive screening of all casual contacts and persons in proximity to infected individuals. *See* The Medical & Public Health Law Site, Louisiana State University Law Ctr., *Contact Tracing, at* http://biotech.law.lsu.edu/Books/lbb/x578.htm (last visited Dec. 1, 2005).

A. ***Investigation of Communicable Disease Carriers.***

1. **Power of local health department.** A local health department shall:
    (a) Utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health.
    (b) Make investigations and inquiries as to:
        (i) The causes of disease and especially of epidemics.
        (ii) The causes of morbidity and mortality.
        (iii) The causes, prevention, and control of environmental health hazards, nuisances, and sources of illness. MCL § 333.2433.
    (c) To assure compliance with laws enforced by a local health department, the local health department may inspect, investigate, or authorize an inspection or investigation to be made of, any matter, thing, premise, place, person, record, vehicle, incident, or event. Sections 2241 to 2247 apply to an inspection or investigation made under this section. MCL § 333.2446.

2. **Power of state department of public health.** The department shall make investigations and inquiries as to:
    (a) The causes of disease and especially of epidemics.
    (b) The causes of morbidity and mortality.
    (c) The causes, prevention, and control of environmental health hazards, nuisances, and sources of illness. MCL § 333.2221.

B. ***Occupational Diseases.***

1. **Investigation of occupational disease.** The department, upon receiving a report under section 5611 or believing that a case or suspected case of occupational disease exists in this state, may investigate to determine the accuracy of the report and the cause of the disease. MCL § 333.5613.

2. **Confidentiality of investigation.** To aid in the diagnosis or treatment of an occupational disease, the department shall advise the physician in charge of a patient of the nature of the hazardous substance or agent and the conditions of exposure of the patient as established by the investigation. In so doing the department shall protect the confidentiality of trade secrets or privileged information disclosed by the investigations in accordance with section 13 of Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws. MCL § 333.5613.

3.44 Sexual Partner Notification and the Duty to Warn

In an attempt to prevent the transmission of certain communicable diseases, Michigan law requires that individuals infected with those diseases inform third parties of their disease status prior to engaging those third parties in personal activities scientifically proven to be associated with a high risk of disease transmission.
In certain situations, Michigan law also empowers persons other than the infected individual to warn third parties.

A. ***Diseases Subject to Duty to Warn.*** Michigan's duty to warn applies to only the following diseases:

1. **Acquired immune deficiency syndrome (AIDS);**
2. **Human immunodeficiency virus (HIV); and**
3. **Hepatitis B.**

B. ***Partner Notification.***

1. **Necessary information shall be provided.** A person or governmental entity that refers an individual to a local health department under subsection (1) shall provide the local health department with information determined necessary by the local health department to carry out partner notification. Information required under this subsection may include, but is not limited to, the name, address, and telephone number of the individual test subject. MCL § 333.5114a.

2. **Informing individual of duty to warn.** A local health department to which an individual is referred shall inform the individual that he or she has a legal obligation to inform each of his or her sexual partners of the individual's HIV infection before engaging in sexual relations with that sexual partner, and that the individual may be subject to criminal sanctions for failure to so inform a sexual partner. MCL § 333.5114a.

3. **Partner notification.** A partner notification program operated by a local health department shall include notification of individuals who are sexual or hypodermic needle-sharing partners of the individual tested under subsection (1). Partner notification shall be confidential and conducted in the form of a direct, one-to-one conversation between the employee of the local health department and the partner of the test subject. MCL § 333.5114a.

4. **HIV notification.** If a local health department receives a report under section 5114(1) that indicates that a resident of this state or an individual located in this state is HIV infected, the local health department shall make it a priority to do all of the following:

(a) **Interviewing.** Attempt to interview the individual and offer to contact the individual's sexual partners and, if applicable, hypodermic needle-sharing or drug-sharing partners. If the subject of the report is determined to have been infected with HIV in utero, the local health department shall attempt to interview the individual's parent or legal guardian, or both. The interview conducted under this subdivision shall be voluntary on the part of the individual being interviewed. The interview or attempted interview required under this subdivision shall be performed by a local health department within 14 days after receipt of a report under section 5114(1). MCL § 333.5114a.

(b) **Information provided.** Within 35 days after the interview conducted pursuant to subdivision (a), confidentially, privately, and in a discreet manner contact each individual identified as a sexual or hypodermic needle-sharing or drug-sharing partner regarding the individual's possible exposure to HIV. The local health department shall not reveal to an individual identified as a partner the identity of the individual who has tested positive for HIV or an antibody to HIV except if authorized to do so by the individual who named the contact, and if needed to protect others from exposure to HIV or from transmitting HIV. The local health department shall provide each individual interviewed under subdivision (a) and each individual contacted under this subdivision with all of the following information:

(i) Available medical tests for HIV, an antibody to HIV, and any other indicator of HIV infection.

(ii) Steps to take in order to avoid transmission of HIV.

(iii) Other information considered appropriate by the department. MCL § 333.5114a.

4.00 PROCEEDINGS REGARDING LIMITATIONS ON INDIVIDUAL LIBERTIES

4.10 LIMITATIONS ON THE PERSON

4.11 Isolation and Quarantine

Isolation: The separation, for the period of communicability, of known infected persons in such places and under such conditions as to prevent or limit the transmission of the infectious agent. *See* Stedman's Medical Dictionary (27th ed. 2000).

Quarantine: The restriction of the activities of healthy persons who have been exposed to a communicable disease, during its period of communicability, to prevent disease transmission during the incubation period if infection should occur. *See* Stedman's Medical Dictionary (27th ed. 2000).

Isolation and quarantine are historically-recognized public health techniques used to contain the spread of infectious diseases.[78] Isolation and quarantine require the separation of infected and potentially infected persons, from the public. This separation is achieved by confinement of the infected and/or potentially infected person(s) to treatment facilities, residences, and/or other locations, depending upon the nature of the implicated disease and the available facilities. Thus, both isolation and quarantine measures may severely curtail the freedom of persons to whom they are applied, particularly in the case of diseases characterized by prolonged incubation periods. In Michigan, the Supreme Court has long recognized the authority of state and local health officers to issue reasonable orders or regulations to control the spread of disease.[79]

In many cases, individuals will voluntarily undertake isolation and quarantine procedures at the request of the state or local health department, and the Court will not be required to intervene. However, in those situations in which individuals are unwilling to undertake isolation or quarantine procedures or become noncompliant with procedures already in place, the Court's assistance may be required.

Given the inherently limiting nature of both isolation and quarantine, as well as the state of anxiety and tension likely to accompany these proceedings, the Court should be attuned to the due process, economic, and logistical concerns of those potentially subject to isolation and quarantine measures and attempt to address theses concerns when issuing its orders. A checklist of issues recommended for the Court's consideration prior to the issuance of isolation and quarantine orders is provided, *infra*, at Section 4.11(B)(4)(b).

A. *General Powers of Isolation and Quarantine*.

1. **In whom powers are vested.**

    (a) **MDCH.** Exercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department. MCL § 333.2226. "Care" includes treatment, control, transportation, confinement, and isolation in a facility or other location. MCL §333.5101.

    (b) **Local Health Departments.** If a local health officer determines that control of an epidemic is necessary to protect the public health, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local

[78] *See*, *e.g.*, *Compagnie Francaise de Navigation a Vapeur v. State Board of Health*, 186 U.S. (1902) (recognizing power of states to institute quarantine to protect their citizens from infectious diseases).

[79] *People, ex rel Hill v Board of Education of City of Lansing*, 224 Mich 388; 195 NW 95 (1923).

governmental entity, during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code. A local health department or the department may provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in sections 5201 to 5238. MCL § 333.2453.

2. **Implementation**

(a) Least restrictive means.

(i) Least restrictive means may include isolation and/or quarantine**.**

B. ***Court Proceedings.***

1. **Courts of jurisdiction.** The circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. An order issued under this subsection may be issued in an ex-parte proceeding upon an affidavit of a department representative or a local health officer. The court shall issue an order under this subsection upon a determination that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. An order under this subsection may be executed on any day and at any time, and shall be served upon the individual who is the subject of the order immediately upon apprehension or detention. MCL §333.5207.

2. **Types of isolation and quarantine proceedings.**

(a) Enforcement of isolation and quarantine orders issued by public health authorities**.**

(i) **Orders issued by the MDCH.** Upon failure of an individual to comply promptly with a department order, the department may petition the circuit court having jurisdiction to restrain a condition or practice which the director determines causes the imminent danger or to require action to avoid, correct, or remove the imminent danger. MCL §333.2251(2). The department may order and recover a civil penalty not to exceed one thousand dollars ($1,000) for each day that the violation continues. MCL §333.2262(1). [The ability of the MDCH to collect fines requires the specific enabling rules, which at this time have not been promulgated.]

(ii) **Orders issued by local health departments.** Authority parallels state authority.

(b) **Emergency detention.**

(i) **When a court order is proper.** A circuit court shall issue an order for a department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation,

examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. MCL §333.5207. Upon a determination:

- That reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. MCL §333.5207.
    * **"A health threat to others."** An individual who is the carrier of a communicable disease represents a health threat to others when:
        ** The individual has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection;
        ** Engages in behavior that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others;
        ** There is a substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so;
        ** The individual makes affirmative misrepresentations of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection. MCL §333.5201.

ii. **Burden of proof.** The state must prove that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. MCL §333.5207(1).

iii. ***Ex-parte* proceedings.** An order may be issued in an ex-parte proceeding upon an affidavit of a department representative or a local health officer. MCL §333.5207(1).

- **Sufficiency of affidavit.** The affidavit must set forth the specific facts upon which the order is sought. MCL §333.5207(2).

iv. **Continuation of emergency detentions.**

- **Timing of continuation proceedings.** An individual held by an emergency detention order shall not be held for more than seventy-two (72) hours with without a court hearing to determine whether the detention should continue. The seventy-two hours does not include Saturdays, Sundays, or legal holidays. MCL §333.5207(3).
- **Notice of continuation proceedings.** Notice of the hearing to determine whether the detention should continue must be served on the individual not less than twenty-four (24) hours before the hearing is held. MCL §333.5207(4).

* **Contents of notice.** The notice of the hearing must contain:

** The time, date, and place of the hearing.
** The grounds underlying the facts on which continued detention is sought.
** The individual's right to appear at the hearing.
** The individual's right to present and cross-examine witnesses.
** The individual's right to counsel, including the right to counsel designated by the circuit court, as described in section 333.5205(12). MCL §333.5207(4).

- **Court order.** The circuit court may order that the individual continue to be temporarily detained if the court finds, by *a preponderance of the evidence*, that the individual would pose a health threat to others if released. MCL §333.5207(5).
- **Limits on emergency detention.** An order of continued temporary detention shall not continue longer than 5 days, unless a petition is filed under section 333.5205. If a petition is filed under section 333.5205, the temporary detention shall continue until a hearing on the petition is held under section 333.5205. MCL § 333.5207(5).

(c) **Non-emergency detention.**

(i) **When a court order is proper.** The court may order an individual be placed in isolation, or may place other restrictions upon him when:

- The individual is a health threat to others; and has failed or refused to comply with a warning notice issued under section 333.5203.
- The individual has failed or refused to comply with a warning notice issued under section 333.5203. MCL § 333.5205(2).

(ii) **Burden of proof.** The state health department or local health department must prove the allegations set forth in the petition by *clear and convincing evidence*. MCL § 333.5205(6).

(iii) ***In- camera* proceedings.**

3. **Provision of counsel.**

(a) **Right of council.** An individual who is the subject of a petition filed under section 333.5205 or an affidavit filed under section 333.5207 has the right to counsel at all stages of the proceedings. If the individual is unable to pay the cost of counsel, the circuit court shall appoint counsel for the individual. MCL § 333.5205(12).

4. **Enforcement of court orders.**

(a) **Injunction appropriate.**

(b) **Further considerations prior to issuance of order.** The Court should undertake the following, additional considerations prior to issuing an order of isolation or quarantine. To the extent possible, these considerations should be addressed in the Court's order(s):

Has sufficient evidence been introduced to support issuance of the order?
An isolation or quarantine order should only be issued when an individual appears to be suffering from a serious disease capable of being easily transmitted form person-to-person. The government entity seeking the order must show, by the appropriate standard of proof, that the individual poses a risk to the public's health sufficient to necessitate deprivation of that individual's liberty.[80]

In the event the disease at issue is a newly-emerging disease, much of this scientific information may be unknown. That scientific details may be unknown will not necessarily prevent the state from meeting the standard of proof, as the standard measures not the scientific data itself but the ability of that data to be reasonably interpreted as evidence of a public health threat justifying government action.[81]
In the context of newly-emerging diseases, the order should both reflect available scientific information and identify knowledge gaps in order to preserve all available testimony and information for appellate review.

□Were all the parties granted access to the available scientific evidence to the extent reasonably possible?

□Will the individual be confined in an appropriate medical facility (hospital, residence, etc.) and not a jail or other punitive environment?

□ Does the order specify the appropriate period of confinement?

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[80] *Cf. Addington v. Texas*, 441 U.S. 418 (1979) (holding Fourteenth Amendment requires "clear and convincing" evidence standard in context of indefinite commitment of individual to a state mental hospital pursuant to state law; "In cases involving individual rights, whether criminal or civil, the standard of proof at a minimum reflects the value society places on individual liberty…We conclude that the individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify confinement by proof more substantial than a mere preponderance of the evidence." (Internal citations omitted.)).

[81] Id. at 429 ("[T]he factual aspects represent only the beginning of the inquiry. Whether the individual is mentally ill and dangerous to himself or others and is in need of confined therapy turns on the *meaning* of the facts which must be interpreted by expert psychiatrists and psychologists." (Emphasis in original.))

This period should be based upon a disease-specific incubation period, as identified by a certified health professional or other competent witness, and be no longer than necessary.

In the event the individual is already exhibiting physical symptoms of the disease, the period of confinement is less likely to be a disputed issue as it will coincide in duration with the period necessary for medical treatment.

In the event the disease at issue is a newly-emerging disease, the incubation period may be unknown. In such a case, the court should issue an order confining the individual for a period of time based upon the incubation period of the communicable disease most closely resembling the disease at issue, as established by the testimony of qualified experts, AND require the public health authority to report to the court with additional scientific information to extend or modify the ordered period of confinement.

□ Does the order satisfactorily address the provision of food, medicine and other necessities to the individual during his/her detention?

□ Does the order adequately address the care and support of the individual's dependents during confinement?

□ Has the Court considered the impact of the confinement on the individual's financial livelihood and employment?

□ Has the Court considered any unique cultural or personal circumstances of the individual?

□ Who will bear the costs associated with the individual's confinement and treatment?

□ Has the Court considered the means by which the confinement will be enforced in the event the individual becomes uncooperative?

For example, what level of force should be used by law enforcement personnel to enforce the order? Is the use of deadly force appropriate to maintain the individual's confinement? To the extent possible, the Court should instruct appropriate personnel as to implementation and enforcement of the order.

C. ***Special Populations*****.**

1. **Nonresidents.** The local health department of the county of domicile may provide for the return of the individual to, and care in, that county. MCL § 333.5303.

(a) **Financial responsibility.** Upon determination by the county department of social services that the place of domicile of an individual receiving care under

section 5117 is in another county in this state, care shall be provided where the individual is found at the expense of the county where the individual is domiciled. The county department of social services, not later than 1 month after the commencement of care, shall mail written notice that the care is being provided to the local department of social services of the individual's county of domicile. MCL § 333.5303.
(b) **Acknowledgement by county of domicile.** If the domicile of the individual is not acknowledged by the alleged county of domicile within 1 month after mailing the notice under subsection (1), the question of domicile may be submitted for decision to the state department of social services. If a disputed or contested claim arises between 2 or more counties as to the county of domicile, the director of social services shall determine the county of domicile when so requested or on his or her own motion. The decision of the director of social services is final. However, pending determination, the county in which the individual is found shall provide the necessary care. MCL § 333.5303.

D. ***Violations.***

1. **Violation as a misdemeanor.** Except as otherwise provided by this code, a person who violates a rule or order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than $200.00, or both. MCL § 333.2261. A violation of a regulation issued by a local health department is a misdemeanor punishable by 90 days in jail, a fine of $200, or both. MCL 333.2243.

4.12 Civil Commitment

"Civil commitment" is a term commonly used to refer to the voluntary or involuntary commitment of a mentally ill individual to a treatment facility. *See* Stedman's Medical Dictionary (27th ed. 2000). In Michigan, other individuals, such as those suffering from alcoholism, incapacitation due to alcohol, or drug addiction may also be civilly committed. In many cases, individuals will voluntarily commit themselves to treatment facilities for mental illness or substance abuse. However, in those situations in which individuals are unwilling or unable to undertake voluntary commitment, the Court may be requested to issue a civil commitment order.

Given the severe impact of compulsory civil commitment on an individual's liberty, the Court should order the least restrictive commitment procedures necessary.

A. ***Detention of Individual Prior to Court Proceedings Regarding Commitment.***

1. Detention of individual prior to proceedings.

B. ***Court Proceedings.***

1. **Place of hearing.** Hearings may be held in such quarters as the court directs; either within or without the county in which the court has its principal office, in a hospital or other convenient place. Whenever practicable, the court shall convene hearings in a hospital. MCL § 330.1456.

2. **Change of venue.** The subject of a petition, any interested person, or the court on its own motion may request a change of venue because of residence, convenience to parties, witnesses, or the court, or the individual's mental or physical condition. MCL § 330.1456.

3. **Civil proceedings.** Court hearings convened under authority of this chapter shall be governed by MCL § 330.452 to 330.465. MCL § 330.1451.

4. **Commencement of hearing.** The court shall fix a date for every hearing convened under this chapter. The hearing shall be convened promptly, but not more than 7 days, excluding Sundays and holidays, after the court's receipt of any of the following:

(a) **Application.** An application for hospitalization, which shall serve as a petition for a determination that an individual is a person requiring treatment, a clinical certificate executed by a physician or a licensed psychologist, and a clinical certificate executed by a psychiatrist. MCL § 330.1452.

(b) **Petition for requiring treatment.** A petition for a determination that an individual is a person requiring treatment, a clinical certificate executed by a physician or a licensed psychologist, and a clinical certificate executed by a psychiatrist. MCL § 330.1452.

(c) **Petition for continuing treatment.** A petition for a determination that an individual continues to be a person requiring treatment and a clinical certificate executed by a psychiatrist. MCL § 330.1452.

(d) **Discharge.** A petition for discharge filed under section 484. MCL § 330.1452.

(i) **Conditions for petition for discharge.** If a report concludes that the individual requires continuing involuntary mental health treatment and the individual or the executive director objects to the conclusions, the individual or the executive director has the right to a hearing and may petition the court for discharge of the individual from the treatment program. This petition shall be presented to the court within 7 days, excluding Sundays and holidays, after the report is received. MCL § 330.1484.

(e) **Discharge certificate.** A petition for discharge filed under section 485a and a physician's or a licensed psychologist's clinical certificate. MCL § 330.1452.

(i) Upon a hearing under section 484, if the court finds that an individual under an order of involuntary mental health treatment is no longer a person requiring treatment, the court shall enter a finding to that effect and shall order that the individual be discharged.

(ii) Upon a hearing under section 484, if the court finds that an individual under a 1-year order of involuntary mental health treatment continues to

be a person requiring treatment, and after consideration of complaints submitted under section 483(2), the court shall do 1 of the following:

- Continue the order.
- Issue a new continuing order for involuntary mental health treatment under section 472a(3) or (4). MCL § 330.1485.

(f) **Demand for notification.** A demand or notification that a hearing that has been temporarily deferred under section 455(5) be convened. MCL § 330.1452.

(i) The subject of a petition under section 452(a) or (b) who is hospitalized pending the court hearing may file with the court a request to temporarily defer the hearing for not longer than 60 days if the individual chooses to remain hospitalized, or 90 days if the individual chooses alternative treatment or a combination of hospitalization and alternative treatment. The request shall include a stipulation that the individual agrees to remain hospitalized and to accept treatment as may be prescribed for the deferral period, or to accept and follow the proposed plan of treatment as described in subsection (2)(c) for the deferral period, and further agrees that at any time the individual may refuse treatment and demand a hearing under section 452. The request to temporarily defer the hearing shall be on a form provided by the department and signed by the individual in the presence of his or her legal counsel and shall be filed with the court by legal counsel. MCL § 330.455(5).

4. **Standard.** A judge or jury shall not find that an individual is a person requiring treatment unless that fact has been established by clear and convincing evidence. MCL § 330.1465.

5. **Involuntary hospitalization.** Upon entry of a court order directing that an individual be involuntarily hospitalized or that an individual involuntarily undergo a program of alternative treatment or a program of combined hospitalization and alternative treatment, the court shall immediately order the department of state police to enter the court order into the law enforcement information network. The department of state police shall remove the court order from the law enforcement information network only upon receipt of a subsequent court order for that removal. MCL § 330.1464a.

6. **State police involvement.** The department of state police shall immediately enter an order into the law enforcement information network or shall immediately remove an order from the law enforcement information network as ordered by the court. MCL § 330.1464a.

7. **Initiation.** Hospitalization of an individual can be initiated in several ways.

(a) **Application for hospitalization.** An application for hospitalization of an individual under section 423 shall contain an assertion that the individual is a person requiring treatment as defined in section 401, the alleged facts that are the basis for the assertion, the names and addresses, if known, of any witnesses to alleged and relevant facts, and if known the name and address of the nearest relative or guardian, or if none, a friend if known, of the individual. The

application may be made by any person 18 years of age or over, shall have been executed not more than 10 days prior to the filing of the application with the hospital, and shall be made under penalty of perjury. MCL § 333.1424.

(b) **A psychiatrist's certificate.** A hospital designated by the department or by a community mental health services program shall hospitalize an individual presented to the hospital, pending receipt of a clinical certificate by a psychiatrist stating that the individual is a person requiring treatment, if an application, a physician's or a licensed psychologist's clinical certificate, and an authorization by a preadmission screening unit have been executed. MCL § 330.1423.

(c) **Clinical certificate.** A physician's or a licensed psychologist's clinical certificate required for hospitalization of an individual under section 423 shall have been executed after personal examination of the individual named in the clinical certificate, and within 72 hours before the time the clinical certificate is filed with the hospital. The clinical certificate may be executed by any physician or licensed psychologist, including a staff member or employee of the hospital with which the application and clinical certificate are filed.

(d) **Petition.** Hospitalization proceedings may be initiated by petition.

(i) **Petition generally.**

- Any individual 18 years of age or over may file a petition with the court that asserts that an individual meets the criteria for assisted outpatient treatment specified in section 401(d). The petition shall contain the facts that are the basis for the assertion, the names and addresses, if known, of any witnesses to the facts, the name and address of the mental health professional currently providing care to the individual who is the subject of the petition, if known, and the name and address of the nearest relative or guardian, if known, or, if none, a friend, if known, of the individual who is the subject of the petition. MCL § 330.1433.
- **Informing the subject of the petition.** Upon receipt of a petition, the court shall inform the subject of the petition and the community mental health services program serving the community in which the subject of the petition resides that the court shall hold a hearing to determine whether the subject of the petition meets the criteria for assisted outpatient treatment. Notice shall be provided as set forth in section 453. The hearing shall be governed by sections 454, 458 to 464, and 465. MCL § 330.1433.
- **Court verifies the petition.** If in the hearing, the court verifies that the subject of the petition meets the criteria for assisted outpatient treatment and he or she is not scheduled to begin a course of outpatient mental health treatment that includes case management services or assertive community treatment team services, the court shall order the subject of the petition to receive assisted outpatient treatment through his or her local community mental health services program. The order shall include case management services. The order may include 1 or more of the following:

* Medication.
*Blood or urinalysis tests to determine compliance with or effectiveness of prescribed medications.
* Individual or group therapy.
* Day or partial day programs.
* Educational and vocational training.
* Supervised living.
* Assertive community treatment team services.
* Alcohol or substance abuse treatment, or both.
* Alcohol or substance abuse testing, or both, for individuals with a history of alcohol or substance abuse and for whom that testing is necessary to prevent a deterioration of their condition. A court order for alcohol or substance abuse testing shall be subject to review every 6 months.
* Any other services prescribed to treat the individual's mental illness and to either assist the individual in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization. MCL § 330.1433.

- **Court may specify role of others.** To fulfill the requirements of an assisted outpatient treatment plan, the court's order may specify the service role that a publicly-funded entity other than the community mental health services program shall take. MCL § 330.1433.
- **Patient's designation of advocate.** In developing an order under this section, the court shall consider any preferences and medication experiences reported by the subject of the petition or his or her designated representative, whether or not the subject of the petition has an existing individual plan of services under section 712, and any directions included in a durable power of attorney or advance directive that exists. If the subject of the petition has not previously designated a patient advocate or executed an advance directive, the responsible community mental health services program shall, before the expiration of the assisted outpatient treatment order, ascertain whether the subject of the petition desires to establish an advance directive. If so, the community mental health services program shall direct the subject of the petition to the appropriate community resources for assistance in developing an advance directive. MCL § 330.1433.
- **Review of patient's designation.** If an assisted outpatient treatment order conflicts with the provisions of an existing advance directive, durable power of attorney, or individual plan of services developed under section 712, the assisted outpatient treatment order shall be reviewed for possible adjustment by a psychiatrist

not previously involved with developing the assisted outpatient treatment order. If an assisted outpatient treatment order conflicts with the provisions of an existing advance directive, durable power of attorney, or individual plan of services developed under section 712, the court shall state the court's findings on the record or in writing if the court takes the matter under advisement, including the reason for the conflict. MCL § 330.1433.

- **Right to appeal.** Nothing in this section negates or interferes with an individual's rights to appeal under any other state law or Michigan court rule. MCL § 330.1433.

(ii) **Filing a petition.**

- **Who may file.** Any individual 18 years of age or over may file with the court a petition that asserts that an individual is a person requiring treatment as defined in section 401. MCL § 330.1434.
- **Contents.** The petition shall contain the facts that are the basis for the
assertion, the names and addresses, if known, of any witnesses to the facts, and, if known, the name and address of the nearest relative or guardian, or, if none, a friend, if known, of the individual. MCL § 330.1434.
- **Petition with certificate or affidavit.** The petition shall be accompanied by the clinical certificate of a physician or a licensed psychologist, unless after reasonable effort the petitioner could not secure an examination. If a clinical certificate does not accompany the petition, an affidavit setting forth the reasons an examination could not be secured shall also be filed. The petition may also be accompanied by a second clinical certificate. If 2 clinical certificates accompany the petition, at least 1 clinical certificate shall have been executed by a psychiatrist. MCL § 330.1434.
- **Execution of certificate.** Except as otherwise provided, a clinical certificate that accompanies a petition shall have been executed within 72 hours before the filing of the petition, and after personal examination of the individual. MCL § 330.1434.

8. **Protective custody.** An individual may be taken into protective custody before hospitalization.

(a) **Peace officer with an application and certificate.** Upon delivery to a peace officer of an application and physician's or licensed psychologist's clinical certificate, the peace officer shall take the individual named in the application into protective custody and transport the individual immediately to the preadmission screening unit or hospital designated by the community mental health services program for hospitalization under section 423. If the individual taken to a preadmission screening unit meets the requirements for hospitalization, then unless the community mental health services program makes other transportation arrangements, the peace officer shall take the individual to a hospital designated by the community mental health services program. Transportation to another

hospital due to a transfer is the responsibility of the community mental health services program. MCL § 330.1426.

(b) **Peace officer acting pursuant to his own belief.** If a peace officer observes an individual conducting himself or herself in a manner that causes the peace officer to reasonably believe that the individual is a person requiring treatment as defined in section 401, the peace officer may take the individual into protective custody and transport the individual to a preadmission screening unit designated by a community mental health services program for examination under section 429 or for mental health intervention services. The preadmission screening unit shall provide those mental health intervention services that it considers appropriate or shall provide an examination under section 429. The preadmission screening services may be provided at the site of the preadmission screening unit or at a site designated by the preadmission screening unit. Upon arrival at the preadmission screening unit or site designated by the preadmission screening unit, the peace officer shall execute an application for hospitalization of the individual. As soon as practical, the preadmission screening unit shall offer to contact an immediate family member of the recipient to let the family know that the recipient has been taken into protective custody and where he or she is located. The preadmission screening unit shall honor the recipient's decision as to whether an immediate family member is to be contacted and shall document that decision in the recipient's record. In the course of providing services, the preadmission screening unit may provide advice and consultation to the peace officer, which may include a recommendation to transport the individual to a hospital for examination under section 429, or to release the individual from protective custody. However, the preadmission screening unit shall ensure that an examination is conducted by a physician or licensed psychologist prior to a recommendation to release the individual. The preadmission screening unit shall ensure provision of follow-up counseling and diagnostic and referral services if needed if it is determined under section 429 that the person does not meet the requirements for hospitalization. MCL § 330.1427.

(i) **Peace officer not financially liable.** A peace officer is not financially responsible for the cost of care of an individual for whom a peace officer has executed an application. MCL § 330.1427.

(ii) **Notification.** A hospital receiving an individual who has been referred by a community mental health services program's preadmission screening unit shall notify that unit of the results of an examination of that individual conducted by the hospital. MCL § 330.1427.

(iii) **Use of force.** If a peace officer is taking an individual into protective custody, the peace officer may use that kind and degree of force that would be lawful if the peace officer were affecting an arrest for a misdemeanor without a warrant. In taking the individual into custody, a peace officer may take reasonable steps for self-protection. The protective steps may include a pat down search of the individual in the individual's immediate surroundings, but only to the extent necessary to discover and seize a dangerous weapon that may be used against the officer or other persons present. These protective steps shall be taken by the peace officer

before the individual is transported to a preadmission screening unit or a hospital designated by the community mental health services program. MCL § 330.1427a.

(c) **Informing the individual.** The taking of an individual to a community mental health services program's preadmission screening unit or a hospital under section 427 is not an arrest, but is a taking into protective custody. The peace officer shall inform the individual that he or she is being held in protective custody and is not under arrest. An entry shall be made indicating the date, time, and place of the taking, but the entry shall not be treated for any purpose as an arrest or criminal record. MCL § 330.1427a.

(d) **Liability of peace officer.** A peace officer who acts in compliance with this act is acting in the course of official duty and is not civilly liable for the action taken. This does not apply to a peace officer who, while acting in compliance with this act, engages in behavior involving gross negligence or willful and wanton misconduct. MCL § 330.1427b.

9. **Review.** Persons involuntarily hospitalized shall have their status reviewed periodically.

(a) **Right to adequate and prompt review.** Each individual subject to a 1-year order of involuntary mental health treatment has the right to adequate and prompt review of his or her current status as a person requiring treatment. Six months from the date of a 1-year order of involuntary mental health treatment, the executive director of the community mental health services program responsible for treatment or, if private arrangements for the reimbursement of mental health treatment services have been made, the hospital director or director of the alternative treatment program shall assign a physician or licensed psychologist to review the individual's clinical status as a person requiring treatment. MCL § 330.1482.

(b) **Review made part of record.** The results of each periodic review shall be made part of the individual's record, and shall be filed within 5 days of the review in the form of a written report with the court that last ordered the individual's treatment, and within those 5 days, the executive director or director of the hospital or treatment program with which private reimbursement arrangements have been made shall give notice of the results of the review and information on the individual's right to petition for discharge to the individual, the individual's attorney, the individual's guardian, and the individual's nearest relative or a person designated by the individual. MCL § 330.1483.

(c) **Complaint regarding treatment.** An individual under a 1-year order of involuntary mental health treatment or a person designated by the individual may submit a complaint to the provider of services at any time regarding the quality and appropriateness of the treatment provided. A copy of each complaint and the provider's response to each complaint shall be submitted to the executive director or director of the private program and the court along with the written report required by subsection (1). MCL § 330.1483.

(d) **Objection to continuing treatment.** If the report concludes that the individual requires continuing involuntary mental health treatment and the

individual or the executive director objects to the conclusions, the individual or the executive director has the right to a hearing and may petition the court for discharge of the individual from the treatment program. This petition shall be presented to the court within 7 days, excluding Sundays and holidays, after the report is received. MCL § 330.1484.

10. **Habeas Corpus.** Nothing shall prevent the filing or deprive any individual of the benefits of a writ of habeas corpus. MCL § 330.1486.

11. **Legal competence.** Prior findings shall not be determinative of legal competence.
(a) **No presumption of incompetence.** No determination that a person requires treatment, no order of court authorizing hospitalization or alternative treatment, nor any form of admission to a hospital shall give rise to a presumption of, constitute a finding of, or operate as an adjudication of legal incompetence. MCL § 330.1489.
(b) **Previous commitment not a finding of incompetence.** No order of commitment under any previous statute of this state shall, in the absence of a concomitant appointment of a guardian, constitute a finding of or operate as an adjudication of legal incompetence. MCL § 330.1489.

4.12a Civil Admission of Minors

A. Michigan law provides different statutes governing civil admission of emotionally disturbed. minors. A minor may only be hospitalized under the provisions specifically governing minors.

1. **Minor may only be hospitalized under theses provisions.** A minor shall be hospitalized only pursuant to the provisions of this chapter. MCL § 330.1498a.

2. **Generally.**
(a) **Conditions for hospitalization.** Subject to section 498e and except as otherwise provided in this chapter, a minor of any age may be hospitalized if both of the following conditions are met:
(i) The minor's parent, guardian, or a person acting in loco parentis for the minor or, in compliance with subsection (2) or (3), the family independence agency or county juvenile agency, as applicable, requests hospitalization of the minor under this chapter.
(ii) The minor is found to be suitable for hospitalization. MCL § 330.1498d.
(b) **Family independence agency.** The family independence agency may request hospitalization of a minor who is committed to the family independence agency under 1935 PA 220, MCL 400.201 to 400.214. MCL § 330.1498d.
(c) **Conditions for agency or county requests.** As applicable, the family independence agency may request hospitalization of, or the county juvenile agency may request an evaluation for hospitalization of, a minor who is 1 of the following:

(i) A ward of the court under chapter X or XIIA of 1939 PA 288, MCL 710.21 to 710.70 and 712a.1 to 712a.32, if the family independence agency or county juvenile agency is specifically empowered to do so by court order.
(ii) Committed to the family independence agency or county juvenile agency under the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, except that if the minor is residing with his or her custodial parent, the consent of the custodial parent is required. MCL § 330.1498d.

(d) **Hospitalization of a minor 14 or older.** Subject to sections 498e, 498f, and 498j, a minor 14 years of age or older may be hospitalized if both of the following conditions are met:

(i) The minor requests hospitalization under this chapter.
(ii) The minor is found to be suitable for hospitalization. MCL § 330.1498d.

(e) **Making the determination.** In making the determination of suitability for hospitalization, a minor shall not be determined to be a minor requiring treatment solely on the basis of 1 or more of the following conditions:

(i) Epilepsy.
(ii) Developmental disability.
(iii) Brief periods of intoxication caused by substances such as alcohol or drugs or by dependence upon or addiction to those substances.
(iv) Juvenile offenses, including school truancy, home truancy, or incorrigibility.
(v) Sexual activity.
(v)Religious activity or beliefs.
(vii) Political activity or beliefs. MCL § 330.1498d.

(f) **County juvenile agency.** As used in this section, "county juvenile agency" means that term as defined in section 2 of the county juvenile agency act. MCL § 330.1498d.

3. **Evaluations of minors.**

(a) **Evaluation.** A minor requesting hospitalization or for whom a request for hospitalization was made shall be evaluated to determine suitability for hospitalization pursuant to this section as soon as possible after the request is made. MCL § 330.1498e.

(b) **Role of director in evaluation.** The executive director of the community mental health services program that is responsible for providing services in the county of residence of a minor requesting hospitalization or for whom a request for hospitalization was made shall evaluate the minor to determine his or her suitability for hospitalization pursuant to this section. In making a determination of a minor's suitability for hospitalization, the executive director shall utilize the community mental health services program's children's diagnostic and treatment service. If a children's diagnostic and treatment service does not exist in the community mental health services program, the executive director shall, through written agreement, arrange to have a determination made by the children's

diagnostic and treatment service of another community mental health services program, or by the appropriate hospital. MCL § 330.1498e.

(c) **Actions the director shall take.** In evaluating a minor's suitability for hospitalization, the executive director shall do all of the following:

(i) Determine both of the following:

- Whether the minor is a minor requiring treatment.
- Whether the minor requires hospitalization and is expected to benefit from hospitalization.

(ii) Determine whether there is an appropriate, available alternative to hospitalization, and if there is, refer the minor to that program.

(iii) Consult with the appropriate school, hospital, and other public or private agencies.

(iv) If the minor is determined to be suitable for hospitalization under subdivision (a), refer the minor to the appropriate hospital.

(v) If the minor is determined not to be suitable for hospitalization under subdivision (a), determine if the minor needs mental health services. If it is determined that the minor needs mental health services, the executive director shall offer an appropriate treatment program for the minor, if the program is available, or refer the minor to any other appropriate agency for services.

(vi) If a minor is assessed and found not to be clinically suitable for hospitalization, the executive director shall inform the individual or individuals requesting hospitalization of the minor of appropriate available alternative services to which a referral should be made and of the process for a request of a second opinion under subsection (4). MCL § 330.1498e.

(d) **Second opinion.** If the children's diagnostic and treatment service of the community mental health services program denies hospitalization, the parent or guardian of the minor may request a second opinion from the executive director. The executive director shall arrange for an additional evaluation by a psychiatrist, other physician, or licensed psychologist to be performed within 3 days, excluding Sundays and legal holidays, after the executive director receives the request. If the conclusion of the second opinion is different from the conclusion of the children's diagnostic and treatment service, the executive director, in conjunction with the medical director, shall make a decision based on all clinical information available. The executive director's decision shall be confirmed in writing to the individual who requested the second opinion, and the confirming document shall include the signatures of the executive director and medical director or verification that the decision was made in conjunction with the medical director. MCL § 330.1498e.

(e) **Transfer.** If a minor has been admitted to a hospital not operated by or under contract with the department or a community mental health services program and the hospital considers it necessary to transfer the minor to a hospital under contract with a community mental health services program, the hospital shall submit an application for transfer to the appropriate community mental health services program. The executive director shall determine if there is an appropriate, available alternative to hospitalization of the minor. If the executive

director determines that there is an appropriate, available alternative program, the minor shall be referred to that program. If the executive director determines that there is not an appropriate, alternative program, the minor shall be referred to a hospital under contract with the community mental health services program. MCL § 330.1498e.

(f) **Applicability.** Except as provided in subsections (1) and (5), this section only applies to hospitals operated under contract with a community mental health services program. MCL § 330.1498e.

4. **Admission.** If a minor is referred to a hospital by an executive director pursuant to section 498e, the hospital director may accept the referral and admit the minor, or the hospital director may order an examination of the minor to confirm the minor's suitability for hospitalization. The examination shall begin immediately. If the hospital director confirms the minor's suitability for hospitalization, the minor shall be scheduled for admission to the hospital. If the minor cannot be admitted immediately because of insufficient space in the hospital, the minor shall be placed on a waiting list and the executive director shall provide necessary interim services, including periodic reassessment of the suitability for hospitalization. The minor may be referred to another hospital. If the hospital director does not confirm the minor's suitability for hospitalization, the minor shall be referred to the executive director, who shall offer an appropriate treatment plan for the minor or refer the minor to any other agency for services. MCL § 330.1498f.

5. **Examination.** If a minor is admitted to a hospital pursuant to this chapter, the director of the hospital shall cause the minor to be examined by a child psychiatrist within 48 hours after the admission of the minor and shall immediately initiate any of the following tests and evaluations of the minor pursuant to section 498j which, in the hospital director's opinion may aid in the preparation of a treatment plan for the minor:

(a) A comprehensive social and family history including family relationships.

(b) A comprehensive educational test and an assessment of educational development.

(c) Psychological testing.

(d) An evaluation by the staff participating in the treatment of the minor.

(e) Any relevant test, assessment, or study of, or related to, the minor. MCL § 330.1498g.

6. **Emergency admission of minor.**

a. **Request by guardian.** A minor's parent, guardian, or person in loco parentis may request emergency admission of the minor to a hospital, if the person making the request has reason to believe that the minor is a minor requiring treatment and that the minor presents a serious danger to self or others. MCL § 330.1498h.

b. **Request made to hospital.** If the hospital to which the request for emergency admission is made is not under contract to the community mental health services program, the request for emergency hospitalization shall be made directly to the hospital. If the hospital director agrees that the minor needs emergency admission, the minor shall be hospitalized. If the hospital director does not agree, the person

making the request may request hospitalization of the minor under section 498d. MCL § 330.1498h.

c. **Request made to preadmission screening unit.** If the hospital to which the request for emergency admission is made is under contract to the community mental health services program, the request shall be made to the preadmission screening unit of the community mental health services program serving in the county where the minor resides. If the community mental health services program has a children's diagnostic and treatment service, the preadmission screening unit shall refer the person making the request to that service. In counties where there is no children's diagnostic and treatment service, the preadmission screening unit shall refer the person making the request to the appropriate hospital. If it is determined that emergency admission is not necessary, the person may request hospitalization of the minor under section 498d. If it is determined that emergency admission is necessary, the minor shall be hospitalized or placed in an appropriate alternative program. MCL § 330.1498h.

d. **Inform of alternatives.** If a minor is assessed by the preadmission screening unit and found not to be clinically suitable for hospitalization, the preadmission screening unit shall inform the individual or individuals requesting hospitalization of the minor of appropriate available alternative services to which a referral should be made and of the process for a request of a second opinion under subsection (5). MCL § 330.1498h.

e. **Notification of parents.** If a person in loco parentis makes a request for emergency admission and the minor is admitted to a hospital under this section, the hospital director or the executive director of the community mental health services program immediately shall notify the minor's parent or parents or guardian. MCL § 330.1498h.

f. **Notification of director.** If a minor is hospitalized in a hospital that is operated under contract with a community mental health services program, the hospital director shall notify the appropriate executive director within 24 hours after the hospitalization occurs. MCL § 330.1498h.

g. **Peace officer.** If a peace officer, as a result of personal observation, has reasonable grounds to believe that a minor is a minor requiring treatment and that the minor presents a serious danger to self or others and if after a reasonable effort to locate the minor's parent, guardian, or person in loco parentis, the minor's parent, guardian, or person in loco parentis cannot be located, the peace officer may take the minor into protective custody and transport the minor to the appropriate community mental health preadmission screening unit, if the community mental health services program has a children's diagnostic and treatment service, or to a hospital if it does not have a children's diagnostic and treatment service. After transporting the minor, the peace officer shall execute a written request for emergency hospitalization of the minor stating the reasons, based upon personal observation, that the peace officer believes that emergency hospitalization is necessary. The written request shall include a statement that a reasonable effort was made by the peace officer to locate the minor's parent, guardian, or person in loco parentis. If it is determined that emergency hospitalization of the minor is not necessary, the minor shall be returned to his or

her parent, guardian, or person in loco parentis if an additional attempt to locate the parent, guardian, or person in loco parentis is successful. If the minor's parent, guardian, or person in loco parentis cannot be located, the minor shall be turned over to the protective services program of the family independence agency. If it is determined that emergency admission of the minor is necessary, the minor shall be admitted to the appropriate hospital or to an appropriate alternative program. The executive director immediately shall notify the minor's parent, guardian, or person in loco parentis. If the hospital is under contract with the community mental health services program, the hospital director shall notify the appropriate executive director within 24 hours after the hospitalization occurs. MCL § 330.1498h.

h. **Evaluation.** An evaluation of a minor admitted to a hospital under this section shall begin immediately after the minor is admitted. The evaluation shall be conducted in the same manner as provided in section 498e. If the minor is not found to be suitable for hospitalization, the minor shall be released into the custody of his or her parent, guardian, or person in loco parentis, and the minor shall be referred to the executive director who shall determine if the minor needs mental health services. If it is determined that the minor needs mental health services, the executive director shall offer an appropriate treatment program for the minor, if the program is available, or refer the minor to another agency for services. MCL § 330.1498h.

i. **When to proceed under estates and protected individuals code.** A hospital director shall proceed under either the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, or chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, as warranted by the situation and the best interests of the minor, under any of the following circumstances:

(i) The hospital director cannot locate a parent, guardian, or person in loco parentis of a minor admitted to a hospital under subsection (8).

(ii) The hospital director cannot locate the parent or guardian of a minor admitted to a hospital by a person in loco parentis under this section. MCL § 330.1498h.

7. **Notice.** The parent or guardian of a minor shall be notified immediately of the admission of a minor to a hospital in any case where the parent or guardian of the minor did not execute the application for hospitalization. The notice shall be in the form most likely to reach the person being notified in an expeditious manner, and shall inform the person of the right to participate in any proceedings under this act. MCL § 330.1498i.

8. **Consent.** A hospital shall request a parent or guardian of a minor admitted to a hospital under this chapter to give written consent for the minor's treatment and for the release of information from agencies or individuals involved in treating the minor before the hospitalization considered necessary by the hospital for the minor's treatment. If the hospital cannot obtain consent for treatment, the director of the hospital may proceed under either the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, or chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to

712A.32, as warranted by the situation and the best interests of the minor. MCL § 330.1498j.

9. **Leave, transportation and appeal.**

(a) **Leaving the hospital without permission warrants notification.** If a minor who has been admitted to a hospital under this chapter leaves the hospital without the knowledge and permission of the appropriate hospital staff, the hospital shall immediately notify the minor's parent, guardian, or person in loco parentis, the executive director if appropriate, and the appropriate police agency. MCL § 33.1498k.

(b) **Requesting transportation of minor back to hospital.** If a minor has left a hospital without the knowledge and permission of the appropriate hospital staff or has refused a request to return to the hospital while on an authorized absence from the hospital, and the hospital director believes that the minor should be returned to the hospital, the hospital director shall request that the minor's parent, guardian, or person in loco parentis transport the minor to the hospital. If the parent, guardian, or person in loco parentis is unable, after reasonable effort, to transport the minor, a request may be submitted to the court for an order to transport the minor. If the court is satisfied that a reasonable effort was made to transport the minor, the court shall order a peace officer to take the minor into protective custody for the purpose of returning the minor to the hospital. MCL § 33.1498k.

(c) **Appeal.** An opportunity for appeal, and notice of that opportunity, shall be provided to any minor and to the parent or guardian of any minor who is returned over the minor's objection from any authorized leave in excess of 10 days. In the case of a minor less than 14 years of age, the appeal shall be made by the parent or guardian of the minor or person in loco parentis. MCL § 33.1498k.

10. **Review.**

(a) **Review requirement.** Not more than 90 days after the admission of a minor to a hospital pursuant to this chapter, and at 60-day intervals after the expiration of the 90-day period, the director of the hospital shall perform or arrange to have performed a review of the minor's suitability for hospitalization. If the minor is in a hospital under contract with a community mental health services program, the executive director shall participate in the reviews. MCL § 330.1498l.

(b) **Transmission of review results.** Subject to section 114a, the reviews of the minor's suitability for continued hospitalization shall be conducted under rules promulgated by the department. Results of the reviews shall be transmitted promptly to all of the following:

(i) The minor, if the minor is 14 years of age or older.
(ii) The parent, guardian, or person in loco parentis of the minor.
(iii) The executive director.
(iv) The court, if there was a court hearing on the admission of the minor. MCL § 330.1498l.

11. **Objections.**

(a) **Persons who can make objections.** An objection to the hospitalization of a minor may be made to the court by any of the following persons:

(i) A person found suitable by the court.

(ii) The minor's parent, guardian, or person in loco parentis if the request for hospitalization was made by the minor pursuant to section 498d(3) or by a peace officer pursuant to section 498h(6).

(iii) The minor who has been hospitalized, if the minor is 14 years of age or older. MCL § 330.1498m.

(b) **Timing and contents of objection.** An objection made to the court pursuant to subsection (1) shall be made in writing not more than 30 days after the admission of a minor to a hospital, and may be made subsequently within not more than 30 days after the receipt of the periodic review of the minor's suitability for continued hospitalization as provided for in section 498l. The objection shall state the basis on which it is being raised. MCL § 330.1498m.

(c) **Assisting a minor in objecting.** If a minor who has been hospitalized for not less than 7 days pursuant to this chapter informs a hospital employee of the minor's desire to object to hospitalization, the hospital employee or a person designated by the hospital shall assist the minor in properly submitting an objection to hospitalization pursuant to this section. An employee of the hospital shall not interfere with or fail to act upon a minor's objection to hospitalization. A person who violates this subsection is guilty of a misdemeanor. MCL § 330.1498m.

12. **Judicial hearings for minors.**

(a) **Notification of hearing.** Upon receipt of an objection to hospitalization filed under section 498m, the court shall schedule a hearing to be held within 7 days, excluding Sundays and holidays. After receipt of the objection, the court shall notify all of the following persons of the time and place for the hearing:

(i) The parents or guardian of the minor to whom the objection refers.

(ii) The person filing the objection.

(iii) The minor to whom the objection refers.

(iv The person who executed the application for hospitalization of the minor.

(v) The hospital director.

(vi) The executive director. MCL § 330.1498n.

(b) **Court's response to objection.** The court shall sustain an objection to hospitalization and order the discharge of the minor unless the court finds by clear and convincing evidence that the minor is suitable for hospitalization. If the court does not sustain the objection, an order shall not be entered, the objection shall be dismissed, and the hospital shall continue to hospitalize the minor. MCL § 330.1498n.

(c) **Rules governing hearing.** The hearing required by subsection (1) shall be governed by sections 451 to 465. MCL § 330.1498n.

(d) **Court shall not refuse to discharge minor if parent refuses to provide care.** The court shall not dismiss the objection and refuse to order a discharge of a

hospitalized minor on the grounds that the minor's parent or guardian is unwilling or unable to provide or arrange for the management, care, or residence of the minor. If an objection is sustained and the minor's parent or guardian is unwilling or unable to provide or arrange for the management, care, or residence of the minor, the objecting person may, or a person authorized by the court shall, file promptly a petition under section 2(b) of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws, to ensure that the minor is provided with appropriate management, care, or residence. MCL § 330.1498n.

(e) **Notification of right to object.** If a hospital has officially agreed to admit a minor, but admission has been deferred until a subsequent date, an objection to hospitalization of the minor may be made to the court under section 498m before the minor is admitted to the hospital. Subject to section 114a, a minor 14 years of age or older shall be notified of the right to object in accordance with rules promulgated by the department. If the objection is sustained by the court, the minor shall not be hospitalized. MCL § 330.1498n.

4.13 Mandatory Testing and Treatment

In certain situations, a government may seek to obtain information about an individual's medical status or subject the individual to medical treatment as part of its efforts to ensure the public's health. While many individuals may agree to provide such information or undergo such treatment voluntarily, in some cases the government will need to compel compliance.

A. *General Authority of Government to Compel Testing or Treatment.*

1. **Reasonable compulsion permissible pursuant to police power.** Pursuant to their police powers, state and local governments may compel an individual to submit to *reasonable* medical testing and treatment in order to protect the public health.[82]

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[82] *See generally Jacobson v. Massachusetts*, 197 U.S. 11, 25-30 (1905) ("According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and by legislative enactment as will protect the public health and the public safety. It is not, therefore, true that the power of the public to guard itself against imminent danger depends in every case involving the control of one's body upon his willingness to submit to reasonable regulations established by the constituted authorities, under the sanction of the state, for the purpose of protecting the public collectively against such danger."); *Rock v Carney*, 216 Mich 280; 185 NW 798 (1921), recognizing that a local health officer may quarantine an individual if sufficient reasonable cause exists to believe that a person is afflicted with a communicable disease, "remembering that the persons so affected are to be treated as patients, not as criminals." *Reynolds v. McNichols*, 488 F.2d 1378, 1382 (10th Cir. 1973) ("Involuntary detention, for a limited period of time, of a person reasonably suspected to having a venereal disease for the purpose of permitting an examination of the person thus detained to determine the presence of a venereal disease and providing further for the treatment of such disease, if present, has been upheld by numerous state courts when challenged on a wide variety of constitutional grounds as

2. **Explicit statutory provisions.** Where such power has been expressly asserted in the public health laws, it has been noted herein. HIV testing may be mandated when individual poses serious and present health threat to others. Communicable disease examination may be mandated when individual poses serious and present health threat to others. Testing and treatment of individual subject to emergency health detention may be mandated. Testing for dangerous communicable disease may be mandated, following exposure of emergency medical services provider.

(a) **Deference to legislative determination.** The court should defer to legislative determinations regarding the necessity and expediency of compulsory testing and treatment *provided* such determinations are not arbitrary or unreasonable. *See* Jacobson, 197 U.S. at 30-31 ("We must assume that, when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories, and was compelled, of necessity, to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease.").

B. *Right of Individual to Refuse Treatment based on personal beliefs.* Except as otherwise provided in part 52 and section 9123, this article and articles 6 and 9 or the rules promulgated under those articles shall not be construed to require the medical treatment, testing, or examination of an individual who objects on the grounds that the medical treatment, testing, or examination violates the personal religious beliefs of the individual or of the parent, guardian, or person in loco parentis of a minor.

4.14 Writ of Habeas Corpus

An individual whose liberty has been restrained pursuant to an isolation, quarantine, or commitment order may prosecute a writ of habeas corpus seeking to obtain information about the cause of the restraint and/or to be freed from the restraint. MCL § 600.4307. Pursuant to the Michigan Constitution, the government may not suspend the privilege of the writ of habeas corpus unless such suspension is necessary to preserve the public safety in the event of rebellion or invasion. Mich. Const. Art I, § 12. Thus, in the event of an outbreak of a naturally-occurring infectious disease, individuals subjected to isolation or quarantine order must be granted access to the courts to prosecute writs of habeas corpus seeking their release. The following discussion briefly addresses state habeas corpus procedure, with a particular emphasis on issues germane to public health.

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valid exercise of the police power designed to protect the public health."); *Blue v. Beach*, 56 N.W. 89 (1900) ("If vaccination was the most effective means of preventing the spread of the disease through the public schools, and this the local board seems to have determined, it then became not only the right but the duty of the board to require that the pupils of such schools be vaccinated as a sanitary condition imposed upon their privilege of attending the schools during the period of the threatened epidemic of smallpox.").

A. ***Generally.***

1. **Who may issue a writ.** The writ of habeas corpus to inquire into the cause of detention, or an order to show cause why the writ should not issue, may be issued by the following:

(a) The supreme court, or a justice thereof.
(b) The court of appeals, or a judge thereof.
(c) The circuit courts, or a judge thereof.
(d) The municipal courts of record, including but not limited to the recorder's court of the city of Detroit, common pleas court, or a judge thereof.
(e) The district courts, or a judge thereof. MCL § 600.4304.

2. **When an action may be brought.** An action for habeas corpus to inquire into the cause of detention may be brought by or on the behalf of any person restrained of his liberty within this state under any pretense whatsoever, except as specified in section 4310. MCL § 600.4307.

3. **When an action may not be brought.** An action for habeas corpus to inquire into the cause of detention may not be brought by or on behalf of the following persons:

(a) **Subject to exclusive jurisdiction.** Persons detained by virtue of any process issued by any court of the United States, or any judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts;
(b) **Cause is plainly expressed in warrant.** Persons committed for treason or felony, or for suspicion thereof, or as accessories before the fact to a felony, where the cause is plainly and specially expressed in the warrant of commitment;
(c) **Persons in execution of legal process.** Persons convicted, or in execution, upon legal process, civil or criminal;
(d) **Committed on original process in civil action.** Persons committed on original process in any civil action on which they were liable to be arrested and imprisoned, unless excessive and unreasonable bail is required. MCL § 600.4310.

B. ***Person Served.***

1. **Duty to produce the body.** If a writ of habeas corpus is issued, the person on whom it is served shall bring the body of the person in his custody according to the command of the writ, except as provided in section 4328. MCL § 600.4325.

2. **Exception to duty to produce body.** If, from the sickness or infirmity of the prisoner directed to be produced by any writ of habeas corpus, the prisoner cannot, without danger, be brought before the court or judge, the party having custody of the prisoner may state that fact in his answer. The court or judge, if satisfied of the truth of the allegation, and if the answer is otherwise sufficient, shall proceed to dispose of the matter on the record. MCL § 600.4328.

3. **Refusal or neglect to obey writ.** If the person upon whom the writ is served refuses to obey it there are a variety of actions that may be taken.

(a) **Judge ordered arrest.** If the person upon whom the writ of habeas corpus was duly served refuses or neglects to obey the writ without sufficient excuse, the court or judge before whom the writ was to be answered, upon due proof of the service thereof, shall direct the arrest of such person. MCL § 600.4331.

(b) **Jailed until compliance with writ.** The sheriff of any county within this state, or other officer, who is directed to make the arrest, shall apprehend such person, and bring him before the court or judge. The person shall be committed to close custody in the jail of the county in which the court or judge is, without being allowed the liberties thereof, until the person complies with the writ. MCL § 600.4331.

(c) **Arrest of a sheriff.** If the person ordered arrested is the sheriff of any county, the order may be directed to any coroner or other person, to be designated therein, who has thereby full power to arrest the sheriff. Such sheriff upon being brought up may be committed to the jail of any county other than his own. MCL § 600.4331.

(d) **Arresting person shall bring the prisoner named in the writ before the judge.** The person directed to make the arrest shall also bring the prisoner named in the writ of habeas corpus before the court or judge which issued the writ. MCL § 600.4331.

(e) **Arresting person may call upon the county.** In making the arrest the sheriff or other person so directed may call to his aid the power of the county as in other cases. MCL § 600.4331.

C. ***Status of Prisoner.***

1. **Custody of Prisoner.** The court or judge issuing the writ of habeas corpus may commit the prisoner to the custody of such individual or individuals as the court or judge considers proper. MCL § 600.4349.

2. **Discharge of prisoner.**

(a) If no legal cause is shown for the restraint, or for the continuation thereof, the court or judge shall discharge the person restrained from the restraint under which he is held.

(b) Obedience to any order for the discharge of any prisoner may be enforced by the court or judge granting such order, by arrest in the same manner as is herein provided for disobedience to a writ of habeas corpus, and with like effect in all respects. The person guilty of disobedience to an order for the discharge of any prisoner is liable to the party aggrieved in the sum of $1,000.00 damages, in addition to any special damages the party may have sustained.

(c) No sheriff or other officer is liable to any civil action for obeying any such order of discharge. MCL § 600.4352.

3. **Remanding of prisoner.** The court or judge shall forthwith remand the person restrained if the person restrained is detained in custody, either:

(a) By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or
(b) By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or
(c) For any contempt specially and plainly charged in the commitment by some court, officer or body having authority to commit for the contempt so charged; and
(d) The time during which such party may be legally detained has not expired. MCL § 600.4355.

4. **Discharge of prisoner of civil cases.** If the prisoner is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, the prisoner shall be discharged only if 1 of the following situations exists:

(a) Where the jurisdiction of the court or officer has been exceeded, either as to matter, place, sum or person;
(b) Where, though the original imprisonment was lawful, the party is entitled to be discharged;
(c) Where the process is void;
(d) Where the process, though in proper form, has been issued in a case not allowed by law;
(e) Where the person having the custody of the prisoner is not the person empowered by law to detain him; or
(f) Where the process is not authorized by any judgment, order or decree of any court, nor by any provision of law. MCL § 600.4358.

D. ***Consequences of Noncompliance.***

1. **Recommitment.** If any person aids or assists in the violation of recommitment; he is guilty of a misdemeanor, and is liable to the party aggrieved in the sum of $1,000.00 damages. MCL § 600.4367.

2. **Concealment of a prisoner as a misdemeanor.** Any one having under his power any person who would be entitled to a writ of habeas corpus to inquire into the cause of his detention, or for whose relief any such writ, warrant, or order to show cause was issued, who shall, with intent to elude the service of the writ, or to avoid the effect thereof, place any such prisoner under the power of another, or conceal him, or change the place of his confinement, is guilty of a misdemeanor. MCL § 600.4370.

3. **Aiding in concealment of a prisoner as a misdemeanor.** Every person who knowingly aids or assists in concealing a prisoner is guilty of a misdemeanor. MCL § 600.4373.

4. **Penalty for misdemeanor.** Every person convicted of any of the misdemeanors specified in sections 4367, 4370 and 4373 shall be punished by a fine not exceeding

$1,000.00, or by imprisonment in the county jail not exceeding 6 months, or by both such fine and imprisonment, in the discretion of the court. MCL § 600.4376.

4.20 Limitations on Property and Economic Interests.

4.21 Public Nuisances

A "public nuisance" is commonly defined as an unreasonable interference with a public right. In the context of public health, public nuisances are those actions or uses of property that significantly interfere with the public's health or safety. *See generally* Restatement (Second) of Torts § 821 (B)(2)(a) (1979).

Pursuant to their police powers, state and local government entities may require remediation of public nuisances. *See* Lawton v. Steele, 152 U.S. 133, 136 (1894). The extent of remediation required will range in degree with the severity of the nuisance and may, in extreme cases, entail the destruction of property or forcible cessation of conduct.

A. *Nuisance Defined.* Michigan statutes define nuisance as an unreasonable interference with a common right enjoyed by the general public involving conduct that significantly interferes, or that is known or should have been known to significantly interfere, with the *public's health*, safety, peace, comfort, or convenience, including conduct prescribed by law. MCL § 125.1802 (emphasis added).

1. **Public v. private nuisance.** Michigan law recognizes both public and private nuisances.

(a) **Public nuisance.** A public nuisance is an unreasonable interference with a right common to the general public. Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:

(i) whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience; or

(ii) whether the conduct is proscribed by a statute, ordinance or administrative regulation; or

(iii) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.[83]

- **Interference with property not required.** Interference with a property right is not a prerequisite to determining that a public nuisance exists.[84]

- **Identification of public nuisances.** A public nuisance may be identified as such by a legislature, government entity, or court.

* **Statutorily-defined public nuisances.** The Michigan statues explicitly define certain conduct and uses of property as public nuisances. For example, any structure or vehicle in which an

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[83] *Dinger v. Department of Natural Resources*, 191 Mich App 630; 479 N.W.2d 353 (1991).

[84] *Bloss v. Paris Township*, 380 Mich 466; 157 N.W.2d 260 (1968); *Bronson v. Oscoda Township*, 188 Mich 679; 470 N.W.2d 688 (1991).

alcoholic beverage is sold or possessed in violation of Michigan law is a public nuisance.

* **Power to declare public nuisance vested in government entities.** In other cases, the Michigan law empowers government entities, such as public health authorities, to determine when conduct or uses of property amount to a public nuisance. For example, the Michigan Department of Public Health, a local health department, or health officer may declare a dwelling unfit for human habitation a public nuisance.[85] A dwelling is unfit for human habitation when it is a danger or detriment to health due to;

** infection with contagious disease; or

** danger to life or health by reason of want of repair; or

** of defects in the drainage, plumbing, lighting, ventilation; or

** the construction of the same, or

** by reason of the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling, (6) for any cause MCL § 125.485.

* **Judicially defined public nuisances.** The following have been found by Michigan courts to constitute public nuisances.

** Polluted water;[86]and

** Wooden buildings constructed within prohibited fire limits.[87]

(b) **Private nuisance.** A private nuisance is defined to be anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. Any unwarrantable, unreasonable, or unlawful use by a person of his own property, real or personal, to the injury of another, comes within the definition stated, and renders the owner or possessor liable for all damages arising from such use.[88]

(i) **Interference with property required.** Interference with a property right is a prerequisite to determining that a private nuisance exists.[89]

2. **Implicit reasonableness element.** Although the Michigan statutes do not explicitly require conduct constituting a public nuisance to be unreasonable, Michigan courts have incorporated a reasonableness standard into their analysis of nuisance law.[90]

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[85] *City of Charlotte Municipal Board of Health v. Santee, 224 Mich. 182;* T*ownship of Kalamazoo v. Lee*, 228 Mich. 117; 199 NW 609 (1924); *Township of Kalamazoo v. Kalamazoo Garbage Co.,* 229 Mich. 263; 200 NW 953 (1924).

[86] *Kalamazoo Twp. v. Lee*, 228 Mich 117; 199 N.W. 609; (1924)

[87] *Hines v. Charlotte*, 72 Mich 278; 40 N.W. 333 (1888).

[88] *Whittemore v. Baxter Laundry Co.*, 181 Mich 564; 148 N.W. 437 (1914).

[89] Id.

[90] *Sanford v. Detroit*, 143 Mich App 194; 371 N.W.2d 904 (1985).

(a) **Not all dangerous entities and conduct are nuisances.** An entity or conduct is deemed a nuisance only when injury is a reasonable and natural consequence of its existence.[91]

3. **Nuisance per se v. nuisance per accidens.** Michigan law recognizes that a public nuisance may be a nuisance per se or nuisance per accidens.

(a) **Nuisance per se (nuisance at law).** Some uses of property and conduct are deemed incapable of being maintained without unreasonably interfering with the rights of others. These uses and conduct are termed "nuisances per se" and are unlawful.[92]

(b) **Nuisance per accidens (nuisance in fact).** Some uses of property and conduct are deemed to unreasonably interfere with the right of others only under certain circumstances. These uses and conduct are termed "nuisances per accidens" and must be identified with reference to their contexts, characteristics, and surroundings.[93]

4. **Applicability to both individuals and municipalities.** Both individuals and municipalities are subject to liability for maintaining a nuisance.[94]

5. **Equitable concept.** Nuisance law is an equitable doctrine, and, as such, individuals seeking to enjoin or abate a nuisance must do so with clean hands.[95]

B. ***Remedies.***

1. **Summary abatement.** A state or municipal legislature may, through an act or ordinance, respectively, authorize summary abatement of a defined nuisance by a government entity or agent *provided*:

(a) The property to be abated is of little value;

(b) The use of the property for illegal purposes is clear or its destruction is necessary to effectuate the object of a statute;[96]

(c) Due process of law is afforded the property owner.[97]

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[91] Id, at 910; *Fox v. Ogemaw County*, 208 Mich App 697; 528 N.W.2d 210 (1995).

[92] *Beard v. State*, 106 Mich App 121; 308 N.W.2d 185 (1981).

[93] *Burdick v. Stebbins*, 250 Mich 665; 231 N.W. 57 (1930); *Cullum v. Topps-Stillman's, Inc.,* 1 Mich App 92; 134 N.W.2d 349 (1965).

[94] *Stremler v. Michigan Dep't of State Highways,* 58 Mich App 620; 228 N.W.2d 492 (1975) (holding municipality liable for maintaining a nuisance). *Cf. In re Detroit v Grand Trunk railway of Canada,* 163 Mich 229; 128 N.W. 250 (1910).

[95] *Birkenshaw v Detroit,* 110 Mich App 500; 313 N.W.2d 334 (1981) (holding plaintiff was not entitled to enjoin city's abatement because he did not have "clean hands").

[96] See *Lawton*, supra, 152 U.S. at 140-41 (upholding summary destruction of fish nets endorsing as acceptable "the power to kill diseased cattle; to pull down houses in the path of conflagrations; the destruction of decayed fruit or fish or unwholesome meats, of infected clothing, obscene books or pictures, or instruments which can only be used for illegal purposes).

[97] *See generally Moore v. Detroit*, 159 Mich App 194; 406 N.W.2d 488 (1987).

2. **Order of abatement.** Under certain conditions, the Michigan Department of Health, a local health department, or a health officer may order the abatement of conditions constituting a public nuisance.

(a) **Dwellings unfit for human habitation.** The department, a local health department, or a health officer, upon determining that a dwelling unfit for human habitation is a public nuisance, may order the removal, abatement, improvement, or cleaning of the dwelling or structures and items in or about the dwelling. MCL § 333.2802.

(i) **State department must provide right of first action to local health board.** The state department of public health may not declare a dwelling a nuisance or order its abatement without first providing the local health department or officer with:

- Notice of all information concerning the dwelling; and
- Three (3) days to take action after receiving the notice.

(ii) **Service order.** An order to remove, abate, improve, or clean a dwelling declared to be a public nuisance must be served on the tenant and owner of the dwelling (or the owner's rental agent.

(iii) **Contents of order—notice.** Notwithstanding any other provision of this act, if a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building.

- **Persons who may be served notice.** The notice shall be served on the owner, agent, or lessee that is registered with the enforcing agency under section 125. If an owner, agent, or lessee is not registered under section 125, the notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records. MCL § 125.540.
- **Contents of notice** The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building. The person to whom the notice is directed shall have the opportunity to show cause at the hearing why the hearing officer should not order the building or structure to be demolished, otherwise made safe, or properly maintained. MCL § 125.540.
- **Hearing officer; filing of notice with officer.** The hearing officer shall be appointed by the mayor, village president, or township supervisor to serve at his or her pleasure. The hearing officer shall be a person who has expertise in housing matters including, but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An employee of the enforcing agency shall not be appointed as hearing officer. The enforcing agency shall file a copy of the notice that the building or structure is a dangerous building with the hearing officer. MCL § 125.540.
- **Notice in writing; service.** The notice shall be in writing and shall be served upon the person to whom the notice is directed

either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice. MCL § 125.540.

(iv) **Judicial involvement.**

- **Hearing officer receiving testimony and making decision.** At a hearing the hearing officer shall take testimony of the enforcing agency, the owner of the property, and any interested party. Not more than 5 days after completion of the hearing, the hearing officer shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe, or properly maintained. MCL § 125.541.
- **Specified action.** If the hearing officer determines that the building or structure should be demolished, otherwise made safe, or properly maintained, the hearing officer shall enter an order that specifies what action the owner, agent, or lessee shall take and sets a date by which the owner, agent, or lessee shall comply with the order. If the building is a dangerous building under section 139(j), the order may require the owner or agent to maintain the exterior of the building and adjoining grounds owned by the owner of the building including, but not limited to, the maintenance of lawns, trees, and shrubs. MCL § 125.541.
- **Failure to comply with order.** If the owner, agent, or lessee fails to appear or neglects or refuses to comply with the order issued, the hearing officer shall file a report of the findings and a copy of the order with the legislative body of the city, village, or township not more than 5 days after the date for compliance set in the order and request that necessary action be taken to enforce the order. If the legislative body of the city, village, or township has established a board of appeals under section 141c, the hearing officer shall file the report of the findings and a copy of the order with the board of appeals and request that necessary action be taken to enforce the order. A copy of the findings and order of the hearing officer shall be served on the owner, agent, or lessee in the manner prescribed in section 140. MCL § 125.541.
- **Setting a date.** The legislative body or the board of appeals of the city, village, or township, as applicable, shall set a date not less than 30 days after the hearing prescribed in section 140 for a hearing on the findings and order of the hearing officer. The legislative body or the board of appeals shall give notice to the owner, agent, or lessee in the manner prescribed in section 140 of the time and place of the hearing. At the hearing, the owner, agent,

or lessee shall be given the opportunity to show cause why the order should not be enforced. The legislative body or the board of appeals of the city, village, or township shall either approve, disapprove, or modify the order. If the legislative body or board of appeals approves or modifies the order, the legislative body shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent, or lessee shall comply with the order within 60 days after the date of the hearing under this subsection. For an order of demolition, if the legislative body or the board of appeals of the city, village, or township determines that the building or structure has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause, and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent, or lessee shall comply with the order of demolition within 21 days after the date of the hearing under this subsection. If the estimated cost of repair exceeds the state equalized value of the building or structure to be repaired, a rebuttable presumption that the building or structure requires immediate demolition exists. MCL § 125.541.

- **Cost of demolition.** The cost of demolition includes, but is not limited to, fees paid to hearing officers, costs of title searches or commitments used to determine the parties in interest, recording fees for notices and liens filed with the county register of deeds, demolition and dumping charges, court reporter attendance fees, and costs of the collection of the charges authorized under this act. The cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure incurred by the city, village, or township to bring the property into conformance with this act shall be reimbursed to the city, village, or township by the owner or party in interest in whose name the property appears. MCL § 125.541.
- **Owner notification and duty.** The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the assessor of the amount of the cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure by first class mail at the address shown on the records. If the owner or party in interest fails to pay the cost within 30 days after mailing by the assessor of the notice of the amount of the cost, the city, village, or township shall have a lien for the cost incurred by the city, village, or township to bring the property into conformance with this act. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided for in this subsection does not have

priority over previously filed or recorded liens and encumbrances. The lien for the cost shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157. MCL § 125.541.

- **Additional actions.** In addition to other remedies under this act, the city, village, or township may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure. A city, village, or township shall have a lien on the property for the amount of a judgment obtained under this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed or recorded as provided by law. The lien does not have priority over prior filed or recorded liens and encumbrances. MCL § 125.541.

(b) **Conditions promoting disease.** When a certified inspector or officer of the health department finds that a dwelling is infected with contagious disease or the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling they may order the dwelling vacated. MCL § 125.485.

(i) **Order contents.** The order must contain:

- The reason; and
- The action must occur in a time period not less than 24 hours nor more than 10 days. MCL § 125.485.

(ii) **Enforcement in the event of noncompliance.** In case such order is not complied with within the time specified, the health officer or such other appropriate public official as the mayor may designate may cause said dwelling to be vacated. The health officer or such other appropriate public official as the mayor may designate whenever he is satisfied that the danger from said dwelling has ceased to exist, or that it is fit for human habitation may revoke said order or may extend the time within which to comply with the same. MCL § 125.485.

c. **Any necessary conditions.** A local health department or the department may issue an order to avoid, correct, or remove, at the owner's expense, a building or condition which violates health laws or which the local health officer or director reasonably believes to be a nuisance, unsanitary condition, or cause of illness. MCL § 333.2455.

d. **Warrant.** If the owner or occupant does not comply with the order, the local health department or department may cause the violation, nuisance, unsanitary condition, or cause of illness to be removed and may seek a warrant for this purpose. The owner of the premises shall pay the expenses incurred. MCL § 333.2455.

3. **Civil Actions to Enjoin and Abate Public Nuisance.**

(a) **Action by attorney general.** The attorney general of the state of Michigan, the prosecuting attorney or any citizen of the county, may maintain an action for

equitable relief in the name of the state of Michigan, upon the relation of such attorney general, prosecuting attorney or citizen to abate said nuisance and to perpetually enjoin any person, his servant, agent, or employee, who shall own, lease, conduct or maintain such building, vehicle, boat, aircraft or place, from permitting or suffering such building, vehicle, boat, or aircraft or place owned, leased, conducted or maintained by him, or any other building, vehicle, boat, aircraft or place conducted or maintained by him to be used for any of the purposes or by any of the persons set forth in section 3801, or for any of the acts enumerated in said section. When the injunction has been granted, it shall be binding on the defendant throughout the judicial circuit in which it was issued. MCL § 600.3805.

(b) **Prosecuting attorney.** The prosecuting attorney of any county may maintain an action for equitable relief in the name of the state of Michigan, upon the relation of such attorney general, prosecuting attorney or citizen to abate said nuisance and to perpetually enjoin any person, his servant, agent, or employee, who shall own, lease, conduct or maintain such building, vehicle, boat, aircraft or place, from permitting or suffering such building, vehicle, boat, or aircraft or place owned, leased, conducted or maintained by him, or any other building, vehicle, boat, aircraft or place conducted or maintained by him to be used for any of the purposes or by any of the persons set forth in section 3801, or for any of the acts enumerated in said section. When the injunction has been granted, it shall be binding on the defendant throughout the judicial circuit in which it was issued. MCL § 600.3805.

(c) **Individual's.** The citizen of any county, may maintain an action for equitable relief in the name of the state of Michigan, upon the relation of such attorney general, prosecuting attorney or citizen to abate said nuisance and to perpetually enjoin any person, his servant, agent, or employee, who shall own, lease, conduct or maintain such building, vehicle, boat, aircraft or place, from permitting or suffering such building, vehicle, boat, or aircraft or place owned, leased, conducted or maintained by him, or any other building, vehicle, boat, aircraft or place conducted or maintained by him to be used for any of the purposes or by any of the persons set forth in section 3801, or for any of the acts enumerated in said section. When the injunction has been granted, it shall be binding on the defendant throughout the judicial circuit in which it was issued. MCL § 600.3805.

4. **Destruction v. abatement.** Destruction of property causing or constituting a public nuisance is permissible when:

(a) The nuisance cannot be effectively abated so as to protect the public; and
(b) Evidence suggests that the owner will not repair or abate the nuisance.[98]

5. **Property owner not entitled to financial compensation for nuisance abatement.** The abatement or destruction of property deemed a nuisance is an exercise of the government's police powers to enforce a use restriction inherent in the owner's property

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[98] *Lake Isabella Dev., Inc. v Vill. of Lake Isabella*, 259 Mich App 393; 675 NW2d 4 (2003); *Geftos v. Lincoln Park,* 39 Mich App 644; 198 NW2d 169 (1972).

title and not a taking. As such, the owner of property abated or destroyed as a nuisance is not entitled to financial compensation from the government.[99]

4.22 Government Takings

No person shall…be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. Const. amend V.

Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record. Mich. Const. Art. X, § 2.

As a general rule, the government must pay compensation for private property taken for public use pursuant to its eminent domain power. This constitutional guarantee is "designed to bar Government from forcing some people alone to bear public burdens which in all fairness and justice, should be borne by the public as a whole."[100]

As mentioned *supra*, this rule does not apply to certain exercises of the government's police power. Decisions of the United States Supreme Court indicate, however that this is not an absolute rule: some exercises of the police power, particularly those that entail extensive regulation of private property, may be subject to the compensation rule.[101] These distinctions are addressed in more detail, *infra*.

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[99] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992) ("Any limitation [that prohibits all economically beneficial use of land] cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership. A law or decree with such an effect must, in other words, do no more than duplicate the result that could have been achieved in the courts—by adjacent landowners or other uniquely affected persons) under the State's law of private nuisance, or by the State under its complementary power to abate nuisances that affect the public generally."); *Mugler v. Kansas,* 123 U.S. 623, 668-69 (1887) ("The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner.").
[100] *Penn Central Trasnp. Co. v. City of New York*, 438 U.S. 104, 123-24 (1978) (Internal citations omitted.).
[101] *See*, *e.g., Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 1014 (1992) ("If instead, the uses of private property were subject to unbridled, uncompensated qualification under the police power, the tendency of human nature would be to extend the qualification more and more until at last private property disappeared." (Internal citations omitted.))

A. ***Taking Defined.***

1. **Takings Per Se.** There are two types of government use of private property considered takings *per se*, entitling the property owner to compensation without a case-specific inquiry.

(a) **Physical invasion.** Regulations that compel a property owner to suffer a physical invasion of his/her property, no matter how minute the invasion.[102]

(b) **Permanent denial of al economically beneficial or productive use.** Regulations that permanently deny all economically beneficial or productive use of property (often referred to as "total taking" or "confiscatory regulation").[103]

2. **Case-specific takings.** In those cases in which government regulation denies some, but not all, economically beneficial or productive uses of private property, a taking may nonetheless exist if the impact of the regulation on the property is sufficiently severe.[104]

(a) **Relevant Factors.** Such determinations are highly fact-specific and necessitate consideration of at least the following factors:

(i) The economic impact of regulation on the property owner;

(ii) The extent to which the regulation has interfered with reasonable investment-backed expectations;

(iii) The character of the governmental action; and

(iv) The duration of the regulation.[105]

(b) **Diminution in value not alone taking.** That a regulation forces a property owner to suffer some diminution in property value is not alone sufficient to render the regulation a taking. [106].

(c) **Denial of most profitable use of property not alone taking.** That a regulation denies a property owner the most profitable use of his/her property is not alone sufficient to render the regulation a taking.[107]

B. ***Relationship to the State's Police Powers.***

1. **Government is not obligated to compensate property owner for abatement or destruction of property pursuant to police power in cases of emergency.** State or local government may, pursuant to its police powers, abate or destroy private property as necessary in an emergency to prevent public harm or destruction. These emergency

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[102] *Lucas*, supra, 505 U.S. at 1015.

[103] *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (2002); *Lucas,* supra, 505 U.S. at 1015-16.

[104] *Penn Central Transp. Co.*, supra, 438 U.S. at 136; *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 415 (1922) ("[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.").

[105] *Tahoe-Sierra Pres. Council*, supra, 535 U.S. at 330-32; *Penn Central Transp. Co.*, supra, 438 U.S. at 136-37

[106] *Lake Oakland Heights Park Asso. v. Waterford, County of Oakland,* 6 Mich App 29; 148 N.W.2d 248 (1967).

[107] *Carabell v. Department of Natural Resources,* 191 Mich App 610; 478 N.W.2d 675 (1991).

exercises of the government's police powers do not entitle property owners to compensation.[108]

2. **Government must compensate property owner for *per se* taking pursuant to police power *unless* proscribed conduct or use was restriction inherent in owner's original title.** State or local government may, pursuant to its police powers, physically invade private property or enact regulations that deprive the property owner of all economically beneficial uses of his/her property. However, such *per se* takings must be accompanied by compensation for the property owner *unless* the taking merely enforces a use restriction inherent in the owner's original title.[109]

(a) **Title restricted against maintaining nuisances and other threats to public heath.** As discussed *supra*, at Section 4.21(B)(5), restrictions against the maintenance of conditions significantly threatening public health are deemed inherent in property titles.[110]

3. **Government is, as a general rule, not obligated to compensate property owner for other regulations that affect property value for public benefit pursuant to police power.** State or local government may, pursuant to its police power, enact regulations that restrict property use and affect property values for public benefit *provided* the regulations substantially advance legitimate state interests. Property owners are not entitled to compensation for losses occasioned by such regulations.[111]

(a) **Judiciary ultimately assesses public nature of benefit.** Although the legislature is granted deference when exercising its police power, the judiciary must ultimately determine whether the benefits of such exercises are sufficiently public to withstand constitutional scrutiny.[112]

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[108] *Lucas*, supra, 505 U.S. at 1029, n. 16; *Bowditch v. Boston*, 101 U.S. 16, 18 (1879) (destruction of building to prevent spread of fire does not entitle building owner to compensation).

[109] *See Lucas,* supra, 505 U.S. at 1026-27 ("*A fortiori* the legislature's recitation of a noxious-use justification cannot be the basis for departing from our categorical rule that total regulatory takings must be compensated. Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with.").

[110] *Moore v. Harrison,* 224 Mich 512; 195 N.W. 306 (1923); *Square Lake Hills Condominium Ass'n v. Bloomfield Township,* 437 Mich 310; 471 N.W.2d 321 (1991).

[111] *Lucas,* supra, 505 U.S. at 1023-24 ("The harmful or noxious uses' principle was the Court's early attempt to describe in theoretical terms why government may, consistent with the Takings Clause, affect property values by regulation without incurring an obligation to compensate—a reality we nowadays acknowledge explicitly with respect to the full scope of the State's power. [L]and-use regulation does not affect a taking if it substantially advances legitimate state interests." (Internal citations omitted.)).

[112] *Center Line v. Chmelko*, 164 Mich App 251; 416 N.W.2d 401 (1987).

(b) **Examples.** The following are examples of cases in which a Michigan court has upheld state or local regulations as valid exercises of the police power, not entitling affected property owners to compensation;

(i) Zoning ordinance limiting occupancy in residential trailers;[113]

(ii) Formation of drainage districts;[114]

(iii) Extension of street across railroad right-of-way.[115]

4. **Government must compensate harmed property owner for improper exercise of police power.** While a government may abate or destroy private property without compensation in order to enforce use restrictions inherent in the owner's original title (*e.g.* to abate a nuisance), compensation must be paid to property owners whose property was not injurious to the public health but was harmed or destroyed only through an improper exercise of police power.[116]

C. *Procedures.* The Michigan statues provide detailed procedures that a state or local government must follow when exercising its power of eminent domain. The statutes provide both general procedures for the exercise of eminent domain and specific procedures for the exercise of eminent domain and state government, a city, or a town for purposes of pubic works and construction.

1. **General provisions.** Any individual or agency authorized to exercise eminent domain must comply with the appropriate procedures.

(a) **Offer to purchase required prior to court action.** There must be an offer to purchase.

(i) **Establishing amount of offer.** Before initiating negotiations for the purchase of property, the agency shall establish an amount that it believes to be just compensation for the property and promptly shall submit to the owner a good faith written offer to acquire the property for the full amount so established. If there is more than 1 owner of a parcel, the agency may make a single, unitary good faith written offer. The good faith offer shall state whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property and the agency's appraisal of just compensation for the property shall reflect such reservation or waiver. The amount shall not be less than the agency's appraisal of just compensation for the property. If the owner fails to provide documents or information as required, the agency may base its good faith written offer on the information otherwise known to the agency whether or not the agency has sought a court order. The agency shall provide the owner of the property and the owner's attorney with an opportunity to review the written appraisal, if an appraisal has been

[113] *Bane v. Pontiac,* 343 Mich 481; 72 N.W.2d 134 (1955).

[114] *Black Marsh Drainage Dist. v. Rowe,* 350 Mich 470; 87 N.W.2d 65 (1957).

[115] Pere Marquette R. Co. v. Michigan Pub. Utilities Com., 225 Mich 12; 195 N.W. 807 (1923).

[116] *Board of Education v. Michigan Bell Tel. Co.*, 51 Mich App 488; 215 N.W.2d 704 (1974).

prepared, or if an appraisal has not been prepared, the agency shall provide the owner or the owner's attorney with a written statement and summary, showing the basis for the amount the agency established as just compensation for the property. If an agency is unable to agree with the owner for the purchase of the property, after making a good faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located. If a parcel of property is situated in 2 or more counties and an owner resides in 1 of the counties, the complaint shall be filed in the county in which the owner is a resident. If a parcel of property is situated in 2 or more counties and an owner does not reside in 1 of the counties, the complaint may be filed in any of the counties in which the property is situated. The complaint shall ask that the court ascertain and determine just compensation to be made for the acquisition of the described property. If an agency made a good faith written offer pursuant to this section before January 28, 1994 but has not filed a complaint for acquisition of the property, the agency may withdraw the good faith written offer and resubmit a good faith written offer that complies with this act as amended. If a good faith offer is resubmitted pursuant to this subsection, attorney fees under section 16 shall be based on the resubmitted good faith offer. MCL § 213.55.

(ii) **Agency rights.** During the period in which the agency is establishing just compensation for the owner's parcel, the agency has the right to secure tax returns, financial statements, and other relevant financial information for a period not to exceed 5 years before the agency's request. The owner shall produce the information within 21 business days after receipt of a written request from the agency. The agency shall reimburse the owner for actual, reasonable costs incurred in reproducing any requested documents, plus other actual, reasonable costs of not more than $1,000.00 incurred to produce the requested information. Within 45 days after production of the requested documents and other information, the owner shall provide to the agency a detailed invoice for the costs of reproduction and other costs sought. The owner is not entitled to a reimbursement of costs under this subsection if the reimbursement would be duplicative of any other reimbursement to the owner. If the owner fails to provide all documents and other information requested by the agency under this section, the agency may file a complaint and proposed order to show cause in the circuit court in the county specified. The court shall immediately hold a hearing on the agency's proposed order to show cause. The court shall order the owner to provide documents and other information requested by the agency that the court finds to be relevant to a determination of just compensation. An agency shall keep documents and other information that an owner provides to the agency under this section confidential. However, the agency and its experts and representatives may utilize the documents and other information to determine just compensation, may utilize the documents and other information in legal proceedings under this act, and

may utilize the documents and other information as provided by court order. If the owner unreasonably fails to timely produce the documents and other information, the owner shall be responsible for all expenses incurred by the agency in obtaining the documents and other information. This section does not affect any right a party may otherwise have to discovery or to require the production of documents and other information upon commencement of an action under this act. A copy of this section shall be provided to the owner with the agency's request. MCL § 213.55.

(iii) **Owner's claim.** If an owner believes that the good faith written offer made did not include or fully include 1 or more items of compensable property or damage for which the owner intends to claim a right to just compensation, the owner shall, for each item, file a written claim with the agency. The owner's written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The owner shall file all such claims within 90 days after the good faith written offer is made pursuant to section 5(1) or 60 days after the complaint is filed, whichever is later. Within 60 days after the date the owner files a written claim with the agency, the agency may ask the court to compel the owner to provide additional information to enable the agency to evaluate the validity of the claim and to determine its value. For good cause shown, the court shall, upon motion filed by the owner, extend the time in which claims may be made, if the rights of the agency are not prejudiced by the delay. Only 1 such extension may be granted. After receiving a written claim from an owner, the agency may provide written notice that it contests the compensability of the claim, establish an amount that it believes to be just compensation for the item of property or damage, or reject the claim. If the agency establishes an amount it believes to be just compensation for the item of property or damage, the agency shall submit a good faith written offer for the item of property or damage. The sum of the good faith written offer for all such items of property or damage plus the original good faith written offer constitutes the good faith written offer for purposes of determining the maximum reimbursable attorney fees under section 16. If an owner fails to file a timely written claim under this subsection, the claim is barred. If the owner files a claim that is frivolous or in bad faith, the agency is entitled to recover from the owner its actual and reasonable expenses incurred to evaluate the validity and to determine the value of the claim. MCL § 213.55.

(iv) **Complaint shall contain.** In addition to other allegations required or permitted by law, the complaint shall contain or have annexed to it all of the following:

- A plan showing the property to be taken.
- A statement of purpose for which the property is being acquired, and a request for other relief to which the agency is entitled by law.
- The name of each known owner of the property being taken.
- A statement setting forth the time within which motions for

review under section 6 shall be filed; the amount that will be awarded and the persons to whom the amount will be paid in the event of a default; and the deposit and escrow arrangements made under subsection (5).
- A declaration signed by an authorized official of the agency declaring that the property is being taken by the agency. The declaration shall be recorded with the register of deeds of each county within which the property is situated. The declaration shall include all of the following:
    * A description of the property to be acquired sufficient for its identification and the name of each known owner.
    * A statement of the estate or interest in the property being taken. Fluid mineral and gas rights and rights of access to and over the highway are excluded from the rights acquired unless the rights are specifically included.
    * A statement of the sum of money estimated by the agency to be just compensation for each parcel of property being acquired.
    * Whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property. MCL § 213.55.

(v) **Deposit of amount.** When the complaint is filed, the agency shall deposit the amount estimated to be just compensation with a bank, trust company, or title company in the business of handling real estate escrows, or with the state treasurer, municipal treasurer, or county treasurer. The deposit shall be set aside and held for the benefit of the owners, to be disbursed upon order of the court under section 8. MCL § 213.55.

2. **Exercise of eminent domain for purposes of public works or construction.** The state or a township may exercise its eminent domain power for purposes of public works pursuant to the procedures proscribed.

(a) **Action by state.** When the governor considers it necessary to acquire property on which to construct public buildings or which adjoins state property already containing public buildings, the governor must order the attorney general to file an action in a court of jurisdiction in the county where the property is located.

(i) **Notice required.** The attorney general must provide the owner(s) of the relevant property the notice required in a civil action.

(ii) **Appointment of appraisal.** The court must appoint appraisers to assess the fair market value of the relevant property interests.

(iii) **Exceptions to appraisal.** An affected property owner may file an exception to the appraisal. A trial on the exceptions must be held by the court, or before a jury if so request by either party.

(b) **Action by townships.** If the entity wants to acquire private property for public works purposes, it must adopt a resolution so stating. MCL § 41.271.

(i) **Notice required.** At least once each for at least two (2) consecutive weeks, the entity must publish the resolution in a newspaper of general circulation published in the municipality. MCL § 41.271.
(ii) **Hearing required.** The board must hold a hearing regarding the resolution no sooner than ten (10) days after the last notice publication. MCL § 41.271.
(iii) **List of affected property owners and corresponding assessment required.** Following the hearing, the board must prepare a list of all property owners affected by the resolution and assess the damages and/or benefits accruing to each. MCL § 41.271a.
(iv) **Right of appeal.** A property owner who disagrees with the board's decision following the remonstrances hearing may appeal the board's decision to a court of jurisdiction in the county in which the municipality is located. MCL § 41.271a.

- **Timing.** The appeal must be filed within twenty (20) days of the decision. MCL § 41.271a.
- **De novo review.** The court must conduct a de novo review of the assessment. MCL § 41.271a.
- **Final decision.** The judgment of the court is final and may not be appealed. MCL § 41.271a.

4.23 Sanitary Regulations

As discussed *supra*, at Section 3.22, state and local public health departments, as well as some municipal building inspectors, may inspect both public buildings and private dwellings to ensure compliance with sanitary laws and regulations. Michigan law provides for several remedies upon a finding that a building or dwelling is not in compliance with sanitary standards.

A. ***Dwelling Unfit for Human Habitation.*** If, upon inspection, public health personnel or municipal building inspectors determine that a dwelling is unfit for human habitation due to the existence of an unsanitary condition likely to cause sickness among the dwelling's occupants, the state health department, a local health department, or health officer may declare the building a public nuisance.

1. **Power to abate unsanitary conditions.** The court of jurisdiction shall make orders and determinations consistent with the objectives of this act.
(a) The court may enjoin the maintenance of unsafe, unhealthy, or unsanitary conditions, or violations of this act;
(b) May order the defendant to make repairs or corrections necessary to abate the conditions.
(c) The court may authorize the enforcing agency to repair or to remove the building or structure. (d) If an occupant is not the cause of an unsafe, unhealthy, or unsanitary condition, or a violation of this act, and is the complainant, the court may authorize the occupant to correct the violation and deduct the cost from the rent upon terms the court determines just.

(e) If the court finds that the occupant is the cause of an unsafe, unhealthy, or unsanitary condition, or a violation of this act, the court may authorize the owner to correct the violation and assess the cost against the occupant or the occupant's security deposit. MCL § 125.534.

4.24 Regulation and Closure of Businesses

In the event of a communicable disease epidemic, public health officials may find it necessary to limit public contact with individuals in affected communities. The Michigan statutes provide that the department of health or a local health board may close schools and forbid public gatherings when such action is deemed necessary to prevent and stop epidemics. Neither the Michigan statutes nor the department regulations explicitly authorize the department of health or local health board to close a business in order to prevent or control an epidemic. However, state and local public health authorities presumably possess such powers pursuant to the wide range of powers they are proscribed. MCL § 333.2453.

Although business owners would suffer financial losses as a result of such closings, it is unlikely an affected owner would be entitled to recover for the losses given the expansive authority of governments to regulate property for the public health, safety, and welfare, as discussed *supra*.

4.25 Animal Health

Animal diseases are relevant to public health for several reasons. First, some animal diseases are directly capable of causing illness in humans. For example, monkeypox is a viral disease that is found primarily in rodents but may be transmitted from infected animals to humans. In June 2003, several Americans became infected with monkeypox from their pet prairie dogs. Second, some animal diseases, although not initially transmissible to humans, may acquire this capability by mutating in certain hosts. For example, many experts believe that gene swapping between flu viruses in pigs created the highly virulent human influenza strains that led to the great flu outbreaks of the past century, including the Spanish Flu of 1918-1919 that claimed the lives of more than 20 million people worldwide (including approximately 500,000 Americans) and the 1957 Asian flue that killed approximately 70,000 Americans. Finally, disease epidemics among animals frequently lead to widespread animal death and slaughter, both of which have the potential to create nuisances and other conditions hazardous to human health.

Given these public health threats, Michigan law empowers both state and local governments to closely monitor animal health and act to prevent disease epidemics among animals within the state. MCL § 287.

A. ***State Animal Health.***

1. **Chief animal health official.** The director shall appoint an individual as state veterinarian who shall be the chief animal health official of the state. MCL § 287.707.

   (a) **Rules of appointment.** The appointment shall be made in accordance with the rules of the state civil service commission. MCL § 287.707.

(b) **Qualifications.** The individual appointed as state veterinarian shall maintain a current license to practice veterinary medicine in this state and be federally accredited in this state by the United States department of agriculture. The state veterinarian shall be skilled in the diagnosis, treatment, and control of infectious, contagious, and toxicological diseases of livestock. The state veterinarian shall also be knowledgeable of state and federal laws as they relate to the intrastate, interstate, and international movement of animals. MCL § 287.707.

2. **Powers and duties.** Under the direction of the director, the state veterinarian shall do all of the following:

(a) Develop and enforce policy and supervise activities to carry out this act and other state and federal laws, rules, and regulations that pertain to the health and welfare of animals in this state on public or private premises.

(b) Promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the use of veterinary biologicals including diagnostic biological agents.

(c) Maintain a list of reportable animal diseases. The state veterinarian shall review and update the list annually and more often if necessary.

(d) Maintain a list of veterinary biologicals whose sale, distribution, use, or administration by any person is reported to the director when requested by the director within 10 working days of the sale, distribution, use, or administration. The state veterinarian shall review and update the list annually and more often if necessary.

(e) Develop and implement scientifically based surveillance and monitoring programs for reportable diseases when the director determines, with advice and consultation from the livestock industry and veterinary profession, that these programs would aid in the control or eradication of a reportable disease or strengthen the economic viability of the industry.

(f) The state veterinarian may require that the importation and use of veterinary biologicals or biological agents be reported to the department and may restrict the use of certain veterinary biologicals to veterinarians when the disease or veterinary biological involved has a substantial impact on public health, animal health, or animal industry.

(g) Unless otherwise prohibited by law, the state veterinarian may enter upon any public or private premises to enforce this act.

(h) A person shall not give false information in a matter pertaining to this act and shall not impede or hinder the director in the discharge of his or her duties under this act.

(i) Upon demand of the director, a person transporting livestock shall produce documentation that contains the origin of shipment, registration or permit copies or documentation, documentation demonstrating shipping destination, and any other proof that may be required under this act.

(j) The director may waive any testing requirements after epidemiologic review. MCL § 287.708.

B. ***Disease Among Animals.*** One of the primary responsibilities of the animal health officers is to prevent and suppress outbreaks of infectious diseases among Michigan's animals. The Michigan animal health laws create a system for the prevention, identification, and control of infectious diseases.

1. **Animal affected with disease or toxic substance.** A person who discovers, suspects, or has reason to believe that an animal is either affected by a reportable disease or contaminated with a toxic substance shall immediately report that fact, suspicion, or belief to the director. The director shall take appropriate action to investigate the report. A person possessing an animal affected by, or suspected of being affected by, a reportable disease or contaminated with a toxic substance shall allow the director to examine the animal or collect diagnostic specimens. The director may enter premises where animals, animal products, or animal feeds are suspected of being contaminated with an infectious or contagious disease, or a disease caused by a toxic substance and seize or impound the animal products or feed located on the premises. The director may withhold a certain amount of animal products or feed for the purpose of controlled research and testing. A person who knowingly possesses or harbors affected or suspected animals shall not expose other animals to the affected or suspected animals or otherwise move the affected or suspected animals or animals under quarantine except with permission from the director.

2. **Owner's assistance.** A person owning animals shall provide reasonable assistance to the director during the examination and necessary testing procedures.

3. **Use of law enforcement.** The director may call upon a law enforcement agency to assist in enforcing the director's quarantines, orders, or any other provisions of this act.

4. **Individuals may not alter or misrepresent information.** A person shall not remove or alter the official identification of an animal. A person shall not misrepresent an animal's identity or the ownership of an animal. A person shall not misrepresent the animal's health status to a potential buyer.

5. **Compensation for testing.** The director shall devise and implement a program to compensate livestock owners for livestock that die, are injured, or need to be destroyed for humane reasons due to injury occurring while the livestock are undergoing mandatory or required testing for a reportable disease.

6. **Disclosure of information.** Any medical or epidemiological information that identifies the owners of animals and is gathered in connection with the reporting of a discovery, suspicion, or reason to believe that an animal is either affected by a reportable disease or contaminated with a toxic substance, or information gathered in connection with an investigation of the reporting of a discovery, suspicion, or reason to believe that an animal is affected by a reportable disease or contaminated with a toxic substance is confidential, is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and is not open to public inspection without the individual's consent unless public inspection is necessary to protect the public or animal health as

determined by the director. Such medical or epidemiological information that is released to a legislative body shall not contain information that identifies a specific owner.

7. **Definitions.**

(a) "Disease free zone" means any area in the state with defined dimensions determined by the department in consultation with the United States department of agriculture to be free of bovine tuberculosis in livestock.
(b) "Infected zone" means any area in the state with defined dimensions in which bovine tuberculosis is present in livestock and separated from the disease free zone by a surveillance zone as determined by the department in consultation with the United States department of agriculture.
(c) "Official intrastate health certificate or official intrastate certificate of veterinary inspection" means a printed form adopted by the department and completed and issued by an accredited veterinarian that documents an animal's point of origin, point of destination, official identification, and any required official test results.
(d) "Prior movement permit" means prior documented permission given by the director before movement of livestock.
(e) "Surveillance zone" means any area in the state with defined dimensions that is located adjacent and contiguous to an infected zone as determined by the department in consultation with the United States department of agriculture.
(f) "High-risk area" means an area designated by the director where bovine tuberculosis has been diagnosed in livestock.
(g) "Intrastate movement" means movement from 1 premises to another within this state. Intrastate movement does not include the movement of livestock from 1 premises within the state directly to another premises within the state when both premises are a part of the same livestock operation under common ownership and both premises are directly interrelated as part of the same livestock operation. Except that when intrastate movement causes livestock to cross from 1 zone into another zone, livestock must meet the testing requirements for their zone of origin.
(h) "Potential high-risk area" means an area determined by the director in which bovine tuberculosis has been diagnosed in wild animals only.
(i) "Whole herd" means any isolated group of cattle, privately owned cervids, or goats maintained on common ground for any purpose, or 2 or more groups of cattle, privately owned cervids, or goats under common ownership or supervision geographically separated but that have an interchange or movement of cattle, privately owned cervids, or goats without regard to health status as determined by the director.
(j) "Whole herd test" means a test of any isolated group of cattle or privately owned cervids 12 months of age and older or goats 6 months of age or older maintained on common ground for any purpose; 2 or more groups of cattle, goats, or privately owned cervids under common ownership or supervision geographically separated but that have an interchange or movement of cattle, goats, or privately owned cervids without regard to health status as determined by

the director; or any other test of an isolated group of livestock considered a whole herd test by the director.

8. **Bovine tuberculosis.** The director may develop, implement, and enforce scientifically based movement restrictions and requirements including official bovine tuberculosis test requirements, prior movement permits, official intrastate health certificates or animal movement certificates to accompany movement of animals, and official identification of animals for movement between or within a disease free zone, surveillance zone, and an infected zone, or any combination of those zones.

9. **Zoning requirement.** The department shall comply with the following procedures before issuing zoning requirements described in subsection (8) that assure public notice and opportunity for public comment:

(a) Develop scientifically based zoning requirements with advice and consultation from the livestock industry and veterinary profession.

(b) Place the proposed zoning requirements on the commission of agriculture agenda at least 1 month before final review and order by the director. During the 1-month period described in this subdivision, written comments may be submitted to the director and the director shall hold at least 1 public forum within the affected areas.

(c) Place the proposed zoning requirements at least 1 month before implementation in a newspaper of each county within the proposed zoning requirement area and at least 2 newspapers having circulation outside of the proposed zoning requirement area.

10. **Revisions.** The director may revise or rescind movement restrictions and other requirements described in subsection (8), pursuant to this section, and any revision or revocation of such movement restrictions or other requirements shall comply with the procedure set forth in subsection (9) unless the revision does not alter the boundary of a previously established zone.

11. **No exemption for dairy herds.** This section does not exempt dairy herds from being tested in the manner provided for by grade "A" pasteurized milk ordinance, 2001 revision of the United States public health service/food and drug administration, with administrative procedures and appendices, set forth in the public health service/food and drug administration publication no. 229, and the provisions of the 1995 grade "A" condensed and dry milk products and condensed and dry whey-supplement I to the grade "A" pasteurized milk ordinance, 2001 revisions, and all amendments to those publications thereafter adopted pursuant to the rules that the director may promulgate.

12. **Establishment of high risk areas.** The director may establish high-risk areas and potential high-risk areas based upon scientifically based epidemiology. The director shall notify the commission of agriculture and publish public notice in a newspaper of each county with general circulation in any area designated as a high-risk or potential high-risk area.

13. **Testing in high risk areas.** All cattle and goat herds located in high-risk areas shall be whole herd bovine tuberculosis tested at least once per year. After the first whole herd bovine tuberculosis test, testing shall occur between 10 and 14 months from the anniversary date of the first test. This section does not prevent whole herd testing by the owner or by department mandate at shorter intervals. When 36 months of testing fails to disclose a newly affected herd within the high-risk area or any portion of the high-risk area, the director shall remove the high-risk area designation from all or part of that area.

14. **Terminal exemption.** Terminal operations located in high-risk areas in this state are exempt from the requirements of subsection (14) and shall be monitored by a written surveillance plan approved by the director. Terminal operations located in potential high-risk areas in this state are exempt from the requirements of subsection (16) and may be monitored by a written surveillance plan approved by the director.

15. **Testing within 6 months.** All cattle and goat herds located in potential high-risk areas shall be whole herd bovine tuberculosis tested within 6 months after the director has established a potential high-risk area or have a written herd plan with a targeted whole herd bovine tuberculosis testing date. When all herds meet the testing requirements imposed in this subsection, the director shall remove the potential high-risk area designation.

16. **Cervid testing.** Each owner of any privately owned cervid herd within a high-risk area shall cause an annual whole herd bovine tuberculosis test to be conducted on all privately owned cervids 12 months of age and older within the herd and all cattle and goats 6 months of age and older in contact with the cervids. Following the initial annual whole herd test, subsequent whole herd tests shall be completed at 9- to 15-month intervals. This section does not prevent whole herd testing by the owner or by department mandate at shorter intervals.

17. **Slaughter surveillance.** Each owner of any privately owned cervid ranch within a high-risk area may elect to undergo a tuberculosis slaughter surveillance plan approved by the director in lieu of the annual whole herd testing. This slaughter surveillance plan must include examination of animals removed from the herd for detection of tuberculosis. Examination must be performed by a state or federal veterinarian or accredited veterinarian. The number to be examined at each testing interval shall include adult animals and must be equal to the amount necessary to establish an official tuberculosis monitored herd as defined in the bovine tuberculosis eradication uniform methods and rules, effective January 22, 1999, and all amendments to those publications thereafter adopted pursuant to rules that the director may promulgate.

4.30 LIMITATIONS ON PRIVACY

4.31 Disclosure of Medical Information and the Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) contains provisions intended to protect the privacy of certain individually identifiable health information (referred to

as "protected heath information" (PHI)). *See* 42 U.S.C. 1320d-2 (2005). Generally, HIPAA limits the ability of certain entities to use and disclose an individual's PHI without notifying and/or obtaining authorization from that individual.

It is important to note that HIPAA contains numerous exceptions to this general rule. One of the most significant of these exceptions involves uses and disclosures of PHI for public health services.

A. ***Applicability of HIPAA Requirements.***

1. **Covered entities.** HIPAA's privacy requirements apply to only three types of entities (referred to as "covered entities"):

(a) **Health plan:** An individual or group plan that provides, or pays the cost of medical care.

(b) **Health care clearinghouse:** A public or private entity that processes or facilitates the processing of health information.

(c) **Health care provider:** A provider of medical or health services or any person or organization who furnishes, bills, or is paid for health care in the normal course of business. 45 C.F.R. §§ 160.102.103.

2. **Public health departments as covered entities.** Many public health departments and agencies provide health care services and, as such, are covered entities. *See generally* MCL § 333.24 (authorizing local boards of health to provide health services); 52 M.M.W.R. 1-12 (Apr. 11 2003) (available online at http://cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm).

(a) **Hybrid entity status.** A public health department may designate itself as a hybrid entity and designate those healthcare providing components of its organization to which HIPAA applies. Then, the non-designated components of the public health department need not comply with HIPAA's privacy requirements. *See 45* C.F.R. § 164.504; 52 M.M.W.R. 1-12.

B. ***Uses and Disclosures of PHI for Public Health Activities.***

A covered entity may disclose PHI for public health purposes without an individual's authorization *provided* such disclosures are made to:

1. **A public health authority.** Authorized by law to collect such information to prevent or control disease, injury, or disability;

(a) **"Public health authority" defined.** A "public health authority" is an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency that is responsible for public health matters as part of its official mandate. 45 C.F.R. § 164.501.

2. **An official of a foreign government agency** that is acting in collaboration with a public health authority;

3. **A public health authority or other government authority** authorized to receive reports of child abuse or neglect;
4. **A person subject to the jurisdiction of the Food and Drug Administration (FDA)** for the purpose of activities related to the quality, safety, or effectiveness of an FDA-regulated product or activity;
5. **A person who may have been exposed to a communicable disease or is at risk of contracting or spreading** if the covered entity is otherwise authorized by law to notify such a person as necessary in the conduct of a public health intervention or investigation; or
6. **An employer** if such information is related to an employee's workplace injury or workplace medical surveillance. 45 C.F.R. § 164.512(b).

C. ***Other Permitted Uses and Disclosures of PHI.*** A covered entity may also disclose PHI without an individual's authorization for, *inter alia*:

1. **Disclosures about victims of abuse, neglect, or domestic violence** to a government authority authorized to receive reports of such abuse, neglect, or violence;
2. **Uses and disclosures for health oversight activities,** such as audits, criminal investigations, or licensing actions;
3. **Disclosures for judicial and administrative proceedings** in response to a court or tribunal order, subpoena, discovery request, or other lawful process;
4. **Disclosures for law enforcement purposes,** such as identification of a suspect, apprehension of a criminal suspect, or ascertainment of a potential victim's cause of death or injury.
5. **Uses and disclosures about decedents** for purposes such as identifying a deceased person or determining a cause or death;
6. **Uses and disclosures for cadaveric organ, eye, or tissue donation purposes** to organ procurement, banking, or transplantation organizations;
7. **Uses and disclosures for public health research purposes** regardless of the source of the research funding;
8. **Uses and disclosures to avert a serious threat to health or safety;**
9. **Uses and disclosures for specialized governmental functions,** such as military activities, intelligence gathering, or law enforcement custodial situations;
10. **Disclosures for workers' compensation;** and
11. **Uses and disclosures otherwise authorized by law.** 45 C.F.R. § 164.512 (which includes a more detailed discussion of the requirements for these disclosures).

D. ***Preemption of State Privacy Law.***

1. **Contrary state law preempted by HIPAA.** HIPAA requirements preempt contrary provisions of state law unless:
   (a) The state law serves a compelling need related to public health, safety, or welfare;
   (b) The principal purpose of the state law relates to the control of any controlled substance;

(c) The state law provides more stringent privacy protections for health information than the applicable HIPAA provisions;
(d) The state law provides for reporting of disease, injury, child abuse, birth, death, or public health surveillance or investigation; or
(e) The state law requires health plans to report or provide access to health information for purposes of financial audits or other programmatic monitoring. 45 C.F.R. § 160.203.

4.32 Disclosures of Medical Information and State Privacy Law

In general, Michigan law provides for the confidential treatment of individual's medical information. *See generally* MCL § 333.

Additionally various provisions of Michigan law require government entities and employees to maintain the confidentiality of specific medical information. Such provisions have been discussed where applicable herein and will not be further addressed in this section.

A. *Confidentiality of Communicable Disease Information.*

1. **No disclosure.** A person may not disclose or be compelled to disclose, by subpoena or otherwise, medical or epidemiological information involving a communicable disease or other disease that is a danger to health *unless*:
   (a) The information is released for statistical purposes in a manner that does not identify an individual;
   (b) The information is released pursuant to the written consent of all individuals identified in the information;
   (c) The information is released to the extent necessary to enforce the public health laws, juvenile delinquency laws, criminal sentencing laws, or homicide laws;
   (d) The information is released to protect the health or life of a named party; or
   (e) The information is about a deceased individual and is released to a coroner. MCL § 333.5101.
2. ***Penalties for reckless, knowing, or intentional disclosure*.** A person responsible for recording, reporting, or maintaining information required to be reported pursuant to Michigan's reportable disease laws who recklessly, knowingly, or intentionally discloses or fails to protect medical or epidemiological information involving a communicable disease or other disease dangerous health commits a misdemeanor. MCL § 333.5133.

4.33 Access to Public Records

As a general rule, all persons are entitled to full and complete information regarding the official actions of government agencies, officials, and employees. Freedom of Information Act, 1976 PA 442, MCL 15.321 et seq. Michigan law provides that any person (except an inmate) may request access to inspect and copy the public records of any public agency, without stating the purpose of such request, during the agency's regular business hours. MCL 15.233. Such requests are often referred to as Freedom of Information Act (FOIA) requests. Information regarding the public health actions of federal agencies, officials, and employees are also subject to public disclosure requirements pursuant to the federal Freedom of Information Act. 5 U.S.C. § 552 (2005). This general policy of public disclosure may prove problematic in the event of a public health

emergency, such as an infectious disease outbreak: disclosing the identity of infected individuals subject to isolation and quarantine orders may subject them to discrimination or retaliatory activities, while disclosing the scope of government containment efforts may intensify public panic. In such situations, the government may seek to maintain the confidentiality of certain public records to protect individuals and the public at large. However, the government's ability to restrict access to public records is extremely limited.

A. ***Exceptions to General Rule of Access to All Public Records.***

1. **Public records to which access *is* prohibited.** Michigan law provides that a public agency may deny disclosure of certain pubic records under section 13 of the FOIA, MCL 15.243:

(a) **Records declared confidential by statute.**
(b) **Patient medical records.** Patient medical records where release of the record constitutes an unwarranted invasion of personal privacy, would be subject to a medical privilege, or would include medical facts or evaluations which would identify the patient.
(c) **Law enforcement investigatory records.** Investigating records compiled for law enforcement purposes may be exempted from disclosure if they interfere with law enforcement proceedings, deprive a person of a right to a fair trial. Constitute an unwarranted invasion of privacy, disclose the identity of informants, disclose investigative techniques, or endanger law enforcement personnel.
(d) **Records indicating vulnerability to terrorist attack.** The public may be prohibited access to any record or part of a record that has a reasonable likelihood of threatening public safety by revealing a vulnerability to a terrorist attack. MCL 15.243(1)(y).
(e) **Public Health Department** records that contain medical information about an individual are generally confidential and may not be disclosed without the consent of the individual. MCL 333.5715, MCL 333.2637 and MCL 333.6113.
Certain sections of the public Health Code also provide for confidentiality:

(i) MCL 333.2631- Medical information obtained in the course of a medical research project.
(ii) MCL 333.2888-Vital Records.
(iii) MCL 333.5114a and MCL 333.5131- HIV and serious communicable disease related records.
(iv) MCL 333.5613- Occupational disease investigations if required to protect trade secrets.
(v) MCL 333.6111- Certain records relating to a substance abuse treatment service.
(vi) MCL 333.9207-Childhood immunization registry.

5.00 OPERATION OF THE COURTS AMID PUBLIC HEALTH THREATS

The conduct of judicial proceedings involving persons infected or suspected of being infected with a dangerous communicable disease will require the court to alter many of its standard

procedures in order to assure the safety of court personnel and parties participating in the proceedings. For example, the court must consider whether an individual suspected of being infected with an unknown, highly contagious disease should be permitted to physically appear in the court room and, if not, how the proceedings will be conducted to ensure the individual adequate participation. Additional issues, including the adequacy of the individual's access to and consultation with counsel, will also challenge the court in such situations. In the event of a public health emergency, such as the widespread outbreak of an infectious disease within a community, the challenges facing the courts will be greater. Court personnel, including judges and sheriffs, may themselves become ill. The court may be forced to relocate to safer and more sanitary premises. Hundreds (if not thousands) of hearings may be required to determine the validity of isolation and quarantine orders. Each of these scenarios will strain the resources of the courts and require innovative solutions that ensure the continued operation of the judicial system while respecting constitutional due process guarantees. Neither Michigan law nor the rules of court specifically address these challenges in the context of public health emergencies. However, several generalized provisions may be invoked in such situations.

5.10 APPEARANCE OF INDIVIDUALS POSING A POTENTIAL THREAT TO PUBLIC HEALTH

Appearance by Means Other Than in Person.

Although isolation and quarantine orders may, under certain circumstances, be issued following *ex parte* hearings (*see supra*, at Section___), an individual affected by such an order is subsequently entitled to attend a full hearing on the subject. *See* U.S. CONST. amend. V ("No person shall … be deprived of life, liberty, or property without due process of law…"); and Mich. Const 1963, art. I, § 17.

5.11 Operation of the Courts Amid Public Health Threats

MCR 8.116(D) provides access to court proceedings except as otherwise provided by statute or court rule, a court may not limit access by the public to a court proceeding unless a party has filed a written motion that identifies the specific interest to be protected, or the court sua sponte has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access; the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect that interest; and the court states on the record the specific reasons for the decision to limit access to the proceeding.

As previously noted, a proceeding for isolation or quarantine provides a right of the individual affected to be present at the hearing. MCL 333.5207.However, an individual that is the subject of an isolation or quarantine order may be physically unable to appear in court due to illness. Alternatively, the court may be unwilling to permit an infected or potentially infected individual to appear in person because of the health threat such an individual poses to court personnel, counsel, and the attending public. In the event an individual is not able or permitted to attend proceedings in person, the court should consider the following alternative procedures.

A. *Telephonic Proceedings and Video telecommunications.* Michigan trial courts are permitted to use "communication equipment" for a motion hearing. MCR 2.402. "Communication equipment" is broadly defined to include a telephone or any other electronic device that allows the parties to hear and speak to each other. The court or a party is generally required to give 7 notice before communication equipment is used. However, with the consent of the parties or for good cause, the notice period may be waived. Communication equipment may also be used to take testimony, if the parties consent or if good cause is shown. A verbatim record of the proceedings is required. The cost associated with the use of communication equipment must be borne by the party seeking to use the equipment. If the Court initiates the use of the equipment, the cost is shared equally, unless otherwise directed.

1. **Advantage of observation.** Although not required by MCR 2.402, the parties may wish to use communication equipment that allows enable the judge to fully view the out-of-court party and his/her counsel and vice versa. The use of video telecommunications, unlike telephone conferencing, would permit the judge to observe the physical condition of the patient, which will frequently be extremely relevant to assessing the scientific validity of isolation and quarantine orders.
2. **Presence of counsel.** Unless safety reasons dictate otherwise, counsel may wish to be personally present with the out-of-court party when communication equipment is used to conduct hearings.
3. **Meaningful consultation with counsel should be preserved.** If possible, any communications equipment used to conduct hearings should enable counsel to confer privately with the out-of-court party outside the reach of the camera and audio microphone.

5.20 PROTECTION OF COURT PERSONNEL

In the event of an outbreak of infectious disease in a community, the court may find it necessary to adopt the procedures discussed to ensure an individual subject to an isolation or quarantine order does not expose court personnel to the disease. In certain circumstances, such as when the outbreak has affected large numbers of persons in the community or the infectious disease is easily transmitted through airborne droplets, the court may need to limit public access to the courtroom. In extreme circumstances, the court itself may need to relocate to a non-affected area to ensure its continued operation.

5.21 Limiting Public Access to the Courtroom

A. Limited Access at Judge's Discretion. State law requires that court sittings be open to the public. MCL 600.1420.

1. **Ability to limit trial access.** As a general rule, all civil trials should be open and notorious.[117] However, under appropriate circumstances, a judge has discretion to hold hearings and conduct proceedings, other than trials, in chambers.[118]

[117] *Bauman v Grand T.W.R. Co*, 363 Mich 604; 110 NW2d 628 (1961).
[118] *Detroit Free Press v Macomb County Judge*, 405 Mich 549; 275 NW2d 482 (1978).

2. **Ability to limit media access.** In Michigan, film and electronic media coverage shall be allowed upon request in writing. A judge may terminate, suspend, limit, or exclude film or electronic media coverage upon a finding on the record that the fair administration of justice requires such action or that rules governing the use of such equipment have been violated. The court may exclude coverage of certain witnesses. Administrative Order 1989-1.

5.22 elocation of Court

A. ***Relocation at Judicial Discretion.*** A judge, at his/her discretion, may hold hearings and conduct trials in a regular courtroom or at any other location within the state.

5.30 PROCEEDINGS INVOLVING NUMEROUS PERSONS

In the event of an infectious disease outbreak, the courts may be called upon to issue numerous isolation and quarantine orders while simultaneously enforcing public health orders regarding premises inspections, searches, and seizures. In a severe outbreak, the sheer number of such proceedings could overwhelm the court system. Judicial surge capacity may be obtained through several logistical and procedural measures.

5.31 Additional Judicial Personnel

A. ***Additional Judges.*** The number of judges available to hear matters in courts having original jurisdiction over public health matters may be augmented by the assignment by the State Court Administrator or order of the Supreme Court of retired judges, judges from other parts of the state, or judges from other courts within the same jurisdiction.

6.00 STATE OF EMERGENCY

In recognition of the threat to public health and safety posed by emergencies and disasters of both manmade and natural causes, Michigan law provides for emergency management procedures. *See* Michigan Emergency Management Act, 1976 PA 390, MCL 30.401 et. seq. Michigan's emergency management procedures include, but are not limited to, the following:

Preparation of state emergency plans and preparedness efforts (MCL 30.407a(2);

Provision of increased powers to the governor and local agencies (MCL 30.405, MCL 30.410);

Enactment of an Interstate Emergency Management and Disaster Compact for the provision of equipment, personnel, and services by other states in the event of an emergency or disaster (2001 PA 247 and 2001 PA 248, MCL 3.991 et. seq.); and

Use of private property to cope with an emergency or disaster and compensation for such use (MCL 30.405(1)(d).

The provision of necessary medical and health services is included within emergency management. (MCL 30.411). Thus, Michigan's emergency management laws will be discussed herein to the extent they affect public health practitioners and public health law.

6.10 DECLARING A STATE OF EMERGENCY

6.11 When Appropriate

A. ***By Governor Upon Determination that Disaster Has Occurred or Is Imminent.*** The governor may declare a disaster or emergency upon determining that a disaster or emergency has occurred or that the occurrence or threat of a disaster or emergency exists. MCL 30.403(3) and (4).

STATE OF EMERGENCY § 6.12

1. **"Disaster" defined.** A "disaster" is an "occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, snowstorm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous material incident, epidemic, air contamination, blight, drought, infestation, explosion, or hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities, riots, or civil disorders." MCL 30. 402(e).

2. **"Emergency" defined**. An emergency is defined as any occasion or instance in which the governor determines that state assistance is needed to supplement local efforts and capabilities to save lives, protect property and public health and safety, or to lessen the threat of a catastrophe. MCL 30.402 (h).

B. ***By Local Official.*** The chief executive officer of a county or municipality or the official designated by charter may declare a local disaster emergency for no more than seven (7) days when appropriate. MCL 30.410(1)(b).

6.12 Procedures

A. ***When Declared by Governor.***

1. **Method of declaration.** The governor may declare a disaster or emergency by executive order or proclamation. MCL 30.403(3) and (4).
2. **Contents of declaration.** All executive orders or proclamations declaring a disaster emergency must indicate:
   (a) The nature of the disaster;
   (b) The area(s) threatened; and
   (c) The conditions that have brought about the disaster.
   (d) the conditions permitting the termination of the state of disaster or emergency. Id.
3. **Duration.** A gubernatorially-declared state of emergency remains in effect until the earlier of:
   (a) The governor determines that the threat or danger has passed or the disaster has been dealt with such that emergency conditions no longer exist;
   (b) The passage of thirty (28) days. Id.
4. **Extension.** The legislature, by joint resolution, may extend the state of emergency or disaster for a specified period following the expiration of thirty (30) days. Id.

B. ***When Declared by Local Official.***

1. **Consent of local governing body required for extension.** A declared local disaster emergency may only be continued for more than seven (7) days upon consent of the governing body of the county or municipality. MCL 30.410(b).

6.20 POWERS OF GOVERNMENT DURING A DECLARED EMERGENCY

6.21 Gubernatorial Powers

A. ***Broad Powers.*** The powers of the governor during a declared disaster or emergency are extremely broad. See MCL 30.405 .

B. ***Powers Relevant to Public Health Law.*** Of relevance to public health Law, the governor powers would allow her to:

1. **Employ any measure and give any direction to the Michigan Department of Community Health or local boards of health** as is reasonably necessary for securing compliance with Michigan's emergency management laws or the findings or recommendations of the MDCH or local boards of health;

2. **Issue any executive order to state and local law enforcement officers and agencies as is reasonable and necessary** to secure compliance with Michigan's emergency management laws;

3. **Serve as commander-in-chief of the militia and all other forces** available for emergency duty;

4. **Control ingress to and egress from disaster area**, as well as the movement of persons within the disaster area and the occupancy of premises in the disaster area;

5. **Give authority to allocate drugs, food, and other essential materials and services**;

6. **Commandeer or use private property as necessary** to cope with the disaster emergency *subject to the compensation requirements*; and

7. **Allow persons holding licenses to practice medicine, dentistry, pharmacy, nursing, and other similar professions to practice their respective profession in Michigan during the disaster or emergency**.

C. ***Limitations on Governor's Powers.***

1. **Compensation.** Although the governor is entitled to commandeer or use private property to the extent necessary during a disaster or emergency, compensation must be paid to the property owner(s) under certain circumstances. MCL 30.406.

(a) **When due.** An individual is entitled to compensation for the taking or use of the individual's property only if:

(i) The taking or use exceeds the individual's obligation to permit appropriate use or restrictions on the use of his/her property during a disaster or emergency;
(ii) The individual did not volunteer the use of his/her property without compensation;
(iii) The property was commandeered or otherwise used to cope with a disaster or emergency; and
(iv) The use or destruction of the property was ordered by the governor or the director of the Department of State Police or his designee.

(b) **Exceptions.** The government is not required to provide compensation for:

(i) The destruction of standing timber or other property in order to provide a fire break; or
(ii) The release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood;
(iii) Personal services, except pursuant to statute, local law, or ordinance.

6.22 Powers of Local Officials

A. *General Authority.* A county, municipality, or other agency designated by the governor may make, amend, and rescind orders, rules, and regulations necessary for emergency management purposes and supplementary to a rule, order, or directive issued by the governor or a state agency exercising a power delegated to it by the governor. A rule or order is temporary and upon declaration by the governor of a state of disaster or emergency, is terminated. MCL 30.412.

6.30 IMMUNITY OF GOVERNMENT ACTORS DURING A DECLARED EMERGENCY

6.31 Extent of Immunity

A. *Emergency Management is Governmental Function.* All emergency management functions and activities are governmental functions.

B. *Government Actors Immune for Death, Injury, and Property Damage.* Personnel of "disaster relief forces" engaged in "disaster relief activities" are immune from liability for death or injury to any person or for damage to property as a result of any activity taken to comply or reasonably attempt to comply with Michigan's emergency management laws. MCL 30.411. Such immunity is that provided in the General Governmental Immunity Act, MCL 691.1407, which excludes acts of gross negligence, auto accidents and building maintenance. "Disaster relief activity" includes training for or responding to an actual, impending, mock, or practice disaster or emergency. MCL 30.411(3). "Disaster relief forces" include:

1. All agencies of the state;

2. All political subdivisions of the state;

3. Private and volunteer personnel;

4. Public officers and employees;

5. All other persons or groups of persons having duties or responsibilities under the Emergency Management Act or pursuant to a lawful order or directive authorized by the Act. MCL 30.402(f).

C. *Individuals Immune for Negligent Death, Injury, and Property Damage on Volunteered Premises.* A "person" eligible for immunity includes an individual, partnership, corporation, association, government entity, or any other entity. MCL 40.402(m). A property owner who without compensation voluntarily allows the use of property during an actual or mock emergency also is immune. MCL 40.411 (6). Such property owners are required to disclose any hidden safety hazards or dangers.

D. Other Sources of Immunity. The Emergency Management Assistance Compact Act has provisions providing immunity for officers and employees of a party state rendering aid in another state, gross negligence excepted. MCL 3.1001 (Article VI).

The ***Federal Volunteer Protection Act of 1977***, 42 USC 14503 provides protection for a volunteer of any non-profit or governmental agency, if the work is within the volunteer's scope of duties, the volunteer is properly licensed, and the conduct is not the result of criminal or willful misconduct. The ***Non-Paid Temporary Federal Employee Act***, 42 USC 5159(b), provides federal immunity for workers assisting pursuant to a federal request. Intermittent disaster response personnel assisting pursuant to the ***National Disaster Medical System*** (NAMES), 42 USC 300hh-11(d)(1) provides a federal license to practice a medical profession, immunity, and reemployment protection. Other laws providing immunity for emergency workers include the ***Good Samaritan Act***, MCL 691.1501; the ***Emergency Medical Care Act***, MCL 691.1502; the ***Public Health Code***, MCL 333.20965; and the ***Fire Code***, MCL 29.7c.

6.40 OPERATION OF THE COURTS DURING A DECLARED EMERGENCY

Michigan's emergency management laws contain no explicit provisions regarding operation of Michigan courts during a declared disaster or emergency. The Michigan Attorney General has entered into an agreement with the State Court Administrator for the appointment of judges to be available to act during an emergency.

7.00 APPENDIXES

I. PUBLIC HEALTH PRIMER

What is Public Health?

Public health is frequently defined as "what we, as a society, do collectively to assure the conditions in which people can be healthy."1

In first proposing this definition nearly twenty years ago, the Institute of Medicine stressed three key components of public health. First, the mission of public health is to fulfill society's interest in assuring the conditions in which people can be healthy. Second, the substance of public health is organized community efforts aimed at the prevention of disease and the promotion of health. Third, the organizational framework of public health encompasses both activities undertaken within the formal structures of government and the associated efforts of private organizations and individuals.2

Although public health draws upon numerous scientific disciplines, its core science is epidemiology, the study of disease within populations and the factors that determine disease spread. In contrast to the practice of medicine, which is concerned with the health and treatment of individuals, public health is dedicated to promoting the health of the population as a whole. For example, while medical explanations for death focus on pathological causes, such as cancer or heart disease, public health seeks to understand why these pathologies exist in society and the societal measures capable of reducing or eliminating them. To attain this understanding, public health agents examine the environmental, social, and behavioral factors that contribute to disease, such as pollutant levels, diet patterns, and tobacco use.3 These data are then used to craft public health interventions, such as regulation of industrial emissions, school cafeteria nutrition requirements, and targeted smoking cessation programs. Scientific knowledge is, therefore, the foundation of public health decision-making.

In practice, public health encompasses an extremely broad range of activities, varying across the country with geography, community demographics, and resource availability. The public health priorities of New York City, for example, differ in many respects from those of rural Michigan towns. Still, it is possible to identify several essential public health activities and services:

Monitoring community health status (data collection, vital statistics, health interview surveys, health trends analyses);
Diagnosing and investigating health problems (disease screening, laboratory analyses, epidemiology);
Informing and educating people about health (health promotion, disease prevention, tobacco cessation campaigns);
Mobilizing community partnerships to improve health (joint drafting of legislation by legislative and public health officials, utilization of physician associations for public education, needle distribution programs at AIDS clinics);
Developing and enforcing health and safety protections (food and milk control, product safety requirements, premises inspections, sewage disposal, water quality monitoring, hazardous waste management);
Linking people to needed personal health services (maternal and child health interventions, immunizations, substance abuse and mental illness treatment, home health programs);
Assuring a competent health workforce (licensing, development of competency sets, public health school curriculum recommendations);
Fostering health-enhancing public policies (seat-belt and motorcycle helmet laws, public smoking bans, health care for the indigent, needle exchange programs)

Evaluating the quality and effectiveness of services (monitoring of health indicators such as immunization rates, prevalence of sexually-transmitted diseases, and number of teenage pregnancies, assessment of pulmonary disease following institution of public smoking bans); and
Researching new insights and innovations (publicly- and privately-funded commissions on disease factors and treatments; intervention comparisons).4

B. A Brief History of Public Health

Organized community efforts have long been utilized to protect the public's health. Quarantine- and isolation-type measures were used as early as 532 B.C.E., when the Emperor Justinian of the Eastern Roman Empire commanded that persons arriving into the Empire's capital city from contaminated localities be housed in special cleansing facilities.5 During the fourteenth and fifteenth centuries, ships entering the port of Venice from certain localities were forced to remain offshore, in isolation, for a period of forty days (*quaranta giorni*) before persons and goods were permitted to debark.6 Other ports and cities throughout Europe and Asia developed similar isolation procedures in subsequent centuries.7 In eighteenth-century America, isolation and quarantine were also widely used to contain disease, and these measures were enforced by appointed councils.8 At the same time, municipalities and local governments began to undertake programs to address the welfare of their most vulnerable citizens. Public hospitals were established to care for the physically ill, and the first public hospital for the mentally ill was founded in Williamsburg, Virginia in 1773.9

The nineteenth century marked the onset of the sanitary movement, often referred to as the "Great Sanitary Awakening." State and local governments began to focus on the environment as a source of disease, a particular challenge in the face of increasing urbanization and industrialization. The public health community also began to utilize health records and vital statistics to influence public policy. Sanitary surveys were performed in both London and Massachusetts during the mid-1800s, and their accompanying reports publicized the poor living conditions in urbanized areas and the disparate health status among socioeconomic classes.10 These reports emphasized the need for proper drainage systems and waste disposal mechanisms and recommended the establishment of state and local boards of health to enforce sanitary regulations. Consequently, the first public agency for health, the New York City Health Department, was established in 1866, followed by the Massachusetts State Board of Health in 1869.11 By the end of the nineteenth century, more than 40 states and localities had established health departments.12

In 1877, Louis Pasteur discovered that anthrax was caused by a bacterium, ushering in the era of bacteriology and, simultaneously, revolutionizing disease control. Public health laboratories were created in state and local health departments to identify biological causes of disease. Science became the basis of public health, and individuals, in addition to the environment, came to be viewed as agents of disease. Accordingly, the early twentieth century saw a renewed focus on individual treatment and the rise of mandatory disease reporting laws, sexual contact tracing, therapeutic clinics, and educational programs.13 Consistent with the overarching political philosophy of the times, the federal government's role in public health increased dramatically during the middle of the twentieth century. In 1930, the national laboratory was relocated to Washington, D.C. and renamed the National Institutes of Health (NIH). The Centers for Disease

Control and Prevention (CDC) and the National Center for Health Statistics were founded during World War II. The federal government asserted jurisdiction over adulterated food, established national standards for drinking water, and provided states financial support for public health training.14 At the end of the twentieth century, federal involvement in public health dwindled as the rhetoric of cost containment and small government gained popularity. The federal government delegated public health decision-making to states in the form of block grants, leading to the varied public health systems seen across America today.15 As early as 1988, the Institute of Medicine reported that the American public health system was in "disarray," unable to respond effectively to current and emerging public health threats and unnecessarily threatening the public's health and safety.16 Although the events of September 2001, the subsequent anthrax mailings, and the 2003 global outbreak of Severe Acute Respiratory Syndrome (SARS) reinvigorated federal involvement in the public health arena, the vast majority of public health decision-making remains at the state and local levels.17

C. The Role of Government in Public Health

Although the Institute of Medicine has acknowledged the role of private organizations and individuals in public health, it has repeatedly reaffirmed the central role of government public health agencies as providers of vital services and guardians of the public health mission.18 Democratically elected governments are alone legitimately capable of undertaking community activity on behalf of the public.19 Based upon this truth, several commentators have proposed narrower conceptions of public health, one of which limits "public health" to "public officials taking appropriate measures pursuant to specific legal authority, after balancing private rights and public interests, to protect the health of the public."20

Regardless of the exclusivity accorded them, government public health agencies serve three core public health functions. First, government agencies are responsible for *assessment* of the health of the communities they serve. To this end, government agencies collect data, conduct epidemiological investigations, and monitor and publish health statistics. Research endeavors are also critical components of assessment. Second, government agencies must actively engage in *policy development* using the scientific knowledge they gain through assessment. Given the constant political struggle for resources, these policy development efforts are most successful when strategic in nature and appropriately prioritized. Third, and finally, government agencies have a duty to provide *assurance* to their communities in the form of services, legislative action, and partnership development. These assurances should include the guaranteed provision of essential health services for the indigent and socially-dependent.21

As indicated above, states are the "central force" in public health,22 exercising their constitutionally-reserved police powers and *parens patriae* powers to protect the public's health, safety, and welfare.23 Currently, each state has a designated agency for public health. However, states delegate many of their public health responsibilities to localities, whose public health departments vary extensively in organizational structure and may serve municipalities, single counties, or combinations of counties.24 Federal entities, such as the Public Health Service of the Department of Health and Human Services and the CDC, exist primarily to provide resources and knowledge support to state and local public health agencies.

D. Public Health and Individual Rights

While science forms the basis of public health decision-making in theory, public values and popular opinions determine the feasibility of many public health activities in practice.25 The power of governmental agencies to coerce individual behavior in the name of community welfare is inherent within public health.26 Disease reporting requirements impinge upon privacy; mandatory testing and screening curtails autonomy; environmental and industrial regulations impact property and economic interests; and isolation and quarantine restrict liberty.27 In this sense, public health and the notions of individualism central to American society coexist in a state of constant tension.

This tension suggests that public health activities are most likely to gain popular support when they reflect an appropriate balancing of community and individual interests. For example, quarantine of individuals exposed to tuberculosis, a highly contagious disease, may be appropriate in certain circumstances, while quarantine of individuals exposed to anthrax, a disease that cannot be transmitted from person to person, is not. In the latter case, it would be improper for the government to restrain an individual's liberty when his freedom of movement poses no danger to society. Of course, there are many cases in which the appropriate balance between community and individual interests is more difficult to discern. Is an individual properly subjected to quarantine for an extended period of time entitled to government compensation and job protection? What is the appropriate penalty for an individual who violates an appropriate quarantine order? May an individual be forced to undergo mandatory testing and treatment during a public health emergency? What type of procedural due process protections are individuals entitled to in the context of mass quarantine and isolation orders?

Public health law is concerned with the ongoing struggle to reconcile these competing individual and community interests in the context of public health activities. As recently suggested:

> Public health law [encompasses] legal powers and duties of the state to assure the conditions for people to be healthy (*e.g.*, to identify, prevent, and ameliorate risks to health in the population) and the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals for the protection or promotion of community health.28

Though perhaps not identified as such, public health issues have long been present on court dockets.29 Legal issues such as nuisance abatement, civil commitment, and sentencing of mentally ill or substance-addicted individuals all reflect public health concerns. However, as recently noted by one commentator, "there appear to be few, if any, published manuals on public health emergency law for government and hospital attorneys, 'bench books' for judges to brief themselves on evidentiary standards for public health search warrants and quarantine orders, or databases of extant state and municipal public health emergency statutes and regulations."30 The renewed focus on public health law prompted by concerns about bioterrorism and emerging infectious diseases presents an opportunity for judges and lawyers to familiarize themselves with the body of public health law and develop new legal approaches to current public health problems.

(1) INST. OF MEDICINE, THE FUTURE OF THE PUBLIC'S HEALTH IN THE 21ST CENTURY 2 (National Academies Press 2003) [*hereinafter* INST. OF MEDICINE 2003].
(2) *See* INST. OF MEDICINE, THE FUTURE OF PUBLIC HEALTH 38-42 (National Academies Press 1988) [*hereinafter* INST. OF MEDICINE 1988].
(3) *See* LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 14 (University of California Press 2000).
(4) *See* INST. OF MEDICINE 2003, *supra* note 1, at 31-33; INST. OF MEDICINE 1988, *supra* note 2, at 87-98; GOSTIN, *supra* note 3, at 17; INST. OF MEDICINE, WHO WILL KEEP THE PUBLIC HEALTHY: EDUCATING PUBLIC HEALTH PROFESSIONALS FOR THE 21ST CENTURY (National Academies Press 2003).
(5) *See* INST. FOR BIOETHICS, HEALTH POLICY & LAW, UNIVERSITY OF LOUISVILLE SCHOOL OF MEDICINE, QUARANTINE & ISOLATION: LESSONS LEARNED FROM SARS – A REPORT TO THE CENTERS FOR DISEASE CONTROL & PREVENTION 17 (2003).
(6) *See id.*
(7) *See id.*, at 17-19.
(8) *See* INST. OF MEDICINE 1988, *supra* note 2, at 57.
(9) *See id.*, at 57-58.
(10) *See id.*, at 59-61 (discussing Edwin Chadwick's *General Report on the Sanitary Conditions of the Labouring Population of Great Britain* (1842), John Griscom's *The Sanitary Condition of the Labouring Population of New York* (1848), and Lemuel Shattuck's *Report of the Massachusetts Sanitary Commission* (1850)).
(11) *See id.*, at 61.
(12) *See id.*
(13) *See id.*, at 63-66; GOSTIN, *supra* note 3, at 10
(14) *See* INST. OF MEDICINE 1988, *supra* note 2, at 67-68; GOSTIN, *supra* note 3, at 10-11.
(15) *See* INST. OF MEDICINE 1988, *supra* note 2, at 70-71.
(16) *See id.*, at 1-2.
(17) *See* INST. OF MEDICINE 2003, *supra* note 1, at 26-28.
(18) *See id.*, at 101-104; INST. OF MEDICINE 1988, *supra* note 2, at 7.
(19) *See* GOSTIN, *supra* note 3, at 8.
(20) Mark A. Rothstein, *Rethinking the Meaning of Public Health*, 30 J. L. MED. & ETHICS 144 (2002); *see also* Lawrence O. Gostin, *Public Health, Ethics, and Human Rights: A Tribute to the Late Jonathan Mann*, 29 J. L. MED. & ETHICS 121 (2001).
(21) *See* INST. OF MEDICINE 1988, *supra* note 2, at 7-12, 44-47.
(22) *Id.*, at 8.
(23) *See* U.S. CONST., amend. X; GOSTIN, *supra* note 3, at 25-59.
(24) *See* INST. OF MEDICINE 2003, *supra* note 1, at 108-110; INST. OF MEDICINE 1988, *supra* note 2, at 78.
(25) *See* INST. OF MEDICINE 2003, *supra* note 1, at 23-26; INST. OF MEDICINE 1988, *supra* note 2, at 3.
(26) *See* GOSTIN, *supra* note 3, at 18-21; Rothstein, *supra* note 19, at 146.
(27) *See* GOSTIN, *supra* note 3, at 20.
(28) *See id.*, at 4.
(29) *See, e.g.,* INST. OF MEDICINE 2003, *supra* note 1, at 104.
(30) Anthony D. Moulton *et al.*, *What is Public Health Legal Preparedness?*, 31 J. L. MED. & ETHICS 672 (2003).

II. PUBLIC HEALTH GLOSSARY

A

acute — Of rapid onset; brief. An acute condition may, but need not necessarily, be severe.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

adenopathy — Swelling or diseased enlargement of the lymph nodes.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

aerosolize — To disperse a substance as particles in air.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

analytic validity — An index of how well a test measures the property or characteristic it is intended to measure. Analytic validity of a test is affected by the technical accuracy and reliability of the testing procedure, and also by the quality of the laboratory processes (including specimen handling).
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L CANCER INSTS., U.S. NAT'L INSTS. OF HEALTH, Cancer Genetics Overview, at http://www.cancer.gov/cancertopics/pdq/genetics/overview#Section_10 (last modified Dec. 18, 2003).

anthrax — A disease caused by the bacterium *Bacillus anthracis*. Anthrax cannot be transmitted from person-to-person. There are three distinct types of anthrax:
cutaneous: An infection of the skin by *B. anthracis*, producing a characteristic lesion that begins as a papule and soon becomes a vesicle and breaks, discharging a bloody liquid. Approximately 36 hours after infection, the vesicle becomes a bluish-black dead mass. Cutaneous anthrax infection is usually accompanied by high fever, vomiting, profuse sweating, and extreme prostration, but is rarely fatal.
(gastro)intestinal: An infection of the digestive track caused by eating foods contaminated with *B. anthracis*. Gastrointestinal anthrax is usually accompanied by chill, high fever, pain in the head, back, and extremities, vomiting, bloody diarrhea, cardiovascular collapse, and, frequently, hemorrhages from the mucous membranes and the skin; gastrointestinal anthrax is often fatal.
inhalation (pulmonary): An infection of the lungs caused by the inhalation of particles containing *B. anthracis*. Inhalation anthrax is usually accompanied by an initial chill followed by pain in the back and legs, rapid respiration, shortness of breath, cough, fever, rapid pulse, and extreme cardiovascular collapse; inhalation anthrax is frequently fatal.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION,
DEPT. OF HEALTH & HUMAN SERVS., Anthrax: What You Need to Know, at http://www.bt.cdc.gov/agent/anthrax/needtoknow.asp (last modified July 31, 2003).

antibody (Ab) A molecule located in the blood or other body fluids that is produced in response to an antigen. An antibody reacts specifically with its corresponding antigen.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

antigen (Ag) A foreign organism or substance or aberrant native cell that induces the production of its corresponding antibody when introduced into an organism. Production of the corresponding antibodies occurs following an antigen-specific latent period, which typically lasts days or weeks.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

antitoxin An antibody formed in response to an antigen that is a poisonous biological substance. An antitoxin neutralizes the effect of the poison.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

asymptomatic Without symptoms.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

ataxia An inability to coordinate voluntary muscle movement.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

B

bacterium A single-celled microorganism that reproduces by cell division.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Anthrax: What You Need to Know, at http://www.bt.cdc.gov/agent/anthrax/needtoknow.asp (last modified July 31, 2003).

botulism An illness caused by the toxin produced by the bacterium *Clostridium botulinum*. Botulism is typically caused by ingestion of the pre-formed *C. botulinum* toxin; wound botulism may occur when wounds are infected with toxin-secreting *C. botulinum* bacteria. Botulism is characterized by severe paralysis and is often fatal.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION,
DEPT. OF HEALTH & HUMAN SERVS., Facts About Botulism, at http://www.bt.cdc.gov/agent/botulism/factsheet.asp (last modified Oct. 14, 2001).

brachycardia Slowness of the heartbeat; typically less than 50 beats per minute.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

bradycardia *See* **brachycardia**.

brucellosis An infectious disease caused by the bacterium *Brucella*, of which the most common species are *B. melitensis*, *B. abortis*, *B. canis*, and *B. suis*. The *Brucella* bacterium is primarily transmitted among animals and is transmitted to humans upon contact with infected animals or ingestion of infected meats. Brucellosis is characterized by fever, sweating, weakness, aches, and pains; in rare cases, severe infections of the central nervous systems or lining of the heart may occur, leading to death. Brucellosis is

transmitted through breast-feeding, sexual intercourse, and, rarely, direct person-to-person contact.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Brucellosis, at http://www.cdc.gov/ncidod/dbmd/diseaseinfo/brucellosis_g.htm (last modified Feb. 17, 2004).

C

capillary A small blood vessel.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

case An instance of disease; a patient.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

chickenpox An acute contagious disease, usually occurring in children, caused **(varicella)** by the Varicellovirus, a member of the family *Herpesviridae*. Chickenpox is marked by a sparse eruption of papules, usually on the face, scalp, and/or trunk. The papules become vesicles and then pustules, like that of smallpox although less severe and varying in stages. Chickenpox has an incubation period of approximately 14 to17 days and is usually accompanied by mild constitutional symptoms. In severe cases, most frequently in adults, chickenpox may lead to bacterial infection of the skin, swelling of the brain, and/or pneumonia. Chickenpox is highly contagious and is spread by coughing or sneezing. The varicella vaccine is available to prevent chickenpox.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L IMMUNIZATION PROGRAM, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Varicella – In Short, at http://www.cdc.gov/nip/diseases/varicella/vac-chart.htm (last modified Feb. 15, 2001).

cholera An acute epidemic infectious disease caused by infection of the intestine with the bacterium *Vibrio cholerae*. Cholera is characterized by profuse watery diarrhea, extreme loss of fluid and electrolytes, dehydration, and collapse. If untreated, cholera may lead to shock and death. Cholera is transmitted by drinking water or consuming foods contaminated with *V. cholerae* bacteria.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Cholera, at http://www.cdc.gov/ncidod/dbmd/diseaseinfo/cholera_g.htm (last modified Feb. 17, 2004).

clinical utility The likelihood that a test will, by prompting an intervention, result in an improved health outcome. The clinical utility of a test is based on the health benefits of the interventions offered to persons with positive test results.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L CANCER INSTS., U.S. NAT'L INSTS. OF HEALTH, Cancer Genetics Overview, at http://www.cancer.gov/cancertopics/pdq/genetics/overview#Section_10 (last modified Dec. 18, 2003).

clinical validity The predictive value of a test for a given clinical outcome (e.g., the likelihood that cancer will develop in someone with a positive test). Clinical validity is, in large measure, determined by the ability of a test to accurately identify people with a defined clinical condition.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L CANCER INSTS., U.S. NAT'L INSTS. OF HEALTH, Cancer Genetics Overview, at http://www.cancer.gov/cancertopics/pdq/genetics/overview#Section_10 (last modified Dec. 18, 2003).

communicable Capable of being transmitted from one organism or person to another.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

communicable disease An illness that is transmissible by direct or indirect contact with the sick, their bodily excretions or cell secretions, or a disease vector.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

constitutional symptoms General indications of disease pertaining to the body as a whole.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

contact A person who has been exposed to a contagious disease.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

contact tracing Identification and location of persons who may have been exposed to an infectious disease, which may result in surveillance of those persons. Contact tracing has been used to control contagious diseases for decades. A disease investigation begins when an individual is identified as having a communicable disease. An investigator interviews the patient, family members, physicians, nurses, and anyone else who may have knowledge of the primary patient's contacts, anyone who might have been exposed, and anyone who might have been the source of the disease. Then the contacts are screened to see if they have or have ever had the disease; in certain cases, the process of contact tracing will be repeated for identified contacts as well. The type of contact screened depends on the nature of the disease. A sexually transmitted disease will require interviewing only infected patients and screening only their sex partners. A disease that is spread by respiratory contact, such as tuberculosis, may require screening tens to hundreds of persons.
CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVICES, Severe Acute Respiratory Syndrome (SARS): Appendix 2 – Glossary, at http://www.cdc.gov/ncidod/sars/guidance/core/app2.htm (last modified Jan. 8, 2004); THE MEDICAL & PUBLIC HEALTH LAW SITE, LOUISIANA STATE UNIVERSITY LAW CTR., Contact Tracing, at http://biotech.law.lsu.edu/books/lbb/x578.htm (last visited June 7, 2004).

contagious disease *See* **communicable disease**.

cutaneous Relating to the skin.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

cyanosis A dark bluish or purplish discoloration of the skin and mucous membrane due to deficient oxygen content in the blood.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

D

decontamination The elimination of poisonous or otherwise harmful agents, such as chemicals or radioactive materials, from a person, area, thing, etc.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

directly observed therapy Visual monitoring of an individual's ingestion of medications by a health care worker to ensure compliance in difficult or long-term regimens, such as in oral treatment for tuberculosis.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

disease An interruption, cessation, or disorder of a body function, system, or organ; a departure from a state of health.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

disease agent A microorganism whose presence or absence results in disease.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

disease vector *See* **vector**.

distal Situated away from the center of the body; often used in reference to the extremity or distant part of a limb or organ.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

dysphagia Difficulty swallowing.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

dyspnea Shortness of breath, usually associated with disease of the heart or lungs.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

E

edema **1.** An accumulation of an excess amount of watery fluid in cells, tissues, or body cavities. **2.** A fluid-filled tumor or swelling.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

effectiveness The extent to which a treatment achieves its intended purpose in an average clinical environment.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

efficacy The extent to which a treatment achieves its intended purpose under ideal circumstances.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

encephalitis Inflammation of the brain.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

endemic Denoting a temporal pattern of disease occurrence in a population in which the disease occurs with predictable regularity and only relatively minor fluctuations in its frequency over time.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

enterovirus A large and diverse group of viruses, including poliovirus types 1 to 3, that inhabit the digestive track.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

epidemic The occurrence in a community of cases of illness or health-related events clearly in excess of normal expectancy.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

epidemiology The study of the distribution and determinants of health-related states or events in specified populations, and the application of this study to control of health problems.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

epistaxis Bleeding from the nose.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

erythema Redness due to dilation of the capillaries.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

Escherichia coli A type of bacteria. *E. coli O157:H7* causes foodborne illness and *(E. coli)* is characterized by bloody diarrhea and, in severe cases, kidney failure and/or death. *E. coli O157:H7* is transmitted through the ingestion of undercooked, contaminated ground beef, unpasteurized milk, or contaminated water. Non-Shiga toxin-producing *E. coli* (diarrheagenic *E. coli*) causes chronic diarrhea (watery or bloody) associated with abdominal cramps and fever. Non-Shiga toxin-producing *E. coli* is transmitted through ingestion of contaminated food and water, most commonly by international travelers or children in the developing world. In rare cases, non-Shiga toxin-producing *E. coli* may be transmitted through person-to-person contact.
DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Diarrheagenic Escherechia coli, at http://www.cdc.gov/ncidod/diseases/hanta/hps/noframes/generalinfoindex.htm (last modified Feb. 10, 2004); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Escherichia coli O157:H7, at http://www.cdc.gov/ncidod/dbmd/diseaseinfo/escherichiacoli_g.htm (last modified Jan 27, 2004).

ex vivo Referring to the use of human cells or tissues after their removal from an organism and while they remain viable.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

exanthema A skin eruption occurring as a symptom of a viral or bacterial disease, such as measles.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

F

fomite An object (*e.g.*, clothing, towel, utensil) that possibly harbors a disease agent and may be capable of transmitting it.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

G

gastrointestinal (GI) Relating to the stomach and intestines.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

genus A group of species alike in the broad features of their organization but different in detail; species within a genus are incapable of fertile mating.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

H

Hantavirus A genus of *Bunyaviridae* viruses that cause pneumonia and hemorrhagic fevers. At least 7 species within the genus are recognized at the current time (Hantaan, Puumala, Seoul, Prospect Hill, Thailand, Thottapalayam, and Sin Nombre virus), while a number of other species have not yet been classified. Rodents are the asymptomatic carriers of Hantaviruses and shed the viruses in their saliva, urine, and feces. Hantavirus is transmitted from rodents to humans through bites, ingestion of contaminated foods, or inhalation of droplets containing the aerosolized virus; person-to-person spread of Hantavirus is rare.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); SPECIAL PATHOGENS BRANCH, NAT'L CTR. FOR INFECTIOUS DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., All About Hantaviruses, at http://www.cdc.gov/ncidod/diseases/hanta/hps/noframes/generalinfoindex.htm (last modified Nov. 13, 2003).

hematemesis Vomiting of blood.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hematuria The presence of blood in the urine.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hemoptysis Spitting of blood from the lungs or bronchial tubes as a result of pulmonary or bronchial hemorrhage.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hemorrhage To bleed.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hemorrhagic fever *See* **viral hemorrhagic fever.**

hepatitis Inflammation of the liver, due usually to viral infection but sometimes to toxic agents. Previously considered a problem only in the developing world, viral hepatitis now ranks as a major public health problem in industrialized nations. The 3 most common types of viral hepatitis (A, B, and C) afflict millions worldwide. Acute viral hepatitis is characterized by varying degrees of fever, malaise, weakness, anorexia, nausea, and abdominal distress.

hepatitis A is caused by an enterovirus and is most often spread through ingestion of contaminated food or water. The case fatality rate is less than 1%, and recovery is complete. The presence of antibody to hepatitis A virus indicates prior infection, noninfectivity, and immunity to future attacks. An effective vaccine is available for immunization against hepatitis A.

hepatitis B is caused by a small DNA virus and is transmitted through sexual contact, sharing of needles by IV drug abusers, needlestick injuries among health care workers, and from mother to fetus. The incubation period is 6-24 weeks. Some patients become carriers, and in some an immune response to the virus induces a chronic phase leading to liver failure and/or liver cancer. Hepatitis B is more likely to cause death than hepatitis A. Hepatitis B surface antigen (HBsAg) is detectable early in serum; its persistence correlates with chronic infection and infectivity. An effective vaccine is available for immunization against hepatitis B.

hepatitis C is the principal form of transfusion-induced hepatitis, which may develop into a chronic active form of hepatitis. Hepatitis C is more likely to cause death than hepatitis A.

hepatitis D is caused by an RNA virus capable of causing disease only in persons previously infected with hepatitis B.

hepatitis E occurs chiefly in the tropics and resembles hepatitis A in that it is transmitted by the fecal-oral route and does not become chronic or lead to a carrier state. However, hepatitis E has a much higher mortality rate than hepatitis A.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

horizontal transmission Transmission of a disease agent from an infected organism or individual to another, susceptible organism or individual.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

host The organism in or on which a parasite lives.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hypertension High blood pressure.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hyperthermia Extremely high fever, often occurring as a side effect of therapeutic regimens.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hypotension Low blood pressure.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hypothermia A body temperature significantly below normal body temperature (98.6°F/37°C for humans).
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

I

identifiable health information Information in any form (*e.g.*, oral, written, electronic, visual, pictorial, physical) that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care and (a) reveals the identity of the individual; or (b) there is a reasonable basis to believe the information could be used, alone or with other information, to reveal the identity of the individual.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, Model State Public Health Act: A Tool for Assessing Public Health Laws 13 (Sept. 2003).

immune response Any response of the immune system to an antigen, including antibody production. The immune response to the initial antigenic exposure (primary immune response) is generally detectable only after a lag period of several days to 2 weeks; the immune response to a subsequent stimulus by the same antigen (secondary immune response) is more rapid.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

immune system An intricate complex of interrelated cellular, molecular, and genetic components that provides a defense (immune response) against foreign organisms or substances and aberrant native cells.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

immunogen *See* **antigen**.

in vitro In an artificial environment, such as a test tube or culture media.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

in vivo In the living body.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

incidence The number of specified new events (*e.g.,* new cases of a disease) during a specified period of time in a specified population.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

incubation period The period of time between a disease agent's entry into an organism and theorganism's initial display of disease symptoms. During the incubation period, the disease is developing. Incubation periods are disease-specific and may range from hours to weeks.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

index case The patient that brings a family, group, or community under study.
OXFORD ENGLISH DICTIONARY (2d. Ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

infectious agent A microorganism that causes infectious disease through transmission.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

infectious disease A disease resulting from the presence and activity of a microorganism.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

isolation The separation, for the period of communicability, of known infected persons in such places and under such conditions as to prevent or limit the transmission of the infectious agent.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 210 (University of California Press 2000).

J

K

L

latent period *See* **incubation period**.

lymph node One of numerous round, oval, or bean-shaped bodies that form part the immune system. Lymph nodes produce a fluid (lymph) that is circulated throughout the body to remove impurities.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

M

measles An acute respiratory disease caused by a virus of the *Paramyxoviridae* family; one of the most infectious diseases in the world. Measles is usually marked by fever, inflammation of the respiratory mucous membranes, red watery eyes, and a generalized eruption of dusky red papules. The papules first appear on the cheeks in the form of spots (often referred to as "Koplik spots"), a manifestation utilized in early diagnosis. Measles has an average incubation period of 10 to 12 days; the rash begins approximately 14 days after exposure and lasts 5 to 6 days, progressing downward from the face. Recovery is usually rapid but respiratory complications caused by secondary bacterial infections are common. Severe cases may be accompanied by swelling of the brain. The measles vaccine is available to prevent measles.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L IMMUNIZATION PGM., CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Measles, at http://www.cdc.gov/nip/diseases/measles/ (last modified Apr. 15, 2004).

monkeypox A disease found in monkeys and rodents and caused by the monkeypox virus, a member of the family *Poxviridae*. In humans, monkeypox is initially characterized by fever, headache, muscle aches, swelling of the lymph nodes, and fatigue. Approximately 3 days after the onset of these initial symptoms, a rash develops, typically beginning on the face, and progresses into raised pustules. Monkeypox has an incubation period of approximately 12 days. The disease is rarely found in humans, but may be transmitted through contact with the blood, bodily fluid, or rash of an infected animal. Monkeypox may also be transmitted among humans through exposure to large respiratory droplets during long periods of face-to-face contact or by touching the bodily fluids or contaminated objects of an infected individual.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., What You Should Know About Monkeypox, at http://www.cdc.gov/ncidod/monkeypox/factsheet2.htm (last modified June 12, 2003).

mucous membrane A tissue lining found in various bodily structures, including the nose, eyes, and mouth.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

myalgia Muscular pain.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

mydriasis Dilation of the pupil.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

N

necrosis Death of one or more cells or a portion of a tissue or organ due to irreversible damage.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

notifiable disease A disease that, by statutory requirements, must be reported to the public health or veterinary authorities when the diagnosis is made because of its importance to human or animal health.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

O

outbreak A sudden rise in the number of new cases of a disease, usually during a specified period and in a specified population.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); MERRIAM-WEBSTER ONLINE, at http://www.merriamwebster.com (last visited Sept. 20, 2004).

P

papule A circumscribed, solid elevation up to 100 cm in diameter on the skin.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

parasite — An organism that lives on or in another and draws its nourishment therefrom.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

plague — An acute infectious disease caused by the bacterium *Yersinia pestis*. Plague is characterized by high fever, prostration, a hemorrhagic eruption, lymph node enlargement, pneumonia, and hemorrhage from the mucous membranes. Plague is primarily a disease of rodents that is transmitted to humans by fleas that have bitten infected animals. In humans, plague takes one of three main forms:
bubonic: The most common form of plague, caused when an infected flea bites a human or materials contaminated with *Y. pestis* bacteria contact broken skin. Bubonic plague cannot be transmitted person-to-person.
pneumonic: A form of plague that occurs when *Y. pestis* infects the lungs. Pneumonic plague may be transmitted person-to-person through the air by inhalation of respiratory droplets containing *Y. pestis* or aerosolized *Y. pestis*. Pneumonic plague may also develop when an individual with bubonic or septicemic plague goes untreated and *Y. pestis* bacteria spread to the lungs.
septicemic: A form of plague resulting from the presence of *Y. pestis* bacteria in the blood. Septicemic plague may develop from bubonic or pneumonic plague or occur alone. When septicemic plague occurs alone, lymph node enlargement is typically absent.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Facts About Pneumonic Plague, at http://www.bt.cdc.gov/agent/plague/factsheet.pdf (last modified Oct. 14, 2001).

polymerase chain reaction (PCR) — A method for the repeated copying of a gene sequence. PCR is widely used to amplify minute quantities of DNA in order to provide adequate specimens for laboratory study.
ALBERTS, B. ET AL., MOLECULAR BIOLOGY OF THE CELL 316-17 (3d. ed. 1994); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

predictive value (Rf) — The likelihood that a given test result correlates with the absence or presence of disease. A positive predictive value is the ratio of patients with the disease who test positive to the entire population of individuals with a positive test result; a negative predictive value is the ratio of patients without the disease who test negative to the entire population of individuals with a negative test
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

prevalence — The number of cases of a disease existing in a given population at a specific period of time (period prevalence) or at a particular moment in time (point prevalence).
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

prostration — Extreme physical weakness or exhaustion.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

proximal Situated nearest to the center or trunk of the body; often used in reference to a portion of a limb, bone, organ, or nerve.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

pruritus Itching.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

public health A societal effort to assure the conditions in which the population can be healthy.
INST. OF MEDICINE, THE FUTURE OF THE PUBLIC'S HEALTH IN THE 21ST CENTURY 2 (National Academies Press 2003); PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, Model State Public Health Act: A Tool for Assessing Public Health Laws 15 (Sept. 2003).

public health agency Any organization operated by federal, tribal, state, or local government that principally acts to protect or preserve the public's health.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, Model State Public Health Act: A Tool for Assessing Public Health Laws 15 (Sept. 2003).

public health emergency An occurrence or imminent threat of an illness or health condition that: (a) is believed to be caused by (i) bioterrorism, (ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin, or (iii) a natural disaster, chemical attack or accidental release, or nuclear attack or accidental release; or (b) poses a high probability of (i) a large number of deaths in the affected population, (ii) a large number of serious or long-term illnesses in the affected population, or (iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, Model State Public Health Act: A Tool for Assessing Public Health Laws 15 (Sept. 2003).

public health law The study of the legal powers and duties of the state to assure the conditions for people to be healthy (*e.g.*, to identify, prevent, and ameliorate risks to health in the population) and the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals for the protection or promotion of community health.
LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 4 (University of California Press 2000).

public health official The head officer or official of a state or local public health agency who is responsible for the operation of the agency and has the authority to manage and supervise the agency's activities.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, Model State Public Health Act: A Tool for Assessing Public Health Laws 15 (Sept. 2003).

pulmonary Relating to the lungs.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

pus A fluid product of inflammation.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

pustule A circumscribed, superficial elevation of the skin, up to 1.0 cm in diameter, containing pus.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

pyrogenic Causing fever.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

Q

quarantine The restriction of the activities of healthy persons who have been exposed to a communicable disease, during its period of communicability, to prevent disease transmission during the incubation period if infection should occur.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW:
POWER, DUTY, RESTRAINT 210 (University of California Press 2000).

R

reportable disease *See* **notifiable disease**.

rhinorrhea A discharge from the nose.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

ricin A poison that may be made from the waste materials generated during the processing of castor beans. Ricin may be produced as a powder, a mist, a pellet, or dissolved in water and may be delivered through ingestion, inhalation, or injection. Ricin poisoning cannot be transmitted person-to-person. Treatment for ricin poisoning consists of supportive care only, as there is currently no effective antibiotic or antitoxin treatment available. Death from ricin poisoning may occur within 36 to 72 hours of exposure, depending upon the route of exposure. If death has not occurred within 3 to 5 days, the victim usually recovers. The symptoms of ricin poisoning vary according to the route of exposure:
ingestion: Ingestion of a significant amount of ricin produces vomiting and diarrhea (that may become bloody) within 6 hours. Severe dehydration may result, followed by low blood pressure. Other symptoms may include hallucinations, seizures, and blood in the urine. In severe cases, the liver, spleen, and kidneys may cease to function, producing death.
inhalation: The inhalation of significant amounts of ricin usually produces respiratory distress, fever, cough, nausea, and tightness in the chest within 8 hours. Heavy sweating and fluid build-up in the lungs may

follow, and the skin may turn blue. In severe cases, low blood pressure and respiratory failure may occur, leading to death.
CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Facts About Ricin, at http://www.bt.cdc.gov/agent/ricin/facts.asp (last modified Feb. 5, 2004).

Rickettsia A genus of small bacteria often found in lice, fleas, ticks, and mites. Pathogenic species of *Rickettsia* infect humans and other animals, causing epidemic typhus, endemic (murine) typhus, Rocky Mountain spotted fever, tsutsugamushi disease, rickettsialpox, and other diseases.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

S

Salmonella A genus of bacteria found in humans and animals, especially rodents. *Salmonella enterica* is a common species that causes gastroenteritis, enteric fever, and food poisoning in humans. Salmonellosis is characterized by the onset of diarrhea, fever, and abdominal cramps within 12 to 72 hours after infection and usually lasts 4 to 7 days. *Salmonella typhi* causes typhoid fever in humans. *Salmonella* bacteria are transmitted through the ingestion of contaminated food or water. Infection with *Salmonella* is treatable with antibiotics. Most persons recover with treatment, but, in severe cases, the infection may spread to the bloodstream, resulting in death.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Salmonellosis, at http://www.cdc.gov/ncidod/dbmd/diseaseinfo/salmonellosis_g.htm (last modified June 9, 2003).

sample **1.** A relatively small quantity of material, or an individual object, from which the quality of the mass, group, species, etc. which it represents may be inferred. **2.** A selected subset of a population.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

screen To systematically apply a test or exam to a defined population.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, Model State Public Health Act: A Tool for Assessing Public Health Laws 16 (Sept. 2003).

sensitivity The ability of a test to correctly identify those with a given characteristic or disease.
LEON GORDIS, EPIDEMIOLOGY 59 (W.B. Saunders Co. 1996).

Severe Acute Respiratory Syndrome (SARS) A viral respiratory illness first identified during a global outbreak in 2003 that originated in China. SARS is usually characterized by a high fever (temperature greater than 100.4°F/38.0°C), headache, an overall feeling of discomfort, and body aches. Some infected individuals also display mild respiratory symptoms, and about 10 to 20 percent of patients have diarrhea. Approximately 2 to 7 days following onset of the illness, infected individuals often develop a dry cough, and many infected

individuals will go on to develop pneumonia. SARS is transmitted through close person-to-person contact. The SARS virus appears to be most easily transmitted by respiratory droplets produced when an infected person coughs or sneezes. These expelled droplets may be deposited directly on the mucous membranes of the mouth, nose, or eyes of persons who are nearby or transferred thereto by persons who touch a contaminated surface or object. It remains uncertain whether the SARS virus is able to spread more broadly through the air or in other ways.
CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Basic Information About Ricin, at http://www.cdc.gov/ncidod/sars/factsheet.htm (last modified Jan 13, 2004).

smallpox (*variola*) An acute eruptive contagious disease caused by a virus of the family *Poxviridae*. Smallpox is characterized by initial chills, high fever, backache, and headache; within 2 to 5 days the constitutional symptoms subside and a skin eruption appears as papules, which become pit-like vesicles, develop into pustules, dry, and form scabs that, on falling off, leave a permanent marking of the skin (pock marks). Fatality rates for smallpox may exceed 20 percent. The average incubation period of smallpox is 8 to 14 days. Generally, direct and fairly prolonged face-to-face contact is required to transmit smallpox from one person to another, although smallpox may also be transmitted through direct contact with infected bodily fluids or contaminated objects. Humans are the only natural hosts of smallpox; it is not known to be transmitted by insects or animals. There is no treatment for smallpox, although a vaccine is available to prevent infection. As a result of increasingly aggressive vaccination programs carried out over a period of about 200 years, smallpox has been eradicated; the last naturally occurring case of smallpox was reported in Somalia in 1977.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Smallpox Disease Overview, at http://www.bt.cdc.gov/agent/smallpox/overview/disease-facts.asp (last modified Dec. 9, 2002).

species A group of organisms that generally bear a close resemblance to one another in the more essential features of their organization; members of the same species may breed effectively to produce fertile offspring.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

specificity The ability of a test to correctly identify those without a given characteristic or disease.
LEON GORDIS, EPIDEMIOLOGY 59 (W.B. Saunders Co. 1996).

sputum Saliva, mucus, blood, or other fluid spit from the mouth.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

Staphylococcus A genus of bacteria found on the skin, in skin glands, on the nasal and other mucous membranes of warm-blooded animals, and in various food products. *Staphylococcus aureus* is a common species found especially on nasal mucous membrane and skin. *S. aureus* produces toxins including those that cause toxic shock syndrome and food poisoning.

Staphylococcus infections are usually treatable with antibiotics, although antibiotic resistant strains have been identified.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. OF HEALTHCARE QUALITY PROMOTION, CTRS. FOR DISEASE CONTROL & PREVENTION, Methicillin Resistant Staphylococcus aureus, at http://www.cdc.gov/ncidod/hip/Aresist/mrsa.htm (last modified Nov. 25, 2003).

surveillance A type of observational study that involves continuous monitoring of disease occurrence within a population.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

T

tachycardia Rapid beating of the heart, typically more than 90 beats per minute.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

toxin A harmful or poisonous substance that is formed during the metabolism and growth of certain microorganisms and some plant and animal species.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

transmissible agent A biological substance that causes disease or infection through conveyance from one organism to another.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, Model State Public Health Act: A Tool for Assessing Public Health Laws 16 (Sept. 2003).

transmission The conveyance of disease from one organism to another.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

tuberculosis (TB) A disease caused by infection with the bacterium *Mycobacterium tuberculosis*, which can affect almost any tissue or organ of the body, but most commonly affects the lungs. Primary tuberculosis is typically a mild or asymptomatic local lung infection that in otherwise health people does not lead to generalized disease because an immune response arrests the spread of the bacteria and walls off the zone of infection. The tuberculosis skin test will, however, become positive within a few weeks of infection and remain positive throughout life. Bacteria involved in primary tuberculosis remain viable and can become reactivated months or years later to initiate secondary tuberculosis. Progression to the secondary stage eventually occurs in 10-15% of people who have had primary tuberculosis. The risk of reactivation and progression is increased by, *inter alia*, diabetes mellitus and HIV infection and in alcoholics, IV drug abusers, nursing home residents, and those receiving steroid or immunosuppressive therapy. Secondary or reactivation tuberculosis usually results in a chronic, spreading lung infection, most often involving the upper lobes. Rarely, secondary or reactivation tuberculosis results in widespread dissemination of infection throughout the body (miliary tuberculosis). The symptoms of active pulmonary tuberculosis are fatigue, anorexia, weight loss, low-grade fever, night sweats, chronic cough, and hemoptysis. Local symptoms depend on the parts affected. Active

pulmonary tuberculosis is relentlessly chronic and, if untreated, leads to progressive destruction of lung tissue.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

tularemia

A disease caused by the bacterium *Francisella tularensis*. Tularemia is characterized by symptoms including sudden fever, chills, headaches, diarrhea, muscle aches, joint pain, dry cough, progressive weakness, and swelling of the lymph nodes. In severe cases, infected persons may develop pneumonia, chest pain, bloody sputum, and respiratory distress. Tularemia is not transmissible through person-to-person contact and is most commonly transmitted to humans from rodents, through the bite of a vector, such as a deer fly, tick, or other bloodsucking insect. Tularemia may also be acquired through the bite of an infected animal, handling of an infected animal carcass, ingestion of contaminated food or water, or inhalation of the bacterium. Tularemia is treatable with antibiotics.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Key Facts About Tularemia, at http://www.bt.cdc.gov/agent/tularemia/facts.asp (last modified Oct. 7, 2003).

typhoid fever

An acute infectious disease caused by the bacterium *Salmonella typhi*. Typhoid fever is characterized by a continued fever rising in a step-like curve during the first week of infection, severe physical and mental depression, an eruption of rose-colored spots on the chest and abdomen, swelling of the abdomen, early constipation, and subsequent diarrhea. In severe cases, typhoid fever may produce intestinal hemorrhage or perforation of the bowel. The average duration of typhoid fever is approximately 4 weeks, although aborted forms and relapses are not uncommon. *S. typhi* bacteria live only in humans, and typhoid fever is transmitted through the ingestion of contaminated food and water, most frequently in the developing world. Typhoid fever can be treated and prevented with antibiotics.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Typhoid Fever, at http://www.cdc.gov/ncidod/dbmd/diseaseinfo/typhoidfever_g.htm (last modified Feb.17, 2004).

typhus

A group of acute infectious and contagious diseases caused by bacteria belonging to genus *Rickettsia*. Typhus occurs in two principal forms: epidemic typhus and endemic (murine) typhus. Typhus is characterized by severe headaches, shivering and chills, high fever, malaise, and a rash and ranges in duration from short-lived to chronic. Typhus is transmitted to humans by arthropods (*e.g.,* ticks, mites, lice, fleas); transmission rarely occurs from person to person.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L CTR. FOR INFECTIOUS DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Rickettsial Infections, at http://www.cdc.gov/travel/diseases/rickettsial.htm (last modified June 30, 2003).

U

V

vector An invertebrate animal (*e.g.*, tick, mite, mosquito, bloodsucking fly) capable of transmitting an infectious agent among vertebrates.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

vertical transmission Transmission of a disease agent from an infected individual to its offspring.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

vesicle A small, circumscribed elevation of the skin, less than 1.0 cm in diameter, containing fluid.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

viral hemorrhagic fever An infectious, epidemic disease caused by a number of different viruses in families including *Arenoviridae*, *Bunyviridae*, *Flaviviridae*, and *Filoviridae*. Viral hemorrhagic fever simultaneously affects multiple organs within the body and is characterized by high fever, malaise, muscular pain, vomiting, diarrhea, a body rash, organ bleeding, shock, and tremors. In severe cases, viral hemorrhagic fever results in vomiting of blood, hemorrhaging of blood from the eyes and nose, and kidney damage. At least some viral hemorrhagic fevers are transmitted through person-to-person contact, including Ebola, Marburg disease, and Crimean-Congo fever. Many viral hemorrhagic fevers are life-threatening.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); SPECIAL PATHOGENS BRANCH, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., Viral Hemorrhagic Fevers, at http://www.cdc.gov/ncidod/dvrd/spb/mnpages/dispages/vhf.htm (last modified Nov. 26, 2003).

viremia The presence of a virus in the bloodstream.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

virus A term for a group of infectious agents that are incapable of growth or reproduction apart from living cells. A complete virus usually includes either DNA or RNA and is covered by a protein shell. Viruses range in size from 15 nanometers to several hundred nanometers. Classification of a virus depends upon its physiochemical characteristics, mode of transmission, host range, symptomatology, and other factors. Many viruses cause disease.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

vital statistics Statistics relating to birth, death, marriages, health, and disease.
MERRIAM-WEBSTER ONLINE, *at http://www.merriamwebster.com* (last visited Sept. 20, 2004).

W

X

Y

Z

zoonosis A disease transmitted from one kind of animal to another or from animals to humans.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed 2000).

III. Selected Model Judicial Petitions and Orders

A. Petition and Ex-Parte Order for Transport and/or Temporary Detention

Affidavit to accompany Petition for Transport and/or Temporary Detention

Notice of Hearing on Petition for Temporary Detention

Order Following Hearing on Petition to Continue Temporary Detention

B. Petition for Treatment of Infectious Disease

Notice of Hearing on Petition for Treatment of Infectious Disease

Order Following Hearing on Petition for Treatment of Infectious Disease

C. Order Appointing Commitment Review Panel

Recommendation of Commitment Review Panel

Appeal of Commitment and Order to Reconvene Commitment Review Panel

Order Following Appeal of Commitment for Treatment of Infectious Disease

D. Petition for Continued Commitment for Treatment of Infectious Disease and Order to Reconvene Commitment Review Panel

Order Following Hearing on Petition for Continued Treatment of Infectious Disease

E. Petition for Testing of Infectious Disease

Notice of Hearing on Petition for Testing of Infectious Disease

Order Following Hearing on Petition for Testing of Infectious Disease

F. Order Finding Imminent Danger to the Public Health and Requiring Corrective Action

G. Petition for Ex-Parte restraining Order, Preliminary Injunction and Order to Show Cause

H. Emergency Order for Control of Epidemic

I. Order to Avoid, Correct, or Remove an Unsanitary Condition or Cause of Illness in a Building

J. Appellants Motion for Ex-Parte Stay

K. Appellant's Motion For Stay, Motion To Waive Transcript Requirement, and Motion For Immediate Consideration of Appellant's Motion for Stay, Motion to Waive Transcript Requirement, and Of Appellant's Emergency Application for Leave to Appeal

L. Search Warrant/Order to Take Body Substance Sample by Necessary Force

M. Summons for Individual to Appear at Hearing Regarding Court Enforcement of Isolation or Quarantine Order

N. Order for Isolation of Individual Following Failure to Comply with Warning Notice

O. Order for Quarantine of Individual Following Failure to Comply with Warning Notice. (Including Findings of Fact and Conclusions)

IV. Selected Emergency Statutes

A. Michigan Emergency Management Act, 1976 PA 390, MCL 30.401, *et seq*.

B. Interstate Emergency Management Assistance Compact; Equipment, 2001 PA 247, MCL 3.991, *et seq*.

C. Interstate Emergency Management Assistance Compact; Personnel, 2001 PA 248, MCL 3.1001, *et seq*.

V. Selected Provisions of the Michigan Public Health Code.

A. Department Powers, MCL 333.2226.

B. Issuance and Enforcement of Inspection/Investigation Orders or Warrants, MCL 333.2221; MCL 333.2241; MCL 333.2433; MCL 333.2446.

C. Determination of Imminent Danger, MCL 333.2251.

D. Local Health Department Imminent Danger Determination, MCL 333.2451.

E. Emergency Order to Control Epidemic, MCL 333.2253.

F. Local Health Department Emergency Order, MCL 333.2453.

G. Criminal Penalties for Violation of Department Order or Rule, MCL 333.2261.

H. Court Order to Remove or Correct Cause of Illness, MCL 333.2455.

I. Injunctive Action by State and Local Health Department, MCL 333.2255 and MCL 333.2465.

J. Definitions, MCL 333.5101, 333.5201.

K. Objections to Treatment Due to Religious Beliefs, MCL 333.5113.

L. Department Warning Notice (for involuntary detention and treatment of individuals) MCL 333.5203.

M. Local Public Health Department Warning Notice, MCL 333.2453.

N. Failure or Refusal to Comply with Department-Issued Warning Notice or Court Order, MCL 333.5205.

O. Public Health Emergency Court Petition and Order, MCL 333.5207.

P. Power of Health Department to Deal with Disease or Infected Individual, MCL 333.5209.

Q. Department Issued Emergency Order, MCL 333.13516.

VI. Selected Rules of the Michigan Department of Community Health

A. Definitions, Rule 325.171.

B. Classification of Disease/Infections, Rule 325.172.

C. Reporting Requirements, Rule 325.173.

D. Requirement to Provide Information and Evidence to Local and State Health Officials, Rule 325.174.

E. Physician Procedures, Rule 325.175.

VII. Selected Memoranda of Law

A. Attorney General Opinion, 7141, October 6, 2003-Emergency Medical Services Personnel Lack of Authority to Detain Persons Carrying Communicable Diseases.

B. Chrysler/Baumann Memorandum Regarding Legal Authority of Department Of Community Health to Respond to SARS Outbreak.

C. Denise Chrysler, Summary of Authority and Actions Under Public Health Code Regarding Public Health Emergencies.

D. Social Distancing Law Project, *Assessment of Legal Authorities*.

VIII. Selected Court Cases

A. *Jacobson v Commonwealth of Massachusetts*, 197 US 11 (1905).

B. *Campagnie Francaise De Navigation A. Bapeau v Louisiana State Board of Health*, 186 US 380 (1902).

C. *Rock v Carney*, 216 Mich 280; 85 NW 798 (1921).

D. *People, ex rel Hill v Board of Education of the City of Lansing*, 224 Mich 388; 195 NW 95 (1923).

LEXSEE 197 US 11

JACOBSON *v.* MASSACHUSETTS

No. 70

SUPREME COURT OF THE UNITED STATES

197 U.S. 11*; *25 S. Ct. 358*; *49 L. Ed. 643*; *1905 U.S. LEXIS 1232

Argued December 6, 1904
February 20, 1905

PRIOR HISTORY: **[***1]** ERROR TO THE SUPREME COURT OF THE STATE OF MASSACHUSETTS

LAWYERS' EDITION HEADNOTES:

Constitutional law -- compulsory vaccination -- personal liberty -- equal protection of the laws -- evidence -- judicial notice. --

Headnote:

1. The spirit of the Federal Constitution or its preamble cannot be invoked, apart from the words of that instrument, to invalidate a state statute.

2. The scope and meaning of a state statute, as indicated by the exclusion of evidence on the ground of its incompetency or immateriality under that statute, are conclusive on the Federal Supreme Court in determining, on writ of error to the state court, the question of the validity of the statute under the Federal Constitution.

3. The personal liberty secured by *U. S. Const., 14th Amend.*, against state deprivation, is not infringed by Mass. Rev. Laws, chap. 75, 137, authorizing compulsory vaccination by local boards of health when deemed necessary for the public health or safety, under which, as construed by the highest state court, vaccination may be required of all the inhabitants of a city where smallpox is prevalent and increasing.

4. Lack of any exception in favor of adults certified by a registered physician to be unfit subjects for vaccination does not render invalid Mass. Rev. Laws, chap. 75, 137, authorizing compulsory vaccination by local boards of health, as denying the equal protection of the laws, although an exception in favor of children in like condition is made by 139 of that act, since the statute is equally applicable to all adults.

5. Judicial notice will be taken that vaccination is commonly believed to be a safe and valuable means of preventing the spread of smallpox, and that this belief is supported by high medical authority.

6. A state legislature, in enacting a statute purporting to be for the protection of local communities against the spread of smallpox, is entitled to choose between the theory of those of the medical profession who think vaccination worthless for this purpose, and believe its effect to be injurious and dangerous, and the opposite theory, which is in accord with common belief, and is maintained by high medical authority; and is not compelled to commit a matter of this character, involving the public health and safety, to the final decision of a court or jury.

7. An adult cannot claim to have been deprived of the liberty secured by *U. S. Const., 14th Amend.*, against state deprivation, by the enforcement against him of a compulsory vaccination law, at least, where he does not show, with reasonable certainty, that he is not at the time a fit subject of vaccination, or that vaccination, by reason of his then condition, will seriously impair his health, or possibly cause his death.

SYLLABUS

The United States does not derive any of its substantive powers from the Preamble of the Constitution. It cannot exert any power to secure the declared objects of the Constitution unless, apart from the

Preamble such power be found in, or can properly be implied from, some express delegation in the instrument.

While the spirit of the Constitution is to be respected not less than its letter, the spirit is to be collected chiefly from its words.

While the exclusion of evidence in the state court in a case involving the constitutionality of a state statute may not strictly present a Federal question, this court may consider the rejection of such evidence upon the ground of incompetency or immateriality under the statute as showing its scope and meaning in the opinion of the state court.

The police of a State embraces such reasonable regulations relating to matters completely within its territory, and not affecting the people of other States, established directly by legislative enactment, as will protect the public health and safety.

While a local regulation, even if based on the acknowledged power of a State, must **[***2]** always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, the mode or manner of exercising its police power is wholly within the discretion of the State so long as the Constitution of the United States is not contravened, or any right granted or secured thereby is not infringed, or not exercised in such an arbitrary and oppressive manner as to justify the interference of the courts to prevent wrong and oppression.

The liberty secured by the Constitution of the United States does not import an absolute right in each person to be at all times, and in all circumstances wholly freed from restraint, nor is it an element in such liberty that one person, or a minority of persons residing in any community and enjoying the benefits of its local government, should have power to dominate the majority when supported in their action by the authority of the State.

It is within the police power of a State to enact a compulsory vaccination law, and it is for the legislature, and not for the courts, to determine in the first instance whether vaccination is or is not the best mode for the prevention of smallpox and the protection **[***3]** of the public health.

There being obvious reasons for such exception, the fact that children, under certain circumstances, are excepted from the operation of the law does not deny the equal protection of the laws to adults if the statute is applicable equally to all adults in like condition.

The highest court of Massachusetts not having held that the compulsory vaccination law of that State establishes the absolute rule that an adult must be vaccinated even if he is not a fit subject at the time or that vaccination would seriously injure his health or cause his death, this court holds that as to an adult residing in the community, and a fit subject of vaccination, the statute is not invalid as in derogation of any of the rights of such person under the *Fourteenth Amendment*.

THIS case involves the validity, under the Constitution of the United States, of certain provisions in the statutes of Massachusetts relating to vaccination.

The Revised Laws of that Commonwealth, c. 75, § 137, provide that "the board of health of a city or town if, in its opinion, it is necessary for the public health or safety shall require and enforce the vaccination and revaccination of all the inhabitants **[***4]** thereof and shall provide them with the means of free vaccination. Whoever, being over twenty-one years of age and not under guardianship, refuses or neglects to comply with such requirement shall forfeit five dollars."

An exception is made in favor of "children who present a certificate, signed by a registered physician that they are unfit subjects for vaccination." § 139.

Proceeding under the above statutes, the Board of Health of the city of Cambridge, Massachusetts, on the twenty-seventh day of February, 1902, adopted the following regulation: "Whereas, smallpox has been prevalent to some extent in the city of Cambridge and still continues to increase; and whereas, it is necessary for the speedy extermination of the disease, that all persons not protected by vaccination should be vaccinated; and whereas, in the opinion of the board, the public health and safety require the vaccination or revaccination of all the inhabitants of Cambridge; be it ordered, that all the inhabitants of the city who have not been successfully vaccinated since March, 1, 1897, be vaccinated or revaccinated."

Subsequently, the Board adopted an additional regulation empowering a named physician to **[***5]** enforce the vaccination of persons as directed by the

Board at its special meeting of February 27.

The above regulations being in force, the plaintiff in error, Jacobson, was proceeded against by a criminal complaint in one of the inferior courts of Massachusetts. The complaint charged that on the seventeenth day of July, 1902, the Board of Health of Cambridge, being of the opinion that it was necessary for the public health and safety, required the vaccination and revaccination of all the inhabitants thereof who had not been successfully vaccinated since the first day March, 1897, and provided them with the means of free vaccination, and that the defendant, being over twenty-one years of age and not under guardianship, refused and neglected to comply with such requirement.

The defendant, having been arraigned, pleaded not guilty. The government put in evidence the above regulations adopted by the Board of Health and made proof tending to show that its chairman informed the defendant that by refusing to be vaccinated he would incur the penalty provided by the statute, and would be prosecuted therefor; that he offered to vaccinate the defendant without expense to him; and that **[***6]** the offer was declined and defendant refused to be vaccinated.

The prosecution having introduced no other evidence, the defendant made numerous offers of proof. But the trial court ruled that each and all of the facts offered to be proved by the defendant were immaterial, and excluded all proof of them.

The defendant, standing upon his offers of proof, and introducing no evidence, asked numerous instructions to the jury, among which were the following:

That section 137 of chapter 75 of the Revised Laws of Massachusetts was in derogation of the rights secured to the defendant by the Preamble to the Constitution of the United States, and tended to subvert and defeat the purposes of the Constitution as declared in its Preamble;

That the section referred to was in derogation of the rights secured to the defendant by the *Fourteenth Amendment of the Constitution of the United States*, and especially of the clauses of that amendment providing that no State shall make or enforce any law abridging the privileges or immunities of citizens of the United States, nor deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction **[***7]** the equal protection of the laws; and

That said section was opposed to the spirit of the Constitution.

Each of the defendant's prayers for instructions was rejected, and he duly excepted. The defendant requested the court, but the court refused, to instruct the jury to return a verdict of not guilty. And the court instructed the jury in substance that if they believed the evidence introduced by the Commonwealth and were satisfied beyond a reasonable doubt that the defendant was guilty of the offense charged in the complaint, they would be warranted in finding a verdict of guilty. A verdict of guilty was thereupon returned.

The case was then continued for the opinion of the Supreme Judicial Court of Massachusetts. That court overruled all the defendant's exceptions, sustained the action of the trial court, and thereafter, pursuant to the verdict of the jury, he was sentenced by the court to pay a fine of five dollars. And the court ordered that he stand committed until the fine was paid.

COUNSEL: *Mr. George Fred Williams*, with whom *Mr. James A. Halloran* was on the brief, for plaintiff in error:

The right of the State under police power to enforce vaccination upon **[***8]** its inhabitants has not yet been determined, or more than remotely considered by this court; references are made to it in *Lawton* v. *Steele*, 152. U.S. 133; *Hammibal & St. J.R.R. Co. v. Husen, 95 U.S. 465*; *Am School of Healing v. McAnnulty, 187 U.S. 94*. The plaintiff in error knows of no other cases in which the subject of vaccination has been considered by this court. From a summary of vaccination laws and vaccination statutes in the United States it appears that thirty-four States of the Union have no compulsory vaccination law, as follows: Alabama, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia and Wisconsin.

Compulsory vaccination exists in eleven States, as follows: Connecticut, Georgia, Kentucky, Maryland (of children), Massachusetts, Mississippi, North, North Carolina, Pennsylvania (in second class cities), South

Carolina, Virginia and Wyoming. In thirteen States exclusion of unvaccinated **[***9]** children from the public schools is provided, as follows: California, Georgia, Iowa, Maine, Massachusetts, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Dakota and Virginia.

Three-quarters of the States have not entered upon the policy of enforcing vaccination by legal penalty. Not one of the States undertakes forcible vaccination, while Utah and West Virginia expressly provide that no such compulsion shall be used.

Smallpox has ceased to be the scourge which it once was, and there is a growing tendency to resort to sanitation and isolation rather than vaccination. The States which make no provision for vaccination are not any more afflicted with smallpox than those which compel vaccination. Even New York, which imports the major part of the immigrants who annually enter this country, has not undertaken to force it upon the people. As to other countries, the Queen of Holland has recently recommended the repeal of the compulsory vaccination laws. There are no vaccination laws in New Zealand, and Switzerland has by plebiscite abolished all compulsory vaccination.

The English Law, 61 & 62 Vict., ch. 49, provides only for the vaccination of children, **[***10]** under a penalty, and furnishes to the people a special vaccinator.

See ch. 299, Laws of Minnesota of 1903, abolishing vaccination, and veto in 1901 of Governor La Follette of vaccination law of Wisconsin. In 1904 there were riots in Brazil arising from attempts to enforce vaccination.

For decisions of state courts involving vaccination laws which have mainly been decided upon statutes relating to the exclusion of children from the public schools see *Bissell* v. *Davison*, 65 Connecticut, 183; *Abell v. Clark, 84 California, 226*; *State v. Zimmerman, 86 Minnesota, 353*; *Osborn v. Russell, 64 Kansas, 507*; *Potts v. Breem, 167 Illinois, 67*; *Duffield v. Williamsport School District, 162 Pa. St. 476*; *State v. Burdge, 95 Wisconsin, 390*; *Re Rebenack, 62 Mo. App. 8*; *Blue v. Beach, 155 Indiana, 121*. The only cases which have considered general compulsory vaccination laws are *State v. Hay, 126 N. Car. 999*; *Morris v. Columbus, 102 Georgia, 792*; *Re William H. Smith, 146 N.Y. 68*.

None of these cases are as extreme as the decision in the case at bar and the laws providing that unvaccinated children shall not **[***11]** attend the public schools are widely variant from laws compelling the vaccination of adult citizens.

As to admitted functions of the police power, see 4 Blackstone, 162; Cooley's Const. Lim. 704; *Ham. & St. Jo. R.R. Co. v. Husen, 95 U.S. 465, 470*; but the power is for the security of liberty and not for oppression. *Barbier v. Connelly, 113 U.S. 27*; *Lawton v. Steele, 152 U.S. 133*.

A compulsory vaccination law is unreasonable, arbitrary and oppressive; it is only effective in the protection of lawbreakers; the legal penalty is illogical and unjust. See under English Act, 30 & 31 Vict., ch. 84, extent of penalties. *Regina* v. *Justice*, L.R. 17 Q.B.D. 191; *Dutton* v. *Atkinson*, L.R. 6 Q.B. 373; *Pitcher* v. *Stafford*, 4 Vest. & S. 775; *Allen* v. *Worthy*, L.R. 5. Q.B. 163; *Tebb* v. *Jones*, 37 L.T. (N.S.) 576. The law is not of general application as children are exempted. Compulsion to introduce disease into a healthy system is a violation of liberty. The right to preserve life is the most sacred right of man, *Slaughter House Cases, 16 Wall. 36*, and is specially provided for in the Preamble of the Federal Constitution. If **[***12]** injured the person vaccinated is damaged without compensation. *Miller* v. *Horton*, 152 Massachusetts, 546. The law is not within any cognizable principle of criminal law. 1 Bishop, §§ 204, 230, 490, 513; *Commonwealth* v. *Thompson*, 6 Massachusetts, 134. The exemptions are unconstitutional. Minors are exempt while adults are penalized. The classification in not a reasonable one. *M., K. & T. Ry. Co. v. May, 194 U.S. 267*; *Gulf, Colo. & S.R. v. Ellis, 165 U.S. 150*.

Plaintiff in error offered to show that he had suffered seriously from previous vaccination, thus indicating that his system was sensitive to the poison of vaccination virus. The like illness of his son indicated that a hereditary condition existed which would cause the system to rebel against the introduction of the vaccine matter. If the plaintiff in error had offered the opinion of a physician that vaccination might even be deadly in its effects upon the plaintiff, the law recognized no such defense, and the evidence must have been excluded. The law itself testifies to its own oppressive and unreasonable character. It is not due process of law, when such defense is excluded. It is not **[***13]** equal protection of the laws, when such defense is open to parents for the protection of children and is not open to parents themselves. The right is of such an important and

fundamental character as to deprive plaintiff of his liberty without due process of law. *West v. Louisiana, 194 U.S. 258, 262*.

The Board of Health is entrusted with arbitrary powers, and determines the necessity for, and methods of, vaccination and plaintiff's rights in regard thereto without a hearing, thus depriving him of his liberty without due process of law. *Chi., M. & St. P. v. Minnesota, 134 U.S. 418*; *Hagan v. Reclamation Dist., 111 U.S. 701*.

The law is not justified by necessity. *Miller* v. *Horton*, 152 Massachusetts, 546; *Am. School of Healing v. McAnnulty, 187 U.S. 94*.

Plaintiff in error was entitled to show the facts as they existed about vaccination and its effects.

Mr. *Frederick H. Nash*, with whom *Mr. Herbert Parker*, Attorney General of the State of Massachusetts, was on the brief, for defendant in error:

It is no argument that the conviction was repugnant to the spirit or to the Preamble of the Constitution. An act of the legislature of **[***14]** a State and regular proceedings under it are to be overthrown only by virtue of some specific prohibition in the paramount law. *Forsythe v. City of Hammond, 68 Fed. Rep. 774*; *Walker v. Cincinnati, 21 Ohio St. 14, 41*; *State* v. *Staten*, 6 Coldwell, 233, 252; *State v. Gerhardt, 145 Indiana, 439, 450*; *State v. Smith, 44 Ohio St. 348, 374*; *People v. Fisher, 24 Wend 214, 219*; *Redell v. Moores, 63 Nebraska, 219*, overruling *State v. Moores, 55 Nebraska, 480*. The *Fifth Amendment* does not apply to action by a State. *Barron* v. *Baltimore*, 7 Pet. 243, 247; *Eilenbecker v. Plymouth Co., 134 U.S. 31*; *McElvaine v. Brush, 142 U.S. 155, 158*; *Brown v. New Jersey, 175 U.S. 172*; *Capital City Dairy Co. v. Ohio, 183 U.S. 238*; *Lloyd v. Dollison, 194 U.S. 445*.

It is now too late to argue that the provisions of the *Fifth Amendment*, securing the fundamental rights of the individual as against the exercise of Federal power, are by virtue of the *Fourteenth Amendment* to be regarded as privileges and immunities of a citizen of the United States. *Slaughter House Cases, 16 Wall. 36*; *Maxwell v.* **[***15]** *Dow. 176 U.S. 581*.

The privileges and immunities of the plaintiff in error except where he comes in contact with the machinery of the Federal Government, are those which his own State gives him. In his relations with his State he takes no benefit from the *Fifth Amendment* or from the Preamble of the United States Constitution.

In its unquestioned power to preserve and protect the public health, it is for the legislature of each State to determine whether vaccination is effective in preventing the spread of smallpox or not, and deciding in the affirmative to require doubting individuals to yield for the welfare of the community. *In re Smith, 146 N.Y. 68, 77*; *Powell v. Pennsylvania, 127 U.S. 678, 683*.

The *s*tatute in the present case was enacted as a health measure, and has a real and substantial relation to that object.

Compare, by contrast, the statute forbidding the manufacture of cigars in tenement-houses, *In re Jacobs, 98 N.Y. 98*, the statute forbidding people to give away articles in connection with a sale of food, *People v. Gillson, 109 N.Y. 389*, and the statute forbidding bakers' employes to work more than ten hours a day, *People v.* **[***16]** *Lochner, 177 N.Y. 145*. Dissenting opinion.

Only in such cases of legislative dissimulation is it held that a law, apparently looking to the protection of the public health and working without undue classification, is a violation of the *Fourteenth Amendment*. *Mugler v. Kansas, 123 U.S. 623*; *Sentell v. New Orleans &c. Ry. Co., 166 U.S. 698, 704, 705*; *Hawker v. New York, 170 U.S. 189, 192*; *Holden v. Hardy, 169 U.S. 366*.

In *Lawton v. Steele, 152 U.S. 133, 136*, it is said, by way of illustration, that compulsory vaccination in a proper exercise of the police power, see also *Morris v. City of Columbus, 102 Georgia, 792*, and *State v. Hay, 126 N. Car. 999*.

The courts may not listen to conflicting expert testimony as to the efficacy or hurtfulness of vaccination in general. The legislature is the only body which has power to determine whether the anti-vaccinationists or the majority of the medical profession are in the right.

That the legislature has large discretion to determine what personal sacrifice the public health, morals and safety require from individuals is elementary. Cases cited *supra*, and *Booth v.* **[***17]** *Illinois, 184 U.S. 425*; *Austin v. Tennessee, 179 U.S. 343*; *Fertilizing Co. v. Hyde Park, 97 U.S. 659*.

The legislature of Massachusetts has power to require the vaccination of its inhabitants and fix appropriate penalties for refusal. As to the form of the legislation and its application to the plaintiff in error, the exception of minors and wards from the provisions of the statute, rests upon a reasonable basis of classification and denies to nobody the equal protection of the laws. The advantage of uniform and general laws is best attained by vesting discretionary power in local administrative bodies. *Wilson v. Eureka City, 173 U.S. 32*; *Health Department v. Rector of Trinity Church, 145 N.Y. 32*.

A perfectly equal law may easily be the most unjust. A statute requiring the vaccination of all the inhabitants of a State at a specified time irrespective of the presence of smallpox and without regard to individual conditions of health, or a set of rules and regulations made by the legislature itself, which must necessarily be more or less inelastic, would be far less just than this stature which delegates discretion to local public officials. It **[***18]** is wise legislation which leaves the necessity for general vaccination and the decision as to the time for vaccination of each individual to the local boards of health. If they act in an arbitrary manner, depriving any individual of a right protected by the *Fourteenth Amendment*, their action in such individual case is void. Thus the law in general stands, but particular cases of oppression may be prevented. Compare *Yick Wo v. Hopkins, 118 U.S. 356*, and *Jew Ho v. Williamson, 103 Fed. Rep. 10*, with *Williams v. Mississippi, 170 U.S. 213*; *Ex parte Virginia, 100 U.S. 339*; *Carter v. Texas, 177 U.S. 442*; *Tarrence v. Florida, 188 U.S. 519*.

The order of the Board of Health is clearly within the authority of the statute. *Matthews v. Board of Education, 127 Michigan, 530*; *Potts v. Breen, 167 Illinois, 67*; *State v. Burdge, 95 Wisconsin, 390*; *Lawbaugh v. Board of Education, 177 Illinois, 572*; *In re Smith, 146 N.Y. 68*; *Wong Wai v. Williamson, 103 Fed. Rep. 1*; *Wilson v. Alabama &c. R.R. Co., 77 Mississippi, 714*; *Hurst v. Warner, 102 Michigan, 238*, distinguished, as the rules were held **[***19]** to be broader than the statute. And see where regulations were sustained, *Field v. Robinson, 198 Pa. St. 638*; *State v. Board of Education, 21 Utah, 401*; *Blue v. Beach, 155 Indiana, 121*; *Bissell* v. *Davidson*, 65 Connecticut, 183; *Morris v. City of Columbus, 102 Georgia, 792*. In *State v. Hay, 126 N. Car. 999*, the court observed that if the jury had found that the defendant's health made it unsafe for him to be vaccinated that would be a sufficient excuse for his non-compliance, since to vaccinate him under such conditions would be an arbitrary and unreasonable enforcement of the statute. See also *Abeel v. Clark, 84 California, 226*; *State v. Bell, 157 Indiana, 25*; *State v. Zimmerman, 86 Minnesota, 353*; *Matter of Walters, 84 Hun, 457*.

The action taken by the Board of Health in the case of the plaintiff in error did not infringe his rights under the Federal Constitution. Arbitrary action by the Board of Health, "with evil mind," might result in a denial of due process of law. If they picked out one class of persons arbitrarily for immediate vaccination, while indefinitely postponing action toward all others, **[***20]** or if they otherwise abused their discretion their action might be in violation of the *Fourteenth Amendment*, cases cited *supra*, but there is no suggestion of arbitrary conduct. It is not even hinted that in the exercise of their discretion they failed to make proper discrimination as to temporary conditions. If there were special reasons why the plaintiff in error could not be vaccinated at the time required by the Board of Health, he should have made them a ground of his refusal; and, if the Board neglected to consider them, a defense to his prosecution. *Penn. R.R. Co. v. Jersey City, 47 N.J.L. 286*. The statute did not require the vaccination and revaccination of all the inhabitants, without discrimination, but left the matter to the discretion of the local authorities. This was an unobjectionable method of legislation. *Field v. Clark, 143 U.S. 649, 693, 694*.

JUDGES: Fuller, Harlan, Brewer, Brown, White, Peckham, McKenna, Holmes, Day

OPINION BY: HARLAN

OPINION

[*22] **[**359]** MR. JUSTICE HARLAN, after making the foregoing statement, delivered the opinion of the court.

We pass without extended discussion the suggestion that the particular section of the statute **[***21]** of Massachusetts now in question (§ 137, c. 75) is in derogation of rights secured by the Preamble of the Constitution of the United States. Although that Preamble indicates the general purposes for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the Government of the United States

or on any of its Departments. Such powers embrace only those expressly granted in the body of the Constitution and such as may be implied from those so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States unless, apart from the Preamble, it be found in some express delegation of power or in some power **[**360]** to be properly implied therefrom. 1 Story's Const. § 462.

We also pass without discussion the suggestion that the above section of the statute is opposed to the spirit of the Constitution. Undoubtedly, as observed by Chief Justice Marshall, speaking for the court in *Sturges v. Crowninshield, 4 Wheat.* **[***22]** *122, 202*, "the spirit of an instrument, especially of a constitution, is to be respected not less than its letter, yet the spirit is to be collected chiefly from its words." We have no need in this case to go beyond the plain, obvious meaning of the words in those provisions of the Constitution which, it is contended, must control our decision.

What, according to the judgment of the state court, is the **[*23]** scope and effect of the statute? What results were intended to be accomplished by it? These questions must be answered.

The Supreme Judicial Court of Massachusetts said in the present case: "Let us consider the offer of evidence which was made by the defendant Jacobson. The ninth of the propositions which he offered to prove, as to what vaccination consists of, is nothing more than a fact of common knowledge, upon which the statute is founded, and proof of it was unnecessary and immaterial. The thirteenth and fourteenth involved matters depending upon his personal opinion, which could not be taken as correct, or given effect, merely because he made it a ground of refusal to comply with the requirement. Moreover, his views could not affect the validity of the statute, **[***23]** nor entitle him to be excepted from its provisions. *Commonwealth* v. *Connelly*, 163 Massachusetts, 539; *Commonwealth* v. *Has*, 122 Massachusetts, 40; *Reynolds v. United States, 98 U.S. 145*; *Regina* v. *Downes*, 13 Cox C.C. 111. The other eleven propositions all relate to alleged injurious or dangerous effects of vaccination. The defendant 'offered to prove and show by competent evidence' these so-called facts. Each of them, in its nature, is such that it cannot be stated as a truth, otherwise than as a matter of opinion. The only 'competent evidence' that could be presented to the court to prove these propositions was the testimony of experts, giving their opinions. It would not have been competent to introduce the medical history of individual cases. Assuming that medical experts could have been found who would have testified in support of these propositions, and that it had become the duty of the judge, in accordance with the law as stated in *Commonwealth* v. *Anthes*, 5 Gray, 185, to instruct the jury as to whether or not the statute is constitutional, he would have been obliged to consider the evidence in connection with facts of common knowledge, **[***24]** which the court will always regard in passing upon the constitutionality of a statute. He would have considered this testimony of experts in connection with the facts that for nearly a century most of the members of the medical profession **[*24]** have regarded vaccination, repeated after intervals, as a preventive of smallpox; that while they have recognized the possibility of injury to an individual from carelessness in the performance of it, or even in a conceivable case without carelessness, they generally have considered the risk of such an injury too small to be seriously weighed as against the benefits coming from the discreet and proper use of the preventive; and that not only the medical profession and the people generally have for a long time entertained these opinions, but legislatures and courts have acted upon them with general unanimity. If the defendant had been permitted to introduce such expert testimony as he had in support of these several propositions, it could not have changed the result. It would not have justified the court in holding that the legislature had transcended its power in enacting this statute on their judgment of what the welfare of the people **[***25]** demands." *Commonwealth* v. *Jacobson*, 183 Massachusetts, 242.

While the mere rejection of defendant's offers of proof does not strictly present a Federal question, we may properly regard the exclusion of evidence upon the ground of its incompetency or immateriality under the statute as showing what, in the opinion of the state court, is the scope and meaning of the statute. Taking the above observations of the state court as indicating the scope of the statute -- and such is our duty, *Leffingwell v. Warren, 2 Black, 599, 603*, *Morley v. Lake Shore Railway Co., 146 U.S. 162, 167*, *Tullis v. L.E. & W.R.R. Co., 175 U.S. 348*, *W.W. Cargill Co. v. Minnesota, 180 U.S. 452, 466* -- we assume for the purposes of the present inquiry that its provisions require, at least as a general rule, that adults

not under guardianship and remaining within the limits of the city of Cambridge must submit to the regulation adopted by the Board of Health. Is the statute, so construed, therefore, inconsistent with the liberty which the Constitution of the United States secures to every person against deprivation by the State?

The authority of the State to enact this statute **[***26]** is to be **[*25]** referred to what is commonly called the police power -- a power which the State did not surrender when becoming a member of the Union under the Constitution. Although this court has refrained **[**361]** from any attempt to define the limits of that power, yet it has distinctly recognized the authority of a State to enact quarantine laws and "health laws of every description;" indeed, all laws that relate to matters completely within its territory and which do not by their necessary operation affect the people of other States. According to settled principles the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. *Gibbons v. Ogden, 9 Wheat. 1, 203*; *Railroad Company v. Husen, 95 U.S. 465, 470*; *Beer Company v. Massachusetts, 97 U.S. 25*; *New Orleans Gas Co. v. Louisiana Light Co., 115 U.S. 650, 661*; *Lawton v. Steele, 152 U.S. 133*. It is equally true that the State may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard **[***27]** the public health and the public safety. The mode or manner in which those results are to be accomplished is within the discretion of the State, subject, of course, so far as Federal power is concerned, only to the condition that no rule prescribed by a State, nor any regulation adopted by a local governmental agency acting under the sanction of state legislation, shall contravene the Constitution of the United States or infringe any right granted or secured by that instrument. A local enactment or regulation, even if based on the acknowledged police power of a State, must always yield in case of conflict with the exercise by the General Government of any power it possesses under the Constitution, or with any right which that instrument gives or secures. *Gibbons v. Ogden, 9 Wheat. 1, 210*; *Sinnot v. Davenport, 22 How. 227, 243*; *Missouri, Kansas & Texas Ry. Co. v. Haber, 169 U.S. 613, 626*.

We come, then, to inquire whether any right given, or secured by the Constitution, is invaded by the statute as interpreted **[*26]** by the state court. The defendant insists that his liberty is invaded when the State subjects him to fine or imprisonment for neglecting **[***28]** or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once **[***29]** recognized it as a fundamental principle that "persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be made, so far as natural persons are concerned." *Railroad Co. v. Husen, 95 U.S. 465, 471*; *Missouri, Kansas & Texas Ry. Co. v. Haber, 169 U.S. 613, 628, 629*; *Thorpe v. Rutland & Burlington R.R., 27 Vermont, 140, 148*. In *Crowley v. Christensen, 137 U.S. 86, 89*, we said: "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty **[*27]** itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law." In the constitution of Massachusetts adopted in 1780 it was laid down as **[***30]** a fundamental principle of the social compact that the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for "the common good," and that government is instituted "for the common good, for the protection, safety, prosperity and happiness

of the people, and not for the profit, honor or private interests of any one man, family or class of men." The good and welfare of the Commonwealth, of which the legislature is primarily the judge, is the basis on which the police power rests in Massachusetts. *Commonwealth* v. *Alger*, 7 Cush. 53, 84.

Applying these principles to the present case, it is to be observed that the legislature **[**362]** of Massachusetts required the inhabitants of a city or town to be vaccinated only when, in the opinion of the Board of Health, that was necessary for the public health or the public safety. The authority to determine for all what ought to be done in such an emergency must have been lodged somewhere or in some body; and surely it was appropriate for the legislature to refer that question, in the first instance, to a Board of Health, composed of persons residing in the locality **[***31]** affected and appointed, presumably, because of their fitness to determine such questions. To invest such a body with authority over such matters was not an unusual nor an unreasonable or arbitrary requirement. Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members. It is to be observed that when the regulation in question was adopted, smallpox, according to the recitals in the regulation adopted by the Board of Health, was prevalent to some extent in the city of Cambridge and the disease was increasing. If such was **[*28]** the situation -- and nothing is asserted or appears in the record to the contrary -- if we are to attach any value whatever to the knowledge which, it is safe to affirm, is common to all civilized peoples touching smallpox and the methods most usually employed to eradicate that disease, it cannot be adjudged that the present regulation of the Board of Health was not necessary in order to protect the public health and secure the public safety. Smallpox being prevalent and increasing at Cambridge, the court would usurp the functions of another **[***32]** branch of government if it adjudged, as matter of law, that the mode adopted under the sanction of the State, to protect the people at large, was arbitrary and not justified by the necessities of the case. We say necessities of the case, because it might be that an acknowledged power of a local community to protect itself against an epidemic threatening the safety of all, might be exercised in particular circumstances and in reference to particular persons in such an arbitrary, unreasonable manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons. *Wisconsin &c. R.R. Co. v. Jacobson, 179 U.S. 287, 301*; 1 Dillon Mun. Corp., 4th ed.,§§ 319 *to* 325, and authorities in notes; Freund's Police Power, § 63 *et seq.* In *Railroad Company v. Husen, 95 U.S. 465, 471-473*, this court recognized the right of a State to pass sanitary laws, laws for the protection of life, liberty, health or property within its limits, laws to prevent persons and animals suffering under contagious or infectious diseases, or convicts, from coming within its borders. But as **[***33]** the laws there involved when beyond the necessity of the case and under the guise of exerting a police power invaded the domain of Federal authority and violated rights secured by the Constitution, this court deemed it to be its duty to hold such laws invalid. If the mode adopted by the Commonwealth of Massachusetts for the protection of its local communities against smallpox proved to be distressing, inconvenient or objectionable to some -- if nothing more could be reasonably **[*29]** affirmed of the statute in question -- the answer is that it was the duty of the constituted authorities primarily to keep in view the welfare, comfort and safety of the many, and not permit the interests of the many to be subordinated to the wishes or convenience of the few. There is, of course, a sphere within which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual **[***34]** in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand. An American citizen, arriving at an American port on a vessel in which, during the voyage, there had been cases of yellow fever or Asiatic cholera, although apparently free from disease himself, may yet, in some circumstances, be held in quarantine against his will on board of such vessel or in a quarantine station, until it be ascertained by inspection, conducted with due diligence, that the danger of the spread of the disease among the community at large has disappeared. The liberty secured by the *Fourteenth Amendment*, this court has said, consists, in part, in the right of a person "to live and work where he will," *Allgeyer v. Louisiana, 165 U.S. 578*; and yet he may be compelled, by force if need be, against his will and

without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defense. It is not, therefore, true that **[***35]** the power of the public to guard itself against imminent danger depends in every case involving the control of one's body upon his willingness **[**363]** to submit to reasonable regulations established by the constituted authorities, under the **[*30]** sanction of the State, for the purpose of protecting the public collectively against such danger.

It is said, however, that the statute, as interpreted by the state court, although making an exception in favor of children certified by a registered physician to be unfit subjects for vaccination, makes no exception in the case of adults in like condition. But this cannot be deemed a denial of the equal protection of the laws to adults; for the statute is applicable equally to all in like condition and there are obviously reasons why regulations may be appropriate for adults which could not be safely applied to persons of tender years.

Looking at the propositions embodied in the defendant's rejected offers of proof it is clear that they are more formidable by their number than by their inherent value. Those offers in the main seem to have had no purpose except to state the general theory of those of the medical profession who attach **[***36]** little or no value to vaccination as a means of preventing the spread of smallpox or who think that vaccination causes other diseases of the body. What everybody knows the court must know, and therefore the state court judicially knew, as this court knows, that an opposite theory accords with the common belief and is maintained by high medical authority. We must assume that when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories, and was compelled, of necessity, to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain. It could not properly abdicate its function to guard the public health and safety. The state legislature proceeded upon the theory which recognized vaccination as at least an effective if not the best known way in which to meet and suppress **[***37]** the **[*31]** evils of a smallpox epidemic that imperilled an entire population. Upon what sound principles as to the relations existing between the different departments of government can the court review this action of the legislature? If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." *Mugler v. Kansas, 123 U.S. 623, 661*; *Minnesota v. Barber, 136 U.S. 313, 320*; *Atkin v. Kansas, 191 U.S. 207, 223*.

Whatever may be thought of the expediency of this statute, it cannot be affirmed to be, beyond question, in palpable conflict with the Constitution. Nor, in view of the methods employed to stamp out the disease of smallpox, can anyone confidently assert **[***38]** that the means prescribed by the State to that end has no real or substantial relation to the protection of the public health and the public safety. Such an assertion would not be consistent with the experience of this and other countries whose authorities have dealt with the disease of smallpox. [1] And the principle of vaccination **[**364]** as a means to **[*32]** prevent the spread of smallpox has been enforced in many States by statutes making the vaccination of children a condition of their right to enter or remain in public schools. *Blue v. Beach, 155 Indiana, 121*; *Morris v. City of Columbus, 102 Georgia, 792*; **[*33]** *State v. Hay, 126 N. Car. 999*; *Abeel v. Clark, 84 California, 226*, Bissell v. Davidson, 65 Connecticut, 183; *Hazen v. Strong, 2 Vermont, 427*; *Duffield v. Williamsport School District, 162 Pa. St. 476*.

1 "State-supported facilities for vaccination began in England in 1808 with the National Vaccine Establishment. In 1840 vaccination fees were made payable out of the rates. The first compulsory act was passed in 1853, the guardians of the poor being entrusted with the carrying out of the law; in 1854 the public vaccinations under one year of age were 408,825 as against an average of 180,960 for several years before. In 1867 a new Act was passed, rather to remove some technical difficulties than to enlarge the

scope of the former Act; and in 1871 the Act was passed which compelled the boards of guardians to appoint vaccination officers. The guardians also appoint a public vaccinator, who must be duly qualified to practice medicine, and whose duty it is to vaccinate (for a fee of one shilling and sixpence) any child resident within his district brought to him for that purpose, to examine the same a week after, to give a certificate, and to certify to the vaccination officer the fact of vaccination or of insusceptibility. . . . Vaccination was made compulsory in Bavaria in 1807, and subsequently in the following countries: Denmark (1810), Sweden (1814), Wurtemburg, Hesse, and other German states (1818), Prussia (1835), Roumania (1874), Hungary (1876), and Servia (1881). It is compulsory by cantonal law in ten out of the twenty-two Swis cantons; an attempt to pass a federal compulsory law was defeated by a plebiscite in 1881. In the following countries there is no compulsory law, but Government facilities and compulsion on various classes more or less directly under Government control, such as soldiers, state employes, apprentices, school pupils, etc.: France, Italy, Spain, Portugal, Belgium, Norway, Austria, Turkey. . . . Vaccination has been compulsory in South Australia since 1872, in Victoria since 1874, and in Western Australia since 1878. In Tasmania a compulsory Act was passed in 1882. In New South Wales there is no compulsion, but free facilities for vaccination. Compulsion was adopted at Calcutta in 1880, and since then at eighty other towns of Bengal, at Madras in 1884, and at Bombay and elsewhere in the presidency a few years earlier. Revaccination was made compulsory in Denmark in 1871, and in Roumania in 1874; in Holland it was enacted for all school pupils in 1872. The various laws and administrative orders which had been for many years in force as to vaccination and revaccination in the several German states were consolidated in an imperial statute of 1874." 24 *Encyclopoedia Britannica* (1894), *Vaccination*.

"In 1857 the British Parliament received answers from 552 physicians to questions which were asked them in reference to the utility of vaccination, and only two of these spoke against it. Nothing proves this utility more clearly than the statistics obtained. Especially instructive are those which Flinzer compiled respecting the epidemic in Chemitz which prevailed in 1870-71. At this time in the town there were 64,255 inhabitants, of whom 53,891, or 83.87 per cent., were vaccinated, 5,712, or 8.89 per cent. were unvaccinated, and 4,652, or 7.24 per cent., had had the smallpox before. Of those vaccinated 953, or 1.77 per cent., became affected with smallpox, and of the uninocculated 2,643, or 46.3 per cent., had the disease. In the vaccinated the mortality from the disease was 0.73 per cent., and in the unprotected it was 9.16 per cent. In general, the danger of infection is six times as great, and the mortality 68 times as great, in the unvaccinated as in the vaccinated. Statistics derived from the civil population are in general not so instructive as those derived from armies, where vaccination is usually more carefully performed and where statistics can be more accurately collected. During the Franco-German war (1870-71) there was in France a widespread epidemic of smallpox, but the German army lost during the campaign only 450 cases, or 58 men to the 100,000; in the French army, however, where vaccination was not carefully carried out, the number of deaths from smallpox was 23,400." 8 *Johnson's Universal Cyclopoedia* (1897), *Vaccination*.

"The degree of protection afforded by vaccination thus became a question of great interest. Its extreme value was easily demonstrated by statistical researches. In England, in the last half of the eighteenth century, out of every 1,000 deaths, 96 occurred from smallpox; in the first half of the present century, out of every 1,000 deaths, but 35 were caused by that disease. The amount or mortality in a country by smallpox seems to bear a fixed relation to the extent to which vaccination is carried out. In all England and Wales, for some years previous to 1853, the proportional mortality by smallpox was 21.9 to 1,000 deaths from causes; in London it was but 16 to 1,000; in Ireland, where vaccination was much less general, it was 49 to 1,000, while in Connaught it was 60 to 1,000. On the other hand, in a number of European countries where vaccination was more or less compulsory, the proportionate number of deaths from smallpox

about the same time varied from 2 per 1,000 of causes in Bohemia, Lombardy, Venice, and Sweden, to 8.33 per 1,000 in Saxony. Although in many instances persons who had been vaccinated were attacked with smallpox in a more or less modified form, it was noticed that the persons so attacked had been commonly vaccinated many years previously." 16 *American Cyclopedia, Vaccination*, (1883).

"'Dr. Buchanan, the medical officer of the London Government Board, reported [1881] as the result of statistics that the smallpox death rate among adult persons vaccinated was 90 to a million; whereas among those unvaccinated it was 3,350 to a million; whereas among vaccinated children under 5 years of age, 42 1/2 per million; whereas among unvaccinated children of the same age it was 5,950 per million.' *Hardway's Essentials of Vaccination* (1882). The same author reports that among other conclusions reached by the Academie de Medicine of France, was one that 'without vaccination, hygienic measures (isolation, disinfection, etc.) are of themselves insufficient for preservation from smallpox.'" *Ib*.

"The Belgian Academy of Medicine appointed a committee to make an exhaustive examination of the whole subject, and among the conclusions reported by them were: 1. 'Without vaccination, hygienic measures and means, whether public or private, are powerless in preserving mankind from smallpox. . . . 3. Vaccination is always an inoffensive operation when practiced with proper care on healthy subjects. . . . 4. It is highly desirable, in the interests of the health and lives of our countrymen, that vaccination should be rendered compulsory.'" *Edwards' Vaccination* (1882).

The English Royal Commission, appointed with Lord Herschell, the Lord Chancellor of England, at its head, to inquire, among other things, as to the effect of vaccination in reducing the prevalence of, and mortality from, smallpox, reported, after several years of investigation: "We think that it diminishes the liability to be attacked by the disease; that it modifies the character of the disease and renders it less fatal, of a milder and less severe type; that the protection it affords against attacks of the disease is greatest during the years immediately succeeding the operation of vaccination."

[*39]** **[*34]** The latest case upon the subject of which we are aware is *Viemeister* v. *White, President &c.*, decided very recently by the Court of Appeals of New York, and the opinion in which has not yet appeared in the regular reports. That case involved the validity of a statute excluding from the public schools all children who had not been vaccinated. One contention was that the statute and the regulation adopted in exercise **[**365]** of its provisions was inconsistent with the rights, privileges and liberties of the citizen. The contention was overruled, the court saying, among other things: "Smallpox is known of all to be a dangerous and contagious disease. If vaccination strongly tends to prevent the transmission or spread of this disease, it logically follows that children may be refused admission to the public schools until they have been vaccinated. The appellant claims that vaccination does not tend to prevent smallpox, but tends to bring about other diseases, and that it does much harm, with no good.

"It must be conceded that some laymen, both learned and unlearned, and some physicians of great skill and repute, do not believe that vaccination is a preventive **[***40]** of smallpox. The common belief, however, is that it has a decided tendency to prevent the spread of this fearful disease and to render it less dangerous to those who contract it. While not accepted by all, it is accepted by the mass of the people, as well as by most members of the medical profession. It has been general in our State and in most civilized nations for generations. It is **[*35]** generally accepted in theory and generally applied in practice, both by the voluntary action of the people and in obedience to the command of law. Nearly every State of the Union has statutes to encourage, or directly or indirectly to require, vaccination, and this is true of most nations of Europe. . . .

"A common belief, like common knowledge, does not require evidence to establish its existence, but may be acted upon without proof by the legislature and the courts. . . .

"The fact that the belief is not universal is not controlling, for there is scarcely any belief that is accepted by everyone. The possibility that the belief may be wrong, and that science may yet show it to be wrong,

is not conclusive; for the legislature has the right to pass laws which, according to the common **[***41]** belief of the people, are adapted to prevent the spread of contagious diseases. In a free country, where the government is by the people, through their chosen representatives, practical legislation admits of no other standard of action; for what the people believe is for the common welfare must be accepted as tending to promote the common welfare, whether it does in fact or not. Any other basis would conflict with the spirit of the Constitution, and would sanction measures opposed to a republican form of government. While we do not decide and cannot decide that vaccination is a preventive of smallpox, we take judicial notice of the fact that this is the common belief of the people of the State, and with this fact as a foundation we hold that the statute in question is a health law, enacted in a reasonable and proper exercise of the police power." *72 N.E. Rep. 97.*

Since then vaccination, as a means of protecting a community against smallpox, finds strong support in the experience of this and other countries, no court, much less a jury, is justified in disregarding the action of the legislature simply because in its or their opinion that particular method was -- perhaps or possibly **[***42]** -- not the best either for children or adults.

Did the offers of proof made by the defendant present a case which entitled him, while remaining in Cambridge, to **[*36]** claim exemption from the operation of the statute and of the regulation adopted by the Board of Health? We have already said that his rejected offers, in the main, only set forth the theory of those who had no faith in vaccination as a means of preventing the spread of smallpox, or who thought that vaccination, without benefiting the public, put in peril the health of the person vaccinated. But there were some offers which it is contended embodied distinct facts that might properly have been considered, Let us see how this is.

The defendant offered to prove that vaccination "quite often" caused serious and permanent injury to the health of the person vaccinated; that the operation "occasionally" resulted in death; that it was "impossible" to tell "in any particular case" what the results of vaccination would be or whether it would injure the health or result in death; that "quite often" one's blood is in a certain condition of impurity when it is not prudent or safe to vaccinate him; that there is no practical **[***43]** test by which to determine "with any degree of certainty" whether one's blood is in such condition of impurity as to render vaccination necessarily unsafe or dangerous; that vaccine matter is "quite often" impure and dangerous to be used, but whether impure or not cannot be ascertained by any known practical test; that the defendant refused to submit to vaccination for the reason that he had, "when a child," been caused great and extreme suffering for a long period by a disease produced by vaccination; and that he had witnessed a similar result of vaccination not only in the case of his son, but in the case of others.

These offers, in effect, invited the court and jury to go over the whole ground gone over by the legislature when it enacted the statute in question. The legislature assumed that some children, by reason of their condition at the time, might not be fit subjects of vaccination; and it is suggested -- and we will not say without reason -- that such is the case with some adults. But the defendant did not offer to prove that, by **[**366]** reason of his then condition, he was in fact not a fit subject of vaccination **[*37]** at the time he was informed of the requirement **[***44]** of the regulation adopted by the Board of Health. It is entirely consistent with his offer of proof that, after reaching full age he had become, so far as medical skill could discover, and when informed of the regulation of the Board of Health was, a fit subject of vaccination, and that the vaccine matter to be used in his case was such as any medical practitioner of good standing would regard as proper to be used. The matured opinions of medical men everywhere, and the experience of mankind, as all must know, negative the suggestion that it is not possible in any case to determine whether vaccination is safe. Was defendant exempted from the operation of the statute simply because of this dread of the same evil results experienced by him when a child and had observed in the cases of his son and other children? Could he reasonably claim such an exemption because "quite often" or "occasionally" injury had resulted from vaccination, or because it was impossible, in the opinion of some, by any practical test, to determine with absolute certainty whether a particular person could be safely vaccinated?

It seems to the court that an affirmative answer to these questions would practically **[***45]** strip the legislative department of its function to care for the public health and the public safety when endangered by epidemics of disease. Such an answer would mean that compulsory vaccination could not, in any conceivable

case, be legally enforced in a community, even at the command of the legislature, however widespread the epidemic of smallpox, and however deep and universal was the belief of the community and of its medical advisers, that a system of general vaccination was vital to the safety of all.

We are not prepared to hold that a minority, residing or remaining in any city or town where smallpox is prevalent, and enjoying the general protection afforded by an organized local government, may thus defy the will of its constituted authorities, acting in good faith for all, under the legislative sanction of the State. If such be the privilege of a minority **[*38]** then a like privilege would belong to each individual of the community, and the spectacle would be presented of the welfare and safety of an entire population being subordinated to the notions of a single individual who chooses to remain a part of that population. We are unwilling to hold it to be an element **[***46]** in the liberty secured by the Constitution of the United States that one person, or a minority of persons, residing in any community and enjoying the benefits of its local government, should have the power thus to dominate the majority when supported in their action by the authority of the State. While this court should guard with firmness every right appertaining to life, liberty or property as secured to the individual by the Supreme Law of the Land, it is of the last importance that it should not invade the domain of local authority except when it is plainly necessary to do so in order to enforce that law. The safety and the health of the people of Massachusetts are, in the first instance, for that Commonwealth to guard and protect. They are matters that do not ordinarily concern the National Government. So far as they can be reached by any government, they depend, primarily, upon such action as the State in its wisdom may take; and we do not perceive that this legislation has invaded by right secured by the Federal Constitution.

Before closing this opinion we deem it appropriate, in order to prevent misapprehension as to our views, to observe -- perhaps to repeat a thought **[***47]** already sufficiently expressed, namely -- that the police power of a State, whether exercised by the legislature, or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression. Extreme cases can be readily suggested. Ordinarily such cases are not safe guides in the administration of the law. It is easy, for instance, to suppose the case of an adult who is embraced by the mere words of the act, but yet to subject whom to vaccination in a particular condition of his health **[*39]** or body, would be cruel and inhuman in the last degree. We are not to be understood as holding that the statute was intended to be applied to such a case, or, if it was so intended, that the judiciary would not be competent to interfere and protect the health and life of the individual concerned. "All laws," this court has said, "should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or absurd consequence. It will always, therefore, be presumed that the legislature **[***48]** intended exceptions to its language which would avoid results of that character. The reason of the law in such cases should prevail over its letter." *United States v. Kirby, 7 Wall. 482*; *Lau Ow Bew v. United States, 144 U.S. 47, 58*. Until otherwise informed by the highest court of Massachusetts we are not inclined to hold that the statute establishes the absolute rule that an adult must be vaccinated if it be apparent or can be shown with reasonable **[**367]** certainty that he is not at the time a fit subject of vaccination or that vaccination, by reason of his then condition, would seriously impair his health or probably cause his death. No such case is here presented. It is the case of an adult who, for aught that appears, was himself in perfect health and a fit subject of vaccination, and yet, while remaining in the community, refused to obey the statute and the regulation adopted in execution of its provisions for the protection of the public health and the public safety, confessedly endangered by the presence of a dangerous disease.

We now decide only that the statute covers the present case, and that nothing clearly appears that would justify this court **[***49]** in holding it to be unconstitutional and inoperative in its application to the plaintiff in error.

The judgment of the court below must be affirmed.

It is so ordered.

MR. JUSTICE BREWER and MR. JUSTICE PECKHAM dissent.

LEXSEE 186 US 380

COMPAGNIE FRANCAISE DE NAVIGATION A VAPEUR *v.* LOUISIANA STATE BOARD OF HEALTH

No. 4

SUPREME COURT OF THE UNITED STATES

186 U.S. 380*; *22 S. Ct. 811*; *46 L. Ed. 1209*; *1902 U.S. LEXIS 903

Argued October 29, 30, 1900
June 2, 1902

PRIOR HISTORY: ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA

LAWYERS' EDITION HEADNOTES:

Commerce -- state regulation -- validity of Louisiana quarantine laws -- excluding immigrants from entering infected district -- due process of law -- effect of Federal immigration and quarantine laws. --

Headnote:

1. No unconstitutional regulation of commerce is made by La. Acts 1898, No. 192, 8, under which the state board of health may exclude healthy persons from entering a locality infested with a contagious or infectious disease, whether such persons come from within or without the state.

2. A foreign steamship company is not deprived of its property without due process of law by the action of the Louisiana state board of health, authorized by La. Acts 1898, No. 192, 8, in prohibiting it from landing the passengers on one of its steamers at New Orleans, or any place contiguous thereto, because of the existence of an infectious disease in that city.

3. The quarantining of a French steamship because of the existence of an infectious or contagious disease at the port of arrival, under the authority of La. Acts 1898, No. 192, 8, does not conflict with the provisions of article 15 of the treaty with Greece (assuming that such treaty is applicable because France must be treated as "the most favored nation" in Louisiana ports), that vessels therefrom, when accompanied by a proper bill of health, shall be subjected to no other quarantine than such as may be necessary for the visit of the health officers of the port of arrival, unless such vessel is subsequently infected or a general quarantine has been established against all ships coming from the port of departure.

4. The quarantine laws of the several states were not abrogated by the immigration acts of March 3, 1875, August 3, 1882, February 26, 1885, February 23, 1887, and March 3, 1891, and the regulations to enforce the same; but the safeguards which they create and the regulations which they impose on the introduction of immigrants are ancillary and subject to such quarantine laws.

5. The overthrow of the existing state quarantine systems, and the abrogation of the power on the subject of health and quarantine exercised by the states, because the enactment of state laws on these subjects would in particular instances affect interstate and foreign commerce, were not contemplated by the act of Congress of 1893 "granting additional quarantine powers and imposing additional duties upon the Marine Hospital Service" (27 Stat. at L. 449, chap. 114), in view of the provisions of 3 of that act, directing the Supervising Surgeon General to co-operate with and aid state and municipal boards of health in the execution and enforcement of their rules and regulations, and those made by the Secretary of the Treasury to prevent the introduction of contagious or infectious diseases into the United States from foreign countries.

SYLLABUS

The law of Louisiana under which the Board of

Health exerted the authority complained of in this case, is found in section 8 of Act 192 of 1898. The Supreme Court of Louisiana, interpreting this statute held that it empowered the board to exclude healthy persons from a locality infested with a contagious or infectious disease, and that this power was intended to apply as well to persons seeking to enter the infected place, whether they came from without or within the State. *Held:* That this empowered the board to exclude healthy persons from a locality infested with a contagious or infectious disease, and that the power was intended to apply as well to persons seeking to enter the infected place, whether they came from without or within the State.

THIS action was commenced in the state court against the Board of Health of the State of Louisiana and three persons who were members of said board, and whom it was sought to hold individually responsible for damages alleged to have been suffered from the enforcement of a resolution adopted by the board upon the theory that the resolution referred to was *ultra vires* and hence the members of the board who voted for it were personally liable for any damages occasioned by the enforcement of the resolution. The board was thus described in the petition:

"That the defendant The State Board of Health was a body created by Act No. 192 of the General Assembly of the State of Louisiana of the year 1898, with power to sue and be sued, domiciled in this city, (the city of New Orleans,) and composed of seven members, whose duty it was, by the provisions of said act, to protect and preserve the public health by preparing and promulgating a sanitary code for the State of Louisiana, by providing for the general sanitation of the State, and with authority to regulate infectious and contagious diseases and to prescribe a maritime and land quarantine against places infected with such diseases."

It was asserted that the plaintiff, a corporation created by and existing under the laws of the Republic of France and a citizen of said republic, on or about September 2, 1898, caused its steamship Britannia to be cleared from the ports of Marseilles, France, and Palermo, Italy, for New Orleans with a cargo of merchandise and with about 408 passengers, some of whom were citizens of the United States returning home, and others who were seeking homes in the United States, and who intended to settle in the State of Louisiana or adjoining States, and that all the passengers referred to at the time of their sailing were free from infectious or contagious diseases. It was further averred that on September 29, 1898, the vessel arrived at the quarantine station some distance below the city of New Orleans, was there regularly inspected, and was found both as to the passengers and cargo to be free from any infectious or contagious disease, and accordingly was given a clean bill of health, whereby the ship became entitled to proceed to New Orleans and land her passengers and discharge her cargo. This, however, it was asserted she was not permitted to do, because, on the date last mentioned, at a meeting held by the Board of Health, the following resolution was adopted:

"*Resolved*, That hereafter in the case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers or others shall be allowed to enter said town, city or parish so long as said quarantine shall exist, and that the president of the board shall enforce this resolution."

It was charged that in order to enforce this resolution the president of the Board of Health, who was one of the individual defendants, instructed the quarantine officer to detain the Britannia at the quarantine station, and the president of the board addressed to the agent of the steamship the following communication explanatory of the detention of the vessel:

"Referring to the detention of the SS. Britannia at the Mississippi River quarantine station, with 408 Italian immigrants on board, I have to inform you that under the provisions of the new state Board of Health law, section 8, of which I enclose a marked copy, this board has adopted a resolution forbidding the landing of any body of people in any town, city or parish in quarantine. Under this resolution the immigrants now on board the Britannia cannot be landed in any of the following parishes of Louisiana, namely: Orleans, St. Bernard, Jefferson (right bank), St. Tammany, Plaquemines, St. Charles or St. John. You will therefore govern yourselves accordingly."

The president of the Board of Health, it was alleged, moreover notified the agent of the ship that if an attempt was made to land the passengers at any place contiguous to New Orleans, such place not being in quarantine, a quarantine against such place would be declared, and thus the landing be prevented.

It was averred that whilst the resolution of the Board of Health purported on its face to be general in its

operation, in truth it was passed with the sole object of preventing the landing of the passengers from the Britannia, and this was demonstrated because no attempt was made by the Board of Health to enforce the provisions of the resolution against immigrants from Italy coming into the United States via the port of New York and thence reaching New Orleans by rail, and that after the promulgation of said resolution "more than 200 such persons, varying in groups of 30 to 100 in number, have from time to time been permitted to enter said city." It was averred that the action of the board was not authorized by the state law, and if it was, such law was void because repugnant to the provision of the Constitution of the United States conferring upon Congress power "to regulate commerce with foreign nations, and among the several States and with the Indian tribes." Averring that damage had been already entailed to the extent of $ 2500, for which not only the board but its members who voted for the resolution were liable, and reserving the right to claim such future damage as might be entailed by the further enforcement of the resolution, the petition asked for an injunction restraining the enforcement of the resolution in question, and prayed judgment against the board and the members named for $ 2500 *in solido*.

The court declined to allow a preliminary restraining order, and upon a hearing on a rule to show cause, the injunction was refused. The order of the Board of Health, which was complained of, continued, therefore, to be enforced against the ship. Subsequently the plaintiff filed a supplemental and amended petition. It was reiterated that the immigrant passengers on board the Britannia were free from disease when they shipped and at the time of their arrival, and, in addition, it was alleged that the steamer with the immigrants on board had sailed from her port of departure "prior to the declaration by said Board of Health of the existence of any infectious disease in the city of New Orleans." It was alleged that, in consequence of the insistence of the Board of Health and its members, in enforcing the illegal order refusing to allow the landing of the immigrant passengers, the steamer had been obliged to proceed to Pensacola, Florida, where they were landed, and then the steamer returned to New Orleans for the purpose of discharging cargo. The damage resulting was averred to be $ 8500, besides the $ 2500 previously claimed, and a judgment for this amount, in addition to the previous sum, was also asked *in solido* against the board and the members thereof, who were individually made defendants. It was, moreover, averred that the action of the board was "in violation of the laws of the United States, and the rules and regulations made in pursuance thereof, relating to quarantine and immigration from foreign countries into ports of the United States, and especially acts of Congress approved February 15, 1893, and acts of Congress of March the 3d, 1893, August the 3d, 1872, and June the 26th, 1884, and the rules and regulations made in pursuance thereof, and of the treaties now existing between the United States, on the one part, and the Kingdom of Italy and the Republic of France on the other part."

The defendants filed a peremptory exception of no cause of action, which was sustained by the trial court, and the suit was therefore dismissed. On appeal to the Supreme Court of the State of Louisiana the judgment of the trial court was affirmed. *51 La. Ann. 645*.

COUNSEL: *Mr. W. B. Spencer* for plaintiff in error. *Mr. W. W. Howe* was on his brief.

Mr. F. C. Zacharie for defendant in error.

JUDGES: Fuller, Harlan, Gray, Brewer, Brown, Shiras, Jr., White, Peckham, McKenna

OPINION BY: WHITE

OPINION

[*384] [813] [***1213]** MR. JUSTICE WHITE, after making the foregoing statement, delivered the opinion of the court.

The law of Louisiana, under which the Board of Health exerted the authority which is complained of, is found in section 8 of Act No. 192, enacted in 1898. The portion of the section which is essential is as follows, the provision which is more directly pertinent to the case in hand being italicized:

"In case that any parish, town or city, or any portion thereof, shall become infected with any contagious or infectious disease, to such an extent as to threaten the spread of such disease to the other portions of the State, the state Board of Health shall issue its proclamation declaring the facts and ordering it in quarantine, and shall order the local boards of health of other parishes, towns and cities to quarantine against said locality, and shall establish and promulgate the rules and regulations, terms and conditions on which intercourse with said infected

locality shall be permitted, and shall issue to the other local sanitary authorities instructions as to the measures adopted in quarantining against persons, goods or other property coming from said infected localities, and these rules and regulations, **[*385]** terms and conditions shall be observed and obeyed by all other health authorities, provided that should any other of the noninfected portion of the State desire to add to the regulations **[**814]** and rules, terms and conditions already imposed by the state board, they do so on the approval of the state Board of Health. *The state Board of Health may, in its discretion, prohibit the introduction into any infected portion of the State, persons acclimated, unacclimated or said to be immune, when in its judgment the introduction of such persons would add to or increase the prevalence of the disease.* The state Board of Health shall render the local boards of health all the assistance in their power and which the condition of their finances will permit."

The Supreme Court of the State of Louisiana, interpreting this statute, held that it empowered the board to exclude healthy persons from a locality infested with a contagious or infectious disease, and that this power was intended to apply as well to persons seeking to enter the infected place, whether they came from without or from within the State. The court said:

"The law does not limit the board to prohibiting the introduction of persons from one portion of the State to another and an infected portion of the State, but evidently looked as well to the prohibition of the introduction of persons from points outside of the State into any infected portion of the State. As the object in view would be 'to accomplish the subsidence and suppression of the infectious and contagious diseases and to prevent the spread of the same,' it would be difficult to see why parties from outside of the State should be permitted to enter into infected places, while those from the different parishes should be prevented from holding intercourse with each other.

"The object in view was to keep down, as far as possible, the number of persons to be brought within danger of contagion or infection, and by means of this reduction to accomplish the subsidence and suppression of the disease and the spread of the same.

"The particular places from which the parties, who were to be prohibited from entering the infected district or districts, came could have no possible influence upon the attainment of the result sought to be attained.

[*386] "It would make no possible difference whether this 'added fuel' sought to be excluded should come from Louisiana, New York or Europe."

Referring to past conditions and the public dangers which had arisen from them, the evil which the statute of 1898 was intended to remedy was pointed out as follows:

"During the fall of 1897, and during the existence of an epidemic, a vessel arrived in the Mississippi River with emigrants aboard under conditions similar to those under which the Britannia reached the same stream in 1898.

"The excited public discussions at the time as to the right of the state board, under the then existing law, to prevent the landing of the emigrants and as to its duty in the premises, were so extended as to authorize us to take judicial notice of the fact, and in our opinion the clause in the present act which covers that precise matter was inserted therein for the express purpose of placing the particular question outside of the range of controversy.

"For a number of years past emigrants have been coming into New Orleans in the autumn from Italy.

"There was a probability when the general assembly met in 1898 that the epidemic of 1897 might be repeated, and a great probability that emigrants would seek to enter, as they had done the year before, to the great danger, not only of the people of Louisiana, but of the emigrants themselves.

"Independently of this, there was great danger to be apprehended from the increasing intercourse between New Orleans and the West India Islands in consequence of a war with Spain.

"It was to ward off these dangers that this particular provision was inserted in the act of 1898."

And by implication from the reasoning just referred to the existence of the conditions rendering it necessary to call the power into play in the case before it was recognized. Thus construing the statute, the state court held that it was not repugnant to the Constitution of the United States and was not in conflict with any law or treaty of the United States. These latter considerations present the questions which arise for our decision. All the assignments of error relied upon to show the **[*387]** invalidity of the statute of the State of Louisiana, and

hence the illegality of the action of the Board of Health from the point of view of Federal considerations, are, in the argument at bar, summarized in four propositions. We shall consider them separately and thus dispose of the case. In doing so, however, as the **[***1214]** first and second contentions both rest upon the assertion that the statute violates the Constitution of the United States, we shall treat them together.

"First. The statute drawn in question, on its face and as construed and applied, is void for the reason that it is in violation of article I, section 3, paragraph 8, of the Constitution of the United States, inasmuch as it vests authority in the state Board of Health, in its discretion, to interfere with or prohibit interstate and foreign commerce.

"Second. The statute is void for inasmuch as it is in conflict with section 1 of the fourteenth article of amendment to the Constitution of the United States, in this it deprives the plaintiff of its liberty and property without due process of law, and denies to it the equal protection of the law."

That from an early day the power of the States to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress, is beyond question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question. The doctrine was elaborately examined **[**815]** and stated in *Morgan Steamship Company v. Louisiana Board of Health, 118 U.S. 455*. That case involved determining whether a quarantine law enacted by the State of Louisiana was repugnant to the *commerce clause of the Constitution* because of its necessary effect upon interstate and foreign commerce. The court said:

"Is the law under consideration void as a regulation of commerce? Undoubtedly it is in some sense a regulation of commerce. It arrests a vessel on a voyage which may have been a long one. It may affect commerce among the States when **[*388]** the vessel is coming from some other State of the Union than Louisiana, and it may affect commerce with foreign nations when the vessel arrested comes from a foreign port. This interruption of the voyage may be for days or for weeks. It extends to the vessel, the cargo, the officers and seamen, and the passengers. In so far as it provides a rule by which this power is exercised, it cannot be denied that it regulates commerce. We do not think it necessary to enter into the inquiry whether, notwithstanding this, it is to be classed among those police powers which were retained by the States as exclusively their own, and, therefore, not ceded to Congress. For, while it may be a police power in the sense that all provisions for the health, comfort and security of the citizens, are police regulations, and an exercise of the police power, it has been said more than once in this court that, even where such powers are so exercised as to come within the domain of Federal authority as defined by the Constitution, the latter must prevail. *Gibbons v. Ogden, 9 Wheat. 1, 210*; *Henderson v. The Mayor, 92 U.S. 259, 272*; *New Orleans Gas Co. v. Louisiana Light Co., 115 U.S. 650, 661*.

"But it may be conceded that whenever Congress shall undertake to provide for the commercial cities of the United States a general system of quarantine, or shall confide the execution of the details of such a system to a National Board of Health, or to local boards, as may be found expedient, all state laws on the subject will be abrogated, at least so far as the two are inconsistent. But, until this is done, the laws of the State on the subject are valid. This follows from two reasons:

"1. The act of 1799, the main features of which are embodied in Title LVIII of the Revised Statutes, clearly recognizes the quarantine laws of the States, and required of the officers of the Treasury a conformity to their provisions in dealing with vessels affected by the quarantine system. And this very clearly has relation to laws created after the passage of that statute, as well as to those then in existence; and when, by the act of April 29, 1878, 20 Stat. 37, certain powers in this direction were conferred on the Surgeon General of the Marine Hospital Service, and consuls and revenue officers were required to contribute **[*389]** services in preventing the importation of disease, it was provided that 'there shall be no interference in any manner with any quarantine laws or regulations as they now exist or may hereafter be adopted under state laws,' showing very clearly the intention of Congress to adopt these laws or to recognize the power of the State to pass them.

"2. But, aside from this, quarantine laws belong to that class of state legislation which, whether passed with

intent to regulate commerce or not, must be admitted to have that effect, and which are valid until displaced or contravened by some legislation of Congress." Again, in *Louisiana v. Texas, 176 U.S. 1, 21*, the court was called upon to consider a quarantine law of the State of Texas which by its terms was applicable to and was enforced as to both interstate and foreign commerce. After referring approvingly to the case which we have above cited, the court, speaking through Mr. Chief Justice Fuller, said:

"It is not charged that this statute is invalid nor could it be if tested by its terms. While it is true that the power vested in Congress to regulate commerce among the States is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution, and that where the action of the States in the exercise of their reserve powers comes into collision with it, the latter must give way, yet it is also true that quarantine laws belong to that class of state legislation which is valid until **[***1215]** displaced by Congress, and that such legislation has been expressly recognized by the laws of the United States almost from the beginning of the government."

Further, in calling attention to the fact, as remarked by the court in *Morgan Steamship company* v. *Louisiana Board of Health, supra*, that in the nature of things quarantine laws and laws relating to public health must necessarily vary with the different localities of the country, it was said:

"Hence even if Congress had remained silent on the subject it would not have followed that the exercise of the police power of the State in this regard, although necessarily operating on interstate commerce, would be therefore invalid. Although from the nature and subjects of the power of regulating commerce **[*390]** it must be ordinarily exercised by the national government exclusively, this has not been held to be so where in relation to the particular subject-matter different rules might be suitable in different localities. At the same time, Congress could by affirmative action displace the local laws, substitute laws of its own, and thus correct any unjustifiable and oppressive exercise of power by state legislation."

Despite these conclusive adjudications, it is earnestly insisted in the argument at bar that by a correct appreciation of all the decisions of this court on the subject, the rule **[**816]** will be discovered to be that the States may enact quarantine or other health laws for the protection of their inhabitants, but that such laws, if they operate upon or directly affect interstate or foreign commerce, are repugnant to the Constitution of the United States independently of whether Congress has legislated on such subjects. To sustain this contention a most copious reference is made to many cases decided by this court, where the nature and extent of the power of Congress to regulate commerce was considered and the validity of state legislation asserted to be repugnant to such power was passed upon. To analyze and review the numerous cases referred to in order to point out their want of relation to the question in hand, would involve in effect a review of the whole subject of the power of Congress to regulate commerce in every possible aspect, and an analysis of practically the greater body of cases which have in this court involved that serious and difficult subject from the beginning. We shall not undertake to do so, but content ourselves with saying, after duly considering the cases relied upon, that we find them inapposite to the doctrine they are cited to sustain, and hence, when they are correctly appreciated, none of them conflict with the settled rule announced by this court in the cases to which we have referred.

The confusion of thought which has given rise to the misconception of the authorities relied upon in the argument, and which has caused it to be supposed that they are apposite to the case in hand, is well illustrated by the premise upon which the proposition that the cited authorities are applicable rests. That proposition is thus stated in the printed argument (italics in the original):

[*391] "Turning now to the decisions of this court, it will be found that the basis upon which it has upheld the exclusion, inspection and quarantine laws of various States, is that criminals, diseased persons and things, and paupers, *are not legitimate subjects of commerce*. They may be attendant evils, but they are not legitimate subjects of traffic and transportation, and therefore, in their exclusion or detention, the State is not interfering with *legitimate* commerce, which is the only kind entitled to the protection of the Constitution."

But it must be at once observed that this erroneously states the doctrine as concluded by the decisions of this court previously referred to, since the proposition ignores the fact that those cases expressly and unequivocally hold that the health and quarantine laws of the several States are not repugnant to the Constitution of the United States, although they affect foreign and domestic commerce, as

in many cases they necessarily must do in order to be efficacious, because until Congress has acted under the authority conferred upon it by the Constitution, such state health and quarantine laws producing such effect on legitimate interstate commerce are not in conflict with the Constitution. True is it that, is some of the cases relied on in the argument, it was held that a state law absolutely prohibiting the introduction, under all circumstances, of objects actually affected with disease, was valid because such objects were not legitimate commerce. But this implies no limitation on the power to regulate by health laws the subjects of legitimate commerce. In other words, the power exists until Congress has acted, to incidentally regulate by health and quarantine laws, even although interstate and foreign commerce is affected, and the power to absolutely prohibit additionally obtains where the thing prohibited is not commerce, and hence not embraced in either interstate or foreign commerce. True, also, it was held in some of the cases referred to by counsel, that where the introduction of a given article was absolutely prohibited by a state law upon the asserted theory that the health of the inhabitants would be aided by the enforcement of the prohibition, it was decided that, as the article which it was thus sought to prohibit, was a well-known article of commerce, and therefore **[*392]** the legitimate subject of interstate commerce, it could not be removed from that category by the prohibitive effect of state legislation. But this case does not involve that question, since it does not present the attempted exercise by the State of the power to absolutely prohibit the introduction of an article of commerce, but merely requires us to decide whether a state law, which regulates the introduction of persons and property into a district infested with contagious or infectious diseases, is void, because to enforce such regulation will burden interstate and foreign commerce, and therefore violate the **[***1216]** Constitution of the United States. It is earnestly insisted that the statute, whose constitutionality is assailed, is, on its face, not a regulation, but an absolute prohibition against interstate commerce, and it is sought to sustain this contention by various suggestions as to the wrong which may possibly arise from a perversion and an abuse by the state authorities of the power which the statute confers. Thus it is said, what is an infectious and contagious disease is uncertain, and involves a large number of maladies. How many cases of such malady are essential to cause a place to be considered as infected with them is left to the determination of the Board of Health. That board, it is argued, may then arbitrarily, upon the existence of one or more cases of any malady which it may deem to be infectious or contagious, declare any given place in the State, or even the whole State of Louisiana, infected, and proceed to absolutely debar all interstate or foreign commerce with the State of Louisiana. True it is, as said in *Morgan* v. *Louisiana, ubi sup.*:

"In all cases of this kind it has been repeatedly held that, when the question is raised whether the state statute is a just exercise of state power or is intended by roundabout means to invade the domain of Federal authority, this court will look into the operation **[**817]** and effect of the statute to discern its purpose. See *Henderson v. Mayor of New York, 92 U.S. 259*; *Chy Lung v. Freeman, 92 U.S. 275*; *Cannon v. New Orleans, 20 Wall. 587*."

But this implies that we are to consider the statute as enacted and the natural results flowing from it. It does not import that we are to hold a state statute unconstitutional by indulging in **[*393]** conjecture as to every conceivable harm which may arise or wrong which may be occasioned by the abuse of the lawful powers which a statute confers. It will be time enough to consider a case of such supposed abuse when it is presented for consideration. And it is also to be borne in mine, as said by this court in *Louisiana v. Texas, supra, 22*, if any such wrong should be perpetrated "Congress could by affirmative action displace the local laws, substitute laws of its own, and thus correct any unjustifiable and oppressive exercise of power by state legislation." And the views which we have previously expressed suffice to dispose of the contention that the subjecting of the vessel of the plaintiff in error to the restriction imposed by the quarantine and health law of the State operated to deprive the defendant in error of its property without due process of law, in violation of the *Fourteenth Amendment*. It having been ascertained that the regulation was lawfully adopted and enforced the contention demonstrates its own unsoundness, since in the last analysis it reduces itself to the proposition that the effect of the *Fourteenth Amendment* was to strip the government, whether state or national, of all power to enact regulations protecting the health and safety of the people, or, what is equivalent thereto, necessarily amounts to saying that such laws when lawfully enacted cannot be enforced against person or property without violating the Constitution. In other words, that the lawful powers of government which the Constitution has conferred may not be exerted without bringing about a

violation of the Constitution.

"Third. The statute as applied and construed is void, for the reason that it is in conflict with treaties between the United States on the one part and the Republic of France and the Kingdom of Italy on the other part, guaranteeing certain rights, privileges and immunities to the citizens and subjects of said countries."

Reliance is placed to sustain this proposition, on the provisions of a treaty concluded with the Kingdom of Italy on February 26, 1871; on the terms of a treaty with Great Britain of July 3, 1815, as also a treaty between the United States and the Kingdom of Greece, concluded December 22, 1837, and one concluded **[*394]** with the Kingdom of Sweden and Norway on July 24, 1827. The treaties of other countries than Italy are referred to upon the theory that as by the treaty concluded with France on April 3, 1803, by which Louisiana was acquired, it was provided that France should be treated upon the footing of the most favored nation in the ports of the ceded territory, therefore the treaties in question made with other countries than France were applicable to the plaintiff in error, a French subject.

Conceding, *arguendo*, this latter proposition, and therefore assuming that all the treaties relied on are applicable, we think it clearly results from their context that they were not intended to and did not deprive the government of the United States of those powers necessarily inhering in it and essential to the health and safety of its people. We say the United States, because if the treaties relied on have the effect claimed for them that effect would be equally as operative and conclusive against a quarantine established by the government of the United States as it would be against a state quarantine operating upon and affecting foreign commerce by virtue of the inaction of Congress. Without reviewing the text of all the treaties, we advert to the provisions of the one made with Greece, which is principally relied upon. The text of article XV of this treaty is the provision to which our attention is directed, and it is reproduced in the margin.[1]

1 "Article XV. It is agreed that vessels arriving directly from the United States of America at a port within the dominion of His Majesty the King of Greece, or from the Kingdom of Greece, at a port of the United States of America, and provided with a bill of health granted by an officer having competent power to that effect at the port whence such vessel shall have sailed, setting forth that no malignant or contagious diseases prevailed in that port, shall be subjected to no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessel shall have arrived, after which said vessels shall be allowed immediately to enter and unload their cargoes; Provided always, that there shall be on board no person who, during the voyage, shall have been attacked with any malignant or contagious disease; that such vessel shall not, during the passage, have communicated with any vessel liable itself to undergo quarantine; and that the country whence they came shall not at that time be so far infected or suspected that, before their arrival, an ordinance had been issued in consequence of which all vessels coming from that country should be considered as suspected, and consequently subject to quarantine."

[*395] It is apparent that it provides only the particular form of document which shall be taken by a ship of the Kingdom of Greece and reciprocally by those of the United **[***1217]** States for the purpose of establishing that infectious or contagious diseases did not exist at the point of departure. But it is plain from the face of the treaty that the provision as to the certificate was not intended to abrogate the quarantine power, since the concluding section of the article in question expressly subjects the vessel holding the certificate to quarantine detention if, on its arrival, a general quarantine had been established against all ships coming from the port whence the vessel holding the certificate had sailed. It other words, the treaty having provided the certificate and given it effect under ordinary conditions, proceeds to subject the vessel holding the certificate **[**818]** to quarantine, if, on its arrival, such restriction had been established in consequence of infection deemed to exist at the port of departure. Nothing in the text of the treaty, we think, gives even color to the suggestion that it was intended to deal with the exercise by the government of the United States of its power to legislate for the safety and health of its people or to render the exertion of such power nugatory by exempting the vessels of the Kingdom of Greece, when coming to the United States, from the operation of such laws. In other words, the treaty was made subject to the enactment of such health laws as the local conditions might evoke not paramount to them. especially where the restriction imposed upon the vessel

is based, not upon the conditions existing at the port of departure, but upon the presence of an infectious or contagious malady at the port of arrival within the United States, which, in the nature of things, could not be covered by the certificate relating to the state of the public health at the port whence the ship had sailed.

"Fourth. The statute as applied is void for the reason that it is in conflict with the laws of the United States relating to foreign immigration into the United States."

In the argument at bar this proposition embraces also the claim that the statute is void because in conflict with the act of Congress of 1893 entitled "An act granting additional quarantine powers and imposing additional duties upon the Marine **[*396]** Hospital Service." 27 Stat. 449. And that it also is in conflict with the rules and regulations adopted for the enforcement of both the immigration laws and the quarantine law referred to.

The immigration acts to which the proposition relates are those of March 3, 1875, of August 3, 1882, of June 26, 1884, of February 26, 1885, of March 23, 1887, and March 3, 1891, and the regulations to enforce the same. Without undertaking to analyze the provisions of these acts, it suffices to say that, after scrutinizing them, we think they do not purport to abrogate the quarantine laws of the several States, and that the safeguards which they create and the regulations which they impose on the introduction of immigrants are ancillary, and subject to such quarantine laws. So far as the act of 1893 is concerned, it is manifest that it did not contemplate the overthrow of the existing state quarantine systems and the abrogation of the powers on the subject of health and quarantine exercised by the States from the beginning, because the enactment of state laws on these subjects would, in particular instances, affect interstate and foreign commerce. An extract from section 3 of the act, which we think makes these conclusions obvious, is reproduced in the margin.[1]

1 "SEC. 3. That the Supervising Surgeon General of the Marine Hospital Service shall, immediately after this act takes effect, examine the quarantine regulations of all state and municipal boards of health, and shall, under the direction of the Secretary of the Treasury, cooperate with and aid state and municipal board of health in the execution and enforcement of the rules and regulations of such boards and in the execution and enforcement of the rules and regulations made by the Secretary of the Treasury, to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, and into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia; and all rules and regulations made by the Secretary of the Treasury shall operate uniformly and in no manner discriminate against any port or place; and at such ports and places within the United States as have no quarantine regulations under state or municipal authority, where such regulations are, in the opinion of the Secretary of the Treasury, necessary to prevent the introduction of contagious or infectious diseases into the United States from foreign counties, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and at such ports and places within the United States where quarantine regulations exist under the authority of the state or municipality which, in the opinion of the Secretary of the Treasury, are not sufficient to prevent the introduction of such diseases into the United States, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, the Secretary of the Treasury shall, if in his judgment it is necessary and proper, make such additional rules and regulations as are necessary to prevent the introduction of such diseases into the United States from foreign countries, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and when said rules and regulations have been made they shall be promulgated by the Secretary of the Treasury and enforced by the sanitary authorities of the States and municipalities, where the state or municipal health authorities will undertake to execute and enforce them; but if the state or municipal authorities shall fail or refuse to enforce said rules and regulations the President shall execute and enforce the same and adopt such measures as in his judgment shall be necessary to prevent the introduction or spread of such diseases, and may detail or appoint officers for that purpose. The Secretary of the Treasury shall make such rules and regulations as are necessary to be observed by vessels at the port of departure and on the voyage, where such vessels sail from

> any foreign port or place to any port or place in the United States, to secure the best sanitary condition of such vessel, her cargo, passengers and crew, which shall be published and communicated to and enforced by the consular officers of the United States."

[*397] **[***1218]** Nor do we find anything in the rules and regulations adopted by the Secretary of the Treasury in execution of the power conferred upon him by the act in question giving support to the contention based upon them. It follows from what has been said that the Supreme Court of Louisiana did not err in deciding that the act in question was not repugnant to the Constitution of the United States, and was not in conflict with the acts of Congress on the treaties made by the United States which were relied upon to show to the contrary and its judgment is, therefore,

Affirmed.

DISSENT BY: BROWN

DISSENT

MR. JUSTICE BROWN, with whom was MR. JUSTICE HARLAN, dissenting.

The power of the several States, in the absence of legislation by Congress on the subject, to establish quarantine regulations, to prohibit the introduction into the State of persons infected **[*398]** with disease, or recently exposed to contagion, and to impose a reasonable charge upon vessels subjected to examination at quarantine stations, is so well settled by repeated decisions of this court as to be no longer open to doubt. This case, however, does not involve that question, but the broader one, whether, in the assumed exercise of this power, the legislature may declare certain portions of the State to be in quarantine, and prohibit the entry therein of *all* persons whatsoever, whether coming from the United States or foreign countries, from infected or uninfected ports, whether the persons included are diseased or have recently been exposed to contagion, or are perfectly sound and healthy, and coming from ports in which there is no suspicion of contagious diseases.

I have no doubt of the power to quarantine all vessels arriving in the Mississippi from foreign ports for a sufficient length of time to enable the health officers to determine whether there are among her passengers any persons afflicted with a contagious disease. But the State of Louisiana undertakes to do far more than this. It authorizes the state Board of Health at its discretion to "prohibit the introduction into any infected portion of the State of persons acclimated, unacclimated or said to be immune, when in its judgment the introduction of said persons would add to or increase the prevalence of the disease;" and at its meeting on September 29, 1898, the Board of Health adopted the following resolution:

"That hereafter, in the case of any town, city or parish of Louisiana being declared in quarantine, no body or bodies of people, immigrants, soldiers or others shall be allowed to enter said town, city or parish so long as said quarantine shall exist, and that the president of the board shall enforce this resolution."

[819]** In other words, the Board of Health is authorized and assumes to prohibit in all portions of the State which it chooses to declare in quarantine, the introduction or immigration of all persons from outside the quarantine district, whether infected or uninfected, sick or well, sound or unsound, feeble or healthy; and that, too, not for the few days necessary to establish the sanitary *status* of such persons, but for an indefinite and possibly **[*399]** permanent period. I think this is not a necessary or proper exercise of the police power, and falls within that numerous class of cases which hold that States may not, in the assumed exercise of police power, interfere with foreign or interstate commerce.

The only excuse offered for such a wholesale exclusion of immigrants is, as stated by the Supreme Court, "to keep down, as far as possible, the number of persons to be brought within danger of contagion or infection, and by means of this reduction to accomplish the subsidence and suppression of the disease, and the spread of the same." In other words, the excuse amounts to this: that the admission, even of healthy persons, adds to the possibility of the contagion being communicated upon the principle of adding fuel to the flame. It does not increase the danger of contagion by adding infected persons to the population, since the bill avers that all the immigrants were healthy and sound. All it could possibly do is to increase the number of persons who might become ill if permitted to be added to the population. This is a danger not to the population, but to the immigrants. It seems to me that this is a possibility too remote to justify the drastic measure of a total exclusion

of all classes of immigrants, and that the opinion of the court is directly in the teeth of *Railroad Company v. Husen, 95 U.S. 465*, wherein a state statute, which prohibited the driving or conveying of any Texas, Mexican or Indian cattle into the State, between March 1 and November 1 in each year, was held to be in conflict with the *commerce clause of the Constitution*. Such statute was declared to be more than a quarantine regulation, and not a legitimate exercise of the police power of the State. Said Mr. Justice Strong, page 472: "While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self-protection it **[***1219]** may establish quarantine and reasonable inspection laws, it may not interfere with the transportation into or through the State, beyond what is absolutely necessary **[*400]** for its self-protection. It may not under the cover of exerting its police powers substantially prohibit or burden either foreign or interstate commerce." The statute was held to be a plain intrusion upon the exclusive domain of Congress; that it was not a quarantine law; not an inspection law, and was objectionable because it prohibited the introduction of cattle, no matter whether they may do an injury to the inhabitants of a State or not; "and if you do bring them in, even for the purpose of carrying them through the State without unloading them, you shall be subject to extraordinary liabilities." Cases covering the same principle are those of *State v. Steamship Constitution, 42 Cal. 578*, and *City of Bangor v. Smith, 83 Maine, 422*.

I am also unable to concur in the construction given in the opinion of the court to the treaty stipulation with France and other foreign powers. The treaty with France of 1803 provides that "the ships of France shall be treated upon the footing of the most favored nation in the ports above mentioned" of Louisiana. Article 14 of the treaty with Greece of December 22, 1837, set forth in the opinion, provides that vessels arriving **[**820]** directly from the Kingdom of Greece at any port of the United States of America, "and provided with a bill of health granted by an officer having competent power to that effect, at the port whence such vessel shall have sailed, setting forth that no malignant or contagious diseases prevailed in that port, shall be subjected to no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessel shall have arrived, after which said vessels shall be allowed immediately to enter and unload their cargoes: *Provided always*, That there shall be on board no person who, during the voyage, shall have been attacked with any malignant or contagious disease; that such vessel shall not, during the passage, have communicated with any vessel liable itself to undergo quarantine, and that the country whence they came, shall not at that time be so far infected or suspected that, before their arrival, an ordinance had been issued, in consequence of which, all vessels coming from that country should be considered as suspected, and consequently subject to quarantine."

[*401] If the law in question in Louisiana, excluding French ships from all access to the port of New Orleans, be not a violation of the provision of the treaty that vessels "shall be subject to no other quarantine than such as may be necessary for the visit of a health officer of the port, after which such vessels shall be allowed immediately to enter and unload their cargoes," I am unable to conceive a state of facts which would constitute a violation of that provision. Necessary as efficient quarantine laws are, I know of no authority in the States to enact such as are in conflict with our treaties with foreign nations.

LEXSEE 216 MICH 280

ROCK v. CARNEY

Docket No. 17

SUPREME COURT OF MICHIGAN

216 Mich. 280*; *185 N.W. 798*; *1921 Mich. LEXIS 458*; *22 A.L.R. 1178

June 23, 1921, Submitted
December 21, 1921, Decided

HEADNOTES

[*1]** 1. PUBLIC HEALTH -- RULES AND REGULATIONS -- REASONABLENESS -- JUDICIAL QUESTION.

While the power to protect the public health is vested by law in public health boards, the legality and reasonableness of the rules and regulations through which this power is exercised constitute judicial questions beyond the power of the legislature to foreclose.

2. PUBLIC HEALTH -- COMMUNICABLE DISEASES -- CLASSIFICATION -- POWERS OF STATE BOARD OF HEALTH -- QUESTIONS REVIEWABLE.

While the classification of a disease as dangerous and communicable by the State board of health under 1 Comp. Laws 1915, § 5018, may not be reviewed by the courts, the method adopted to prevent the spread thereof is open to judicial inquiry when a claimed unlawful exercise of authority has been visited upon a citizen and redress is asked.

3. PUBLIC HEALTH -- EXAMINATIONS FOR COMMUNICABLE DISEASES -- REASONABLE GROUNDS.

The power of a public health officer to make physical examinations of persons to determine the presence of communicable diseases, under 3 Comp. Laws 1915, § 5091, may not be exercised indiscriminately, but only in good faith and upon reasonable ground to believe that the person examined is infected.

[*2]** 4. PUBLIC HEALTH -- COMMITMENT OF INFECTED PERSON TO DETENTION HOSPITAL -- POWER OF HEALTH OFFICER.

In the absence of statutory authority, a public health officer has no power to refuse a person infected with a communicable disease isolation in the home by quarantine and placard notice thereof and to commit the diseased person to a hospital.

5. PUBLIC HEALTH -- RESTRAINT OF LIBERTY -- JUSTIFICATION -- VENEREAL DISEASE -- EVIDENCE -- BURDEN OF PROOF.

In an action against a city health officer, who was also an inspector for the State board of health, for damages for the alleged unlawful detention of plaintiff in a hospital for treatment for venereal disease, where the detention was made to appear, the burden was upon defendant to justify the same.

6. PUBLIC HEALTH -- EVIDENCE -- DIRECTED VERDICT.

In said action, where defendant offered no evidence tending to justify his conduct, the trial court was in error in directing a verdict in favor of defendant.

SYLLABUS

Error to Gratiot; Moinet (Edward J.), J. Submitted June 23, 1921. (Docket No. 17.) Decided December 21, 1921.

Case by Nina McCall Rock, an infant, by her next friend, against Thomas J. Carney and others for the unlawful **[***3]** restraint of plaintiff's liberty in a detention hospital for treatment. Judgment for defendants on a directed verdict. Plaintiff brings error. Reversed.

COUNSEL: *Brown & Kelley* and *S. H. Person,* for appellant.

O. L. Smith and *James G. Kress* (*Cummins & Nichols,* of counsel), for appellees.

OPINION BY: FELLOWS

OPINION

[*281] **[**800contd]** [EDITOR'S NOTE: The page number of this document may appear out of sequence; however, this pagination accurately reflects the pagination of the original published document.]

FELLOWS, J. Plaintiff at the time the events occurred which are the basis of this lawsuit in 1918 was 18 years of age. She lived with her mother at St. Louis about 3 miles from Alma. Defendant Carney is a physician residing at Alma and was at that time health officer of that city and had also been appointed an inspector by the State board of health. There was at this time a considerable number of soldiers stationed at Alma and the State board of health together with local health boards and officers were at this time engaged in the work of eradicating and preventing the spread of venereal diseases especially among soldiers. Defendant Ida B. Peck **[***4]** was a nurse and social worker employed by the city of Alma and the school board of that city to aid in this work. Defendant Mary Corrigan was superintendent of a hospital at Bay City where girls and women are detained **[*282]** and treated for such diseases. This hospital had a contract with the State board of health to care for female patients thus afflicted. As the trial judge directed a verdict for defendants the testimony most favorable to plaintiff must be accepted. This testimony tended to establish the following state of facts: Plaintiff was approached by a Mr. Martin, a deputy sheriff. What he said to her was excluded, but as a result of their conversation she and her mother accompanied Mr. Martin to the office of Dr. Carney in Alma where the doctor in the presence of her mother and a lady nurse made a physical examination of her person. It is her claim that this was without her consent although no force was used or any assault committed other than that necessary to make the examination. He informed them that she was diseased, that she had gonorrhea and would have to go to Bay City. He also told them she would have to go to Bay City or their home would be placarded **[***5]** showing the presence of venereal disease. She claims that later he told her she would have to go to Bay City and that he would not consent to her remaining at home and placarding the house. Plaintiff signed two papers in which she consented to go to the Bay City hospital and accept treatment and agreed to follow the rules and regulations of the institution. It is her claim that she signed them without knowledge of their contents. Dr. Carney executed a certificate showing that she was afflicted with gonorrhea and this certificate together with the two papers signed by her were given to defendant Peck who took plaintiff to the Bay City hospital and delivered to defendant Corrigan the papers intrusted to her. Shortly after plaintiff was received at the hospital blood was extracted for examination, for a Wasserman test; its examination disclosed positive results indicating syphilis, and she was treated for both gonorrhea and syphilis for about **[*283]** twelve weeks, and at the end of that time she was discharged from the institution, having been found free from the diseases in the infectious stage. She claims that upon the insistence of defendant Peck she went to Dr. Carney after **[***6]** she returned home and received further treatments. She brings this action to recover the damages she claims to have suffered through the various acts of these defendants who she claims were acting in concert, and it is the claim of her counsel that each and all of the acts of defendants were without statutory authority and that they infringed the constitutional rights of this plaintiff.

The questions involved in this litigation are of supreme importance, not only to the individuals composing this commonwealth, but also to the numerous boards of health and to the State itself. We approach their consideration with a due regard of their importance. Neither a desire to sustain the State, nor a supersensitiveness prompted by the delicacy of the examination here involved should in any way enter into or control our decision. Policies adopted by the legislative and executive branches of the State government are not submitted to this branch for approval as to their wisdom. They stand or fall in this court because valid or invalid under the law, and their wisdom or want of wisdom in no way rests with us. If valid they must be upheld by this court; if invalid they must be so declared **[***7]** by this court. If these defendants have transcended their power they must be held liable, and **[**801]** they may not be excused from liability by the fact that their motives were of the highest. If they have not transcended their power they are not liable, and supersensitiveness or preconceived notions of proprieties no matter of how long standing do not render them liable.

The case must be determined by the application of cold rules of law.

In section 5018, 1 Comp. Laws 1915, it is provided:

[*284] "The said State board of health is hereby expressly authorized to designate what diseases are dangerous communicable diseases and what diseases are contagious diseases, and it shall be the duty of every local board of health and health officer to observe such rules in relation to dangerous communicable diseases and contagious diseases as may be prescribed by the said State board of health."

Acting pursuant to the authority here conferred the State board of health designated gonorrhea and syphilis as dangerous communicable diseases. The validity of the provision of the statute above quoted is here assailed by plaintiff's counsel as a delegation of legislative power and it **[***8]** is claimed that it contravenes sections 1 and 2 of article 4 of the Constitution of the State. We cannot follow plaintiff's counsel in this contention. This is not an attempt on the part of the legislature to delegate to a board or commission the power to make a law but is the delegation to a board of the power to find a fact, a scientific fact, a medical fact. This distinction was clearly pointed out in *Locke's Appeal, 72 Pa. St. 491, 498 (13 Am. Rep. 716*), where it was said:

"Then, the true distinction, I conceive, is this: The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government."

It is now too late to insist that the power given to administrative boards, commissions and officers to determine questions of fact and to make proper administrative rules and regulations is the delegation of legislative or judicial power. Much of recent legislation of this character has been assailed on this ground and with striking unanimity the courts have rejected the contention. See **[***9]** *Kennedy v. State Board of Registration, 145 Mich. 241*; *Michigan Cent. R. Co.* **[*285]** *v. Railroad Commission, 160 Mich. 359*, *Feek v. Bloomingdale Township Board, 82 Mich. 393 (10 L.R.A. 69*); *Sherlock v. Stuart, 96 Mich. 193 (21 L.R.A. 580*); *Union Bridge Co. v. United States, 204 U.S. 364 (27 Sup. Ct. 367*).

In 1917 a large number of young men were in the military camps of the State; many of them in training for service in the World War. Prompted by this fact the State board of health took up and considered at length the measures to be adopted for the control of venereal diseases. A committee was appointed to prepare rules and regulations looking to that end. The committee acted but the regulations and rules suggested by it were not adopted by the board as a board. Under these circumstances we need not consider the question as to whether such rules and regulations would be a protection to these defendants if they had been adopted. Not having been adopted by the board they cannot be here considered as a defense to this action. As the events occurred prior to the enactment of Act No. 272, Pub. Acts 1919, the laws existing prior thereto **[***10]** only are to be considered.

Dr. Carney was the health officer of the city of Alma and had likewise been appointed an inspector by the State board of health pursuant to the provisions of section 5018, 1 Comp. Laws 1915. He was, therefore, clothed with such authority as the statutes gave to inspectors of the State board of health and to the health officers of local boards of health. He was the instrument through which both acted. Broad powers were conferred upon the State board of health by the legislature; general language was used. By section 4989, 1 Comp. Laws 1915, it was provided:

"The State board of health shall have the general supervision of the interests of the health and life of the citizens of this State."

[*286] Local boards of health were likewise given broad powers in cases of communicable diseases. By section 5055, 1 Comp. Laws 1915, it was provided:

"When any person coming from outside the county or residing in any township, city or village within this State shall be infected or shall lately before have been infected with a dangerous communicable disease, the board of health of the township, city or village where such person may be shall make effectual **[***11]** provision in the manner in which it shall judge best for the safety of the inhabitants, and it may remove such sick or infected person to a separate house if it can be done without danger to his health, and shall provide nurses and other assistance and necessaries which shall be at the charge of the person himself, his parents or other persons who may be liable for his support, if able." * * *

This section as it appears in the compilation of 1915 is as it was finally amended by Act No. 98, Pub. Acts 1909, it having been amended in 1903 by Act No. 7 of the Public Acts of that year. These amendments had to do solely with the auditing of bills and the raising of funds to meet them and did not alter or change the power of the board of health in cases of communicable diseases. In section 4424, 1 Comp. Laws 1897, will be found the law as it existed prior to these amendments **[**802]** and the portion of the statute above quoted will be there found. In *Township of Cedar Creek v. Board of Sup'rs of Wexford Co., 135 Mich. 124*, Chief Justice HOOKER, speaking for the court, said:

"The health board has large discretionary powers, made necessary by the fact that it is an emergency **[***12]** board. When it has reason to fear danger from diseases which are generally recognized as communicable and dangerous to the public health, a court may be justified in taking judicial notice that the disease is within the statute, which in plain terms includes *all* diseases where there is danger to the public health **[*287]** from a threatened spread of the disease. There may be other diseases which the courts can judicially know not to be within the statute; but there are still others where it cannot be a matter of judicial notice. * * * Within reasonable bounds, at least, the health officer's conclusion that a disease is communicable, and is a menace to public health, must be conclusive; otherwise the efficiency of health officers and boards would be seriously lessened, for persons would be likely to hesitate about furnishing necessary medicines and other commodities, and rendering services, if it involved the danger of review by another board, with power to disallow claims upon the ground that the disease was not within the statute, or the goods furnished were not necessary."

The case of *Highland v. Schulte, 123 Mich. 360*, is a leading case and has been frequently **[***13]** cited by the courts of other States. In that case the plaintiff occupied the east half of a two-family dwelling. Smallpox existed in the family occupying the west half. Defendants, constituting the board of health of Detroit, quarantined the entire building although there were no connecting passages between the homes and plaintiff had not been exposed to the disease. He brought the action to recover his damages occasioned by the quarantine. This court held there was no liability and that defendants were authorized to make the regulations requiring that double houses be quarantined where smallpox breaks out in one of the homes.

But in *Hurst v. Warner, 102 Mich. 238 (26 L.R.A. 484, 47 Am. St. Rep. 525)*, this court held that a rule of the board of health requiring the inspection of baggage of *all* immigrants irrespective of whether they came from localities where communicable disease existed or not was broader than the power conferred upon the board by section 5011, 1 Comp. Laws 1915, as it then existed. I shall have occasion to refer to this case later.

[*288] I quote some excerpts from the article on "Health" in Ruling Case Law:

"Generally, the authority **[***14]** of boards of health or other bodies designated to act as boards of health, is prescribed by general enactments of the legislature or by municipal charters. For the protection of the health of the community, the most extensive powers may be conferred on such boards whether State or local. Whatever doubt there may be as to the extent of powers not expressly conferred, there can be no question that the legislature may invest them with the most ample authority within the locality in which they are to act. And while, being creatures of statute, they have only such powers as the statutes confer, it is well settled that the authorizing acts should be construed liberally in order to effectuate the purpose of the legislature; and this notwithstanding that the liberty of individual citizens may largely be involved." 12 R.C.L. p. 1268.

"Generally, what laws or regulations are necessary to protect the public health and secure public comfort is a legislative question, and appropriate measures intended and calculated to accomplish these ends are not subject to judicial review. So the courts have no jurisdiction to interfere with the acts of health authorities except in cases of palpable abuse **[***15]** of the discretion conferred. The judgment of the court should not be substituted for the judgment of the board of health. Moreover, every reasonable presumption should be indulged in favor of the validity of the action of health authorities." 12 R.C.L. p. 1273.

"One of the most important of all health regulations is that directed to the exclusion of communications is that directed to the exclusion of communicable diseases and the keeping of such diseases, when they have once gained an entrance, within the smallest possible limits, and providing for the establishment and enforcement of regulations by which their general dissemination shall be

prevented and their continued existence rendered improbable or impossible. Power to make quarantine regulations is one of the most frequent powers conferred upon boards of health. **[*289]** Such regulations constitute a proper exercise of the police power. Under this power regulations may be adopted which provide for the isolation of persons who have infectious and contagious diseases, and which prevent persons so affected from coming, or which prohibit infected goods from being carried, within the jurisdiction of the board. It is common **[***16]** knowledge that contagious diseases may be communicated by those who have been exposed to the disease; and it is the common practice for the health authorities to detain all such persons from going abroad so long as the danger is imminent from those who have been exposed." 12 R.C.L. p. 1289.

In *Allison v. Cash, 143 Ky. 679 (137 S.W. 245)*, it was said by the court:

"A board of health is an instrumentality of government created for convenience and invested with such powers as will enable it to protect the general health of the people of the State, county or community over which it is given jurisdiction. As said in 21 Cyc. pp. 394, 395:

"'The power to remove and quarantine persons who have been infected with communicable diseases, or exposed to contagion, need not, however, be conferred on sanitary authorities in express terms; but may be implied from the general power to preserve the public health, or to guard against the introduction or spread of contagious diseases. * * * Under **[**803]** powers similar to those which authorize the establishment of quarantine, sanitary authorities may require the disinfection not only of property that has actually been exposed to contagion, **[***17]** but of all articles liable to convey infection, especially where it is impossible to ascertain their history or the place from which they originally came.' * * *

"It seems to be well settled that a health officer, who by statute is authorized to take action for the prevention of the spread of disease, is not liable for injuries resulting from such reasonable and customary measures as he may in good faith adopt or direct for that purpose with regard to persons or matters subject to his jurisdiction."

[*290] The detention in quarantine of persons infected with communicable diseases has long been recognized by the medical profession and the public at large as one of the most effective measures that may be taken to prevent their spread. Such measures have uniformly been held to be within the police power of the State. The health of the people is of supreme importance to the State, and measures reasonably calculated to promote the public health have with uniformity been sustained. The statute I have quoted from gives the power to the board of health to detain in quarantine persons infected with a communicable disease. I think the question of whether the persons shall be detained **[***18]** in a detention hospital or in their own homes must be left to the honest judgment of the duly constituted authorities. The purpose of the quarantine is isolation, prevention of infection. If this can, in the honest judgment of the health officer, be better secured by detention in a hospital, and the health officer so decides, it is not for the courts to override such decision and substitute their judgment for that of those skilled in the healing art and intrusted by the law with the determination of the question.

The power to quarantine carries with it in my judgment as a necessary incident to the exercise of such power the right to examine one whom the health officer has reasonable grounds to believe is infected with the communicable disease. But the legislature has not left this subject in doubt. Section 5091, 1 Comp. Laws 1915, provides in part as follows:

"That whenever the health officer of any township, city or village in this State shall receive reliable notice or shall otherwise have good reason to believe that there is within the township, city or village of which he is the health officer, a case of smallpox, diphtheria, scarlet fever or other communicable disease **[***19]** dangerous to the public health, it shall be the duty of said health **[*291]** officer, unless he is or shall have been instructed by the board of health of which he is an executive officer, to do otherwise, immediately to investigate the subject, and in behalf of the board of health of which he is an executive officer, to order the prompt and thorough isolation of those sick or infected with such disease, so long as there is danger of their communicating the disease to other persons." * * *

Our State has not been alone in dealing with the question of the control of venereal diseases. With the advent of the World War and the congregation of a large number of young men in military camps the necessity of control of venereal diseases forced itself upon the attention of the health officers of other States, and the

courts of some of these other States have been called upon to determine the power of such boards in the premises. So far as I have been able to ascertain, the following are all the cases dealing with the specific questions of power to examine and quarantine those infected with venereal diseases which have arisen from this situation: *Wragg v. Griffin, 185 Iowa, 243* **[***20]** *(170 N.W. 400, 2 A.L.R. 1327*); *In re McGee, 105 Kan. 574 (185 Pac. 14, 8 A.L.R. 831*); *State, ex rel. McBride, v. Superior Court, 103 Wash. 409 (174 Pac. 973*); *In re Hardcastle, 84 Tex. Crim. Rep. 463 (208 S.W. 531*); *In re Brooks, 85 Tex. Crim. Rep. 397 (212 S.W. 956*); *In re Johnson, 40 Cal. App. 242 (180 Pac. 644*); *In re Dillon (Cal. App.), 186 Pac. 170*; *In re Travers (Cal. App.), 192 Pac. 454*; *In re Shepard (Cal. App.), 195 Pac. 1077*; *Dowling v. Harden (Ala. App.), 88 South. 217*; *Brown v. Manning, 103 Neb. 540 (172 N.W. 522*).

The case of *Wragg* v. *Griffin* must be accepted as sustaining the contention of plaintiff's counsel, while the balance of the cases tend to sustain the contention of defendants' counsel. It should be said in passing, however, that the Texas cases hold that upon *habeas corpus* the question of fact as to whether the detained **[*292]** person is infected with a venereal disease may be tried out, and the California courts seem to have adopted that practice *(In re Travers, supra).* I am persuaded that in the absence of fraud or arbitrary action on the part of the examining health officer, his conclusion **[***21]** is final and that this question is foreclosed in this State by the reasoning of the case of *Township of Cedar Creek v. Board of Sup'rs of Wexford Co., supra.* In *State, ex rel. McBride, v. Superior Court, supra,* the court concluded its opinion with the following statement:

"Finally, we hold that it is within the power of the legislature, in dealing with the problems of public health, to make the determination of a fact by a properly constituted health officer final and binding upon the public as well as upon the courts."

And in *Re McGee, supra,* it was said:

"In the application for the writ it is stated that the petitioners are not diseased. The question is one of fact, determinable by practically infallible scientific methods. The city health officer was authorized to ascertain the fact. He has certified to the existence of disease, and, in the absence of a charge of bad faith, or conduct equivalent to bad faith, on his part, his finding is conclusive."

[804]** The purpose of these measures to prevent the spread of venereal diseases is thus stated in *Re Brooks, supra:*

"The object of the law is not punishment for the unfortunates who are afflicted **[***22]** with these maladies, so easily transmitted and so fearful in results, but the well being of these and the remainder of the people."

Again I quote from the *McGee Case:*

"The rules of the State board of health and the city ordinance are assailed as unreasonable. In this instance only those provisions of the rules of the State instance only those provisions of he rules of the State board of health and of the city ordinance are involved **[*293]** which relate to isolation of persons who have been examined and have been found to be diseased. Reasonableness of provisions relating to discovery and to examination of suspects need not be determined. It may be observed, however, that while provisions of the latter class cut deeply into private personal right, the subject is one respecting which a mincing policy is not to be tolerated. It affects the public health so intimately and so insidiously that considerations of delicacy and privacy may not be permitted to thwart measures necessary to avert the public peril. Only those invasions of personal privacy are unlawful which are unreasonable, and reasonableness is always relative to gravity of the occasion. Opportunity for abuse **[***23]** of power is no greater than in other fields of governmental activity, and misconduct in the execution of official authority is not to be presumed."

An examination of the authorities, a consideration of our own statutes, having in mind the rule that they should be liberally construed in order that the aim intended, *i.e.,* the good of the public health, should be attained, leads me irresistibly to the conclusion that we should hold: That the State board of health has validly determined that gonorrhea and syphilis are communicable diseases; that the power exists in the boards of health acting through their respective health officers to quarantine persons infected with these diseases either in their homes or in detention hospitals, such detention to continue so long as the diseases are in their infectious state; and that, subject to what will now be considered, such health officer has the power to make such examination as the nature of the disease requires to determine its presence.

I have said that I thought the health officer had the power to make the examination. When may that power be exercised? Indiscriminately? May he send for every man and woman, every boy and girl of the **[***24]** vicinage and examine them for these disorders? I think not. Section 5091, 1 Comp. Laws 1915, says **[*294]** that he may investigate the subject when he "shall receive reliable notice or shall otherwise have good reason to believe." *Hurst v. Warner, supra,* places the ban on the indiscriminate inspection of the baggage of *all* immigrants, and the case of *In re Dillon, supra,* quite fully considers this question. After holding that the circumstances of that particular case did not furnish reasonable grounds for making the examination, and after considering the question at some length, the court announces this rule:

"Where sufficient reasonable cause exists to believe that a person is afflicted with a quarantinable disease, there is no doubt of the right of the health authorities to examine into the case and, in a proper way, determine the fact. Such preliminary investigation must be made without delay, and, if quarantining is found to be justifiable, such quarantine measures may be resorted to only as are reasonably necessary to protect the public health, remembering that the persons so affected are to be treated as patients, and not as criminals."

Dr. Carney had **[***25]** the power to make the examination but he could not exercise such power unless he had reasonable grounds to believe that plaintiff was infected. Such good faith on his part was a necessary prerequisite to the exercise of the power. I am unable to follow the contention of defendants' counsel that this record establishes such good faith. Dr. Carney was not sworn as a witness and it did not appear from any testimony introduced in the case that he had any information with reference to plaintiff, her habits or her conduct, which would give him reasonable grounds to believe that she was infected with either of the diseases named. In the absence of such testimony I think the trial judge was in error in directing a verdict for defendant Carney. What information defendant Carney had was within his own knowledge and not within the knowledge of the plaintiff.

[*295] The trial judge required plaintiff's counsel to elect as to which defendant he would proceed against. This ruling is of doubtful propriety, but plaintiff was not harmed by it. Defendants Peck and Corrigan both had before them the certificate of Dr. Carney that plaintiff was infected with a communicable disease, gonorrhea; **[***26]** both had before them the papers signed by plaintiff. The certificate of the doctor was sufficient grounds for a reasonable belief that plaintiff was infected with this disease and furnished a protection for their acts.

After the connection of defendant Carney with Mr. Martin was shown in the case, as it was shown, it was competent to prove what Mr. Martin said to plaintiff. Such testimony was not competent when it was first offered. The other assignments of error have been considered but do not merit discussion.

I think the case should be reversed for the error pointed out, and that the costs should abide the final result.

STEERE, C.J., and SHARPE, J., concurred with FELLOWS, J.

CONCUR BY: WIEST (In Part)

CONCUR

[798contd]** [EDITOR'S NOTE: The page number of this document may appear out of sequence; however, this pagination accurately reflects the pagination of the original published document.]

WIEST, J. *(concurring in part).* The judgment should be reversed, but I am not willing to go the whole length of the opinion of Mr. Justice FELLOWS relative to the powers of boards of health and health officers. I do not deem it necessary to state in full the limitations **[***27]** upon the powers to be exercised by health officers, but leave decision thereon until the proper case arises. It is sufficient to pass upon what was done here and determine whether, under the evidence, a case was presented for the consideration of the jury.

There is power to protect the public **[**799]** health; it is vested by law in public health boards to be exercised through reasonable rules and regulations duly promulgated. Whether such rules and regulations are **[*296]** lawful and reasonable, considering the true end in view and personal rights guaranteed citizens by the Constitution, constitute judicial questions beyond the power of the legislature to foreclose.

Arbitrary power, beyond the reach of redress open to

an injured citizen, is not vested in boards of health or anywhere else under our system of government. While courts may well be loath to review health regulations, promulgated by an executive board under legislative delegated authority, yet in a proper case the duty exists, and no board by executive action can close the court and succeed in having its officers remain immune from judicial inquiry when a claimed unlawful exercise of authority has been visited **[***28]** upon a citizen and redress is asked.

Courts may be controlled by the determination of an executive board skilled as to what constitutes a dangerous communicable disease and may not attempt to review such classification, but the method adopted or exercised to prevent the spread thereof must bear some true relation to the real danger, and be reasonable, having in mind the end to be attained, and must not transgress the security of the person beyond public necessity.

Measures to prevent the spread of dangerous communicable diseases and to provide for the isolation and segregation of those diseased are practically as old as history. It has been said that:

"The history of pestilence is the history of quarantine."

The law of Moses segregated the lepers and their forced cry of "unclean, unclean," was the forerunner of the modern warning placard. Ancient Rome and Greece had their systems under which those infected with leprosy were separated from the well. In 1448 the senate of Venice instituted a code of quarantine, **[*297]** and a few years earlier a regularly organized lazaretto, or pesthouse, was established.

"The republic of Venice also established the first board of health. **[***29]** It consisted of three nobles, and was called the council of health. It was ordered to investigate the best means of preserving health, and of preventing the introduction of disease from abroad. Its efforts not having been entirely successful, its powers were enlarged in 1504, so as to grant it 'the power of life and death over those who violated the regulations for health.' No appeal was allowed from the sentence of this tribunal." 91 North Am. Rev. p. 442.

During the plague in London in 1665, the magistrates consulted to devise means for stopping, or at least impeding the progress of the disease, and the result of their deliberations was a series of orders which appointed commissioners, searchers, chirurgeons, and buriers, to each district, acting under certain regulations, and which directed the provisions of an old act of parliament to be in force, for shutting up all such houses as appeared to the proper officers to contain any infected person, and every house which was visited, as it was called, was by those orders marked with a red cross of a foot long in the middle of the door, evident to be seen. See 22 Littell's Living Age, p. 227. The act of parliament mentioned was **[***30]** passed in 1603.

The law has not yet conferred upon boards of health the old time custom of the Samnites of examining the conduct of the young people or of holding general inquisition for the discovery of venereal disease. The board of health has no legislative power; it may, under delegated power, enact rules and regulations for the protection and preservation of the public health, but must steer clear of combining legislative with executive power; in other words, such board cannot give itself power and then execute the power. I have been unable to lay my finger upon any statute authorizing **[*298]** or even sanctioning by inference the procedure here adopted. I recognize the need of full power to stay the spread of epidemic diseases and I find such power in the statute, but I cannot find there that, by the mere determination that a disease is dangerous and communicable, there follows power at the will of a health officer to refuse isolation in the home by quarantine and placard notice thereof and to commit the diseased person to a hospital. If the law conferred the power exercised by the health officer in this instance, then children with any one of the numerous diseases now **[***31]** declared dangerous and communicable could be taken from their homes and sent to a hospital.

Act No. 272, Pub. Acts 1919 (enacted since the acts complained of), expressly relates to venereal diseases. If the power existed before this law then it was a general power and still exists and covers all diseases determined as dangerous and communicable, and the law of 1919 has neither added to nor taken from such power.

And right here arises the question of whether the exercise of the power by the defendant officer in refusing this girl right of quarantine in her own home was an unreasonable act and not warranted by menace to the public health, and her confinement in the detention hospital an unlawful restraint of her person. This

presented an issue of fact for the jury and the trial judge was in error in directing a verdict for defendant.

The restraint over the person of plaintiff **[**800]** being made to appear, the burden was upon defendants to justify the same under the authority of some law. It would be an intolerable interference by way of officious meddling for health officers to assert and then assume the power of making physical examination of girls at will for venereal **[***32]** disease. The law of 1919 points out methods for bringing venereal cases to the attention **[*299]** of health officers, but does not sanction what plaintiff claims was done in this case, and surely the power of defendant was not more without law upon the subject than it is now with law.

I agree with my Brother that, if the health officer had power at all to examine plaintiff, he had no right to exercise it without reasonable cause, such cause to precede examination and in no way to depend upon the result of examination. In any event the defendant had no right to suspect and examine plaintiff so long as she had no accuser. [1]

1 In 1 Am. Rul. Cas. Ann. pp. 827-1080, under the title "Health," may be found a valuable collection of cases relating to the powers of health boards. -- REPORTER.

MOORE, STONE, and BIRD, JJ., concurred with WIEST, J. CLARK, J., did not sit.

a school district, the board may not, under its general powers, temporarily close the schools until the epidemic has passed; but what I do say is that the legislature has not undertaken to give them the power, when no epidemic of contagious disease exists or is imminent in the district, to pass a general, continuing rule which would have the effect of a general law excluding all pupils who will not submit to vaccination."

The instant case was foreshadowed in that opinion. During the winter of 1922-23 smallpox existed in the city of Lansing. The board of health and the board of education for a time worked in harmony. On January 8th, the board of health after consulting with the **[*390]** secretary of the State board of health, the president of the board of education, and others, passed a resolution directing that steps be taken to prevent the **[***4]** spread of the disease, these steps including quarantine and free vaccination. On January 25th it adopted a further resolution requiring the exclusion from the public schools of school children, teachers and janitors who had not been vaccinated. Notwithstanding the former harmonious relations between the two boards, on January 30th the board of education passed a resolution reciting that there were but 17 cases of smallpox then existing in the city and directing the admission of children to the schools who had not been vaccinated. This proceeding in mandamus was then instituted in the circuit court for the county of Ingham to require the enforcement of the regulations of the board of health. The writ issued and the proceeding is here reviewed by certiorari.

We are plowing no virgin field in considering the questions here involved. Numerous decisions, both Federal and State, have considered the questions now before us. They are not all in accord and in some instances are not reconcilable. There is, however, a very marked trend in them in one direction, that which upholds the right of the State in the exercise of its police power and in the interest of the public health to enact **[***5]** such laws, such rules and regulations, as will prevent the spread of this dread disease. The power of the State to require vaccination in case the disease was present in a community was upheld in *Jacobson v. Massachusetts, 197 U.S. 11 (25 Sup. Ct. 358, 3 Ann. Cas. 765)*, where it was said by Justice Harlan, speaking for the court:

"But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed **[*391]** from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. * * *

"Applying these principles to the present case, it is to be observed **[***6]** that the legislature of Massachusetts required the inhabitants of a city or town to be vaccinated only when, in the opinion of the board of health, that was necessary for the public health or the public safety. The authority to determine for all what ought to be done in such an emergency must have been lodged somewhere or in some body; and surely it was appropriate for the legislature to refer that question, in the first instance, to a board of health, composed of persons residing in the locality affected and appointed, presumably, because of their fitness to determine such questions. To invest such a body with authority over such matters was not an unusual nor an unreasonable or arbitrary requirement. Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members. It is to be observed that when the regulation in question was adopted, smallpox, according to the recitals in the regulation adopted by the board of health, was prevalent to some extent in the city of Cambridge and the disease was increasing. If such was the situation -- and nothing is asserted or appears **[***7]** in the record to the contrary -- if we are to attach any value whatever to the knowledge which, it is safe to affirm, is common to all civilized peoples touching smallpox and the methods most usually employed to eradicate that disease, it cannot be adjudged that the present regulation of the board of health was not necessary in order to protect the public health and secure the public safety. Smallpox being prevalent and increasing at Cambridge, the court **[*392]** would usurp the functions of another branch of government if it adjudged, as matter of law, that the mode adopted under the sanction of the State, to protect the people at large, was arbitrary and not justified by the necessities of the case."

In the case of *State v. Hay, 126 N.C. 999 (35 S.E. 459, 49 L.R.A. 588, 78 Am. St. Rep. 691*), it was said:

"* * * It is every day common sense that if a people can draft or conscript its citizens to defend its borders from invasion, it can protect itself from the deadly pestilence that walketh by noon-day, by such measures as medical science has found most efficacious for that purpose. We know, as an historical fact, that prior to the discovery, 101 years ago, of **[**97]** **[***8]** vaccination, by Edward Jenner, smallpox often destroyed a third or more of the population of a country which it attacked, and so futile was every precaution, and the most careful seclusion, that the greatest sovereigns fell victims to this loathsome disease, which Macaulay has styled 'the most terrible of all ministers of death.' If this was so in days of imperfect communication, the present rapid means of intercourse between most distant points would so spread the disease as to quickly paralyze commerce, and all public business, if government could not at once stamp it out by compelling all alike for the public good as much as for their own, to submit to vaccination. * * *

"But even if we were of opinion with the small number of medical men who contend that vaccination is dangerous to health, and not a preventive of the disease, the court is not a paternal despotism, gifted with infallible wisdom, whose function is to correct the errors and mistakes of the legislature."

In the *Matter of Viemeister, 179 N.Y. 235 (72 N.E. 97, 70 L.R.A. 796, 1 Ann. Cas. 334, 103 Am. St. Rep. 859*), the court held as it has been held in other States that the courts would take judicial notice of **[***9]** the fact that the common belief of the people is that vaccination is a preventive of smallpox and it was there said:

[*393] "The right to attend the public schools of the State is necessarily subject to some restrictions and limitations in the interest of the public health. A child afflicted with leprosy, smallpox, scarlet fever or any other disease which is both dangerous and contagious, may be lawfully excluded from attendance so long as the danger of contagion continues. Public health as well as the interest of the school requires this, as otherwise the school might be broken up and a pestilence spread abroad in the community. So a child recently exposed to such a disease may be denied the privilege of our schools until all danger shall have passed. Smallpox is known of all to be a dangerous and contagious disease. If vaccination strongly tends to prevent the transmission or spread of this disease, it logically follows that children may be refused admission to the public schools until they have been vaccinated."

In *Morris v. City of Columbus, 102 Ga. 792 (30 S.E. 850, 42 L.R.A. 175, 66 Am. St. Rep. 243*), the court sustained the validity of a vaccination ordinance **[***10]** of the city enacted under delegated authority, and it was said:

"The ordinance is aimed only at those who have not been vaccinated within a certain time, who are not immune, or who have not furnished a certificate from some physician that the injection of the virus into their system would be injurious. It is even more liberal than that; it allows to every person the privilege of being inoculated by the physician of his choice. There can be no question that this is a reasonable exercise of the power conferred upon the city authorities by the legislature. With the wisdom or policy of vaccination the courts have nothing to do. We do not propose to enter into a discussion as to whether or not it is a preventive of smallpox. That question is not proper subject-matter for review by the courts. The legislature has seen fit to adopt the opinion of those scientists who insist that it is efficacious, and this is conclusive upon us. * * * No law which infringes any of the natural rights of man can long be enforced. Under our system of government the **[*394]** remedy of the people, in that class of cases where the courts are not authorized to interfere, is in the ballot-box. Any law **[***11]** which violates reason, and is contrary to the popular conception of right and justice will not remain in operation for any length of time, but courts have no authority to declare it void merely because it does not measure up to their ideas of abstract justice. The motive which doubtless actuated the legislature in the passage of the act now under consideration was that vaccination was for the public good. In this the general assembly is sustained by the opinion of a great majority of the men of medical science both in this country and in Europe."

See, also, *Bissell v. Davison, 65 Conn. 183 (32 Atl. 348, 29 L.R.A. 251*); *State v. Board of Education, 76 Ohio St. 297 (81 N.E. 568, 10 Ann. Cas. 879*); *Commonwealth v. Pear, 183 Mass. 242 (66 N.E. 719, 67 L.R.A. 935*); *Abeel v. Clark, 84 Cal. 226 (24 Pac. 383*); *In re Walters, 84 Hun (N.Y.), 457*; *People v. Ekerold, 211 N.Y. 386 (105 N.E. 670*); *Hutchins v. Durham, 137 N.C. 68 (49 S.E. 46, 2 Ann. Cas. 340*); *State, ex rel. Cox, v.*

Board of Education, 21 Utah, 401 (60 Pac. 1013).

It is further urged on behalf of defendants that assuming the State has power to require vaccination of **[***12]** children as a condition of admission to the public schools, such power can only be exercised by the legislature, and that it can not be, and has not been, delegated to the local health boards. We shall not quote all the provisions of our legislation having reference to the powers of the health boards. The details, what shall be done as different situations arise, must, of necessity, be left to some administrative body. Section 5081, 1 Comp. Laws 1915, provides:

"When the smallpox or any other disease dangerous to the public health, is found to exist in any township, the board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travelers, by such means **[*395]** as in their judgment shall be most effectual for the common safety."

See, also, section 5091, 1 Comp. Laws 1915. Under section 288 of the charter of the city of Lansing its board of health is given the power conferred on health boards by the general laws of the State. By the statute above quoted very broad powers to deal with this dread disease are conferred. Since the early case of *Hazen v. Strong, 2 Vt. 427*, decided in 1830, the **[***13]** general tendency of the courts has been to give to statutes dealing **[**98]** with the public health a liberal construction. In that case the power had been delegated to the selectmen to take "the most prudent measures" to prevent the spread of the disease. It was there said:

"When the legislature made it the duty of the selectmen in each town, in which there should be any person infected with the smallpox, to take the most prudent measures to prevent the spreading of the disease, they may not have thought of the particular measure of inoculating for the kine pox. They may not have known that to be a prudent or efficacious measure. But whenever it is found to be evidently such the provisions of the statute are broad enough to include it. These prudent measures to prevent the spread of the disease, are to be taken at the expense of the town, and not of individuals. There may be trouble and expense to individuals, but the selectmen cannot compel them to pay any expense of their proceedings. These must be paid by the town. Now, experience fully evinces the eminent utility of the kine pox in saving expense, as well as placing a safeguard around each individual, to protect life **[***14]** and health, while all attend to their usual vocations, instead of being confined with a loathsome disease, or becoming nurses to those who are thus confined. We are, therefore, disposed to support the selectmen, and the town, in this measure to prevent the spreading of the disease, when circumstances render any measures necessary."

In the case of *State, ex rel. Freeman, v. Zimmerman,* **[*396]** *86 Minn. 353 (90 N.W. 783, 58 L.R.A. 78, 91 Am. St. Rep. 351*), the same questions were before the court as we have under consideration in the instant case. It was there said:

"In view of the importance of the interests confided to the care of health officers, the various statutes conferring such powers should, notwithstanding the individual liberty of the citizens is in a large measure involved, receive a broad and liberal construction in aid of the beneficial purposes of their enactment. * * *

"It will be noted that none of the provisions of the statute just quoted expressly authorizes municipal authorities or health officers to require children to be vaccinated, as a condition precedent to their admission to the public schools; yet we have no hesitation in holding (giving **[***15]** the several provisions referred to a broad and liberal construction) that the legislature intended to confer such power upon them. A broad and comprehensive delegation of power to do all acts and make all regulations for the preservation of the public health as are deemed expedient confers, by fair implication, at least, the power sought to be exercised in this case."

In *Blue v. Beach, 155 Ind. 121 (56 N.E. 89, 50 L.R.A. 64, 80 Am. St. Rep. 195*), the supreme court of that State also had before it the questions here involved. The power had been delegated in general terms. In an exhaustive and able opinion written by Justice Jordan, the authorities are fully considered and the right to exclude children who had not been vaccinated from the public schools was upheld. We quote somewhat at length from this case:

"It can not be successfully asserted that the power of boards of health to adopt rules and by-laws subject to the provisions of the law by which they are created, and in harmony with other statutes in relation to the public health, in order that the 'outbreak and spread of contagious and infectious diseases' may be prevented, is

an improper delegation of legislative **[***16]** authority, **[*397]** and a violation of *article 4, § 1, of the constitution.* It is true beyond controversy that the legislative department of the State, wherein the constitution has lodged all legislative authority, will not be permitted to relieve itself of this power by the delegation thereof. It can not confer on any body or person the power to determine what the law shall be, as that power is one which only the legislature, under our constitution, is authorized to exercise; but this constitutional inhibition can not properly be extended so as to prevent the grant of legislative authority, to some administrative board or other tribunal, to adopt rules, by-laws, or ordinances for the government of or to carry out a particular purpose. It can not be said that every grant of power to executive or administrative boards or officials, involving the exercise of discretion and judgment, must be considered as a delegation of legislative authority. While it is necessary that a law, when it comes from the lawmaking power, shall be complete, still there are many matters relating to methods or details which may be, by the legislature, referred to some designated ministerial officer or **[***17]** body. All of such matters fall within the domain of the right of the legislature to authorize an administrative board or body to adopt ordinances, rules, by-laws, or regulations in aid of the successful execution of some general statutory provision. * * * This being true, and an emergency on account of danger from smallpox having arisen, and the board believing, as we may assume, that the disease would spread through the public schools, and further believing that it could be prevented, or its bad effects lessened, by the means of vaccination, and thereby afford protection to the pupils of such schools and the community in general, it would certainly have the right, under the authority with which it was invested by the State, to require, during the continuance of such danger, that no unvaccinated child be allowed to attend the public school; or the board might, under the circumstances, in its discretion, direct that the schools be temporarily closed during such emergency, regardless of whether or not the pupils thereof refused to be vaccinated.

"If vaccination was the most effective means of preventing the spread of the disease through the public schools, and this the local board **[***18]** seems to have determined, **[*398]** it then became not only the right but the duty of the board to require that the pupils of such schools be vaccinated as a sanitary condition imposed upon their privilege of attending the schools during the period of the threatened epidemic of smallpox."

Upon the question of the exercise of delegated authority, see, also, *In the Matter of Rebenack, 62 Mo. App. 8*; *State, ex rel.* **[**99]** *O'Bannon, v. Cole, 220 Mo. 697 (119 S.W. 424, 22 L.R.A. [N.S.] 986)*; *State, ex rel. Cox, v. Board of Education, supra.*

The last speaking of the court of last resort of the Nation is *Zucht v. King, 260 U.S. 174 (43 Sup. Ct. 24)*, handed down November 13, 1922. This was a case involving delegated power. It was there said:

"Long before this suit was instituted, *Jacobson v. Massachusetts, 197 U.S. 11 (25 Sup. Ct. 358, 3 Ann. Cas. 765)*, had settled that it is within the police power of a State to provide for compulsory vaccination. That case and others had also settled that a State may, consistently with the Federal Constitution, delegate to a municipality authority to determine under what conditions health regulations **[***19]** shall become operative. *Laurel Hill Cemetery v. San Francisco, 216 U.S. 358 (30 Sup. Ct. 301)*. And still others had settled that the municipality may vest in its officials broad discretion in matters affecting the application and enforcement of a health law. *New York, ex rel. Lieberman, v. Van De Carr, 199 U.S. 552 (26 Sup. Ct. 144)*. A long line of decisions by this court had also settled that, in the exercise of the police power, reasonable classifications may be freely applied and that regulation is not violative of the equal protection clause merely because it is not all-embracing. *Adams v. Milwaukee, 228 U.S. 572 (33 Sup. Ct. 610)*; *Miller v. Wilson, 236 U.S. 373, 384 (35 Sup. Ct. 342*, L.R.A. 1915F, 829). In view of these decisions we find in the record no question as to the validity of the ordinance sufficiently substantial to support the writ of error. Unlike *Yick Wo v. Hopkins, 118 U.S. 356 (6 Sup. Ct. 1064)*, these ordinances confer not arbitrary power, but only **[*399]** that broad discretion required for the protection of the public health."

In 12 R.C.L. p. 1289, it is said:

"Generally express power to require the vaccination **[***20]** of school children is not necessary, but may be implied from discretionary power to take all proper measures to safeguard the public health."

In the case of *Highland v. Schulte, 123 Mich. 360*, this court had before it the delegation of power to the Detroit board of health in most general terms. Acting

under it the board of health made a rule that where smallpox developed in one apartment of a double house the whole house should be quarantined. The power of the board to make and enforce such a rule was upheld.

The language of the section quoted confers on the board of health broad powers; it permits the board to work out the details necessary to prevent the spread of the disease. There must be some elasticity in order to effectually meet varying conditions and the legislature has seen fit to fix the ultimate purpose of the regulations to be the "common safety" and to leave the details necessary to work out that purpose to an administrative board. We can not say upon this record that the members of that board have chosen the wrong means or that they lack the power in the exercise of their honest judgments to make the regulation here considered.

The courts are always **[***21]** open to review the arbitrary action, the abuse of discretion of an administrative body. But we would not be justified in holding in the instant case that the action of the health board was arbitrary or that it had abused its discretion. While the number of cases of smallpox in Lansing seems to be in dispute, if we accept defendants' figures the disease is present in the city and there are several **[*400]** cases of it. From an examination of the case of *State, ex rel. Cox, v. Board of Education, supra,* it will be noted that at the time of the hearing there were 200 cases of smallpox in the city of Salt Lake City, all of which were directly traceable to one case. In *Duffield v. School District, 162 Pa. 476 (29 Atl. 742, 25 L.R.A. 152)*, the school board had refused admission to children who had not been vaccinated. The action of the board was upheld by the court, and it was said:

"It is not an error in judgment, or a mistake upon some abstruse question of medical science, but an abuse of discretionary power, that justifies the courts in interfering with the conduct of the school board or setting aside its action."

And in *Auten v. School Board of Little* **[***22]** *Rock, 83 Ark. 431 (104 S.W. 130)*, it was said:

"It was the duty of the city council and of the board of health of the city, as far as possible, to protect the inhabitants of the city from malignant, contagious and infectious diseases, and the special duty of the school board to guard the pupils of the school against such dangers. When we consider that a number of cases of smallpox were already in the city, and that strict precautions were necessary to prevent the spread of the disease, we do not think there can be any ground for the contention that this requirement that pupils should be vaccinated before entering the schools was unreasonable and unnecessary."

When we consider that one child may innocently communicate the disease to all its playmates in school and realize how quickly the scourge spreads unless restrained, it becomes evident that courts ought not to stay the hands of an administrative board seeking to protect the public health unless clearly convinced that the board is acting arbitrarily and in abuse of discretion. Courts ought not to under such circumstances with pencil and paper figure out percentages **[*401]** and probabilities and say to such board we will **[***23]** substitute our judgment for yours and unless a certain percentage of the population is stricken, you may not act.

Finally it is insisted that mandamus may not be resorted to. This contention is answered by the case of *State, ex rel. Horne, v. Beil, 157 Ind. 25 (60 N.E. 672)*, in which case mandamus was issued on application of the board of health to compel the school **[**100]** trustees to enforce a regulation similar to the one here involved. We think the board of health is to be commended instead of condemned for applying to the court to enforce its order rather than to attempt its enforcement by "brute force."

The writ was properly issued and the judgment will be affirmed. As the question is a public one no costs will be allowed.

McDONALD, CLARK, and STEERE, JJ., concurred with FELLOWS, J.

CONCUR BY: WIEST

CONCUR

WIEST, C.J. *(concurring).* Without subscribing to all of the general observations relative to powers vested in boards of health, but confining consideration thereof to the very instance before us, I concur in the result reached by Mr. Justice FELLOWS.

DISSENT BY: MOORE

DISSENT

MOORE, J. *(dissenting).* On January 25, 1923, the board of health of the city of Lansing **[***24]** passed the following resolution:

"That all school children, teachers and janitors not already vaccinated be excluded from the public schools of Lansing until such time as in the opinion of the board of health the danger from further spread of smallpox has passed."

On January 30, 1923, the board of education of the city of Lansing adopted the following resolution:

[*402] "Whereas, the work of the schools of the city of Lansing has been seriously interrupted during the past month, and

"Whereas, large numbers of children have been vaccinated, and

"Whereas, there is no epidemic of smallpox in this city, there being only 17 cases at present;

"Therefore be it resolved by the board of education of the city of Lansing that all principals of schools in the city be instructed to admit any child to school who has not had smallpox recently, or who has not been living in a family having smallpox, or who is not quarantined and who in his or her judgment is in good health and has not been exposed to smallpox.

"This resolution is passed in the interests of the schools and for the purpose of enforcing proper school law and having in school all children who ought legally to be in **[***25]** attendance."

The return of the school board shows there had been no case of smallpox in 19 of the 22 public schools of the city. The answer also contains the following statement:

"And further answering, said respondents say that the city of Lansing is a city with a population of approximately seventy thousand persons and that there were and are approximately eleven thousand children of school age in attendance in the public schools within said city; and respondents deny that in view of the population of said city and the number of children of school age therein, that the number of cases of smallpox as alleged in said petition as having existed or existing within said city, has created an epidemic of smallpox therein and say that no epidemic of smallpox has existed or does exist which warrants or authorizes the order of the board of health referred to in said petition undertaking to generally exclude from attendance in the public schools of children who have not been vaccinated for smallpox."

The answer further states that there are approximately 1,500 unvaccinated children of school age in the city of Lansing. It may or may not be of interest **[*403]** that the president **[***26]** of the school board, which makes the return, is one of the leading physicians in Lansing. The answer of the school board was verified and no plea thereto was made so that it may be said the answer should be taken as true (3 Comp. Laws 1915, § 13440).

It may be pertinent at the outset to inquire what is an epidemic as related to disease. Webster's Dictionary says it is "a disease, which spreading widely, attacks many persons at the same time." Could 17 cases of smallpox, duly quarantined, in a city of 70,000 people, be said to be within the definition of an epidemic?

The legislature has spoken upon the subject of smallpox and what should be done when it appears. Commencing with section 5075, 1 Comp. Laws 1915, nearly three pages are devoted to the subject of what shall be done when the disease appears. Provision is made for removal to hospitals, for isolation, for quarantine. Section 5091, 1 Comp. Laws 1915, tells what shall be the duty of the health officer. Nowhere is it suggested in any of these provisions that all school children must be vaccinated and that if they are not they may be excluded from the public schools though they are in good health and have not been exposed **[***27]** to the smallpox.

Justice FELLOWS is quite right in saying of the decisions of the courts that they are not all in accord and in some instances are not reconcilable. I think he is wrong in concluding that the case of *Mathews v. Kalamazoo Board of Education, 127 Mich. 530 (54 L.R.A. 736*), foreshadowed the result reached in his opinion. So far as that opinion is applicable to the instant case we think it justifies the action of the school board in declining to exclude unvaccinated children from the public schools. The prevailing opinion in that case undertook to show, and we think **[*404]** did show, that the parent was under obligation to send his child of school age to the public school and that the practical effect of the action of the school board in that case would be to compel vaccination. In the instant case if the resolution of the board of health is to control then the child must be debarred from attending school unless

vaccinated, even though the parent may have religious scruples against vaccination, and though a very large number of people of excellent judgment object to the introduction of vaccine virus into the bodies **[**101]** of healthy children, and **[***28]** though the school board, which is undoubtedly in touch with local conditions, is of the opinion there was no occasion for the order of the board of health and, if we may take judicial cognizance of the conditions in Lansing, the sequel has shown that the board of education was right and the board of health was unnecessarily disturbed.

The case of *Duffield v. School District, 162 Pa. 476 (29 Atl. 476, 25 L.R.A. 152*), cited in the opinion of Justice FELLOWS, was quoted from at length in the minority opinion in *Mathews v. Board of Education, supra,* but this court declined to follow it and the line of cases of which it is a type. On the contrary the court quoted with approval from *Potts v. Breen, 167 Ill. 67 (47 N.E. 81, 39 L.R.A. 152, 59 Am. St. Rep. 262*), and from *State, ex rel. Adams, v. Burdge, 95 Wis. 390 (70 N.W. 347, 37 L.R.A. 157, 60 Am. St. Rep. 123*). To these cases should be added the case of the *People, ex rel. Jenkins, v. Board of Education, 234 Ill. 422 (84 N.E. 1046, 17 L.R.A. [N.S.] 709 14 Ann. Cas. 943*).

As has already appeared the legislature has spoken as to what may be done in cases of smallpox. If it should decide that **[***29]** in addition to the power now conferred upon boards of health they should also have the power to exclude all unvaccinated children from the **[*405]** public schools it will undoubtedly say so. Until that is done the board of public health may not act as it has attempted to do here. See *Rock v. Carney, 216 Mich. 280 (22 A.L.R. 1178*).

We think the writ was improperly issued and should be dismissed. The case is one of public interest and no costs should follow.

BIRD and SHARPE, JJ., concurred with MOORE, J.