

Legal Aspects of Active Tuberculosis

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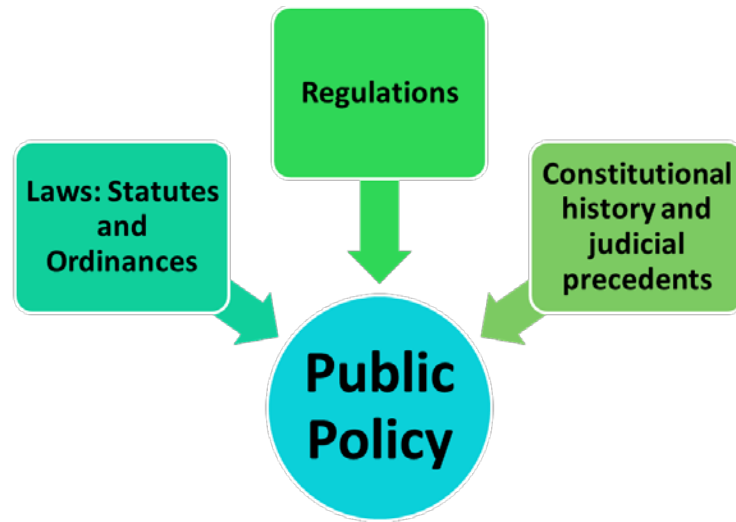


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Public health responsibilities in TB control

- Planning and policy development
- Contact investigation
- Clinical/diagnostic services for TB patients and contacts
- Training and education
- Surveillance and information management
- Monitoring and evaluation



Federal Quarantine Authority

To prevent introduction/transmission/interstate spread of communicable disease such as TB into or within the United States

Two separate regulatory parts allows apprehension or detaining a person with a “quarantinable disease” :

- Part 70=domestic interstate quarantine
- Part 71=travelers seeking entry into the United States
- Court order is not necessary

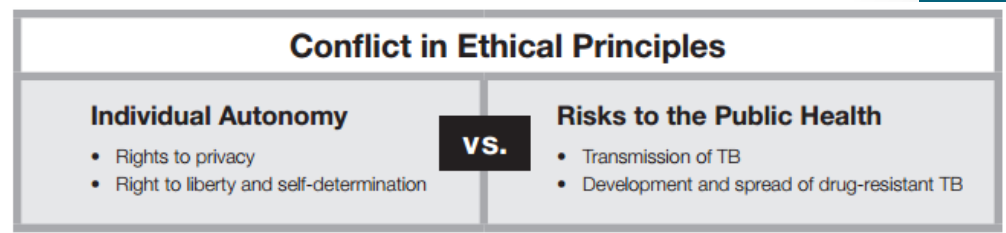
Not applicable to cases of extra-pulmonary TB or clinically diagnosed pulmonary TB

Constitutional Requirements:

- Restrict individual liberty
- U.S. Constitution:
 - 5th Amendment-Due Process Clause “nor be deprived of life, liberty, or property, without due process of law”
 - 14th Amendment-makes “due process” applicable to states

Constitutional Law Requirements for Both Federal and State Regulations:

- Must have compelling State interest
- “Well-Targeted” intervention
- Least restrictive alternative
- Due Process Requirements:
 - Right to notice
 - Right to counsel
 - Right to hearing on request
 - Reasonable belief for detention





“I got an offer of employment from a UAE-based company in 2014. However, during the medical examination, an x-ray showed scars on my lungs. Due to this, I was permanently banned from entering the UAE. I consulted a doctor and was told that I had a tuberculosis virus, but was cured. Only the scars remain.

The doctor told me I was as fit as any normal person. But a permanent ban was imposed on me on basis of Ministerial Order No. 28/2010 and Law No. 7/2008. Please let me know if this ban can be lifted.”

“Pursuant to your question, it may be noted that relevant provisions of the Ministerial Order No 28 of 2010 and the Federal Law No. 7/2008 specifically state that applications for new visas for persons with a previous record of having suffered tuberculosis or presently suffering from the disease are considered unfit by law for further processing.

Pursuant to this, all individuals seeking a residence/employment visa in the UAE are required to undergo a compulsory medical examination. It may be noted that the reports of the medical examination are carefully scrutinized on a case to case basis. In cases where scars are found on the lungs of an applicant, the reports are further examined for incidence of tuberculosis. Subsequently, the individuals confirmed to having suffered from tuberculosis on a previous occasion are imposed a lifetime immigration ban.”

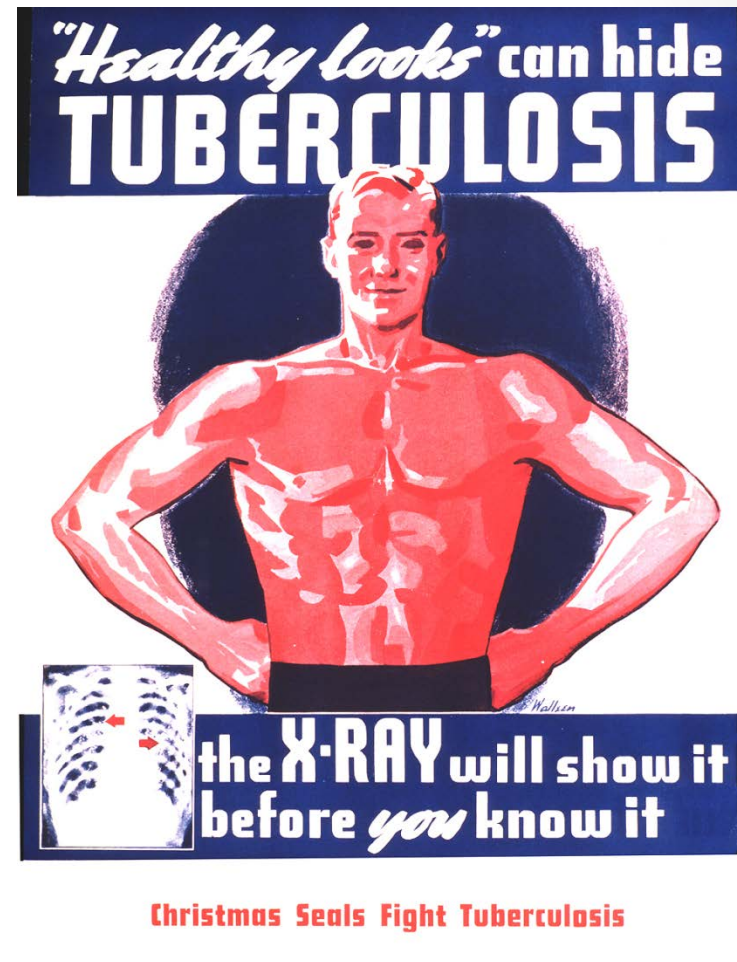
Police Powers

Protect, preserve, and promote:

- Health
- Safety
- Morals
- General welfare

Can restrict private interests
(within Constitutional limits):

- Personal interests—Autonomy, privacy, association, expression, liberty
- Economic interests—Contractual freedom, property uses, pursue trades and occupations



Health Department Authority

To Protect the Public from TB Disease

- Defined by Michigan Public Health Code
- Public health responsibilities are a joint function of state and local health departments
- Michigan's 45 local health departments have the primary responsibility to protect human health within their jurisdictions
- MDHHS provides systems or services where statewide administration most effective
e.g. Michigan Disease Surveillance System

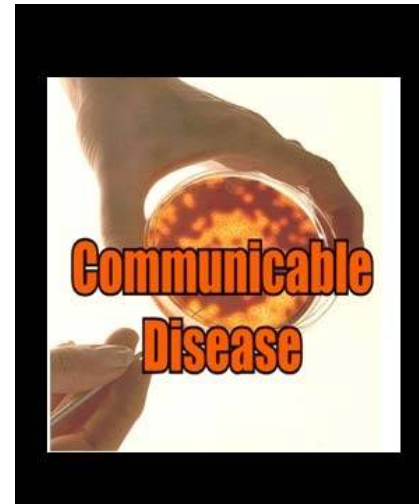
Power to Inspect or Investigate

- Physicians, laboratories, schools, hospitals, health facilities are required to report cases or suspected cases of TB to health department
- Local health department must initiate an investigation as necessary
- Must advise MDHHS when investigating a report of TB disease
- Inspect or investigate “any matter, thing, premises, place, person, record, vehicle, incident, or event” to ensure compliance with laws:
 - Review confidential information
 - Obtain specimens
 - Conduct contact investigations
 - Notify exposed individuals

**Try and Get Patient
Consent (But It Really
Is Not Required)**

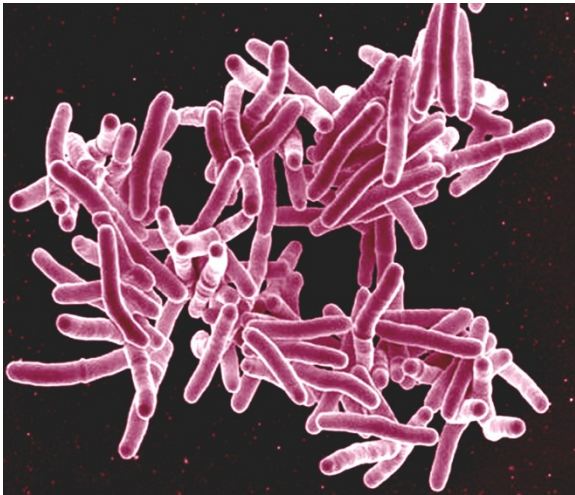
Physicians, laboratories, schools, hospitals, health facilities are required to report cases or suspected cases of TB to health department
R 325.173 - Reporting and Surveillance Requirements

When a physician or clinical laboratory **suspects the presence of a designated condition**, but does not have sufficient information to confirm its presence, the physician or laboratory **shall report** the designated condition as suspect to the appropriate local health department.



R 325.179 Submission of tuberculosis laboratory specimens and test results, Rule 9

Taken from Michigan Communicable Disease Rules:



A laboratory that initially receives any clinical specimen which yields *M. Tuberculosis* complex or a preliminary result of *M. Tuberculosis* must submit those results to both the:

- **Local health department**
- and
- **State health department**

Investigations And Identifiable Health Information

- Investigator shall promptly be provided with medical and epidemiological information for:
 - Individuals who have/suspected of having TB disease
 - Individuals, whether sick or well, who are part of group in which TB has occurred
 - Individuals who may have been exposed
 - Other individuals where information is needed for investigation into cause or occurrence of disease
- The patient's consent or authorization is not required.

HIPAA Does Not Always Apply

R 325.181(2)

- State law regarding disclosure of health information for the prevention and control of disease takes precedence over HIPAA
- HIPAA recognizes that health providers may rely on the statement of the government regarding the legal authority under which the protected health information is requested
- *“Medical and epidemiological information which identifies an individual and which is gathered in connection with an investigation is confidential and is not open to public inspection without the individual's consent or the consent of the individual's legally authorized representative, unless public inspection is necessary to protect the public health as determined by a local health officer or the director.”*
R325.181(2)

Code of Federal Regulations

Title 45 - Public Welfare

Volume: 1

Date: 2013-10-01

Original Date: 2013-10-01

Title: Section 164.512 - Uses and disclosures for which an authorization or opportunity to agree or object is not required.

Context: Title 45 - Public Welfare. SUBTITLE A - DEPARTMENT OF HEALTH AND HUMAN SERVICES. SUBCHAPTER C - ADMINISTRATIVE DATA STANDARDS AND RELATED REQUIREMENTS. PART 164 - SECURITY AND PRIVACY. Privacy of Individually Identifiable Health Information.

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered in this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity must obtain the individual's agreement may be given orally.

(a) *Standard: Uses and disclosures required by law.* (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the requirements of such law.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(b) *Standard: Uses and disclosures for public health activities.*—(1) *Permitted uses and disclosures.* A covered entity may use or disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

(ii) A public health authority that is authorized by law to disclose protected health information for the public health activities and purposes described in this paragraph to:

(iii) A person who is authorized by law to disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

(ii) A person who is authorized by law to disclose such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

(iii) A person who is authorized by law to disclose such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

(iv) A person who is authorized by law to disclose such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

(v) An employer, about an individual who is an employee of the employer, for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

(A) The covered entity is a covered health care provider;

(1) To conduct an evaluation relating to the medical surveillance of the workplace; or

(2) To evaluate whether the individual has a work-related illness or injury;

(B) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;

(C) The employer needs such findings in order to comply with its obligations, under 29 CFR parts 1904 through 1928, 30 CFR parts 50 through 90, or under state law having a similar purpose, to record such illness or injury or to carry out respiratory protection, workplace medical surveillance; and

(D) The covered health care provider provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:

(1) By giving a copy of the notice to the individual at the time the health care is provided; or

(2) If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.

(vi) A school, about an individual who is a student or prospective student of the school, if:

(A) The protected health information that is disclosed is limited to proof of immunization;

(B) The school is required by State or other law to have such proof of immunization prior to admitting the individual; and

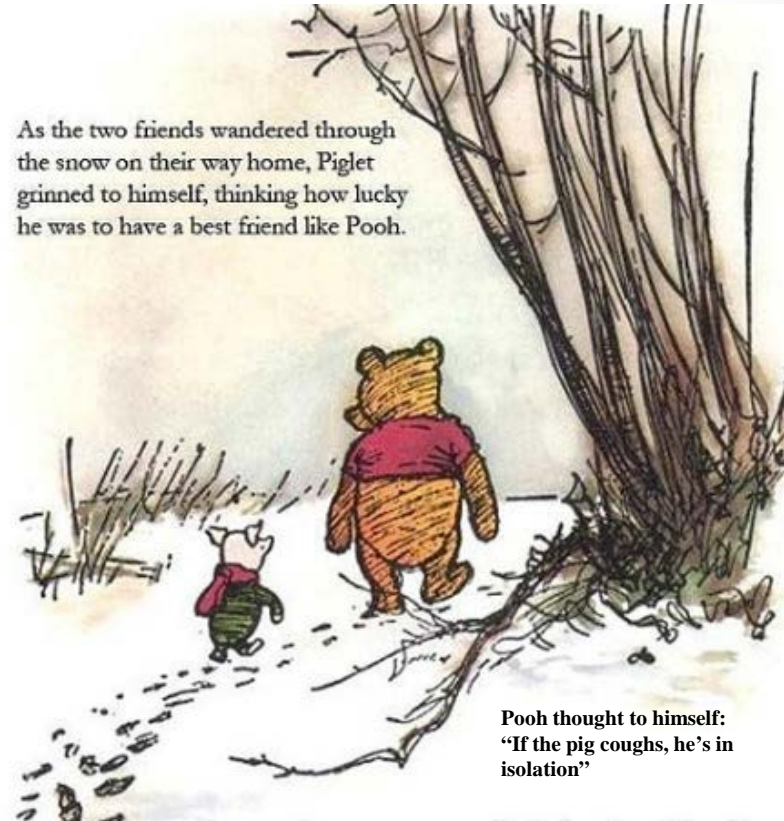
(C) The covered entity obtains and documents the agreement to the disclosure from either:

Contact Investigations

- Because TB disease is spread through the air from one person to another, a contact investigation must be conducted.
- Public health departments are empowered and required to identify and notify individuals who may have been exposed TB.
- MDHHS or LHD may require that specimens be obtained for testing in the course of a TB investigation.

Preventing the Spread of TB: Public Health Responsibilities

- May institute appropriate isolation for a case or suspected case of TB disease, as necessary to protect the public, household members or others at risk of exposure
- May initiate exclusion from work or school while a risk to others



Public Health Obligation to Treat TB

Public Health Code requires the local health department to immediately furnish care to an individual in its jurisdiction who requires care, REGARDLESS of the individual's domicile



...And to Remember the Patients Treated

- It is unconstitutional to physically force a person to undergo treatment without consent except in rare instances involving minors, persons with mental disabilities, or prisoners.
- However, patients who refuse to comply with prescribed TB treatment may be isolated until they no longer pose any risk to the public.
- Courts have usually upheld isolation or detention as long as basic procedural safeguards (e.g., notice, hearing before an impartial tribunal, access to representation, & opportunity to appeal) are provided.

Support to Compel Compliance

- Education and Counseling
- Warning Notice
- Health Department Emergency Order
- Court Order



Court Actions That Can Be Used To Support Public Health

- To compel compliance with Warning Notice
- To compel compliance with Imminent Danger Order
- To compel compliance with Emergency Order to Control Epidemic
- To obtain warrant to inspect or investigate and to seize property
- To obtain an injunction
- To obtain emergency order against a patient who is a health threat to others

Michigan Court Forms for Use With Infectious Disease

<http://courts.mi.gov/Administration/SCAO/Forms/Pages/Infectious-Disease.aspx>



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Index of SCAO-Approved Forms for Use in Commitment or Testing for Infectious Disease

This set of forms is used to either commit an individual for treatment of infectious disease or to order an individual to undergo testing for infectious disease. The forms must be filed in the family division of circuit court.

Title	Name	Date	Citation	Previous Versions
Affidavit to Accompany Petition for Transport and/or Temporary Detention	pc109	6/98	MCL 333.5207(1), (2)	
Appeal of Commitment and Order to Reconvene Commitment Review Panel	pc113	6/98	MCL 333.5205(6)	
Notice of Hearing on Petition for Temporary Detention	pc111	6/98	MCL 333.5207(4)	
Notice of Hearing on Petition for Testing of Infectious Disease	mc73	3/10	MCL 333.5205(9)	(6/04) previous approved form which can be used until stock is depleted
Notice of Hearing on Petition for Treatment of Infectious Disease	pc105	6/98	MCL 333.5205(3)	
Order Appointing Commitment Review Panel	pc107	6/98	MCL 333.5205(5)	
Order Following Appeal of Commitment for Treatment of Infectious Disease	pc114	6/98	MCL 333.5205(5), (7)	
Order Following Hearing on Petition for Continued Commitment for Treatment of Infectious Disease	pc116	6/98	MCL 333.5205(4), (5)	
Order Following Hearing on Petition for Testing of Infectious Disease	mc74	3/08	MCL 333.5205(7), (9)	
Order Following Hearing on Petition for Treatment of	pc106	6/98	MCL	

Warning Notice

- Issued against individual who is a health threat to others
- Requires individual to cooperate in preventing or controlling transmission of disease
- Notifies individual that if he or she fails to comply, the health department will seek a court order
- Informs individual that they have a right to a hearing before court issues order, except in emergency

MCL 333.5203

August 31, 2012

NAME
ADDRESS
CITY STATE ZIP

Re: Warning Notice for Contact Evaluation

Dear NAME:

This letter is to inform you that you have been exposed to someone with pulmonary tuberculosis (TB). Public health regulations in the State of Michigan MCL 333.5201 et. seq require that a person identified as a high-priority contact to someone with active tuberculosis must submit to a complete medical evaluation, which may include a tuberculin skin test (TST) and chest x-ray as necessary. Our preliminary tests have indicated you are infected with the tuberculosis mycobacterium but did not have active disease. As you have declined LTBI treatment, you must come into the Health Division for signs and symptoms review and a chest x-ray every six months for the next year and a half (3 more times).

Be advised that this evaluation is mandatory. This letter is to inform you that the Oakland County Health Department is able to give you this evaluation at no cost. It is extremely important that you contact the Oakland County Health Department at 248-858-1286 within 7 days of receiving this letter to arrange for the evaluation or discuss other means of getting the evaluation. Please be assured that the Oakland County Health Department staff is prepared to assist you if necessary to ensure you receive this evaluation.

If you do not respond to this warning and do not get this evaluation, you will be subject to legal actions ordering you to get the evaluation.

Your cooperation in this matter is deeply appreciated.

Sincerely,

Oakland County Health Division
Department of Health and Human Services

Kathleen Forzley, R.S., M.P.A.
Health Officer

Pamela Hackert, M.D., MPH, JD
Chief of Medical Services

PH/sc

Enforcement Warning Notice

- If there are reasonable grounds to believe that an individual has failed or refused to comply with a warning notice, the health department may petition their circuit court for an order

MCL 333.5205(1)

Emergency Action Against Carrier

Upon the filing of an affidavit by the health officer, the circuit court may order the health department 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(1)

* Note: “Carrier” is not to be interpreted as LTBI.

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	PETITION AND EX PARTE ORDER FOR TRANSPORT AND/OR TEMPORARY DETENTION	CASE NO.
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In the matter of _____

PETITION

1. I, _____, am a local health officer
Name (type or print) State Community Health Department representative and make
 this affidavit in respect to _____, who is a minor
Name (type or print) an adult and who resides in
 _____ County at _____
Address City
 _____ and who is presently found at _____
State Zip Address, location, or facility

2. An emergency exists and there is reasonable cause to believe that the individual is a carrier and a health threat to others for the reasons stated in the attached affidavit.

I REQUEST:

- 3. The individual be taken into custody and transported to _____,
Name of facility
 an emergency care or treatment facility, for observation. examination. testing. diagnosis. treatment.
- 4. The individual be detained temporarily at the facility and a hearing be held within the next 72 hours to determine whether temporary detention should continue up to 5 days, and longer if a petition for treatment of an infectious disease is filed within that 5 days.

I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

 Date

 Signature

 Name (type or print)

 Address

 City, state, zip

 Telephone no.

ORDER

THE COURT FINDS:

- 5. An affidavit has been filed in compliance with MCL 333.5207.
- 6. Reasonable cause exists to believe that there is a substantial likelihood the individual is a carrier and a health threat to others.

(PLEASE SEE OTHER SIDE)

Do not write below this line - For court use only

Imminent Danger Order

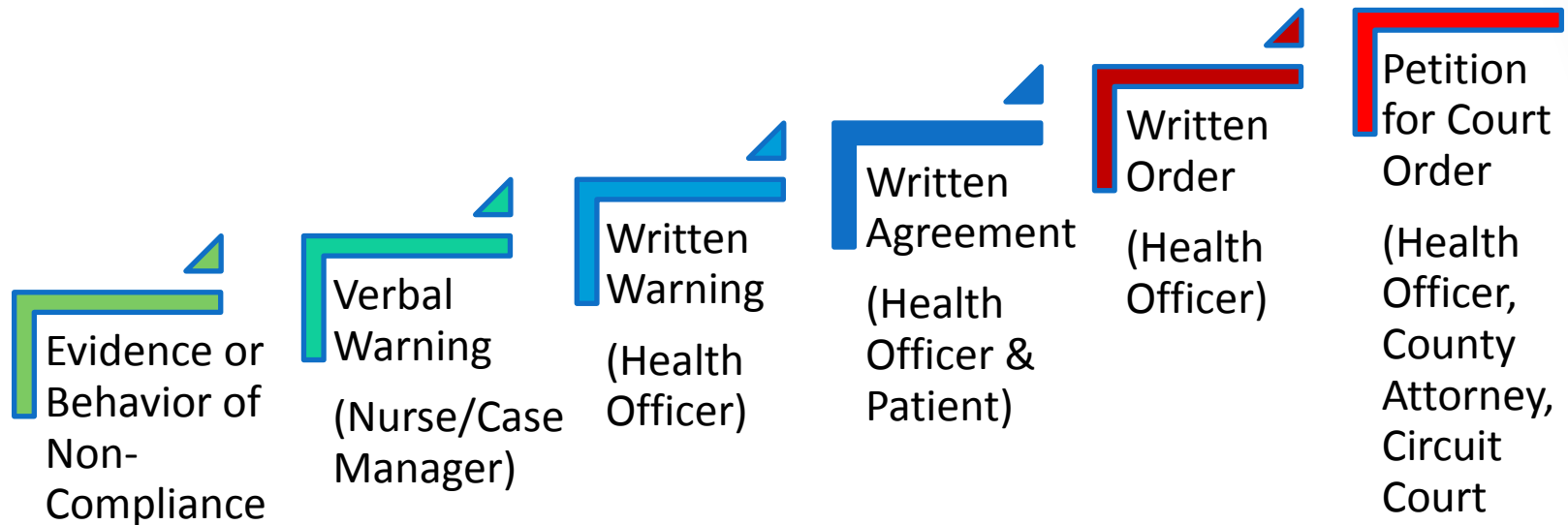
- Issued by health officer
- After there has been a determination that there is an imminent danger to the public
- Order necessary action that will avoid, correct or remove the danger
- Deliver order to “person” authorized or able to take corrective action
- Provide warning to affected individuals or (where applicable) post notice at site of danger
- **Definition:** 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 proceedings otherwise provided...



Order to Control an Epidemic

- Issued by health officer
- Must determine that control of an epidemic is necessary to protect the public health
- Order may prohibit the gathering of people for any purpose
- Order may establish procedures to be followed by persons during an epidemic to insure continuation of essential public health services and/or to control the spread of disease
- Order may be issued against a local governmental entity

Flowchart of Progressive Legal Interventions



Always document the instance of non-compliance - and interventions/actions taken - at each step.

Provide education and explanation to patient at each step.

Criminal Enforcement

- A person who violates an order of a local health officer or MDCH is guilty of a misdemeanor
 - Punishable by imprisonment for not more than 6 months, or a fine of not more than \$200, or both
- An individual may be arrested if the violation occurs in the presence of a police officer, or the police officer has reasonable cause to believe the individual violated the order
- Court has power to punish violations of its orders (contempt)

Do Not Board and Lookout Lists

1. Contagious, likely contagious, or persons at risk of becoming contagious with a communicable disease that represents a public health risk

AND

2. Noncompliant with public health recommendations or unaware of diagnosis

AND

3. At risk of traveling on a commercial flight or traveling internationally.



Do Not Board and Lookout Lists

Do Not Board

- Administered by the U.S. Transportation Security Administration (TSA)
- Prevents an individual from boarding a commercial aircraft inbound to, outbound from, or within the United States.
- This list is for air conveyances only and does not prevent passengers from boarding ships, buses, or trains

Lookout List

- Administered by the U.S. Customs and Border Protection (CBP)
- The lookout list (LO) alerts CBP officers to notify public health authorities when an individual on the list attempts to enter the United States at a port of entry
- U.S. Centers for Disease Control and Prevention (CDC) Quarantine Station staff then evaluate the individual and take any necessary public health action.
- DNB and LO actions are always issued together.

“How Did You Get My Name?”



- R 325.174 allows for the collection of medical or epidemiological information on "individuals, whether ill or well" and even "individuals who are not known to have a designated condition but whose medical or epidemiological information is needed for investigation into the cause...."

“I’m sorry, but we can’t release that information to you because of HIPAA”

- The Health Department **NEEDS** Patient Information!
- §178(2)(B) of the HIPAA statute:

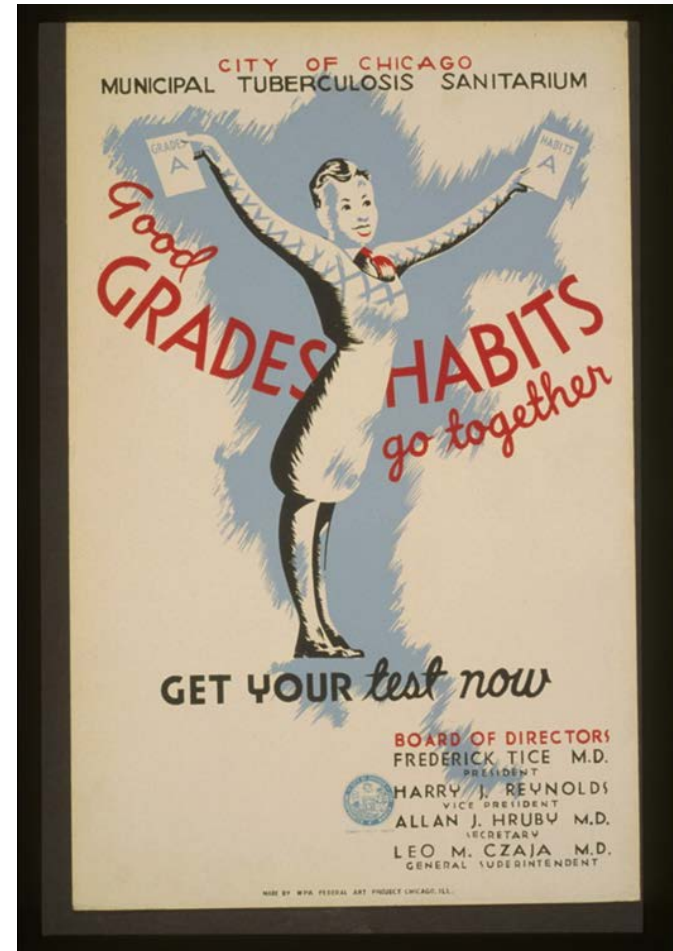
“Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth or death, public health surveillance, or public health investigation or intervention.”



“But Our University Requires More”

The Family Education Rights and Privacy Act (FERPA)

- Protects the privacy of student educational records by requiring written consent for the disclosure of identifiable information
 - This is subject to limited EXCEPTIONS including:
 - “Appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.”
- 20 U.S.C. §1232g(b)(1)(I).



Questions?