

POLICE POWERS OF THE HEALTH OFFICER IN CALIFORNIA

An Overview



Ethical Framework in PH

Key Ethical Principles in Public Health



Individual rights and liberties
and
Social justice and equity

Key Conflict



Individual Autonomy

vs.

Public Health Risk

Individual Autonomy

- A central tenet in medical ethics
- Examples:
 - Informed consent
 - Right to refuse care

Public Health Risk

- Transmission to others by untreated persons with active disease
- Development and spread of multidrug-resistant (MDR) TB

Balancing Risks and Benefits

- Medical interventions
 - Risk to the individual
 - Benefit the individual
- vs. -
- Public health interventions
 - Risk to one individual
 - Benefit to other individuals



The Legal Framework

Legal Framework

- Duty to promote health and well-being within the population
- Authority to regulate individuals and businesses to achieve communal benefits of health and security
- Restraint in the reach of authority



Duty

California duty to protect

- The board of supervisors of each county shall take measures as may be necessary to preserve and protect the public health in the unincorporated territory of the county, including, if indicated, the adoption of ordinances, regulations and orders not in conflict with general laws, and provide for the payment of all expenses incurred in enforcing them. H&S §101025.

California HO duty to protect

- Each city health officer shall enforce and observe all of the following:
 - a) Orders and ordinances of the governing body of the city pertaining to the public health.
 - b) Orders, quarantine and other regulations, concerning the public health, prescribed by the department.
 - c) Statutes relating to the public health.

H&S §101470



Authority

Police Powers

Definition: Police Power

- **police powers n.** from the 10th Amendment to the Constitution, which reserves to the states the rights and powers "not delegated to the United States" which include protection of the welfare, safety, health and even morals of the public. Police powers include licensing, inspection, zoning, safety regulations (which cover a lot of territory), quarantines, and working conditions as well as law enforcement.

Free Legal Dictionary

Definition: Police Power

- The police power is the right of the state to take coercive action against individuals for the benefit of society.

The Role of the Police Power in 21st Century Public Health

EDWARD P. RICHARDS III, JD, MPH, AND KATHARINE C. RATHBUN, MD, MPH

Sexually Transmitted Diseases, July, 1999; Vol. 26 . No. 6

A bit of History

- For ten years prior, the yellow-fever had raged almost annually in the city, and annual laws were passed to resist it. The wit of man was exhausted, but in vain. Never did the pestilence rage more violently than in the summer of 1798. The State was in despair. The rising hopes of the metropolis began to fade. The opinion was gaining ground, that the cause of this annual disease was indigenous, and that all precautions against its importation were useless. But the leading spirits of that day were unwilling to give up the city without a final desperate effort. The havoc in the summer of 1798 is represented as terrific. The whole country was roused. A cordon sanitaire was thrown around the city. Governor Mifflin of Pennsylvania proclaimed a nonintercourse between New York and Philadelphia.

Communicable Disease in the Colonies

- Mostly poorly drained coastal areas
 - Malaria, Yellow Fever
- Terrible epidemics
 - Smallpox
 - Nearly wiped out the Constitutional Convention
- Quarantines, areas of non-intercourse
- Colonial governments did public health

Constitutional Provisions

- Articles of Confederation
 - Left all powers to the states
- Constitution
 - Divided powers between the state and federal government
 - Reserved the police power to the states

Police Power

- Police departments came later
- Power to protect the public health and safety
 - Communicable disease control
 - Sanitation
 - Nuisance
 - Drinking water

Federal Powers

- Direct constitutional powers
 - Interstate commerce
 - 42 Code of Federal Regulations parts 70 and 71, CDC is authorized to detain, medically examine, and release persons arriving into the United States (quarantine stations) and traveling between states who are suspected of carrying these communicable diseases.
 - Example: Do Not Board lists

Is there a Federal Police Power?

- Constitutional Debate
 - US Supreme Court says no, but ...
- Can the Feds do local disease control?
 - CDC only comes in at the state's invitation
 - Public Health is state and local

State Authority

- State authority
 - States have “police powers” to protect the health, safety, and welfare of persons within their borders
- Tribal authority
 - Tribes also have police power authority to take actions that promote the health, safety, and welfare of their own tribal members.
 - Tribal health authorities may enforce their own isolation and quarantine laws within tribal lands, if such laws exist.

Local Authority

- Local authority
 - In California, local health authorities implement state law
 - Local authorities may also exist
- When laws are in conflict
 - Federal > State > Local



California Health Officer Police Powers

Responsibility and Authority

Health Officer Duty

- Health Officers must provide: "Communicable disease control, including availability of adequate isolation facilities, and the control of acute communicable diseases..., based upon provision of appropriate preventive measures for the particular communicable disease hazards in the community."

17 C.C.R §1276(c)

Health Officer Practice Guide for Communicable Disease in California, 2013

Health Officer Authority

- Health Officers are authorized to control contagious, infectious, or communicable disease and may “take measures as may be necessary” to prevent and control the spread of disease within the territory under their jurisdiction (H&S §120175)

Health Officer Authority

- Health and Safety Code grants broad powers to HOs to promote public health or safety.
 - Actions taken under this statutory authority are an exercise of police power. *Coelho v. Truckell (1935) 9 Cal.App.2d 47*
- Courts: “The preservation of the public health is universally conceded to be one of the duties devolving upon the state as a sovereignty, and whatever reasonably tends to preserve the public health is a subject upon which the legislature, within its police power, may take action.” *Patrick v. Riley (1930) 209 Cal. 350, 35*

General Authority

- The position and powers of the Health Officer derive from statute (Division 105 of the H&S, starting at §120100)
- Appointment of each Health Officer is based upon the actions of the local governing body (H&S §101025)
 - The governing body of each city and county is required by statute to take measures necessary for the preservation and protection of the public health
- CDPH may issue direct orders to Health Officers
 - HO must, when required by CDPH, act to enforce all CDPH orders, rules and regulations (H&S §§120130, 120145, 120190, 120195, 120200, 120210, 120215 and 120175)

General Authority

- Potential Actions
 - Limiting movement of individuals and groups
 - Close/restrict public assemblies or gatherings
 - Require evacuation, examination, inspection, vaccination, decontamination, disinfection, property destruction or commandeering
 - Compel assistance
- Specific statutes augment general authority



Restraint

- "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 free from restraint. There are manifold restraints to which every person is necessarily subject for the common good." *Jacobsen v. Massachusetts*, (1905). 197 U.S. 11, 26.

BUT

Due Process

- Government cannot deprive a person of life, liberty or property interest ,without “**due process**” of law
 - Government must
 - Have appropriate justification
 - substantive due process
 - Must use fair procedures
 - procedural due process

Life, Liberty, Property

- Common sense meanings
- Broader meanings
 - Life
 - Bodily integrity
 - Liberty includes freedom of movement
 - Property
 - Job
 - Reputation
- Privacy

Constitutional Rights

- Fifth Amendment

*No person shall be. . .deprived of life, liberty, or property, **without due process of law.***“

- Fourteenth Amendment

*No State. . .shall any State deprive any person of life, liberty, or property, **without due process of law.***

“Person” – not just “citizen”

Due Process

- Substantive due process requires appropriate justification more stringent as the magnitude of restriction increases. Must :
 - Have reasonable grounds
 - Based on the specific situation and persons
 - Be narrowly tailored
- Procedural due process requires that restrictions be fairly imposed.
 - Notice
 - Opportunity to be heard



Examples