

IMMUNIZE. PREVENT WHAT'S PREVENTABLE

# UNDERSTANDING AND ENFORCING PUBLIC HEALTH LAW



THE  
**IMMUNIZATION**  
PARTNERSHIP

Allison N. Winnike, J.D.  
President & CEO

18 March 2019  
Health Authority Training  
TPHA 95<sup>th</sup> Annual Education Conference

# **DISCLOSURE TO THE LEARNER**

- **Requirements for successful completion of learning activity**
  - Registration, participation, and evaluation
  - Requests for Continuing Education Credits for this workshop must be submitted within 30 days of this event
- **Disclosure of Conflict of Interest**
  - The speakers and planning committee have disclosed no relevant financial interest
- **Commercial Support**
  - This workshop received no commercial support
- **Non-Endorsement Statement**
  - Accredited status does not imply endorsement by the Department of State Health Services, Continuing Education Service Program, Texas Medical Association, or America Nurses Credentialing Center of any commercial product displayed in conjunction with an activity
- **Off Label Use**
  - The speakers did not disclose the use of products for a purpose other than what it had been approved for by the Food and Drug Administration



# **LEARNING OBJECTIVES**

- › Demonstrate knowledge of public health law principles and their application to public health in Texas
- › Demonstrate knowledge of Local Health Authority role and responsibility in Texas
- › Demonstrate knowledge of enforcing public health law



# THE IMMUNIZATION PARTNERSHIP

## Vision

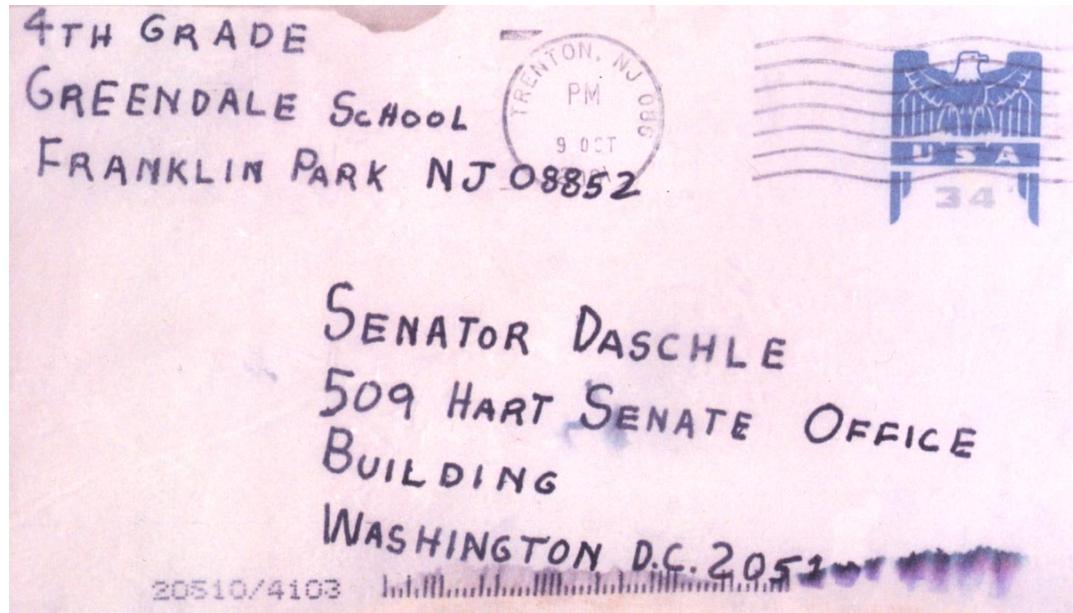
- › A community protected from vaccine-preventable diseases

## Mission

- › To eradicate vaccine-preventable diseases by educating the community, advocating for evidence-based public policy, and supporting immunization best practices



# ANTHRAX AND RICIN IN THE SENATE



Letter to Sen. Daschle (Oct. 9, 2001), available at Ralph R. Frerichs, *Exposure Letters*, UCLA FIELDING SCHOOL OF PUB. HEALTH, [http://www.ph.ucla.edu/epi/bioter/detect/antdetect\\_letters.html](http://www.ph.ucla.edu/epi/bioter/detect/antdetect_letters.html).



Hazmat enters Senate (Dennis Cook/AP, Feb. 4, 2004), available at Steven Nelson, *Ricin Scare: Senate Offices Evacuated, Obama Mail Intercepted*, US NEWS & WORLD REPORT (APR. 17, 2013), <https://www.usnews.com/news/newsgram/articles/2013/04/17/ricin-scare-senate-offices-evacuated-obama-mailed-suspicious-substance>.



# CONTROL MEASURES AND PUBLIC HEALTH EMERGENCIES

A TEXAS BENCH BOOK

Sec. 81.085. QUARANTINE; CRIMINAL PENALTIES. (a) If an outbreak of communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine if the commissioner believes it is reasonable cause to believe that the period necessary to determine whether an outbreak of communicable disease has occurred is likely to exceed the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with the department. A health authority that imposes an area quarantine shall give written notice to the county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.

ment may impose additional disease control measures in a quarantine area if the health authority considers necessary and more appropriate to arrest, control, and treat the disease. Absent appropriate action by the department under Chapter 418, Government Code (Texas Disaster Act), a health authority may impose additional disease control measures in a quarantine area under the authority's jurisdiction if the health authority considers necessary to protect the public health.

2016

Contains flowcharts and sample forms

UNIVERSITY OF HOUSTON LAW CENTER  
Health Law & Policy Institute

# CONTROL MEASURES AND PUBLIC HEALTH EMERGENCIES: A TEXAS BENCH BOOK

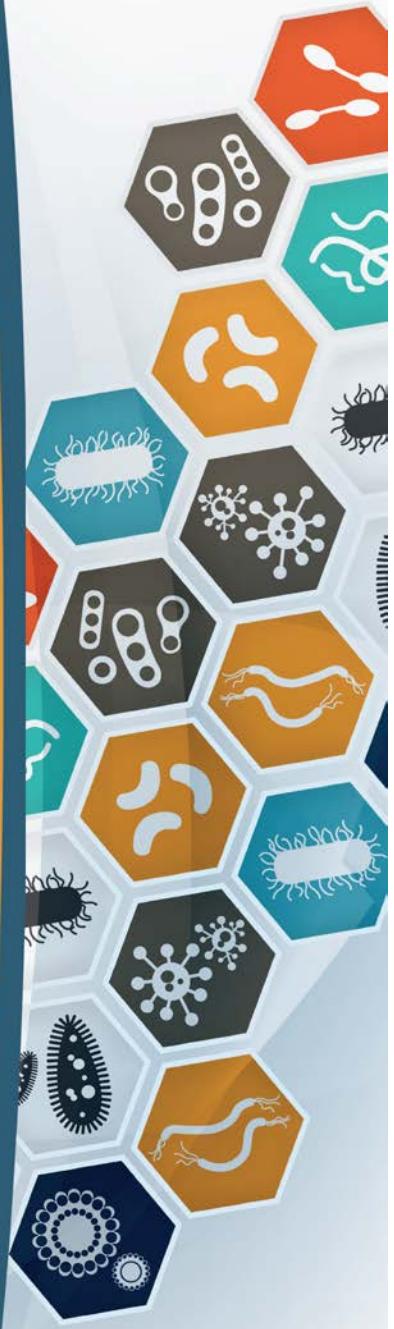
Resource for public health officials, judges, district attorneys, and elected officials

<http://www.law.uh.edu/healthlaw/HLPIBenchBook.pdf>



# PREPARING FOR A **PANDEMIC**

An Emergency Response Benchbook  
and Operational Guidebook for State  
Court Judges and Administrators



# **PREPARING FOR A PANDEMIC: AN EMERGENCY RESPONSE BENCHBOOK AND OPERATIONAL GUIDEBOOK FOR STATE COURT JUDGES AND ADMINISTRATORS**

Model bench book for states by the  
Conference of Chief Justices  
Pandemic and Emergency Response  
Task Force

[http://ncsc.contentdm.oclc.org/cdm  
/ref/collection/facilities/id/194](http://ncsc.contentdm.oclc.org/cdm/ref/collection/facilities/id/194)



# **FOUNDATIONS IN PUBLIC HEALTH LAW**



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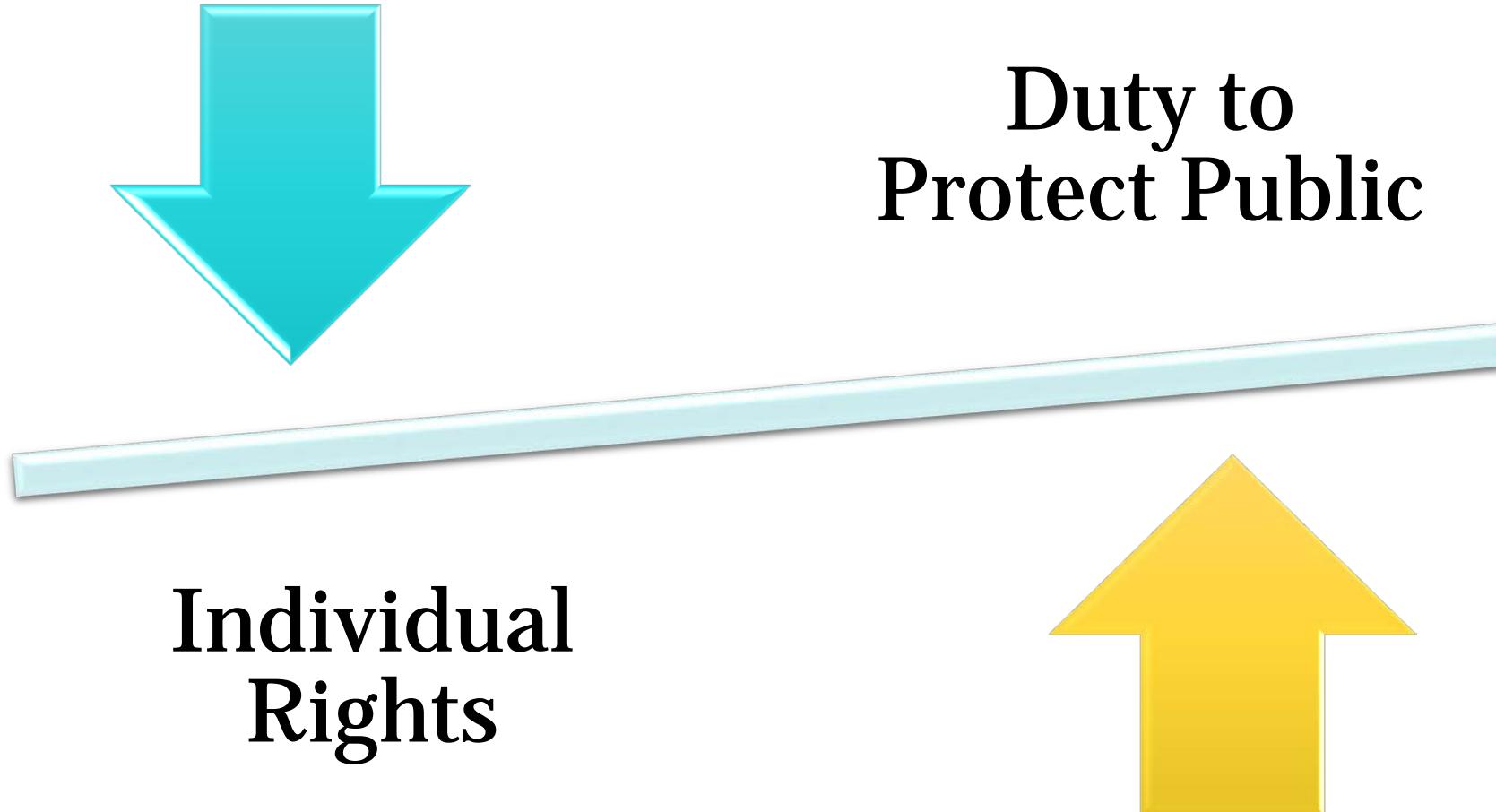


# **WHAT IS PUBLIC HEALTH LAW?**

Public Health Law is the intersection of the legal authority and duty of government to protect the public's health and the legally protected rights of the individual.



# PUBLIC HEALTH LAW BALANCE



# PUBLIC HEALTH LAWS, POLICIES & ETHICS

Conditions to determine whether promoting public health warrants overriding individual liberty:

- > Effectiveness
- > Proportionality
- > Necessity
- > Least infringement
- > Public justification



# LEVELS OF PUBLIC HEALTH INTERVENTIONS

- Voluntary
- Mandatory
- Compulsory



“**ALL PUBLIC HEALTH  
IS LOCAL**”

—Julie L. Gerberding, M.D., M.P.H.

*SARS: How Effective is the State and Local Response?: Hearing Before the Subcomm. on Investigations of the S. Comm. on Governmental Affairs, S. Hrg. 108-74, 108th Cong. 10–11 (May 21, 2003) (statement of Julie Gerberding, Director, Centers for Disease Control and Prevention), <http://www.gpo.gov/fdsys/pkg/CHRG-108shrg88251/pdf/CHRG-108shrg88251.pdf>.*



# FEDERAL V. STATE JURISDICTION

- › States have primary responsibility for protecting the public's health
- › State authority may be delegated to local health authorities
- › Federal government has power in international and interstate transmission of disease



# FEDERAL POWERS

- › Commerce Clause
  - › “The Congress shall have power... [t]o regulate commerce with foreign nations, and among the several states, and with the Indian tribes” (Article I, Section 8, Clause 3)
- › Taxing and Spending Clause
  - › “The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States” (Article I, Section 8, Clause 1)



# FEDERAL PUBLIC HEALTH POWERS

- › HHS Secretary responsible for preventing introduction, transmission, or spread of communicable diseases (a) from foreign countries, and (b) between the states (42 U.S.C. § 264)
- › List of Quarantinable Communicable Diseases (Exec. Order No. 13295, as amended by Exec. Order Nos. 13375 & 13674)
- › HHS Secretary may declare Public Health Emergency (42 U.S.C. § 247d) or Emergency Use Authorization (21 U.S.C. § 360bbb-3)



# **STATE POLICE POWERS**

- › 10th Amendment of U.S. Constitution
  - › “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
- › The police powers to protect the health, safety, morals, and general welfare of the people are reserved to the States
- › Broad power and responsibility to protect public's health



# **JACOBSON V. MASSACHUSETTS, 197 U.S. 11 (1905)**

- › Upheld use of police powers to protect the public's health
- › State may delegate public health authority to local health authorities
- › Imposed limits on individual liberty if necessary to protect public health
- › “There are manifold restraints to which every person is necessarily subject for the common good.”



# EXECUTIVE ROLE IN PUBLIC HEALTH

- May order the implementation of control measures to prevent the spread of disease
- May order abatement of a public nuisance



# JUDICIARY ROLE IN PUBLIC HEALTH

- › Hear cases and issue orders related to control measures and public health nuisances
- › Ensure balance between the public's health and an individual's right to liberty



# **TEXAS EXECUTIVE PUBLIC HEALTH AUTHORITY AND RESPONSIBILITY**

- › Governor
- › Department of State Health Services
- › Local Health Authority



# **EXECUTIVE POWER: GOVERNOR**

- › Declare State of Disaster under Texas Disaster Act
- › Initiate the State Emergency Management Plan
- › Recommend local evacuation of affected areas
- › Ask for Presidential declaration of emergency under Stafford Act
- › Work with HHS if Secretary declares Public Health Emergency





## GOVERNOR GREG ABBOTT

Dear Mr. President:

Under the provisions of Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (Stafford Act), and implemented by 44 CFR § 206.36, I request that you declare a major disaster for the state of Texas as a result of Hurricane Harvey, that began on August 21, 2017.

In response to the current situation, I have taken the appropriate action under state law by directing the execution of the state's emergency management plan and by declaring a state of disaster on August 23, 2017 for 30 Texas counties.

Pursuant to 44 CFR 206.36, I have determined that this incident is of such severity and magnitude that effective response is beyond the capabilities of the state and affected local governments, and that supplementary federal assistance is necessary to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster. I am requesting Individual Assistance, Public Assistance (Categories A and B including Direct Federal Assistance) and Hazard Mitigation for the following counties. As we are able to assess damages to the other affected counties, I reserve the right to request assistance for additional counties in Texas.

Bee, Goliad, Kleberg, Nueces, San Patricio, Refugio



# **EXECUTIVE POWER: GOVERNOR & DSHS COMMISSIONER**

- › Declare Public Health Disaster under the Communicable Disease Prevention and Control Act
- › Public Health Disaster is both
  - › State of Disaster, and
  - › Determination by DSHS Commissioner that there is an immediate threat from a communicable disease that poses risk to large number of people



# **EXECUTIVE POWER: DSHS**

- › Implement control measures
- › Define reportable diseases
- › Investigate disease cases
- › Assist local health authorities



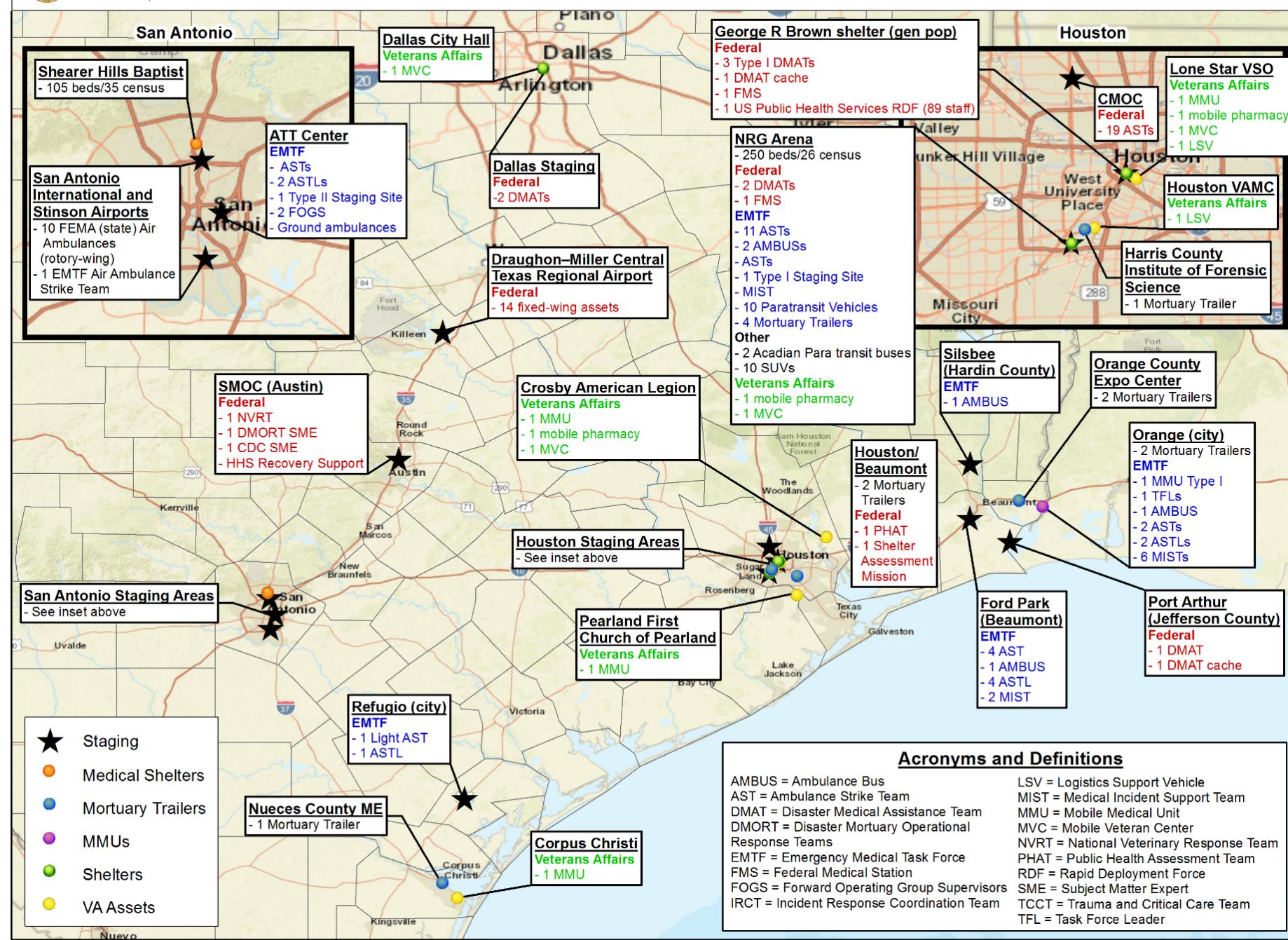
# **EXECUTIVE POWER: DSHS & TDEM**

- › Operate the State Medical Operations Center (SMOC)



# Resource Locations

Date: 9/6/2017 Time: as of 1200



John Hellerstedt, Tex. Health & Hum. Serv. Cmsn., *Public Health and Healthcare Response to Hurricane Harvey*, Presentation to Texas House Cmte on Appropriations 9 (Oct. 2, 2017),  
<https://www.dshs.texas.gov/legislative/2017-Reports/DSHS-HAC10022017.pptx>.



# **EXECUTIVE POWER: LOCAL HEALTH AUTHORITY**

- › Implement control measures
- › Report contagious, infectious, and dangerous epidemic diseases to DSHS
- › Investigate disease cases



# **LOCAL HEALTH AUTHORITY**

- › Local Health Authority is an officer of the state with a two-year appointment (renewable)
- › Requirements:
  - › physician licensed to practice in Texas
  - › “competent physician with a reputable professional standing”
  - › Texas resident



# **LEGAL TOOLS TO PROTECT PUBLIC HEALTH AND SAFETY**



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# **PUBLIC HEALTH CONTROL MEASURES**

- > Quarantine and Isolation
- > Apprehension, Restriction and Detention
- > Medical Examination
- > Decontamination, Disinfection and Disinfestation
- > Chemoprophylaxis, Preventive Therapy, Immunization, and Prevention
- > Nuisance abatement
- > Education



# QUARANTINE

- › Applies to healthy individuals who may have been exposed to a communicable disease
- › Federal definition: “the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease.” 42 C.F.R. § 70.1.



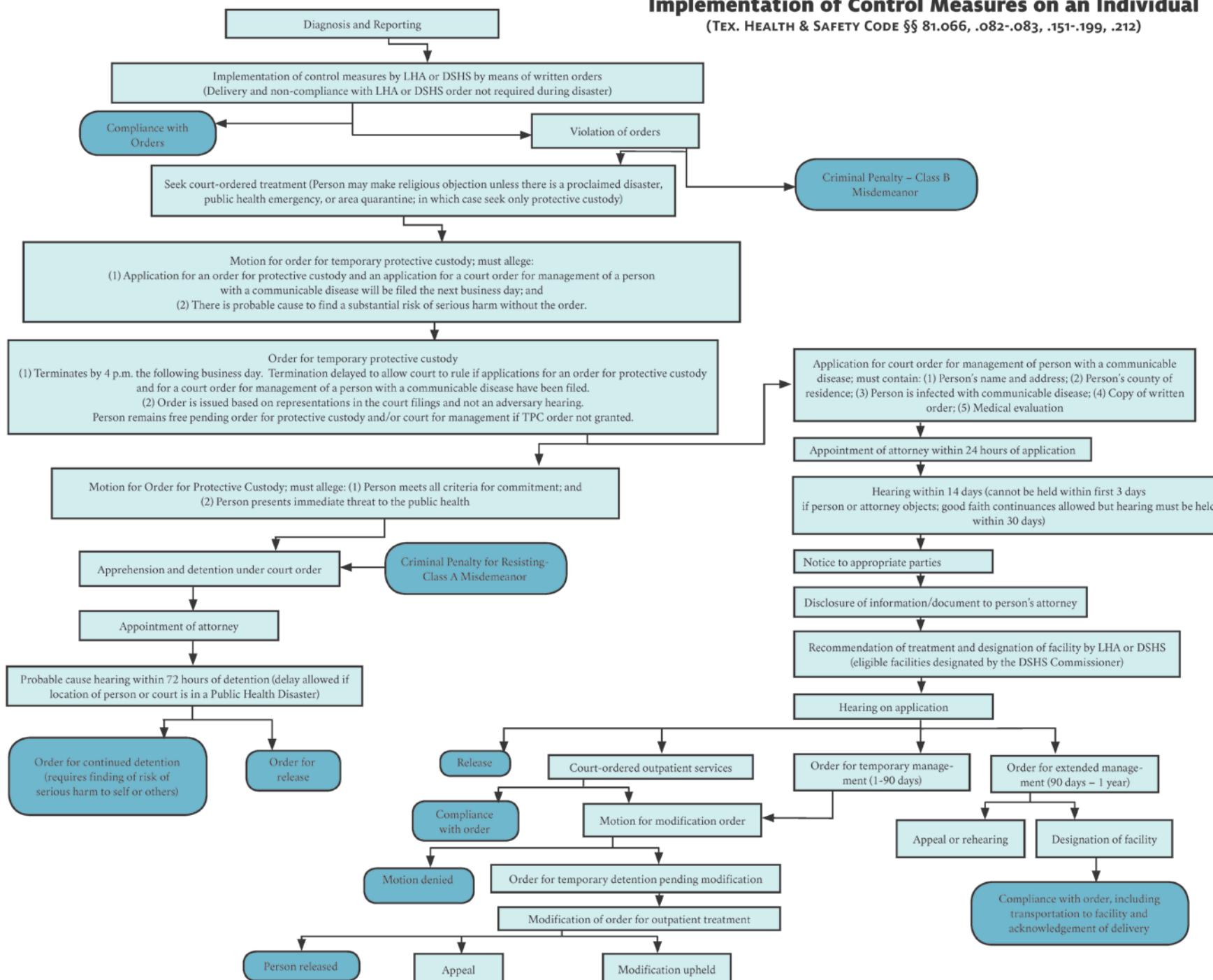
# ISOLATION

- > Applies to individuals already known to be infected with a communicable disease
- > Federal definition: “the separation of an individual or group reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease.” 42 C.F.R. § 70.1.



# Implementation of Control Measures on an Individual

(TEX. HEALTH & SAFETY CODE §§ 81.066, .082-.083, .151-.199, .212)



THE STATE OF TEXAS  
FOR THE BEST INTEREST  
AND PROTECTION OF

\_\_\_\_\_

§ IN THE \_\_\_\_\_ DISTRICT COURT  
§  
§ IN AND FOR  
§  
§ \_\_\_\_\_ COUNTY, TEXAS

## **Writ of Commitment**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, the undersigned, entered an order directing treatment of (*initials of proposed patient*) at (*name of facility*), a copy of which is attached hereto.

In accordance with this Court's order and this writ, the sheriff or constable is hereby ordered to accompany the proposed patient to (*name of facility*) and apply any control measures needed during such transportation as determined by the Department of State Health Services or the Local Health Authority.

SO ORDERED THIS: \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_



# ILLUSTRATIVE SCENARIOS

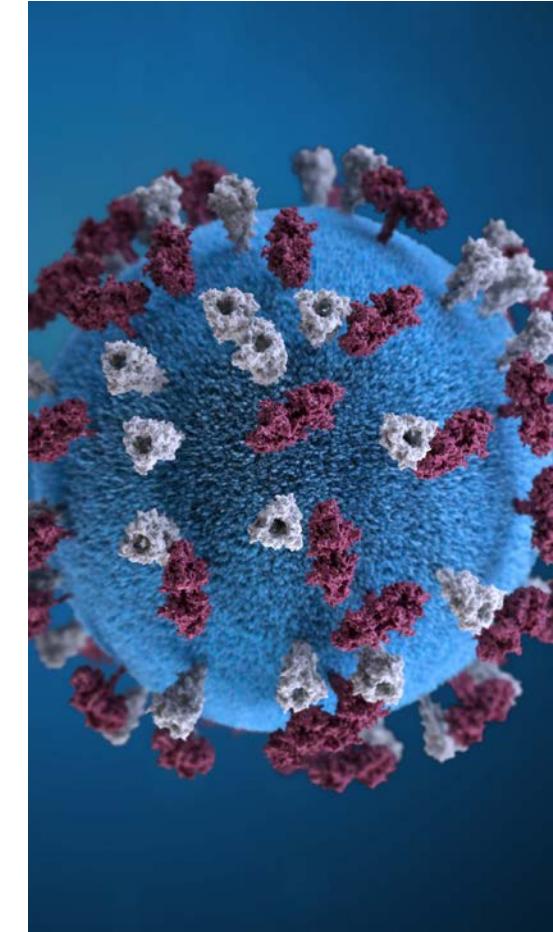


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# VACCINE-PREVENTABLE DISEASE OUTBREAK AT SCHOOL

- › 1 suspected measles case
- › Role of LHA?
- › Role of school administrators?
- › Role of parents?



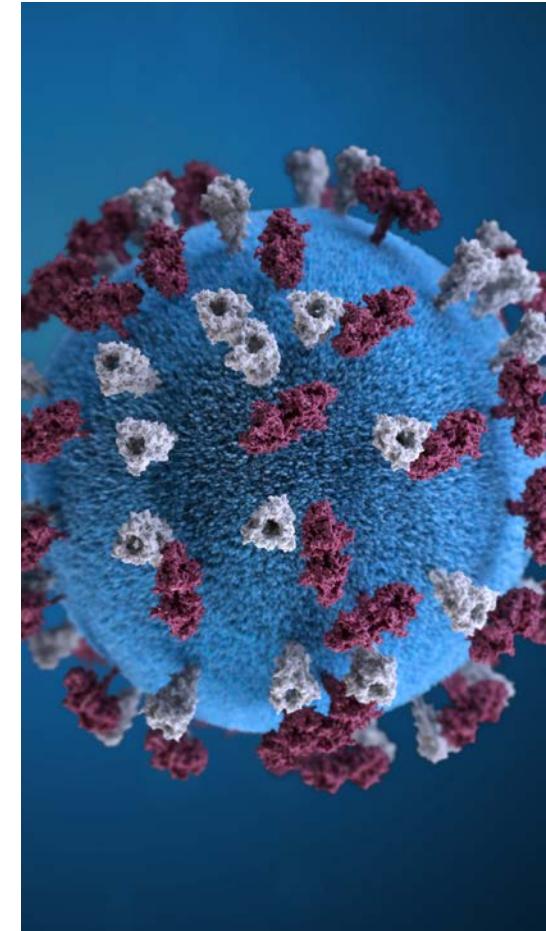
# JURISDICTIONAL COORDINATION

- › Determine which jurisdiction has authority (local, state, or federal officials)
- › Primary jurisdiction responsible for response
- › If resources inadequate or unavailable, ask for assistance
  - › Local to state
  - › State to state, or State to federal



# MEASLES QUARANTINE

- › Healthy person
- › LHA *reasonably believes* that this healthy person *may have been exposed* to measles
- › LHA issues a Written Order of Control Measures



# **WRITTEN ORDER OF CONTROL MEASURES**

- > Identify individual
- > Describe control measures in detail
  - > May include testing
  - > May include monitoring requirements
  - > May include movement restrictions
  - > May include education on disease transmission
- > Delivered personally or by mail (registered or certified)
- > Effective until either (a) individual is no longer infected, or (b) expiration of incubation period



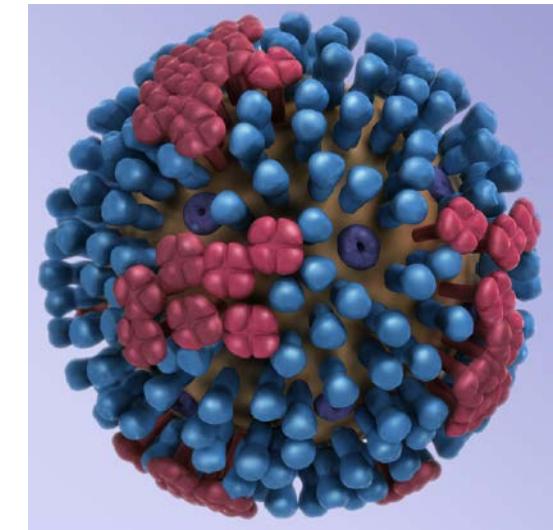
# **VIOLATION OF WRITTEN ORDER OF CONTROL MEASURES**

- › Failure of an individual to follow the control measures ordered by DSHS/LHA is a Class B misdemeanor, which is punishable by
  - › a fine not to exceed \$2,000;
  - › confinement in jail for a term not to exceed 180 days; or
  - › both fine and confinement.



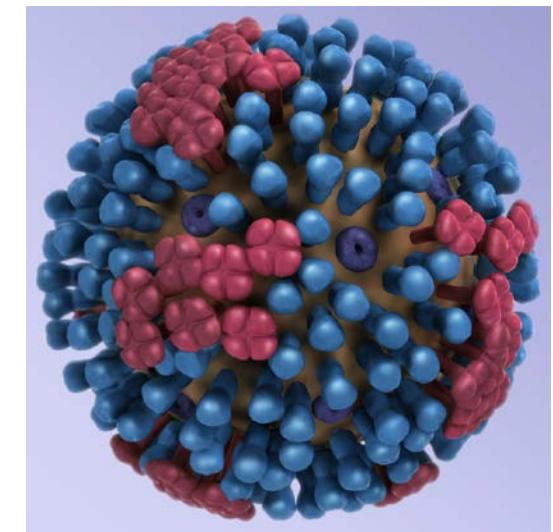
# VACCINE-PREVENTABLE DISEASE OUTBREAK AT SCHOOL

- › Confirmed influenza in 35% of student body
- › Role of LHA?
- › Role of school administrators?
- › Role of parents?



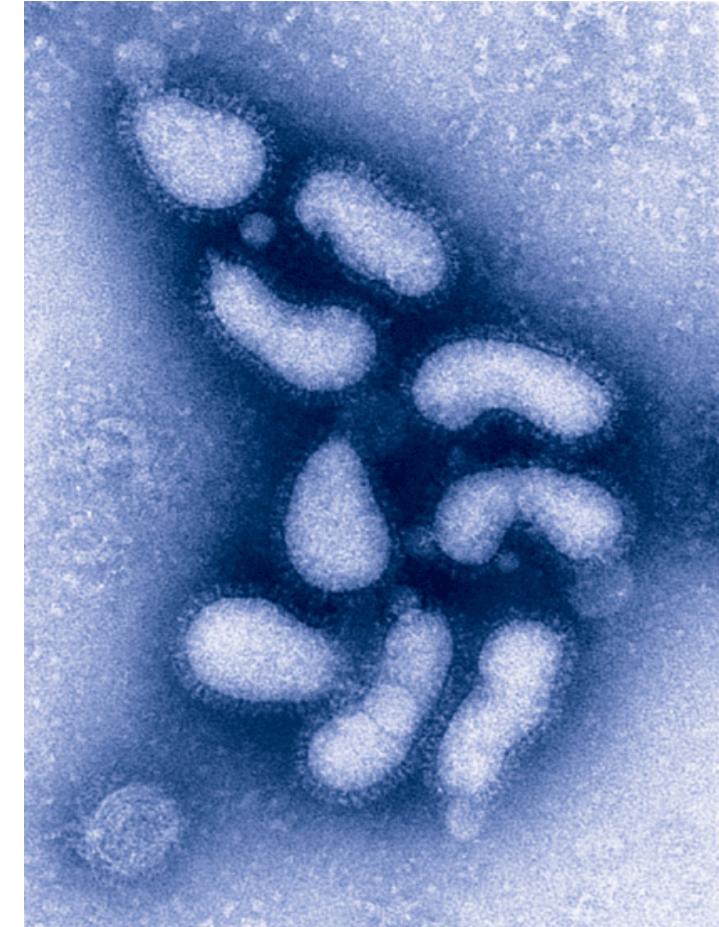
# FLU ISOLATION

- > Infected person
- > LHA *reasonably believes* that this person *has been infected* with flu
- > LHA issues a Written Order of Control Measures
  - > May include medication regimen
  - > May include movement restrictions and isolation from others
- > If person violates Order, apply for a court OMPCD



# AREA QUARANTINE FOR DISEASE

- › Healthy person(s) in a defined area
- › LHA or DSHS Commissioner *reasonably believes* that this group *may have been exposed* to illness
- › DSHS Commissioner (or LHA in consultation with DSHS) issues an area quarantine



# **AREA QUARANTINE FOR AGENT**

- › Specific area quarantine laws for the introduction of an environmental or toxic agent into the environment
- › If area quarantine issued by LHA, it expires
  - › In 24-hours; or
  - › When action taken under the Texas Disaster Act; or
  - › When action taken by DSHS Commissioner



# PUBLIC HEALTH NUISANCE

- › Determination of public health nuisance
- › LHA issues written notice ordering nuisance abatement to responsible party



# PUBLIC HEALTH NUISANCE

A condition, act, or failure to act that **unreasonably** interferes with the health or safety of the community by

- › endangering life,
- › generating or spreading infectious diseases, or
- › otherwise injuriously affecting the public's health

TURNING POINT ACT § 1-102(36) (2003).



# PUBLIC HEALTH NUISANCES IN TEXAS

- › A collection of water in which mosquitoes are breeding in the limits of a municipality, or
- › A collection of water that is a breeding area for mosquitoes that can transmit diseases regardless of the collection's location (excepting agriculture activities).
- › An object, place, or condition that is a possible and probable medium of disease transmission to or between humans.



# PUBLIC HEALTH NUISANCES IN TEXAS

- > Harboring rats (pop. area)
- > Breeding place for flies (pop. area)
- > Bedbugs in hotels
- > Spoiled meats
- > Fat rendering, bone boiling
- > Unsanitary food service
- > Unsanitary government agency
- > Waste likely to spread disease
- > Leaky waste transport
- > Overflowing septic tank



# **PUBLIC HEALTH NUISANCE ABATEMENT**

- › Responsible person required to abate nuisance
- › Local Health Authority shall issue written notice ordering abatement
  - › Notice to responsible party
  - › Copy to local municipal, county, or district attorney



# **NOTICE ORDERING PUBLIC HEALTH NUISANCE ABATEMENT**

- › Specify type of public health nuisance
- › Designate a reasonable time to complete abatement
- › LHA notifies prosecuting attorney if nuisance not abated within time allowed
- › District attorney institutes proceedings to abate nuisance (or asks Attorney General to do so)

TEX. HEALTH & SAFETY CODE § 341.011.



# JURISDICTIONAL ISSUES

- › Different requirements for cities and unincorporated areas in the county
- › Some municipalities may
  - › Have more stringent definitions of what constitutes a nuisance
  - › Require inspections
  - › Impose fines



# **UNINCORPORATED EXAMPLE**

- › Public nuisance to maintain property in an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests
- › Penalty if nuisance not abated within 30 days of notice
  - › \$50 to \$200 fine (or \$200 to \$1000 fine and up to 6 months in jail if repeat conviction)
  - › Order abatement or county may abate with reimbursement



# MOSQUITO CONTROL ON UNINHABITED PROPERTY

- › Government may enter property and abate without notice on a residential property reasonably presumed to be abandoned or that is uninhabited due to foreclosure
- › Abatement limited to treating stagnant water with mosquito larvicide
- › Must post notice of abatement on front door

TEX. HEALTH & SAFETY CODE § 341.019.



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Thank You!

ALLISON N. WINNIKE, J.D.

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The Immunization Partnership  
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