



Sounding the Alarm: The Duty of Public Health Officials to Take Politically Unpopular Stands

Introduction

- » **Politics can overwhelm public health decisions**
 - COVID-19 and the Flint Water Crisis as examples
 - Must public health officials oppose political decisions that threaten the public's health?
 - How should the law account for this responsibility?
 - What are the political and personal consequences for opposition to political decisions?

First Presentation: Holding Out for a Public Health Hero

- » **Expectation that public health officials must take a stand**
 - **Simultaneously reasonable and unreasonable**
 - **Simultaneously logical and illogical**
 - **Primary function is to safeguard the community's health over competing interests**
 - **A legal duty in most state public health codes**
 - **Professional loyalty to public health**
 - **Commitment to speak truth to power**

Holding Out for a Public Health Hero

- » **Expectation that public health officials will speak truth to power regardless of consequences**
- **Set aside professional self-interests**
- **Represent the community's interests during a fiscal crisis or when political decisions would threaten the public's health**
- **Understood as a minimal job requirement**
- **But can professional martyrdom or heroism really be a basic job requirement?**

Holding Out for a Public Health Hero

- » **Risking jobs in name of public health has implications for legal preparedness**
 - How to define and operationalize such a duty
 - Would law protect the official who speaks out?
 - If not, what legal changes are needed?
 - Is it realistic for officials to expect legal protection?

Second Presentation: Even Public Health Heroes Need Accountability

- » **Public health decision-making is difficult and complex under the best of circumstances**
- Mistakes in judgment and policy implementation are inevitable
- Sound policy may turn out in retrospect to be harmful or wrong
- Acknowledging fallibility should not inherently lead to culpability
- What are the appropriate accountability mechanisms when decisions cause harm or fail to prevent harm to the population's health?

Even Public Health Heroes Need Accountability

- » **Public health decision-making is difficult and complex under the best of circumstances**
- **Flint Water Crisis as an example**
 - **Poor policy decisions led to tragic harms from lead in the drinking water**
 - **Failure to notify the public ignored potential harms from Legionella outbreaks**
 - **State public health, environmental, and political officials blamed for poor judgments**

Even Public Health Heroes Need Accountability

» Legal consequences ensued

- Criminal prosecutions
- Liability litigation
- What are the legal and political ramifications of these approaches?
 - What is the appropriate level of responsibility for what happened?
 - What are the relevant factors for holding public health officials accountable for harm?

Third Presentation: Beyond the Public Health Code

- » **Broad grant of authority in state public health codes that public health officials rely on to justify interventions**
- Codes are not self-executing
- Codes offer little operational guidance
- Public health officials thus have considerable discretion to act

Beyond the Public Health Code

- » **Reality that functioning within a political system**
 - Sometimes the public health code is insufficient
 - Health officer must decide when to go beyond the code, even if politically risky
 - **Flint Water Crisis**
 - **COVID-19**

Beyond the Public Health Code

» **Flint Water Crisis**

- Failed to use the bully pulpit
- Failed to intervene when it might have changed the political environment
- Should have gone beyond the public health code

» **COVID-19**

- Facing intense political and community resistance
- Threats to health and safety
- Hard to justify going beyond the public health code

Conclusion

- » **Health officer's primary obligation is to serve the community**
- » **Developing appropriate accountability measures is essential when decisions cause harm**
- » **Being a public health hero is difficult in the best of circumstances**
- » **COVID-19 made it dangerous**