
Improving Competencies for Public Health Emergency Legal Preparedness

Kristine M. Gebbie, James G. Hodge, Jr., Benjamin Mason Meier, Drue H. Barrett, Priscilla Keith, Denise Koo, Patricia M. Sweeney, and Patricia Winget

Introduction

This paper is one of the four interrelated action agenda papers resulting from the National Summit on Public Health Legal Preparedness (Summit) convened in June 2007 by the Centers for Disease Control and Prevention, and multi-disciplinary partners. Each of the action agenda papers deals with one of the four core elements of legal preparedness: laws and legal authorities; competency in using those laws; and coordination of law-based public health actions; and information.

This action agenda offers options for consideration by those responsible for or interested in ensuring that public health professionals, their legal counsels, and relevant partners understand the legal framework in which they operate and are competent in applying legal authorities to public health emergency preparedness.

Competencies are critical to an individual's ability to make effective legal response to all-hazards public emergencies. The accompanying assessment paper outlines the state of existing competencies in public health legal preparedness by discussing the development of public health emergency competencies and public health law competencies and identifies gaps in competencies that detract from attainment of the

goal of full legal preparedness for public health emergencies.¹ It concludes that "public health emergencies raise unique legal issues, necessitate rapid responses, and require consistent approaches...A uniform set of legal competencies that are routinely implemented and evaluated would prove invaluable to emergency preparedness and response." This action paper, based on extensive deliberations among the co-authors and participants at the 2007 National Summit on Public Health Legal Preparedness, frames an agenda for advancing legal competencies as a core element in effective public health emergency preparedness. The agenda identifies activities in response to identified gaps in 4 areas: (1) expanding the range of sectors that should have competency in public health legal preparedness, (2) improving competency specification, (3) disseminating competency information to key target audiences, and (4) improving measurement and evaluation of practice impacts.

Competencies as a Practice Tool

Despite the common use of "competency" to describe education and performance standards, there are misunderstandings of what it means to have a competent workforce or to provide competency-based education.

Kristine M. Gebbie, Dr.PH., R.N., is the Elizabeth Standish Gill Associate Professor of Nursing and Director of the Doctor of Nursing Science at Columbia University School of Nursing; she is also the Director of the Center for Health Policy. **James G. Hodge, Jr, J.D., LL.M.**, is an Associate Professor at Johns Hopkins Bloomberg School of Public Health; he is also the Executive Director of the Center for Law and the Public's Health. **Benjamin Mason Meier, J.D., LL.M., M.Phil.**, is a Fellow at the Department of Sociomedical Sciences and Center for Health Policy at Columbia University. **Drue H. Barrett, Ph.D.**, is the Public Health Ethics Coordinator of the Office of the Chief Science Officer at the Centers for Disease Control and Prevention. **Priscilla Keith, J.D.**, is the Chief Counsel at the Marion County Health and Hospital Corporation in Indiana. **Denise Koo, M.D., M.P.H.**, is the Director of the Division of Applied Public Health Training at the Office of Workforce and Career Development, Centers for Disease Control and Prevention. **Patricia M. Sweeney, J.D., M.P.H., R.N.**, is the Co-Director of the Center for Public Health Practice and an Assistant Professor of the Graduate School of Public Health at the University of Pittsburgh. **Patricia Winget, J.D.**, is Legal Counsel with the Office of the General Counsel, Minnesota Department of Health.

A common misunderstanding is to focus on only one of the three building blocks for competency, either knowledge, or skills, or values. In the area of legal preparedness, for example, it is easy to focus on knowledge (specific laws and regulations, contracts, plans) or values (the law as a positive force for public good or public health as a shared value) at the expense of the composite competency, which also requires skills such as analysis, communication or definition. A complete competency statement reflective of all three building blocks requires an active verb that translates to a clearly observable (and thus measurable) action or impact. An example of the importance of the active verb is illustrated in Box 1, in which the competency associated with isolation and quarantine law varies widely based on the verb selected to fill the blank.

Box 1:

A lawyer competent in public health emergency preparedness is able to ____ isolation and quarantine law.

- Recite
- Locate
- Interpret for tuberculosis
- Apply to the case of Mary Doe
- Explain to the media
- Defend in court
- Critique

An individual is often described as moving across three levels of competence: aware, proficient, and expert. More clearly stated, an individual will initially achieve competency at a novice level, and may proceed to a higher level (proficient or expert) if the competency is practiced or applied regularly. If, however, the person moves to a different competency, even one associated with the same context or object, then he or she is again considered a novice until experiences lead to greater expertise. Using the example from Box 1, a novice at locating isolation and quarantine law may need to consult an index each time; a proficient practitioner will be able to find the correct section of the law without outside assistance. Applied to different contexts, the individual who is expert at locating isolation and quarantine law may be proficient at interpreting the law as it applies to tuberculosis, but he or she may be only a novice at explaining this law to the media.

Options for Improving Legal Competencies for Public Health Emergency Preparedness

The following actionable options are organized into 4 key areas that respond to issues raised in the accompanying assessment paper and move beyond them to additional

points developed in Summit deliberations. Together, they outline a framework for action to strengthen competency in public health emergency legal preparedness at all levels of government (local, state, tribal, and federal), all sectors involved in the application of law in emergency preparedness and response, and academic institutions that support this practice.

1) Expand sectors that require competency in public health law and public health legal preparedness

In examining the work to date on public health emergency legal competencies, it becomes clear that legal competency efforts have focused first on the public health community and public health legal counsel. Less attention has been given to professionals in other sectors that play critical roles in public health emergency legal preparedness. Given the potential complexities of interpreting and applying legal remedies or interventions under emergency conditions, the summit participants concluded that the range of persons who should have at least some minimal level of public health emergency legal competencies should be expanded from the current focus on select public health officials to at least eight sectors – as identified in Box 2.

Box 2:

Priority sectors requiring attainment of competency in public health legal preparedness

1. Governmental public health and healthcare professionals, especially field staff in such key program areas as epidemiology, communicable disease control, and environmental regulation.
2. Leaders of non-governmental public health and other health organizations (hospitals, clinics, charitable organizations).
3. Legal counsel to key emergency response organizations, including government agencies (e.g., emergency management, law enforcement, environmental protection, education, and transportation), NGOs (e.g., the Red Cross) and business groups (e.g., chambers of commerce).
4. Members of the judiciary and their staff.
5. Members of legislative bodies and their staff, especially those serving on committees dealing with public health issues.
6. Elected and appointed members of the executive branch.
7. Leaders of all sectors identified in the National Response Plan as having Emergency Support Functions.
8. Leaders of the military, including National Guard.
9. Academics providing education and training to any of the above personnel.

As a lower priority, all law schools should move toward including some content on public health emergency preparedness in curricula, so that all members of the bar have opportunity to develop competency in this important area of practice.

2) Specify the core and sector-specific sets of required competencies

The competency sets described in the status paper were developed over an extended period of time, beginning with a period in which the public health community was not as sensitive to the importance of constructing competency statements using the conceptual and language standards discussed above. Furthermore, they have been developed using a range of methods that may or may not adequately represent expectations in the field. For these reasons, the action agenda must include two phases of competency development, beginning with the competencies identified in the status paper and then improving competency specification through an ordered, inclusive and technically sound method such as that recently employed in identifying competencies for epidemiologists in public health practice.²

- *Identify a limited set of core competencies for which all members of the groups identified in the preceding section are responsible.* Those practicing full-time in the public health sector, whether as legal counsel or health professionals, would be expected to master the core competencies and advance quickly to additional skills (see following section). For others (e.g., leaders of non-public health emergency support functions), the competency expectations might not rise above the novice level, given their relatively rare opportunities for practice or application. For selected examples of a set of core competencies in public health legal preparedness that all public health nurses should master, see Box 3.
- *Identify additional profession-, position- or sector-specific competencies that can be expected of all members of the specified group.* For example, additional competencies beyond the core should be expected of chief public health officials (agency heads) at the local, state, tribal and federal levels, since they will be called upon to make use of legal counsel when delivering public information messages or making regulatory decisions during an emergency event.

Box 3:

Selected examples of public health law core competencies for nurses related to emergency preparedness and response

A legally competent public health nurse should be able to:

1. Describe the basic legal framework for public health emergency response; roles of federal, state, and local governments; and the relationship between legislatures, executive agencies, and the courts,
2. Explain the purpose and scientific basis of public health emergency laws related to scope of practice,
3. Apply ethical principles to the development, interpretation, and enforcement of laws,
4. Adhere to confidentiality laws in the collection, maintenance, and release of data in a public health emergency,
5. Access, effectively apply, and defend the use of legal information, tools and remedies (e.g., quarantine and isolation orders, injunctions, abatement orders) in a public health emergency, and
6. Apply essential tenets of antidiscrimination laws, such as the Americans with Disabilities Act (ADA) affecting the delivery of services in a public health emergency.

[Cfr. For Law and the Public's Health: Core Legal Competencies for Public Health Professionals]

- *Reevaluate competency statements on a periodic basis.* As practitioners apply the competencies, it is likely that gaps will be identified, or that one or more of the statements will be deemed unnecessary. Evaluation of these newly-identified competencies should be led by the public health law community in collaboration with experts in public health practice and competency-based workforce development. While 3 to 5 years is a typical competency review interval, the rapidly evolving nature of emergency preparedness and related training suggests that an initial evaluation should take place within 2 to 3 years, with reevaluations taking place concurrent with the redrafting of emergency response plans. Periodic review of the competency statements – particularly in the aftermath of legal responses to actual events, as seen most recently in the legal response to patients with multi-drug resistant tuberculosis (MDR-TB) – would provide practitioners with the evolving tools they will need to keep pace with experiential learning in emergency preparedness and response.³

- *Incorporate core competencies and those sector-specific competencies into the existing competency sets that currently guide public health education and practice.* For example, given that public health nurses compose the largest group of professionals practicing public health (and a public health nurse may be, in smaller jurisdictions, the only full-time professional), it would be appropriate for the core legal preparedness competencies, and those developed specifically for public health professionals, to be incorporated into the competency materials developed for public health nurses by the Association of State and Territorial Directors of Nursing.⁴

3) *Disseminate competency information to facilitate use*

As the competencies for public health legal preparedness are elaborated, it is essential to develop plans for disseminating them to institutions that can then translate them into practice. This translation involves both formative and continuing education:

- *Use the identified core competencies in all public health pre-practice education, consistent with the Institute of Medicine recommendation that law is an essential component of public health education.*⁵
- *Include the identified core competencies in the curricula of all health professional schools (e.g., public health, medicine, dentistry, nursing).*
- *Include the identified core competencies in the curricula of all law schools.* It is critically important that all members of the bar have an opportunity to develop core competency encompassing the legal authority for public health.
- *Support faculty instruction at the intersection of law, public health, and emergency preparedness with an expanded set of scholarly and applied materials.* Professional schools may seek to create specialized academic programs and advanced resource materials that go beyond the core competencies and into specific subsets of the competencies.
- *Provide continuing education based on the identified competencies for the current workforce.* Continuing education may be offered either by law or public health organizations, in a variety of in-person or distance-based formats. Support for continuing education would be strengthened if one or more professional societies or certifying bodies included requirements for training in public health emergency legal preparedness in their standards. While there may be some interest in a

program that certifies attainment of competency, certification programs do not assure sound practice, and should only be considered in this area after public health practitioners and others gain more experience in certification at a basic level.

- *Include public health emergency legal competency training in existing law enforcement and judicial training programs.* Schools of public health or law schools with public health law expertise should be encouraged to work with these training programs in the development of appropriate materials.
- *Develop a national public health law training program (or academy) for more advanced preparation, within which preparedness for emergencies can be given thorough attention.* Offered once or twice a year, this program would meet the needs of the relatively small number of newly employed, appointed, or elected individuals requiring updated education beyond the core competencies in any one locale. Through such an academy, expert faculty could be drawn from across the country; the full range of interested professional communities could participate in sessions that demonstrate the cross-sectoral collaboration essential to effective public health emergency legal practice; and a common interpretation of key competencies could be assured.⁶
- *Create communities of practice, both horizontally across all levels (community, region, state, tribal, national) and vertically (from local health agency to state and federal counterparts), to stimulate the development of best legal practices in public health emergency preparedness for specific communities and specific types of emergency events.* As discussed in other action agendas, a professional's isolation from those doing overlapping work may limit his or her ability to perform effectively. Engagement in a community of practice will also support the novice in public health emergency legal preparedness in maintaining his or her achieved level of performance or in moving to a higher level of competency.
- *Build a specialized network of public health legal practitioners active in emergency preparedness to support public health officials' response to legal issues that emerge during declared emergencies.* This network or collaborative could improve emergency response by supporting those who are directly involved but who have limited experience in public health legal emergency preparedness, developing their competencies in legal response for future events.

4) *Improve Measurement of Practice Impact*

Public health assessment is moving toward measurement of the relationship between competencies and public health outcomes. As public health legal competencies, including those essential to public health emergencies, are more clearly specified, taught to existing and emerging practitioners, and applied in simulated and real emergencies, it is essential to measure the impact of increased competence on the effectiveness of response efforts and protections of the public's health.

- *Assess competence of individual public health practitioners and legal practitioners through the inclusion of legal preparedness competencies in workforce hiring, job performance appraisals, and promotion evaluations.*
- *Include in public health emergency drills and exercises at least one objective that requires application of public health emergency legal competence.* This would give participants opportunities to practice the legal components of emergency preparedness and response, which should be a central element in every emergency exercise.
- *Research specific hypotheses on the correlation between competence and performance* through evaluations (case-control or otherwise) of drills and exercises or through methodical data analyses following real emergent events. Achieving this needed knowledge requires the inclusion of additional scholars in the competency endeavor, as well as additional funding structures to develop and test this research agenda.

Conclusion

Competency in public health emergency legal preparedness is consistent with the holistic view that law is integral to all public health practice settings and situations. Effective competency-based public health legal practice will enable more effective management of emergency events. Given the centrality of public health law to an effective public health emergency response, it will be necessary to achieve better developed and more widely disseminated competence in public health emergency legal response. The public health community, specifically those working actively at the intersection of law and public health, should prioritize the action options presented here and develop specific plans for their implementation.

References

1. J. G. Hodge, K. M. Gebbie, C. Hoke, M. Fenstersheib, S. Hoffman, and M. Lynk, "Assessing Competencies for Public Health Emergency Legal Preparedness," *Competencies Action Agenda*.
2. G. S. Birkhead and D. Koo, "Professional Competencies for Applied Epidemiologists: A Roadmap to a More Effective Epidemiologic Workforce," *Journal of Public Health Management & Practice* 12, no. 6 (2006): 501-504.
3. H. Markel, L. O. Gostin, and D. P. Fidler, "Extensively Drug-Resistant Tuberculosis: An Isolation Order, Public Health Powers, and a Global Crisis," *JAMA* 298, no. 1 (2007): 83-86.
4. L. O. Keller, *Critical Competencies for the Public Health Nurse in the 21st Century*, Association of State and Territorial Directors of Nursing, available at <<http://www.astdn.org/>> (last visited December 3, 2007).
5. K. Gebbie, L. Rosenstock, and L. M. Hernandez, *Who Will Keep the Public Healthy? Educating Public Health Professionals for the 21st Century* (Washington, D.C.: Institute of Medicine, National Academy of Sciences, 2002).
6. R. Hogan, C. H. Bullard, D. Stier, M. Penn, T. Wall, J. Cleland, J. Burch, J. Monroe, R. E. Ragland, T. Baker, and J. Casciotti, "Assessing Coordination for Public Health Emergency Legal Preparedness," *Coordination Status Paper*.