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## **A GUIDE TO NEW YORK STATE LAWS GOVERNING BIOTERRORISM PREPAREDNESS AND RESPONSE**

This compilation of New York State statutory and regulatory authority is intended as a convenient resource for state and local health officials involved in planning for potential bioterrorism and other public health emergencies, including those arising from a radiological source.

### **I. PLANNING FOR A PUBLIC HEALTH EMERGENCY**

#### **A. DISASTER PREPAREDNESS PUBLIC POLICY STATEMENT**

**Authority:** Executive Law 20(1) states that it is the policy of the State that:

- (a) local government and emergency service organizations continue their essential role as the first line of defense in times of disaster, and that the State provide appropriate supportive services to the extent necessary;
- (b) local chief executives take an active and personal role in the development and implementation of disaster preparedness programs and be vested with authority and responsibility in order to assure the success of such programs;
- (c) State and local natural disaster and emergency response functions be coordinated in order to bring the fullest protection and benefit to the people;
- (d) State resources be organized and prepared for immediate effective response to disasters which are beyond the capability of local governments and emergency service organizations; and
- (e) State and local plans, organizational arrangements, and response capability required to execute the provisions of Executive Law Article 2-B (Disaster Preparedness) shall at all times be the most effective that current circumstances and existing resources allow.

#### **B. DISASTER PREPAREDNESS COMMISSION PLAN**

**Authority:** Executive Law 21 provides for the creation of a Disaster Preparedness Commission, which includes the commissioners of the following State agencies: Health, Transportation, Division of Criminal Justice Services, Education, Economic Development, Agriculture and Markets, Housing and Community Renewal, General Services, Labor, Environmental Conservation, Mental Health, State Energy Research and Development Authority, State Police, Insurance, Banking, and State. The Disaster Preparedness Commission also includes the State Fire Administrator, the chair of the Public Service Commission, the Adjutant General, the chairman of the State Thruway Authority, the chief professional officer of the State coordinating chapter of the American Red Cross and other members appointed by the Governor.

Among the Disaster Preparedness Commission's duties set forth at Executive Law 21(3)(c) is the duty to prepare State disaster preparedness plans.

### C. CIVIL DEFENSE DRILLS

**Authority:** Executive Law 29-b(1) provides that the Governor may, in his discretion, direct the State Civil

Defense Commission to conduct a civil defense drill, under its direction, in which all or any of the civil defense forces of the State may be utilized to perform the duties assigned to them in a civil defense emergency, for the purpose of protecting and preserving human life in a disaster. In such event, civil defense forces in the State shall operate under the direction and command of the State Director of Civil Defense, who is, pursuant to Military Law 11, the Adjutant General.

Executive Law 29-b(2) and (3) respectively set forth provisions governing use of civil defense forces by the chief executives of counties and cities, including provisions relating to drills.

## II. REPORTING AND DETECTION

The ability to detect and respond effectively to an unannounced act of bioterrorism may depend significantly upon timely and complete reporting of cases of communicable disease.

### 1. PRIMARY REPORTERS OF CASES OF COMMUNICABLE DISEASE AND OTHER INDICATORS OF DISEASE OUTBREAK

#### 1. Local Health Officers Outside the City of New York

**What is reported:** All cases of such communicable diseases as may be required by State Department of Health (DOH)

**Report made to:** State DOH

**Manner of reporting:** Original reports or summary reports when authorized by State DOH

**When reported:** Promptly

**Authority:** Public Health Law 2103 requires every local health officer to report promptly to the State DOH all cases of communicable diseases as may be required by State DOH. Public Health Law 2110 excepts the provisions of Public Health Law 2103 from applying to the City of New York. See instead New York City Health Code Article 11.

#### 2. County Health Commissioners Outside the City of New York

**What is reported:** Original reports of communicable disease cases.

**Report made to:** State DOH.

**Manner of reporting:** Original reports or summary reports when authorized by State DOH.

**When reported:** Within 24 hours after receipt by county health commissioner.

**Authority:** Public Health Law 2104(1) requires the health officer of each city, village, town and consolidated health district included as part of any county or part-county health district, to transmit daily all original reports of communicable disease cases to the county health commissioner. Public Health Law 2104(2) requires the county health commissioner to transmit to State DOH the original reports of communicable disease cases within 24 hours after he or she receives them. Public Health

Law 2110 excepts the provisions of Public Health Law 2104 from applying to the City of New York. See instead New York City Health Code Article 11.

### 3. Hospitals

**What is reported:** “Case”, defined in 10 NYCRR 2.2(b) as a person diagnosed to have a particular disease or condition; “outbreak”, defined in 10 NYCRR 2.2(c) as an increased incidence of disease above its expected baseline level.

**Report made to:** State DOH and to the city, county or district health officer.

**When reported:** Not specified.

**Manner of reporting:** as specified by the Commissioner of Health (10 NYCRR 405.11(c)).

**Authority:** Public Health Law 201(1)(c) authorizes DOH to supervise the reporting and control of disease. Public Health Law 2803(1)(a) grants the Commissioner of Health the power to inquire into the operation of hospitals. 10 NYCRR 405.11(c), which requires the hospital professional responsible for the hospital-wide infection control program to report to DOH any increased incidence of nosocomial infections, must be read with the 10 NYCRR 2.2(a) definition, which states that “for public health reporting purposes, hospital associated infections include outbreaks or increased incidence of disease due to microbiological agents or their toxic products”. 10 NYCRR 2.1 specifies the infectious, contagious or communicable diseases which must be reported pursuant to various provisions contained within 10 NYCRR Part 2 (Communicable Diseases), which was promulgated pursuant to Public Health Law 225. Nosocomial infections are reportable by hospitals pursuant to 10 NYCRR 405.11(c).

### 4. Physicians Outside the City of New York

**What is reported:** The full name, age and address of every person with a suspected or confirmed case of a communicable disease or any outbreak of communicable disease, together with the name of the disease, and any additional information requested by the health officer in the course of a communicable disease investigation.

**Report made to:** City, county or district health officer within whose jurisdiction the patient is.

**When reported:** Immediately or within 24 hours from the time the case is first seen by the physician.

**Manner of reporting:** Telephone, facsimile and other electronic transmission if indicated, and also in writing unless the State Health Commissioner approves waiver of written notice.

**Authority:** Public Health Law 2101 requires that every physician shall immediately give notice of every case of communicable disease required by State DOH to be reported to it, to the health officer of the local health district where such disease occurs. Existing regulations promulgated pursuant to Public Health Law 225, and set forth at 10 NYCRR 2.10, require every physician to report to the city, county, or district health officer, within whose jurisdiction the patient is, specified information concerning every person with a suspected or confirmed case of a communicable disease or any outbreak of communicable disease, within 24 hours from the time the case is first seen by the physician. Reports shall be made by telephone, facsimile or other electronic transmission if indicated, and shall also be made in writing, except that the written notice may be omitted with the approval of the State Commissioner of Health. Although direct reporting to State DOH is not currently required, when a communicable disease is reported to a city, county or district health officer, a copy is retained in that office, and another copy of the report must be reported to State DOH, pursuant to 10 NYCRR 2.1(b).

## 5. Physicians Within the City of New York

**Authority:** Public Health Law 2110 excepts the City of New York from, among other requirements, the provisions of Public Health Law 2101 described in paragraph 4 above. See instead New York City Health Code Article 11.

## 6. Nursing homes, diagnostic and treatment centers, other Public Health Law Article 28 facilities

**What is reported:** Cases of communicable diseases as defined in 10 NYCRR 2.2(b).

**Report made to:** State DOH and to the city, county or district health officer in whose jurisdiction the institution is located.

**When reported:** Not specified.

**Manner of reporting:** Not specified.

**Authority:** 10 NYCRR 2.10(a) provides that when a case of communicable disease occurs in a facility licensed under Article 28 of the Public Health Law, the person in charge of the facility shall report the case to the State Department of Health and to the city, county or district health officer in whose jurisdiction the institution is located.

## 7. Clinical Laboratories

**What is reported:** Identity of person from whom specimen is taken, name of physician sending specimen, other facts pertinent to the examination. Tests performed and such other information as the Department of Health may require to carry out the provisions of Title V, Article 5 of the Public Health Law. Also, such information and data concerning the laboratory's technical operation as may be specified by the Department.

**Report made to:** Local health official and State DOH.

**When reported:** Immediately for communicable disease reporting.

**Manner of reporting:** In a form prescribed by the Department.

**Authority:** Public Health Law 2102(1) requires that when any laboratory examination discloses evidence of communicable disease, the results of such examination together with all required pertinent facts, shall be immediately reported by the person in charge of the laboratory or the person making such examination to the local or state health official to whom the attending physician is required to report such case. Public Health Law 576(2) authorizes the State DOH to require clinical laboratories and blood banks to submit, in a form prescribed by the Department, periodic reports of tests performed and such other information as the Department may require to carry out the provisions of Title V, Article 5. 10 NYCRR Part 58-1.11(a) states that when requested, a laboratory shall submit reports containing such information and data concerning its technical operation as may be specified by the Department.

## 8. State Institutions

**What is reported:** Cases of communicable diseases.

**Report made to:** State DOH and to city, county or district health officer.

**When reported:** Not specified.

**Manner of reporting:** Not specified.

**Authority:** Public Health Law 2105 requires the director or person in charge of each state institution  
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to report immediately an outbreak of a communicable disease in such institution to the State Health Commissioner and as may otherwise be provided in the State Sanitary Code. 10 NYCRR 2.10(a) provides that when a case of communicable disease occurs in a State institution or a facility licensed under Article 28 of the Public Health Law, the person in charge of the institution or facility shall report the case to the State Department of Health and to the city, county or district health officer in whose jurisdiction such institution is located.

#### **9. Public Health Nurses and All Other Persons When No Physician Is In Attendance**

**What is reported:** The name and address of any individual affected with any disease presumably communicable.

**Report made to:** City, county or district health officer.

**When reported:** Immediately.

**Manner of reporting:** Not specified.

**Authority:** 10 NYCRR 2.12 provides that when no physician is in attendance, it shall be the duty of the head of a private household or the person in charge of any institution, school, boarding house, camp or vessel or any public health nurse or any other person having knowledge of an individual affected with any disease presumably communicable, to report immediately the name and address of such person to the city, county, or district health officer.

#### **10. Coroners, Medical Examiners, Pathologists**

**What is reported:** Case of any individual who at time of death was apparently affected with a communicable disease, based on examination of the corpse or from history of events leading to death.

**Report made to:** City, county or district health officer.

**When reported:** Within 24 hours of determination.

**Manner of reporting:** By telephone, facsimile transmission or other electronic communication if indicated, and also in writing, except that the written notice may be omitted with the approval of the State Health Commissioner.

**Authority:** 10 NYCRR 2.11 provides that if a pathologist, coroner, medical examiner, or other person determines from examination of a corpse or from history of the events leading to death that at the time of death this individual apparently was affected with a communicable disease, he/she shall report the case within 24 hours to the proper health authority according to the manner indicated in 10 NYCRR 2.10 as if the diagnosis had been established prior to death. Note that the State Department of Health is not a direct recipient of such information pursuant to 10 NYCRR 2.10 but is an indirect recipient pursuant to 10 NYCRR 2.1(b).

### **B. REGULATION OF LIVE PATHOGENIC MICROORGANISMS OR VIRUSES**

**Authority:** This is an area regulated primarily by the Federal government. It is important because of the potential threat of diversion of dangerous pathogens for bioterrorism. In addition to the State law cited below, see also Title 42 Code of Federal Regulations Part 72, entitled Interstate Shipment of Etiologic Agents, promulgated pursuant to the Antiterrorism Act of 1996, Pub.L. No. 104-132 which, among other things, directed the Federal Centers for Disease Control and Prevention to establish a regulatory scheme to identify biological agents posing a threat to the public health and

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to regulate their transfer and use through Federal rule. See also the USA Patriot Act of 2001 (Pub. Law 107-56, section 817); 18 U.S.C. 175 and 175b.

Public Health Law Article 32 (Live Pathogenic Microorganisms or Viruses) requires that no person other than a licensed practitioner of medicine, dentistry, or veterinary medicine or a person under their direct supervision shall possess or cultivate live pathogenic microorganisms or viruses other than vaccine virus, subject to certain exceptions. Public Health Law 3201(1),(2) requires that no person shall sell or convey any live pathogenic microorganisms or viruses other than vaccine virus to any other person without permission from the State Commissioner of Health, or the New York City Health Department if within that city. However, this requirement does not apply to diseased tissue, exudate, or other specimens which are sent by physicians, dentists or veterinarians to laboratories for examination as an aid to the diagnosis or control of disease.

### **III. STATE AND LOCAL GOVERNMENT RESPONSE PROVISIONS**

#### **1. AT ONSET OF PUBLIC HEALTH EMERGENCY**

##### **1. Actions of the Governor**

###### **a. Governor May Declare a Disaster Emergency**

*Authority:* Executive Law 28(1),(3) provides that whenever the Governor, on his own initiative or pursuant to a request from one or more chief executives, finds that a disaster has occurred or may be imminent, for which local governments are unable to respond adequately, he shall declare a disaster emergency by executive order, which describes the disaster and affected area, and which remains in effect for a period not to exceed 6 months unless extended by executive order for additional limited periods.

*Disaster* is defined at Executive Law 20(2)(a) as the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made causes, including, but not limited to, fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, wind, storm, wave action, volcanic activity, *epidemic*, air contamination, blight, drought, infestation, explosion, radiological accident, water contamination, bridge failure or bridge collapse.

*State disaster emergency* is defined at Executive Law 20(2)(b) as a period beginning with a declaration by the Governor that a disaster exists and ending upon its termination.

###### **b. Governor May Invoke the New York State Defense Emergency Act of 1951**

*Authority:* The New York State Defense Emergency Act of 1951 (Chapter 784, Laws of 1951), could be invoked following an “attack”, defined to include any case involving use of bacteriological or biological means, thereby empowering a State Defense Council, chaired by the Governor, to exercise a broad range of extraordinary powers. (See appendices which contain the complete statute).

##### **2. Local Government Actions**

###### **a. Chief Executive of a County, City, Town or Village May Proclaim a Local State of Emergency**

**Authority:** Executive Law 24(1) provides that specified chief executives (defined at Executive Law 20(2)(f)) may proclaim a local state of emergency within any part or all of the territorial limits of such local government under specified circumstances.

**Local state of emergency** may arise in the event of a disaster, rioting, catastrophe, or similar public emergency within the territorial limits of any county, city, town or village. See Executive Law 24(1).

## 2. During Public Health Emergency

### 1. Actions of the Governor

#### a. Governor May Temporarily Suspend State and Local Laws and Regulations Under Specified Conditions

**Authority:** Under Executive Law 29-a, the Governor may, by executive order and subject to the State and Federal Constitutions and Federal statutes and regulations, and after seeking the advice of the Disaster Preparedness Commission, temporarily *suspend* specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.

#### b. Governor Shall Take Specified Actions Following Declaration of Disaster Arising from Radiological Accident

**Authority:** Executive Law 28(2) requires that upon the Governor's declaration of a disaster arising from a radiological accident, the Governor or his designee, shall direct one or more chief executives and emergency services organizations to: (a) notify the public that an emergency exists; and (b) take appropriate protective actions pursuant to the radiological emergency preparedness plan approved pursuant to sections 22 and 23 of the Executive Law. The Governor or his designee shall also have the authority to direct that other actions be taken by such chief executives pursuant to their authority under Executive Law 24.

#### c. Governor May Request Federal Assistance

**Authority:** Executive Law 28(4) provides that whenever the Governor finds that a disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected jurisdictions, he shall make an appropriate request for Federal assistance available under Federal law, and may make available out of any funds provided under the governmental emergency fund or such other funds as may be available, sufficient funds to provide the required State share of grants made under any Federal program for meeting disaster related expenses.

#### d. Governor May Direct State Agencies to Provide Disaster Emergency Assistance

**Authority:** Executive Law 29 provides that upon the declaration of a state disaster emergency, the Governor may direct any and all agencies of the state government to provide assistance under the coordination of the Disaster Preparedness Commission. Such State assistance may include: (1) utilizing, lending, or giving to political subdivisions, with or without compensation, equipment, supplies, facilities,

services or state personnel, and other resources, other than the extension of credit; (2) distributing medicine, medical supplies, food and other consumable supplies through any public or private

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agency authorized to distribute such items; (3) performing on public or private lands temporary emergency work essential for the protection of public health and safety, clearing debris and wreckage, making emergency repairs to and temporary replacements of public facilities of political subdivisions damaged or destroyed as a result of such disaster; and (4) making such other use of their facilities, equipment, supplies and personnel as may be necessary to assist in coping with the disaster or any resulting emergency.

**e. Governor May Order the Organized Militia into Service of the State**

**Authority:** Military Law 6(1) provides that the Governor shall have power, in case of disaster, to order the organized militia into the active service of the State for such period, to such extent, and in such manner as he may deem necessary. Pursuant to Military Law 9, whenever the organized militia is employed under Military Law 6, the Governor may by proclamation declare the county or city in which the troops are serving to be under *martial rule*, if in the Governor's judgment the maintenance of law and order will thereby be promoted. Martial rule is subject to the Federal and State Constitutions and is governed by the Code of Military Justice. See Military Law Article VII.

**f. Governor May Issue Call to the State Police**

**Authority:** Executive Law 223(1) sets forth the duties and powers of the Superintendent and members of the New York State Police. The State Police are subject to the call of the Governor and are empowered to cooperate with any other department of the State or with local authorities. Upon the direction of the Governor or upon the request of the mayor of a city with the approval of the Governor, the State Police may exercise their powers within the limits of any city to suppress rioting and disorder.

**g. Governor May Require State Health Commissioner to Examine Nuisances and Order Their Abatement or Removal**

**Authority:** Public Health Law 1301(1) provides that whenever required by the Governor, the State Commissioner of Health shall make an examination concerning nuisances or questions affecting the security of life and health in any locality, and shall report the results to the Governor within the time prescribed by him. The Governor may declare the matters public nuisances and may order them to be changed, abated or removed as he may direct, pursuant to Public Health Law 1301(2). Pursuant to Public Health Law 1301(3), the Governor may, by a precept under his hand and official seal, require the district attorney, sheriff and other officers of the county where such nuisance is maintained, to take all necessary measures to execute such order and cause it to be obeyed.

Application of these provisions to a situation arising from bioterrorism would assume the resulting contamination of property which might be identified and termed a public *nuisance*.

**2.State Agency Actions**

**a. State Health Commissioner and New York State Department of Health Continue to Exercise Powers and Duties Regarding Public Health Matters as Provided by Law**



**Authority:** Public Health Law 200 provides for the existence of a Department of Health in State government, headed by a Commissioner of Health of the State of New York. Public Health Law 206(1)(a) states the duty of the Commissioner of Health to take cognizance of the interests of public health and exercise functions, powers and duties prescribed by law.

**Supervision of local boards of health and health officers** — Public Health Law 206(1)(b) states the duty of the Commissioner of Health to exercise general supervision over the work of all local boards of health and health officers, unless provided otherwise.

**Promulgation of regulations by Public Health Council** --- Public Health Law 225(4) and 225(5)(a) provide that the Public Health Council, which exists within the Department of Health, shall have the power to establish, amend and repeal regulations known as the State Sanitary Code, which may deal with any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York and with any matters as to which the jurisdiction is conferred upon the Public Health Council.

**Supervision of reporting and control of disease** --- Public Health Law 206(1)(d) states the duty of the Commissioner to investigate the causes of disease, epidemics, the sources of mortality and the effect of various factors on public health. Public Health Law 201(1)(c) states that the Department of Health shall, as provided by law, supervise the reporting and control of disease.

**Supervision of nuisance abatement** — Public Health Law 201(1)(n) requires the Department to exercise control over and supervise the abatement of nuisances affecting or likely to affect public health. Public Health Law 1300 confers on the Commissioner of Health all necessary powers to make investigations and examinations into nuisances, or questions affecting the security of life and health in any locality. Pursuant to Public Health Law 1303(4) and 10 NYCRR 8.5, the Commissioner of Health may mandate that local boards of health outside of New York City convene and take directed action necessary for the public good, including the abatement of the spread of disease.

**Deputization of local health officers** --- Pursuant to Public Health Law 206(9), the Commissioner of Health may deputize in writing any local health officer to do or perform in her place and stead those duties set forth at Public Health Law 206(1)(d) pertaining to the investigation of the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health.

**Modification of local board of health orders** --- Pursuant to Public Health Law 206(4)(b), the Commissioner of Health may annul or modify an order, regulation, by-law or ordinance of a local board of health concerning a matter which in her judgment affects the public health beyond the territory over which such local board of health has jurisdiction.

**Access to facilities and property**--- Pursuant to Public Health Law 206(2), the Commissioner of Health or designee may, without fee or hindrance, enter, examine and survey all grounds, erections, vehicles, structures, apartments, buildings and places.

***Expenditure of funds***--- Public Health Law 201(1)(p) provides that the Department of Health shall receive and expend funds for public health purposes as provided by law.

***Distribution of products*** --- Public Health Law 201(1)(e) requires the Department of Health to produce, standardize and distribute diagnostic, prophylactic and therapeutic products as provided by law.

***Regulation of public health aspects of radiation*** — Public Health Law 201(1)(r) requires the Department of Health to supervise and regulate the public health aspects of ionizing radiation and non-ionizing electromagnetic radiation.

***Promotion of disease education*** --- Public Health Law 201(1)(g) requires the Department of Health to promote education in the prevention and control of disease as provided by law.

**b. State Health Commissioner May Take Summary Action to Protect Public Health**

***Authority:*** Public Health Law 16 provides that whenever the Commissioner, after investigation, is of the opinion that any person is causing, engaging in or maintaining a condition or activity which in her opinion constitutes danger to the health of the people, and that it therefore appears to be prejudicial to the interests of the people to delay action for 15 days until an opportunity for a hearing can be provided in accordance with the provisions of Public Health Law section 12-a, the Commissioner shall order the person, including any State agency or political subdivision having jurisdiction, by written notice to discontinue such dangerous condition or activity or take certain action immediately or within a specified period of less than 15 days. As promptly as possible thereafter, within not to exceed 15 days, the Commissioner shall provide the person an opportunity to be heard and to present any proof that such condition or activity does not constitute a danger to the health of the people.

**c. Commissioner of General Services May Authorize State Agency Emergency Procurements**

***Authority:*** State Finance Law 163(10)(b) provides that procurements made to meet emergencies arising from unforeseen causes may be made without a formal competitive process and shall only be made under unusual circumstances and shall include a determination by the Commissioner of General Services or the State agency that the specifications or requirements for the purchase have been designed in a fair and equitable manner. The purchasing agency is required to document in the procurement record the nature of the emergency giving rise to the procurement.

***Emergency*** is defined at State Finance Law 163(1)(b) as an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

**3. Local Government Actions**

**a. Local Boards of Health and Health Officers Have the Duty and Authority to Control Infectious Diseases by Means that Include Isolation and Quarantine**

***Authority:*** Public Health Law 2100 (1) requires every local board of health and every health officer to guard against the introduction of such communicable diseases as are designated in the State Sanitary Code, by the proper and vigilant medical inspection and control of all persons and things

infected with or exposed to such diseases. Public Health Law 2100(2) places a legal duty upon local boards of health and health officers to: (a) provide for care and isolation of cases of communicable disease in a hospital or elsewhere when necessary for protection of the public health and (b) subject to the provisions of the State Sanitary Code, prohibit and prevent all intercourse and communication with or use of infected premises, places, and things, and require, and if necessary provide the means for their thorough purification and cleansing before resumption of their use. Pursuant to Public Health Law 2110, New York City is exempt from the requirements contained in Public Health Law 2100. See New York City Health Code Article 11.

**Isolation** is defined at 10 NYCRR 2.25(d) as consisting of the separation from other persons, in such places, under such conditions, and for such time, as will prevent transmission of the infectious agent, of persons known to be ill or suspected of being infected.

**Quarantine of premises** is defined at 10 NYCRR 2.25(e) to consist of (1) prohibition of entrance into or exit from the premises, as designated by the health officer, where a case of communicable disease exists of any person other than medical attendants and such others as may be authorized by the health officer; (2) prohibition, without permission and instruction from the health officer, of the removal from such premises of any article liable to contamination with infective material through contact with the patient or with his secretions or excretions, unless such article has been disinfected.

Pursuant to 10 NYCRR 2.29, whenever a case of a highly communicable disease (as defined in 10 NYCRR 2.1) comes to the attention of the city, county or district health officer, he or she shall isolate such patients as in his or her judgment are deemed necessary. Pending official action by the health officer, it is the legal duty of every attending physician, upon discovering a case of a highly communicable disease (as defined in 10 NYCRR 2.1) to immediately isolate the patient. 10 NYCRR 2.33 restricts the removal of persons affected with any highly communicable disease (as defined in 10 NYCRR 2.1) from one health district into another.

Under case law, including *Crayton v. Larabee* (1917) 220 N.Y. 493, isolation and quarantine must not be arbitrary, unreasonable or oppressive, and due process protections must be afforded to persons subject to isolation and quarantine orders of public health officers.

**b. Local Boards of Health and Health Officers Have Duty to Investigate, Suppress and Remove Nuisances and Conditions Detrimental to Life and Health**

**Authority:** Public Health Law 1303 provides that every local board of health and local health officer shall

receive and examine into all complaints concerning nuisances, or causes of danger or injury to life and health within the health district. Every local board of health shall order the suppression and removal of all such nuisances and conditions.

Application of this provision to a situation arising from bioterrorism would assume the resulting contamination of property which might be identified and termed a *nuisance*.

**c. City Commissioner of Health (or Health Officer in Cities with Population of Less than 175,000) May Exercise Extraordinary Powers in Case of Great and Imminent Peril to the Public Health**

*Authority:* Public Health Law 370(1) provides that in case of great and imminent peril to the public health of the city, it shall be the duty of the city health commissioner, or health officer in cities having a population of less than 175,000, with the approval and consent of the legislative authority if it is practicable to convene such authority for prompt action, or if not, when approved by the board of estimate or similar authority, to take such measures and to do, order or cause to be done such acts and to make such extraordinary expenditures, in excess of the sum appropriated to the city department of health, as provided by law, for the preservation and protection of the public health of such city as he or she may deem necessary and proper.

**d. Chief Executive of County, City, Town or Village May Promulgate Emergency Orders Following Proclamation of a Local State of Emergency**

*Authority:* Executive Law 24(1) provides that following the proclamation of a local state of emergency and during its continuance, the chief executive may promulgate local emergency orders to protect life and property or to bring the emergency situation under control.

*Control of roads and public areas* — As illustration, such orders may, within any part or all or the territorial limits of such local government provide for: the establishment of a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel; the prohibition and control of the presence of persons on public streets and places.

*Designation of emergency facilities*— Such orders may also provide for the establishment or designation of emergency medical shelters.

**e. Chief Executive of County, City, Town or Village May Suspend Local Law Under Specified Conditions**

*Authority:* Pursuant to Executive Law 24(1)(g), a local emergency order may provide for the *suspension* within any part or all of its territorial limits of any of its local laws, ordinances or regulations, or parts thereof, subject to Federal and State constitutional, statutory and regulatory limitations, which may prevent, hinder, or delay necessary action in coping with a disaster or recovery from a disaster. This extraordinary power is first subject to two conditions: (1) a request has been made by the appropriate chief executive of the county or city to the Governor in accordance with Executive Law 24(7); or (2) the Governor has

declared a state of disaster emergency pursuant to Executive Law 28. Also, such suspension of any local law, ordinance or regulation is subject to specified standards and limits:

- (i) no suspension shall be made for a period in excess of 5 days, provided, however, that upon reconsideration of all the relevant facts and circumstances, a suspension may be extended for additional periods not to exceed 5 days each during the pendency of the state of emergency;
- (ii) no suspension shall be made which does not safeguard the health and welfare of the public and which is not reasonably necessary to the disaster effort;
- (iii) any such suspension order shall specify the local law, ordinance or regulation, or part thereof,

suspended and the terms and conditions of the suspension;

(iv) the order may provide for such suspension only under particular circumstances, and may provide for the alteration or modification of the requirements of such local law, ordinance or regulation suspended, and may include other terms and conditions;

(v) any such suspension order shall provide for the minimum deviation from the requirements of the local law, ordinance or regulation suspended consistent with the disaster action deemed necessary; and

(vi) when practicable, specialists shall be assigned to assist with the related emergency actions to avoid adverse effects resulting from the suspension.

**f. Chief Executive of County and Certain Chief Executives of Cities May Request Governor to Provide Assistance Following Declaration of Local State of Emergency Involving Disaster Beyond Capability of Local Government to Meet**

*Authority:* Executive Law 24(7) provides that whenever a local state of emergency has been declared pursuant to this section, the chief executive of the county in which the local state of emergency has been declared, or where a county is wholly contained within a city, the chief executive of the city, may request the Governor to provide assistance under the Executive Law, provided that such chief executive determines that the disaster is beyond the capacity of local government to meet adequately and State assistance is necessary to supplement local efforts to save lives and to protect property, public health and safety, or to avert or lessen the threat of a disaster.

**IV. PROVISIONS GOVERNING CRITICAL AREAS**

**A. SAFE DISPOSAL OF INFECTIOUS WASTE**

*Authority:* See Public Health Law Article 13, Title XIII, entitled Storage, Treatment, and Disposal of Regulated Medical Waste. Included are the following definitions:

*Regulated medical waste* – 1389-aa(1)

*Infectious agents* – 1389-aa(5)

*Cultures and stocks* – 1389-aa(1)(a)

*Human pathological waste*– 1389-aa(1)(b)

*Sharps*– 1389-aa(1)(d)

In addition, see 6 NYCRR 364.9, which establishes a program for tracking and managing medical waste shipments pursuant to the Environmental Conservation Law.

**B. SAFE DISPOSAL OF HUMAN REMAINS**

*Authority:* See generally Public Health Law Article 41, Title IV (Registration of Deaths: Burial Permits); and Public Health Law Article 42 (Cadavers). Public Health Law 4140 requires that in the case of a death occurring from a disease which is designated in the State Sanitary Code as a communicable disease, no permit for the removal or other disposition of the body shall be issued by the registrar, except to a funeral director or undertaker licensed in accordance with Public Health Law Article 34 (Funeral Directing), under such conditions as may be prescribed in the State Sanitary Code.

**C. DESTRUCTION OF PROPERTY**

**Authority:** Public Health Law 2100 (2)(b) provides that every local board of health and every health officer may, subject to the provisions of the State Sanitary Code, prohibit and prevent all contact with or use of infected premises, places and things, and require, and if necessary, provide the means for their thorough purification and cleansing before contact may be resumed. According to an 1894 Opinion of the Attorney General, it was within the power of a local board of health to destroy clothing which had become infected with infectious or contagious disease germs.

#### D. LICENSING AND APPOINTMENT OF HEALTH PERSONNEL

##### **1. Coroner, Coroner's Physician and Medical Examiner**

**Authority:** Outside of New York City, County Law Article 17-A applies and describes their duties and manner of investigating deaths within their jurisdiction.

##### **2. Physicians**

**Authority:** Education Law Article 131 (Medicine); Education Law Article 131-A (definitions of professional misconduct applicable to physicians); Public Health Law 230 et seq.(Professional Medical Conduct); Public Health Law Article 33 (Controlled Substances)

##### **3. Physician's Assistants**

**Authority:** Education Law Article 131-B (Physician Assistants and Special Assistants); Education Law Article 131-A (definitions of professional misconduct applicable to physician's assistants and special assistants); Public Health Law Article 33 (Controlled Substances)

##### **4. Nurses**

**Authority:** Education Law Article 139 (Nursing); Public Health Law Article 33 (Controlled Substances)

##### **5. Pharmacists**

**Authority:** Education Law Article 137 (Pharmacy); Public Health Law Article 33 (Controlled Substances)

##### **6. Veterinarians**

**Authority:** Education Law Article 135 (veterinary medicine)

##### **7. Emergency Medical Technicians**

**Authority:** Public Health Law Article 30 (Emergency Medical Services); 10 NYCRR Part 800 (State Emergency Medical Services Code)

##### **8. Funeral Directors**

**Authority:** Public Health Law Article 34 (Funeral Directing)

#### E. COLLECTION OF LABORATORY SPECIMENS: CHAIN OF CUSTODY

Physical evidence of an act of bioterrorism may take the form of a biohazard specimen. Whenever such a specimen is to be appropriately collected by members of the health service system or law Section 3-Non-Hospital Quarantine and Isolation

enforcement agencies and transported to an appropriate laboratory for testing (e.g. Wadsworth Center for Laboratories and Research), material submitted as physical evidence must comply with policies that ensure its integrity and safe handling.

**Authority:** Executive Law 995-b(1) requires the Commission on Forensic Science to develop minimum standards for all forensic laboratories in New York State. See also 9 NYCRR Part 6190 (New York State Accreditation Program for Forensic Laboratories).

#### F. ACCESS TO AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

**Authority:** In addition to State law cited below, recently enacted Federal law must also be considered. See especially the Federal Health Insurance Portability and Accountability Act (HIPAA). Accompanying regulations are not yet effective. However, the relevant privacy regulations implementing HIPAA are scheduled to take effect and require compliance on April 14, 2003.

**Hospitals** licensed under Public Health Law Article 28 are required to ensure the confidentiality of patient records. Original medical records, information from or copies of records shall be released only to hospital staff involved in treating the patient and individuals as permitted by Federal and State laws. (10 NYCRR 405.10 (a)(5)).

**Nursing homes** must keep confidential all information contained in the residents' records except when release is required by the resident or by law. (10 NYCRR 415.22 (d)).

**Confidential HIV related information** is defined at Public Health Law 2780(7). No person who obtains such information in the course of providing any health or social services pursuant to a release of confidential HIV related information may disclose or be compelled to disclose such information except as provided in Public Health Law 2782 and Article 27-F.

**Release of patient medical records** procedures are provided for in Public Health Law 17 upon the written request of the patient to an examining, consulting or treating physician or hospital.

**Access to patient information** is governed generally by Public Health Law 18.

#### V. ENFORCEMENT

**Authority:**

**A. Criminal penalties** — Public Health Law 12-b(2) provides that a person who wilfully violates any provision of the Public Health Law or any regulation lawfully made or established by any public officer or board under authority of the Public Health Law, the punishment for violating which is not otherwise prescribed by the Public Health Law or any other law, is punishable by imprisonment not exceeding one year, or by a fine not exceeding \$2000 or by both.

**B. Physician discipline** — A physician may be charged via the disciplinary processes of Public Health Law 230 with professional misconduct pursuant to Education Law 6530(16) for a wilful or grossly negligent failure to make a communicable disease report required under 10 NYCRR 2.10.

**C. Civil penalties** --- Pursuant to Public Health Law 12 and 206, any person, including health facilities licensed under Public Health Law Article 28, who violates any provision of the Public Health Law or regulations made pursuant to it shall be liable for a civil penalty of not to exceed \$2000 for every such violation. A health facility licensed under Public Health Law Article 28 may subject its operating certificate to revocation, pursuant to Public Health Law 2806(1) for violation of the Public Health Law or applicable regulations, including communicable disease reporting requirements.

**D. Obstruction or interference with State health inspector** — No person shall interfere with or obstruct the inspection or examination of any occupant of any house, building, vessel or other premises by the State Commissioner of Health in the discharge of her official duties.(10 NYCRR 1.11).