

***Public Health Emergencies and the Law: Responding to Terrorism and Other Public Health Emergencies in New York***

A Symposium Co-Sponsored by Pace Law School, The New York State Judicial Institute  
and Westchester County Department of Health  
November 30, 2005<sup>1</sup>

This symposium brought together nearly 100 experts from New York and around the nation to discuss the threats to the state's public health, the institutions and laws designed to prepare for and meet these threats, and the legislation proposed to improve New York's response. Participants included health care professionals, public health experts, lawyers, lawmakers, executives, academics, judges, and first responders.

Pace Law School Professor **Linda Fentiman**, Director of Graduate Programs **Mark R. Shulman**, and Westchester County Commissioner of Health **Joshua Lipsman** convened this symposium with generous support from the Alfred P. Sloan Foundation.

**Notable Issues:**

- **Westchester County Executive Andrew Spano** emphasized the need for an articulated *ladder of executive authority* during emergencies. Currently mayors, county executives and the governor can each declare states of emergency, but no one declaration takes precedence over another. Therefore, the county cannot reallocate the resources of a municipality. This lack of a designated leader can easily lead to unclear and chaotic lines of authority such as those that crippled Louisiana during the response to Hurricane Katrina. Mr. Spano proposed that local and municipal executives should run the response to an emergency unless and until the county executive steps in and declares his own state of emergency. Likewise, the county executive would run the response unless and until the governor declares his own state of emergency. Finally, the law should be clarified to allow the President of the United States to step in when necessary and take control. In a related discussion, **Barry Steinhardt of the American Civil Liberties Union (ACLU)** agreed that this clarification would be helpful – reserving however, issues about the circumstances justifying such declarations and the powers they would confer.
- Speakers discussed current New York public health law, and addressed the question of whether it should to be changed to address new public health emergencies as well as traditional public health concerns, such as outbreaks of food-borne diseases and contaminated drinking water. Some speakers expressed concern that the focus on responding to a bioterrorist attack, such as anthrax, was **diverting attention from public health problems** that were more likely to occur.
- Since shortly after 9/11/01, the state legislature has been considering adoption of the **Model State Emergency Health Powers Act (MSEHPA)** that “grants public health powers to state and local public health authorities to ensure a strong, effective, and timely planning, prevention, and response mechanisms to public health emergencies (including bioterrorism) while also respecting individual

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<sup>1</sup> For the complete agenda and background materials, see [http://library.law.pace.edu/research/public\\_health\\_emergencies.html](http://library.law.pace.edu/research/public_health_emergencies.html).

rights.”<sup>2</sup> **Benjamin Berkman, a scholar at the Georgetown Center for Law and the Public’s Health**, which wrote MSEHPA, explained the value of the model but indicated that it might not be needed in New York. One of the law’s principal sponsors in New York, **State Senator Michael Balboni**, essentially rejects the act in its current form. Senator Balboni explained that he had introduced it only to draw attention to deficiencies in New York’s level of preparedness.

**Assemblyman Richard Gottfried, chair of the Assembly Health Committee**, explained in nuanced detail why the act has no chance of being passed.



- Senator Balboni stated his belief that we are at the beginning of a **world health crisis** and that *New York level of preparedness is insufficient*. He is less concerned by a lack of legal capacity than by the inadequacy of the infrastructure and about kinks in the points of distribution of health care. He urges the dramatic increase in the number of hospital beds, health care providers and other facilities that would give us surge capacity to meet a crisis. He also proposes that hospitals develop co-generation sources that will enable them to function when the electric power grid is down.
- **Judge Linda Chezem** of Indiana and the National Institute on Alcohol Abuse and Alcoholism emphasized that *training of judges* is essential so that they will be prepared to adjudicate public health emergencies. The need to identify in advance the question of what kinds of due process are necessary to protect individual liberties while preserving the public health was also stressed.
- Other speakers focused on the need to involve physicians and other health care professionals in private practice in *planning for emergencies*, in order to maximize the effectiveness of their volunteer efforts.

**For further information, please contact:**

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<sup>2</sup> See <http://www.publichealthlaw.net/Resources/Modellaws.htm#MSEHPA> for this quote, the text of the act, its provenance, and its impact across the US.