

# **Public Health Law and Ethics: Liability and Immunity**

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# Disclaimer

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# Goals

- Legal theories of liability
- Existing sources of immunity and gaps in the existing immunity scheme
- Conceptual framework to address gaps

# Legal Theories

- Negligence
  - individual, corporate, vicarious liability
- Invasion of privacy & breach of confidentiality
- HIPAA Privacy Rule
- Constitutional claims against governmental entities & public employees
  - Deprivation of life, liberty, or property without due process of law and denial of equal protection

# More Sources of Liability

- Americans with Disabilities Act
- State constitutional provisions & civil rights laws
- EMTALA
- Criminal liability

# Governmental entities & employees

- Will enjoy immunity for good faith discretionary acts in most cases
  - Govt. immunity for negligence
  - Constitutional immunity/ qualified immunity
  - EMAC
  - State emergency response statutes
- Possibly vulnerable to invasion of privacy, breach of confidentiality & ADA claims

# Volunteers



- Enjoy extensive protection
  - Good Samaritan statutes
  - Volunteer Protection Acts
  - State emergency response statutes
- Volunteer means an individual, not an entity and usually cannot be compensated

# Paid private sector responders & entities

- Generally not entitled to immunity



# Wyoming statute

- **§ 35-4-114. Immunity from liability**

During a public health emergency any health care provider or other person who in good faith follows the instructions of the state health officer is immune from any liability arising from complying with those instructions. This immunity shall not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.

# Matters to Consider

- Compensate victims in appropriate cases
- Deter misconduct
- Encourage people to participate in response
- Control court dockets
- Control insurance & other costs
- Volunteer oversight
- Professional licensure & credentialing
- Who should be entitled to immunity?

# Conceptual Framework

- Comprehensive immunity provision for all health care providers
- Triggered by federal or state declaration of public health emergency
- Incorporated into Public Health Service Act and state public health emergency laws

# Conceptual Framework Continued

- Health care providers should not be liable for good faith actions undertaken in response to a public health emergency
- Willful misconduct, gross negligence, and criminal activity not covered



# Conclusion

- Comprehensive immunity provision needed:
  - Enhance the effectiveness of public health emergency operations
  - Provide essential guidance to responders