

Ethical Challenges and Decision Making for Strategic Public Health Leadership

Implementing a public health ethics
infrastructure in local health departments

Michigan's 2018 Premier Public Health Conference
Bay City, Michigan.
October 10, 2018

Alan Melnick, MD, MPH, CPH
Public Health Director/Health Officer
Clark County Public Health
Vancouver, Washington

Learning Objectives

- Identify the types of ethical challenges faced by local health departments
- Describe how to apply a public health ethics framework to improve decision making when facing such challenges
- Identify approaches to building sustainable ethics competencies and infrastructure in local health departments to implement the use of a public health ethics framework in decision-making

Overview

- What is Public Health Ethics?
 - Public Health Ethics Principles
 - Clinical ethics vs. Public Health Ethics
 - Ethics and Public Health Law
 - Ethical Challenges Faced by Local PH Officials
- Ethics Guide for Decision-Making
 - Case Study
- Building an Ethics Infrastructure in a Local Health Department
 - Ethics and the PH 3.0/Community Health Strategist models
- Resources

What is Public Health Ethics?

- Ethical principles and moral norms particular to the practice of public health
- Study of or deliberation about moral norms that should guide public health decision-making
- A process for identifying, analyzing, and resolving ethical conflicts or tensions in public health



What is Public Health Ethics?

I. Principles – The rules, norms, and values relevant to the practice of public health

II. Problems – The kinds of recurrent ethical challenges public officials face

III. Procedures – Systematic approaches to address ethical dilemmas and challenges that arise in public health practice

IV. Practice: An upstream, ethics-in-all-policies approach to decision making that is integral to the translation process and that incorporates human-centered design



Public Health Ethics Principles

Public Health Core Values

Public Health Core Principles

Health

- Humans have a right to resources necessary for health
- Protection, promotion and prevention

Achieve health equity

Address root cause for prevention

Respect community member rights

Community

- Humans are inherently social and interdependent
- Effectiveness of institutions depends on the public's trust
- Collaboration is a key element to PH
- Each person has an opportunity to contribute
- People and their physical environment are interdependent

Display cultural competence

Gain community consent

Establish collaborations to build trust

Maintain data confidentiality

Give stakeholders a fair hearing

Enhance the environment

Evidence-*informed* action

- Knowledge is important and powerful
- Science is the basis for much of our PH knowledge
- People are responsible to act on the basis of what they know

Seek and base programs on right information

Respond to problems in a timely way

Ensure competence of practitioners

Clinical Ethics vs. Public Health Ethics

Clinical Ethics	Public Health Ethics
Focus on individual patient-provider interactions	Focus on populations, institutions, communities
Individual liberty, autonomy	Interdependence of people
Authority vested in prestige of physicians and medical profession	Authority vested in the police powers of states
Patient consent	Societal consent through the political process; public engagement
Beneficence and non-maleficence	Social good and avoiding social harm
Justice	Social justice and equity

PH Ethics and PH Law: Police Powers

- Powers exercised by **states** to enact legislations and promulgate regulations to protect the public health , welfare and morals and to promote the common good
- Examples:
 - Communicable disease investigation
 - Vaccination as condition for school entry
 - Involuntary isolation and quarantine
 - Property seizure and destruction to control toxic threats
 - Vending machine, smoking bans, beverage restrictions/taxes

Constitutional Limits on Government Action

- Although courts generally uphold PH powers, there are constitutional limits
- Jacobson v. Massachusetts
 - Involved individual's refusal to receive mandatory smallpox vaccine during an epidemic
 - Court held that mandatory vaccination is a legitimate exercise of police power BUT
- Court placed limits on PH actions based on
 - PH necessity (need high proportion vaccinated to control the smallpox epidemic)
 - Reasonable means (effective vaccine with limited side effects)
 - Proportionality (least restrictive means of protecting PH)
 - Harm avoidance (should not impose undue health risk on subject)

Law Sets Parameters

- Laws provide boundaries
 - Tell you what you MUST do
 - Tell you what you CANNOT do
- Boundaries suggest what you CAN do
- But may not tell you what you SHOULD do

Dealing with Uncertainty

- Lawyer might be unable to provide advice about what one OUGHT to do
 - Where law does not require or prohibit
 - No legal precedent to guide
 - Limit of professional role
- Ethics might help in thinking through options
 - Identifying options
 - Delineating justification for or against

Legal and Ethical Continuum

ethical
maximums

Ethical ideals (best)

Ethical conduct (acceptable)

Possibly unethical conduct (questionable)

legal
minimums
(floor)

**LAW = generally agreed upon conduct;
unethical conduct \neq illegal conduct**

Public Health Law and Ethics

Law in Public Health

Provides authority, limitations on state power, incentives and disincentives for behavior, allows for much professional discretion

- Formal institution
 - Statutes
 - Regulations
 - Court Decision
- Public proceedings with a “reasonable” person standard

Ethics in Public Health

Provides ongoing analysis, deliberation, and justification for PH action and policy, often when law is indeterminate

- Less formal
 - Moral norms, values
 - Professional codes
 - Previous cases
- Publicly justifiable positions based on ethical reasoning

Benefits of Public Health Ethics

- Clarify, prioritize, and justify possible courses of public health action
- Increased capacity to recognize ethical issues
- Greater transparency in decision making
- Foster respectful deliberation about ethical tensions
- Enhanced public trust and relationship building
- Strengthened scientific integrity and professional excellence



What Does Public Health Ethics Offer?

- ❑ **Vocabulary and guidance:** to illuminate the ethical dimensions of cases and policies
- ❑ **Ethical principles and norms:** “starting points” to guide ethical reflection about balancing the competing moral claims
 - Moral claims are not absolute
 - Balancing moral claims is similar to the process officials use in understanding and making PH cost-benefit tradeoffs
 - Difference: Instead of focusing on “quantifiable” health gains or losses, PH ethics focuses on identifying, weighing, and balancing moral interests at stake in a particular situation
 - When allocating scarce resources for pandemic flu, it might be useful to clarify the principle of utility and distinguish between social utility and medical utility

Examples of Ethical Challenges Identified by Public Health Officials

- Allocation of scarce resources
- Perceived or actual conflicts of interest
- Negotiating the political context
- Data use and management, including privacy and confidentiality protection
- Balancing individual liberty with protecting the public good

Practical Public Health Ethics Tools for Making Tough Choices

Public Health Ethics Tools

- Case-based approach
- Stakeholder analysis
- Deliberative process
- Prioritizing values
- Professional values: *Principles of the Ethical Practice of Public Health*



Advantages of Case-based Approach

- Encourages ethical reflection and discussion
- Reinforces basic ethical concepts through application to concrete cases
- Highlights practical decision making
- Allows learners to consider different perspectives
- Sensitizes learners to complex, multi-dimensional context of issues in public health practice

3-Step Ethical Analysis Procedure

3-Step Ethical Analysis Procedure

Analyze the Ethical Issues	Evaluate the ethical dimensions of alternate courses of action	Justification
What are the Public health goals?	Utility: does a particular action produce a balance of benefits over harms?	Effectiveness – is the public health goal likely to be accomplished?
Who are the stakeholders, and what are their moral claims?	Justice: are burdens and benefits distributed fairly?	Proportionality - Will the probable benefits outweigh the infringed moral considerations?
What are the risks and harms of concern?	Respect for individual and community interests and respect for public institutions	Necessity - Is overriding the conflicting ethical claims necessary to achieve the public health goal?
What is the legal authority and are there constraints on action?		Least infringement ?
Relevant precedents, guidance documents, and ethics resources	Contextual appropriateness	Can PH provide justification that citizens, and in particular those most affected, could find acceptable in principle?

Stakeholder Analysis

- Consider interests, values, and moral claims of stakeholders
- Identify potential partners and areas of tension
- May involve community engagement or consultation
- Builds trust and acceptance



Deliberative Process

- Ensures fairness of process
- Weighs stakeholder values in relation to core public health values
 - Health
 - Community
 - Evidence-based decision making
- Designs alternatives consistent with stakeholder and public health values
- Chooses between competing alternatives

Professional Values → *Principles of the Ethical Practice of Public Health*

- Principles translate values into moral rules for action
- Emerged out of the practice of public health
- Key notion: the importance of recognizing the interdependence of community members



Ethical and Legal Constraints

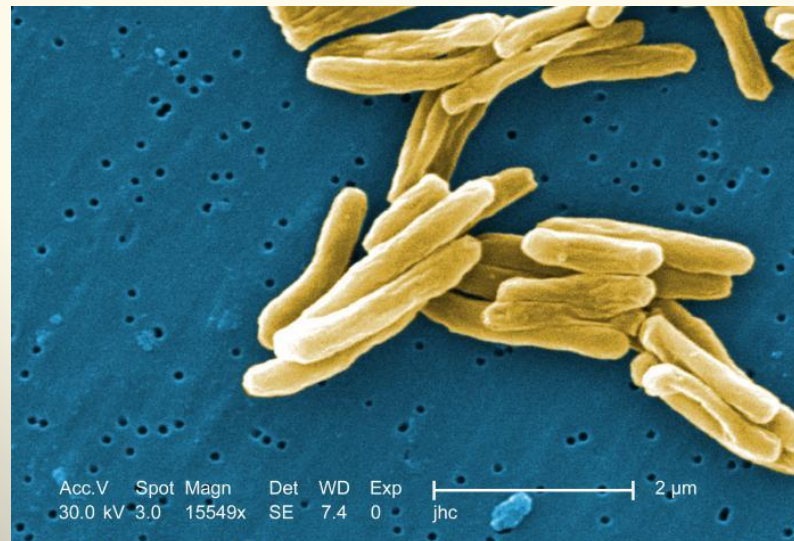
Financial, Technical, and Political Constraints
(Time and Evidentiary Constraints)



Economical	User-friendly	Reliable
\$50	\$75	\$100
Difficult to use	Convertible, a snap to use	Not hard to use
Acceptable safety	Good safety	Excellent safety

Multidrug Resistant Tuberculosis

- Integrating ethics and statutory authority to address the health needs of the community while respecting rights of individuals and families



Multidrug Resistant Tuberculosis

- Family adopts children from a developing country with endemic TB, including MDRTB
- On entry to the U.S., authorities inform the family about risk for developing TB and to seek care for their children if they develop symptoms
- The family has strong religious beliefs about medical care; has refused immunizations and other preventive care
- Children homeschooled but go into the community for other activities

Multidrug Resistant Tuberculosis

- Shortly after arrival, one of the children, a teenager, develops a cough, night sweats and weight loss, which continue over several months
- After several months, family takes the child to a pediatrician
- Pediatrician diagnoses active TB and notifies the local health department
- Positive sputum and CXR results reveal the child has pulmonary TB, in this case transmissible through airborne spread

Multidrug Resistant Tuberculosis

- Although contagious, pulmonary TB is less contagious than the flu – usually requires prolonged exposure in a confined space.
- Cultures revealed multiple drug resistance and the child's pediatrician made a referral to a pediatric TB specialist.
- Treatment of TB requires several drugs taken over at least 6 months; for MDRTB, the treatment can take up to 18-24 months

Multidrug Resistant Tuberculosis

- If all drugs not taken, further resistance can develop, leading to extremely drug resistant TB; inadequate treatment can be worse than no treatment at all.
- In following the patient's progress, the treating physician and the health department must know whether the patient received all the medications;
- Otherwise, it's difficult to tell if lack of progress is due to drug resistance or to not taking the medications

Multidrug Resistant Tuberculosis

- The standard of care for everyone with active TB is directly observed therapy (DOT)
- When the child began treatment, a TB nurse visited the house to administer DOT
- The family objected to having the nurse visit, stating that they could be trusted to give the medication and that DOT was an invasion of their privacy and parental rights

Multidrug Resistant Tuberculosis

- Although electronic DOT was available, because the child had MDRTB, the pediatric TB specialist supported in-person DOT for at least the first two weeks of treatment.
- The relationship with the specialist deteriorated and the family refused to let the specialist treat the child
- The health officer agreed with the pediatric TB specialist and informed the family that in-person DOT was necessary to protect the child and the community

Multidrug Resistant Tuberculosis

- At first the family agreed, but became increasingly reluctant to have the nurse visit, and eventually refused DOT, including electronic DOT, which they felt was still invasive
- They insisted that they would treat the child themselves for the full 18 months or longer and they could be trusted to do so given their love for their child
- The Health Officer has the statutory authority to require DOT, and even isolation of the child if deemed necessary to protect the public health
- However, the statutes also provide for due process
- **What should the Health Department do?**

Step 1: Analyze the Ethical Issues

- What are the risks and harms of concern?
- What are the PH goals?
- Who are the stakeholders, and what are their moral claims?
- Is the source or scope of legal authority in question?
- Are precedent cases relevant?
- Do professional codes of ethics provide guidance?

Step 2: Evaluate the ethical dimensions of the alternate courses of public health action

- **Utility:** Does a particular public health action produce a balance of benefits over harms?
- **Justice:** Are the benefits and burdens distributed fairly?
- **Respect for individual and community interests:** Does the public health action respect individual and civic roles and values (e.g., honesty, trustworthiness)
- **Respect for legitimate public institutions:** Does the public health action respect professional and civic roles and values, such as transparency, honesty, trustworthiness, consensus-building, promise-keeping, protection of confidentiality, and protection of vulnerable individuals and communities from undue stigmatization

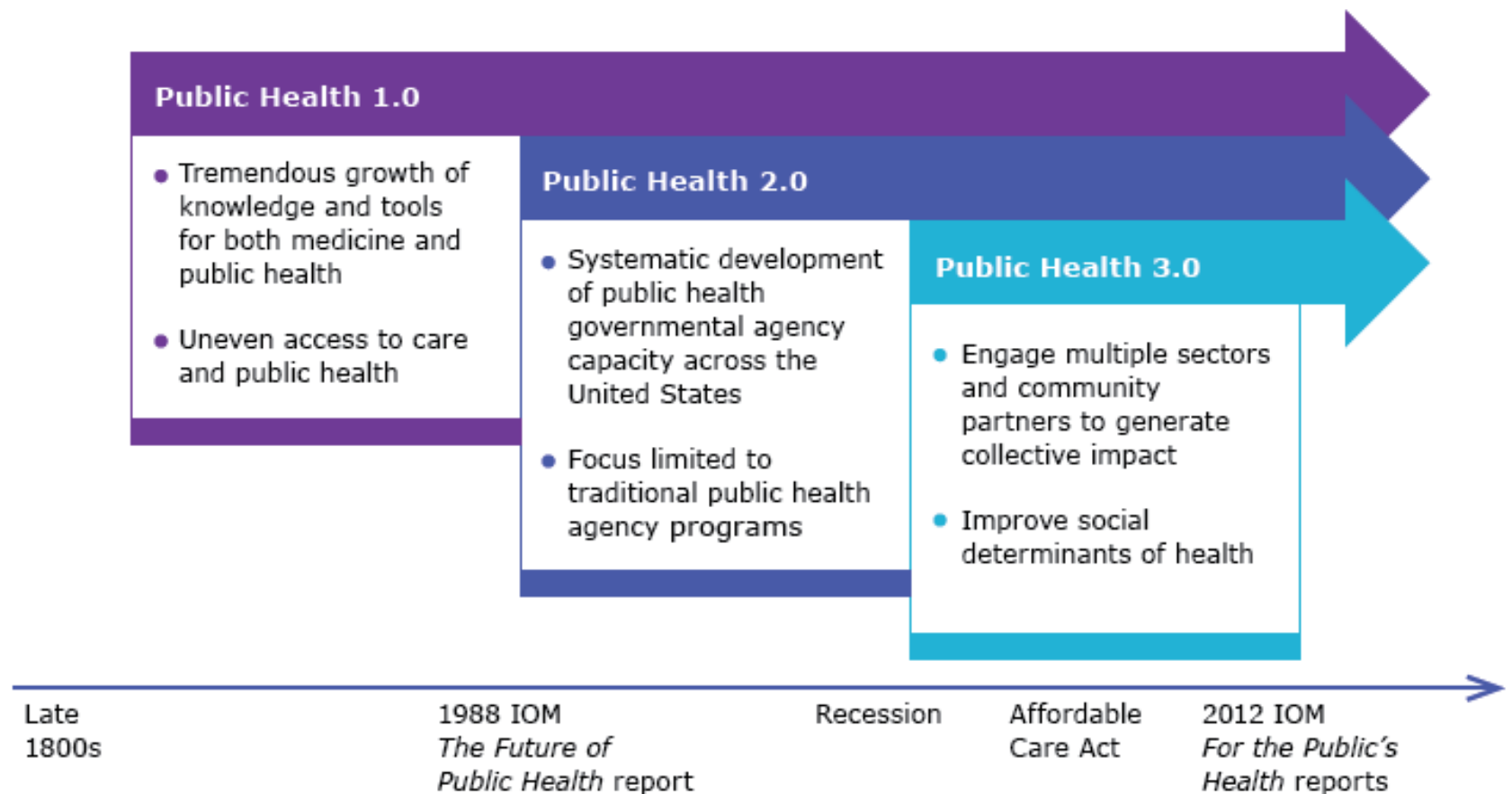
Step 3: Provide Justification for PH Action

- **Effectiveness:** Is the Public health goal likely to be accomplished?
- **Proportionality:** Will the probable benefits of the action outweigh the infringed moral considerations?
- **Necessity:** Is overriding the conflicting ethical claims necessary to achieve the public health goal?
- **Least infringement:** Is the action the least restrictive and least intrusive?
- **Public justification:** Can public health agents offer public justification that citizens, and in particular those most affected, could find acceptable in principle?

Building an Ethics Infrastructure in a Health Department

- Why create an ethics infrastructure?
 - PH 3.0 and the Community (Chief) Health Strategist model
 - Public Health Accreditation
- Health department profile
- Ethics Committee development, composition and charter
 - Background/purpose
 - Values
 - Ground rules
 - Assumptions
 - Roles and responsibilities
- Framework
- Examples of ethical deliberations

Public Health 3.0



Public Health 3.0: A Call to Action for Public Health to Meet the Challenges of the 21st Century

https://www.cdc.gov/pcd/issues/2017/17_0017.htm

The High Achieving Governmental
Health Department in 2020 as the
Community Chief Health Strategist

Chief Health Strategist Practice Areas	PH Ethics Principles
1. Adopt and adapt strategies to combat the evolving leading causes of illness, injury and premature death.	Address root causes for prevention
2. Develop strategies for promoting health and well-being that work most effectively for communities of today and tomorrow.	Display cultural competence; Achieve health equity
3. Chief health strategists will identify, analyze and distribute information from new, big and real data sources.	Respond to problems in a timely way; Base programs on right information
4. Build a more integrated, effective health system through collaboration between clinical care and public health.	Establish collaborations to build trust; Give stakeholders a fair hearing; Display cultural competence;
5. Collaborate with a broad array of allies- including those at the neighborhood-level and the non-health sectors – to build healthier and more vital communities.	Gain community consent
6. Replace outdated organizational practices with state-of –the-art business, accountability, and financing systems.	Ensure competence of practitioners; Respond to problems in a timely way; Base programs on right information

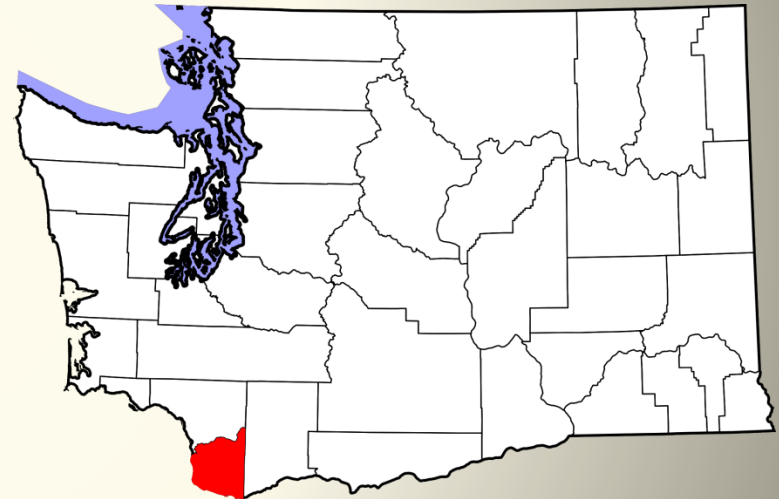
NACCHO Workforce Committee:

CHS PRACTICE #5 Leadership Competencies

- Promotes the role of community partners, particularly consumers, neighborhood organizations and non-profit organizations in collaborations to improve population health and eliminate health disparities
- Communicates the roles of local governmental public health in Interacting with public and private partners at the local, state, national and global levels to influence the health of populations at all levels
- Collaborates with individuals and organizations in developing and implementing a vision for a healthy community
- Incorporates diverse perspectives, including diverse community perspectives, in developing, implementing, and evaluating policies, programs, and services that affect the health of the community
- Maintains partnerships that will increase use of evidence in public health practice
- Share, analyze and interpret data for and with community partners so that they can be active collaborators in community health improvement efforts.
- Considers the roles of local governmental public health in Interacting with public and private partners at the local, state, national and global levels to influence the health of populations at all levels

Clark County, Washington, Department of Public Health

- Located in Portland/Vancouver metro area
- Population 480,000
- Budget ~ \$14 million/ FTE ~ 100



Why Create a Local Health Department PH Ethics Committee?

- PH practice raises many ethical questions:
 - How should a LHD allocate limited resources?
 - How should a LHD avoid actual or perceived conflicts of interest?
 - When should a LHD order isolation, quarantine or other measures that restrict individuals to protect others?
- LHD leadership desires to increase transparency of decision-making
- Desire to build ethically-based decision-making skills among staff
- PHAB Accreditation

PHAB Accreditation



PHAB Standard 11.1: Develop and maintain an operational infrastructure to support the performance of public health functions

- ❑ **Measure 11.1.2A – Ethical issues identified and ethical decisions made**
- ❑ **Required Documentation:**
 1. **Strategies for decision making relative to ethical issues** – *document the identification of issues with ethical considerations and a strategic deliberative process for consideration and resolution of ethical issues*
 2. **Ethical issues reviewed and resolved** – *document the consideration, deliberation, and resolution of ethical issues*

Clark County Public Health Ethics Committee Charter

- Background/purpose
- Values
- Ground rules
- Assumptions
- Roles and responsibilities



Charter: Background and Purpose

- Diverse mix of community volunteers and staff who:
 - Provide guidance on ethical issues to staff, management, and community partners
 - Encourage and support an institutional culture of ethical awareness and high ethical standards
 - Provide a process of open and transparent decision making
 - Meet PHAB accreditation requirements
 - **Ultimate goal – to build community trust**

Charter: Background and Purpose

- Determine if ethical dilemmas are appropriate for analysis
 - CCPH staff can bring ethical dilemmas to the committee
- Facilitate and/or participate in analyses
 - At least two committee members and facilitator
- Prepare reports
 - Describe analysis, ethical considerations, recommendations
- Coordinate reporting of results to requestor
- Continue education and training

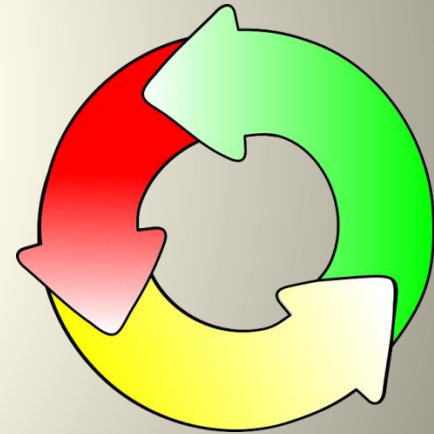
Charter: Composition

- Representation from LHJ Leadership Team, managers and staff
 - Train staff early
 - Helps to have staff “champion.”
- Community volunteers
 - Ethicist (academic or hospital), local physician, local nurse, diverse community advocates, representatives of community-based organizations, faith, business
- Prosecuting/County Attorney
- Ad hoc members:
 - Key stakeholders
 - Content experts



Charter: Committee Process

- Deliberate using the three-step framework
- Submit recommended course of action to CCPH Leadership
- **It is ultimately the responsibility of CCPH Leadership Team to make the final policy decision**



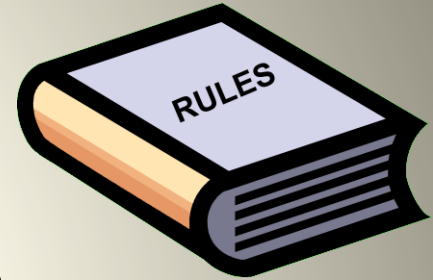
Charter: Values

- Focus is on policy/operations, not individual/group behavior
- Staff facilitating ethical analyses must meet basic training requirements
- CCPH will develop and support a culture that values high ethical awareness and standards
- CCPH efforts in organizational ethics will enhance its public health leadership



Charter: Ground Rules

- Respect for all participants
- Clarify expected level of confidentiality
- Focus on policies, systems, and operations
 - Personnel issues referred elsewhere
- Absent Committee members will respect decisions but may ask for reconsideration if strongly object



Charter: Assumptions

- No additional resources
- CCPH Leadership Team will respect and strongly consider Committee recommendations
- Results of ethical analyses, including CCPH Leadership Team decisions, will be communicated back to all participants

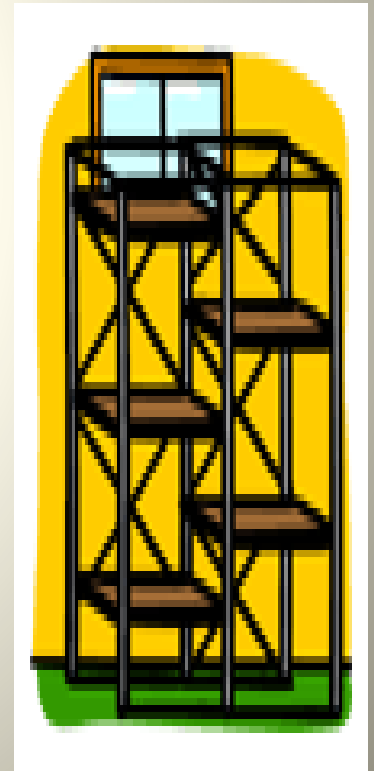


Charter: Roles and Responsibilities

- Chair:
 - Organize, facilitate, and schedule meetings
 - Ensure committee members remain engaged and equally valued
- County Attorney:
 - Provide guidance on legal considerations and limitations
- CCPH Leadership
 - Serve as liaison to the CCPH Leadership Team
 - Provide input on departmental vision and direction
- Committee Members
 - Participate in trainings, ethical analyses, and team meetings
 - Facilitate ethical analyses, model ethical standards, and contribute to the Committee's ongoing learning

Framework

- Background
- Process
- Definitions
- Three step guide for ethical analysis
- CCPH vision, mission and values
- Public Health Code of Ethics



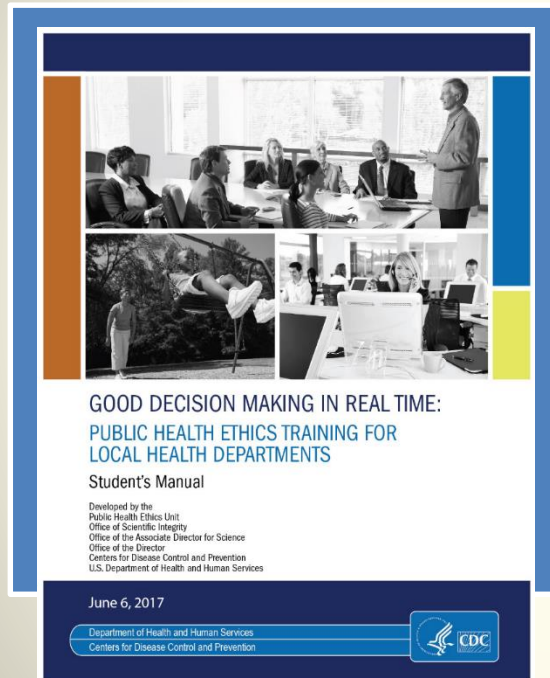
Examples of Clark County PH Ethics Committee Deliberations

- Should CCPH-sponsored activities allow lunches or other gifts from pharmaceutical companies?
- Should CCPH participate in a federal Nurse Family Partnership (NFP) study that randomizes NFP participants?
- Should restaurants involved in the Healthy Restaurant Program be removed from the program if they allow vaping on premises?
- How should we allocate ventilators during a pandemic?

Public Health Ethics Resources

CDC Public Health Ethics Resources

<https://www.cdc.gov/od/science/integrity/phethics/trainingmaterials.htm>



Public Health Ethics Case
Repository

On-Demand e-Learning Training Modules

Good Decision Making in Real Time: Practical Public Health Ethics for Local Health Officials

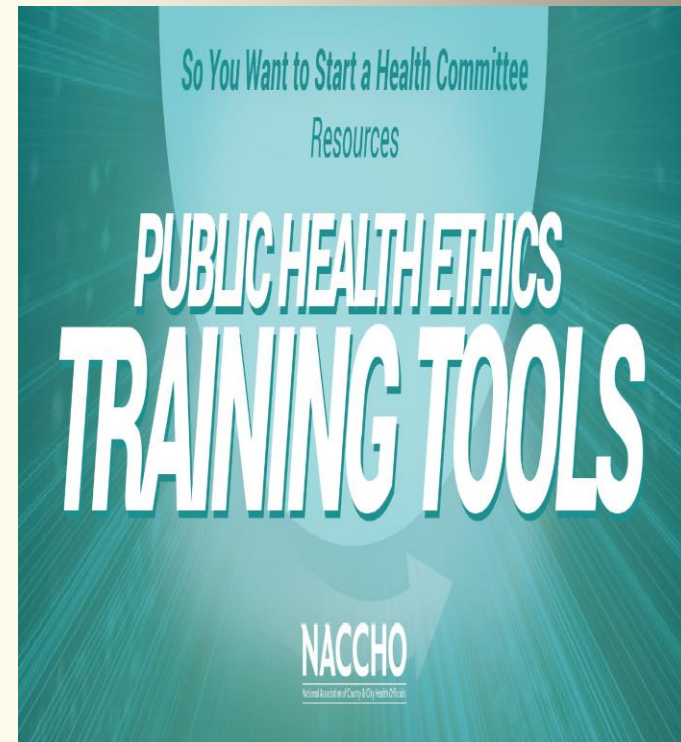
2 hours CE Credit

- Physicians
- Nurses
- Certified Health Education Specialists
- Pharmacists
- Veterinarians
- IACET CEUs
- CPH Recertification

URL: <https://www.pathlms.com/naccho/courses/282>

NACCHO Public Health Ethics Resources

- ❑ Building Ethics Infrastructure
- ❑ Interactive Workbook
- ❑ Ethics and Public Health Model Curriculum
- ❑ North Carolina Institute for Public Health TRAIN Courses
- ❑ Principles of the Ethical Practice of Public Health
- ❑ Skills for the Ethical Practice of Public Health
- ❑ Stanford Encyclopedia of Philosophy
- ❑ Presidential Commission for the Study of Bioethical Issues



QUESTIONS?