


RUTGERS
THE STATE UNIVERSITY OF NEW JERSEY

**When Terror Strikes –
How a Pharmacist Can Save the World**

**Application of Legal Issues During a
Bioterrorism Event**

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New Jersey Emergency Health Powers Act

I. Definitions N.J.S.A 26:13-2:

(A) Bioterrorism: The intentional use or threat of use of any biological agent, to cause death, disease or other biological malfunction in a human, animal, plant or other living organism, or degrade the quality and safety of the food, air or water supply

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I. Definitions N.J.S.A 26:13-2 (cont.):

(B) Health Care Provider: Any person or entity who provides health care services including, but not limited to: a health care facility, bioanalytical laboratory director, perfusionist, physician, physician assistant, pharmacist, dentist, nurse, paramedic, respiratory care practitioner, medical or laboratory technician, and ambulance and emergency medical workers

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New Jersey Emergency Health Powers Act

I. Definitions N.J.S.A 26:13-2 (cont.):

(C) Public Health Emergency:
Occurrence or imminent threat of following:

1. Bioterrorism or an accidental release of biological agents
2. The appearance of a novel or previously controlled or eradicated biological agent
3. A natural disaster
4. A chemical attack or accidental release of toxic chemicals
5. Nuclear attack or nuclear accident

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New Jersey Emergency Health Powers Act

I. Definitions N.J.S.A 26:13-2 (cont.):

(C) Public Health Emergency (cont.):
Frequently have a high probability of:

1. A large number of deaths, illness or injury in the affected population
2. A large number of serious or long-term impairments in the affected population
3. Exposure to a biological agent or chemical that poses a significant risk of substantial future harm to a large number of people in the affected population.

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New Jersey Emergency Health Powers Act

I. Definitions N.J.S.A 26:13-2 (cont.):

Note for Pharmacists
Bioterrorism is a broad term that covers almost anything that can injure living organisms or interfere with the ecosystem. Pharmacists are an important part of the Healthcare Providers listed in the act.

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- II. **N.J.S.A. 26:13-4**: Measure to detect and investigate Public Health Emergency; reporting requirement
- (A) Commissioner has the responsibility to investigate any incident or imminent threat of any human disease or health condition. The commissioner can issue orders requiring information from any health care providers and others if he/she believes a public health emergency exists.
- (B) A health care provider or medical examiner shall report to department about any cases that would potentially cause a public health emergency.

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- II. **N.J.S.A. 26:13-4**: Measure to detect and investigate Public Health Emergency; reporting requirement (cont.)
- (C) A pharmacist shall report any unusual increase in prescriptions for antibiotics, or in prescriptions to treat conditions that the commissioner identifies by regulation.

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- II. **N.J.S.A. 26:13-4**: Measure to detect and investigate Public Health Emergency; reporting requirement (cont.)
- (D) Reports shall include:
1. Specific illness or health condition
 2. A case number (linked to patient file)
- Supplemental reports may require the following:
1. Patient's general information (name, phone, address...)
 2. Name and address of the reporting individual

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- II. **N.J.S.A. 26:13-4**: Measure to detect and investigate Public Health Emergency; reporting requirement (cont.)

Note for Pharmacists

The Commissioner has broad power in a public health emergency. Pharmacists have a reporting requirement to the Department of Health regarding or prescribing usage patterns linked to a public health emergency. It is essential that in initial reports, pharmacists only give the illness and case number. Only if required subsequently by the department, should identifying information be given.

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- III. **N.J.S.A. 26:13-5**: Duties of Commissioner

It is Commissioner's duty to identify and interview individuals exposed to illness or health condition that may potentially cause a public health emergency.

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- IV. **N.J.S.A. 26:13-6**: Emergency Health Care Provider Registry

The commissioner may establish a registry of health care professionals who volunteer to provide health care service and support during public health emergency.

Identification cards issued by commissioner to the health care professionals serve the following purposes:

1. Identify the health care professionals' qualifications
2. Indicate that the individual is registered as New Jersey emergency health care personnel

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IV. N.J.S.A. 26:13-6: Emergency Health Care Provider Registry (cont.)

An emergency health care personnel registered under this section shall not be liable for any civil damages as a result of the person's act during the time of public health emergency.

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IV. N.J.S.A. 26:13-6: Emergency Health Care Provider Registry (cont.)

Note for Pharmacists

If a pharmacist volunteers to provide services during a health emergency, they will be registered and receive an identification card. Any pharmacist who volunteers will be immune from civil liability for his or her actions during the emergency. The act is silent as to gross negligence.

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V. N.J.S.A. 26:13-9: Powers of Commissioner relative to Health Care Facilities

During a state of public health emergency, the Commissioner can execute his power to:

1. Use property and facilities (real estate, food...etc.) to deal with the emergency
2. Transfer the management or supervision of the health care facility for the duration of the emergency
3. Write an order within 24 hours of transfer

The health care facilities can contest the order by requesting a hearing in the Superior Court.

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V. N.J.S.A. 26:13-9: Powers of Commissioner relative to Health Care Facilities (cont.)

Note for Pharmacists

During a public health emergency, the management of pharmacies as well as their stock can be transferred to the state. The pharmacy's only remedy is to obtain a hearing in Superior Court.

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VI. N.J.S.A. 26:13-10: Control of Health Care Supplies in a State of Emergency

During a state of public health emergency, the Commissioner may purchase, obtain, store, distribute or take for priority redistribution any anti-toxins, serums, vaccines, immunizing agents, antibiotics and other pharmaceutical agents or medical supplies.

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VI. N.J.S.A. 26:13-10: Control of Health Care Supplies in a State of Emergency (cont.)

If the emergency results in shortage of any above products, the Commissioner may issue orders to control, restrict and regulate by rationing.

In making rationing and distribution decisions, the Commissioner may give preference to health care providers, disaster response personnel and mortuary staff.

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VI. N.J.S.A. 26:13-10: Control of Health Care Supplies in a State of Emergency (cont.)

Note for Pharmacists

During a public health emergency, the medication in a pharmacy can be taken by the state. Pharmacies can also be subject to rationing orders.

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VII. N.J.S.A. 26:13-14: Vaccination

- The commissioner may require vaccination for protection and prevention of contagious disease
- Performed by authorized personnel
- Informed consent is required
- Quarantine and isolation if person is unwilling to take vaccine

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VII. N.J.S.A. 26:13-14: Vaccination (cont.)

Note for Pharmacists

When the final New Jersey Board of Pharmacy rules regarding immunization are published, pharmacists will play a large role.

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VIII. N.J.S.A. 26:13-17: Access to and Disclosure of Protected Health Information

Access to PHI of individuals shall be limited to people having a legitimate need to:

1. Provide treatment;
2. Conduct epidemiologic research;
3. Investigate the causes of the transmission;
4. Assist law enforcement agencies; and
5. Provide payment.

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VIII. N.J.S.A. 26:13-17: Access to and Disclosure of Protected Health Information (cont.)

PHI shall not be disclosed without individual written informed consent except for disclosures made:

1. Directly to the individual;
2. To immediate family members or personal representative;
3. To appropriate federal agencies or authorities
4. To local health department assisting in the investigation or disease containment measures;
5. To law enforcement agencies;
6. Pursuant to a court order; and
7. To identify deceased individual or determine cause of death.

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VIII. N.J.S.A. 26:13-17: Access to and Disclosure of Protected Health Information (cont.)

Note for Pharmacists

Even though a public emergency may exist, patients still have privacy rights with regard to their PHI. Exceptions are made for investigation and disease containment measure as well as to aid law enforcement agencies. Disclosure should be limited to only what is required.

New Jersey Emergency Health Powers Act

IX. N.J.S.A. 26:13-18: Commissioner's Emergency Power

During a state of public health emergency the commissioner has the power:

- To require in-state health care providers to assist in the performance of vaccination, treatment, examination or testing of any individual.
- To appoint and prescribe duties to out-of-state emergency health care providers. (The commissioner may waive any State licensing requirements)

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IX. N.J.S.A. 26:13-18: Commissioner's Emergency Power (cont.)

Under this section no health care provider shall be liable for any civil damage regarding medical care or treatment or public health preparedness activities

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IX. N.J.S.A. 26:13-18: Commissioner's Emergency Power (cont.)

Note for Pharmacists

During a public health emergency pharmacists may be required to assist in vaccination, treatment, or examinations. No pharmacist participating can be civilly liable for injuries they cause. The act is silent on gross negligence.

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X. N.J.S.A. 26:13-19: Immunity from Liability

No public entity or agents including volunteers shall be liable for an injury cause by any act or omission with regard to:

- A public health emergency or preparatory activities
- Properties of any kind that are donated or acquired

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X. N.J.S.A. 26:13-19: Immunity from Liability (cont.)

Note for Pharmacists

Pharmacists are immune from civil liability for their acts or omissions during a public health emergency. They are also immune if their property causes injury. Again, the act is silent on gross negligence.

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XI. N.J.S.A 26:13-23: New Jersey Vaccine Education and Prioritization Plan

The Commissioner should implement the plan when:

1. There is clear evidence that avoidable health outcome from communicable disease can be prevented in identifiable high-risk individuals.
2. Vaccine shortage occur, and to treat people, procedures for the assessment, distribution, administration and reallocation are needed.

Each violation of this plan shall be liable for a civil penalty of \$500

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- XI. **N.J.S.A. 26:13-23: New Jersey Vaccine Education and Prioritization Plan (cont.)**

Note for Pharmacists

If vaccine shortages occur, pharmacies may have their stock redistributed. Violations will result in \$500 fines.

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- XII. **N.J.S.A. 26:13-24: State Public Health Emergency Claim Reimbursement Board**

The board shall have the authority to award reasonable reimbursement under this act.

The board members consist of:

- The Commissioner of Health and Senior Services
- The Attorney General
- The Adjutant General of Department of Military and Veterans' Affairs
- The State Director of Emergency Management
- The Secretary of Agriculture
- The Commissioner of Banking and Insurance
- The Commissioner of Environmental Protection
- The Commissioner of Community Affairs
- The State Medical Examiner
- The State Treasurer

New Jersey Emergency Health Powers Act

- XII. **N.J.S.A. 26:13-24: State Public Health Emergency Claim Reimbursement Board (cont.)**

Note for Pharmacists

Any services performed by a pharmacist or a pharmacy during a public health emergency shall be reasonably reimbursed by the Emergency Claim Reimbursement Board.

New Jersey Emergency Health Powers Act

- XIII. **N.J.S.A. 26:13-25: Claims for Reimbursement**

Claim petitions must be filed to the Board for reimbursement. The petition shall include:

1. A description of the services or property employed, taken or used;
2. The dates of the employment, taking or usage;
3. The person or entity ordering the employment, taking or usage;
4. Such additional as the petitioner deems relevant for a full consideration of the claim
5. Any additional information that the Board may require

All petitions shall be filed within 180 days from the last date the services or property were employed, taken or used

New Jersey Emergency Health Powers Act

- XIII. **N.J.S.A. 26:13-25: Claims for Reimbursement (cont.)**

Note for Pharmacists

To receive reimbursement, pharmacists must file claims with the board within 180 days from the last date of services. The board will indicate what information is required.

Privacy and Individually Identifiable Information

- I. **Uses and Disclosures for Public Health Activities 45 CFR § 164.512 (b)**
 - A. Permitted Disclosures
 - B. Permitted Uses
- II. **Permitted Disclosures for Law Enforcement Purposes 45 CFR § 164.512 (f)**
 - A. Pursuant to Process and Otherwise Required by Law
 - B. Limited Information for Identification and Location Purposes
 - C. Victims of a Crime
 - D. Decedents
 - E. Crime on Premises
 - F. Reporting Crime in Emergencies