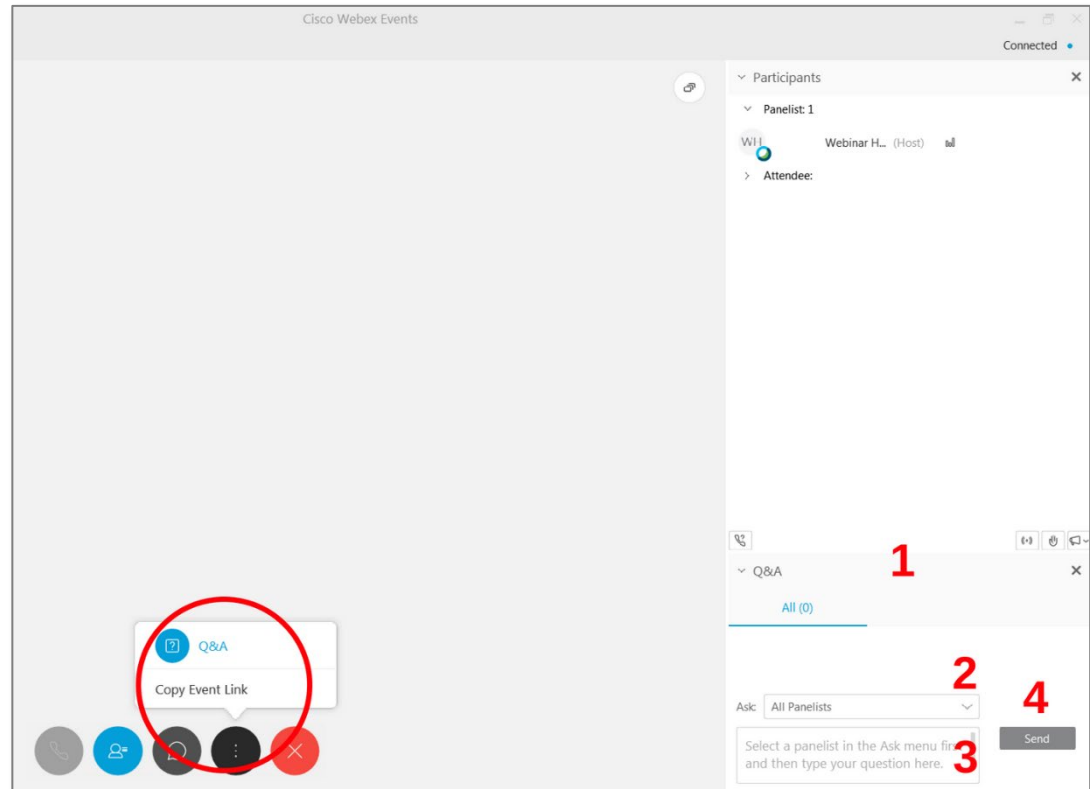


Public Health Decision-Making During the COVID-19 Pandemic

1:00 – 2:00 p.m. EST | April 23, 2020

How to Use WebEx Q & A

1. Open the Q&A panel
2. Select “All Panelists”
3. Type your question
4. Click “Send”



Moderator



Kayleen Klarich, Marketing and Membership Manager, the Network for Public Health Law – National Office

- Areas of expertise:
 - Development and execution of marketing strategies
 - Management of organizational membership programs

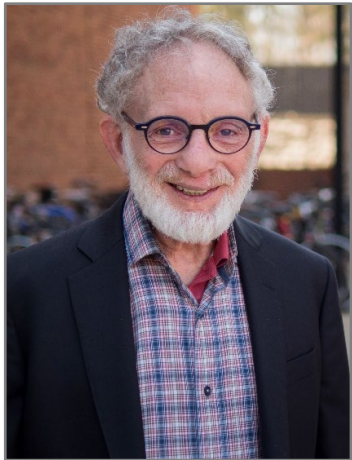
Presenter



Denise Chrysler, Director, Network for Public Health Law – Mid-States Region Office

- J.D., University of Michigan Law School
- Research interests/areas of expertise:
 - Data sharing to improve community health
 - Newborn screening samples and research
 - Immunization
 - Bed bugs

Presenter



Peter Jacobson, Professor Emeritus of Health Law and Policy, University Michigan School of Public Health; Co-Director, Network for Public Health Law – Mid-States Region Office

- J.D., University of Pittsburgh School of Law
- M.P.H., University of California Los Angeles
- Research interests/areas of expertise:
 - Health equity
 - Health care delivery
 - Public health agency structure, organization, and accreditation

Public Health Decision-Making During the COVID-19 Pandemic

A Legal and Ethical Framework to Assist Public Health Officials in Choosing Actions to Protect the Public from Emerging Threats

Denise Chrysler, JD

Peter D. Jacobson, JD, MPH

**Public health decisions should be based on
timely and reliable data and science
. . .But, information absent + a moving target**

» **Who is infected?**

» **Who is infectious?**

» **How does disease spread?**

» **What control measures work?**

» **Who has recovered? Who has died?**

» **Who is immune from re-infection?**

» **What resources do we have, who has them, &
how do we get more?**

Using law to protect the public's health

CAN I?

Legal question: Do I have authority?

MUST I?

Legal question: Does law leave me no choice?

SHOULD I?

Policy & ethics question: How should I exercise my discretion?

Using law to protect the public's health

CAN I?

Legal question: Do I have authority?

POWER . . .

- » **Do I have the power?**
- » **What is the scope of my power?**
- » **What interventions can I use?**
- » **Who else has power?**

Using law to protect the public's health

MUST I?

Legal question: Does law leave me no choice?

DUTY . . .

- » **Am I mandated to take action?**
- » **Am I mandated to take a particular action?**

Using law to protect the public's health

**SHOULD
I?**

Policy & ethics question: How should I exercise my discretion?

PROFESSIONAL JUDGMENT

Based on discretionary power ...

- Should I act?
- How should I act?
- When should I act?
- What should I consider in exercising my discretion to act, and the nature of my actions?

Based on discretionary authority

Should I?

Must be used reasonably, impartially.

Considerations:

- » Resources
- » Feasibility
- » Impact
- » Priorities
- » Proportionality

Uniformity & consistency

Strength of evidence, strength of legal authority

Public opinion

Political considerations – relevant? (e.g. relationships)

Doing “nothing” is doing “something” (risk assessment)

Decision-Making Ethical Considerations

Autonomy

Respect for individual's right to make own choices

Non-Maleficence

First, do no harm

Beneficence

Do good

Justice

Treat all people equally and equitably

Fidelity

Keep promises; be faithful to the community's trust

Veracity

Be honest

Public Health Decision-Making Tool

Use this tool as a guide to:

- **Assess the situation**
- **Evaluate the threat**
- **Consider the options**
- **Communicate the risks**

And to:

- Record these steps
- Share “Up” -- Provide situation updates, facts and analysis, basis for decisions with other agencies/commissioners/governor’s office, and those with the gift of 20/20 hindsight.

Available to download as a fillable form at

<https://www.networkforphl.org/resources/public-health-decision-making-tool/>

Assess the Situation: Facts

SITUATION

What are the facts? Describe the facts as known/understood at this time.

- **Focus on asking the right questions**
- **Do not assume the answer**
- **Start at the beginning every time:**
 - Validate information you have
 - Assume quick evolution of facts/circumstances

Evaluate the Risk

CONSEQUENCE

What are the consequences?

If danger or threat occurs, what are potential consequences? (i.e., “list of horrors”).

- **Consider impact on different populations—especially those most vulnerable.**

Consider the Options

MITIGATION

How can the threat be addressed?

What measures or mitigation might be used to address each potential danger or threat?

- **What have others done in similar situations to mitigate impact or likelihood of reoccurrence?**
- **Consider the range of actions; pros and cons.**

Act Now? Wait?

CERTAINTY

Should you take action now or wait?

What is potential harm in implementing measures or mitigation **prematurely**? In **delaying** measures or mitigation?

List the pros and cons of acting versus waiting.

- **What additional evidence would be helpful? What is the timeframe to obtain it?**
- **Is there another action that we should be considering?**
- **How will we measure success?**
- **What resources are needed to execute & maintain the chosen course of action?**
- **Not acting should be a decision, not a default.**

When & What to Communicate to the Public?

COMMUNICATION

Balance: Will notice make a difference for those notified? What, if any, reasons are there for lack of transparency? What is in the interest of the public's health? Keep the public health mission paramount over any political pressure/expediency.

Shapeshift: When would YOU want to know as a resident, patient, parent, consumer...

Anticipate the reaction/perception: What could be the legitimate criticism of lack of transparency and delay or lack of notice?

Application: Scenario 1

Releasing names, addresses of positive COVID-19 cases to first responders

- Legal authority to disclose**
- Probably no duty to warn**
- Best professional judgment**

Factors to Consider

- Individual's right to privacy
- Protecting health and safety of first responders (i.e., to determine type of PPE needed)
- Whether disclosure would protect general public by preventing/controlling spread of COVID-19
- Alternatives short of disclosure / mitigating risks
- Potential for broader identification of individuals
- Potential for stigma/discrimination against a community or neighborhood

Question to first responders: What will you do differently if you know someone tested positive?

Application: Scenario 2

- **In politically moderate state:**
 - **Broad stay-at-home guidance in place for three weeks**
 - **Governor wants your support to remove restrictions now**
 - **Your models indicate it would increase morbidity/mortality**
- **As Chief Health Officer, how do you respond?**

Factors to Consider

- **Economics**
 - **Loss of businesses**
 - **Continued unemployment**
 - **Mental health consequences**
 - **Second wave morbidity/mortality**
- **Individual liberties**
- **Health system and testing capacity**
- **Health equity**
- **Science and politics**
- **If not now, when?**
- **Your job**

Application: Scenario 3

- **State takes over fiscally distressed city in your health department's county**
- **Emergency manager appointed unilaterally decides to switch drinking water source to save money**
- **New water source probably contaminated, but state withholds data**
- **No direct authority to override decision**
- **What action, if any, do you take?**

Factors to Consider

- **Responsibilities to community**
- **Health consequences of inaction**
- **Retaining community's trust**
- **Availability of direct action**
- **Using bully pulpit**
- **Political implications of intervening**
- **Your job**

**Making
choices
vs. abusing
discretion**

Consider facts, principles, and law

Be able to articulate basis for decision

Show that you considered/weighed alternatives

Does decision make sense?

Is it reasonable?

vs.

Decisions that are “arbitrary” and “capricious”

**Doing nothing is doing something – make sure
doing nothing is a conscious choice**

**Arbitrary - not considered, ignores the facts,
whimsical**

Capricious - impulsive and unpredictable

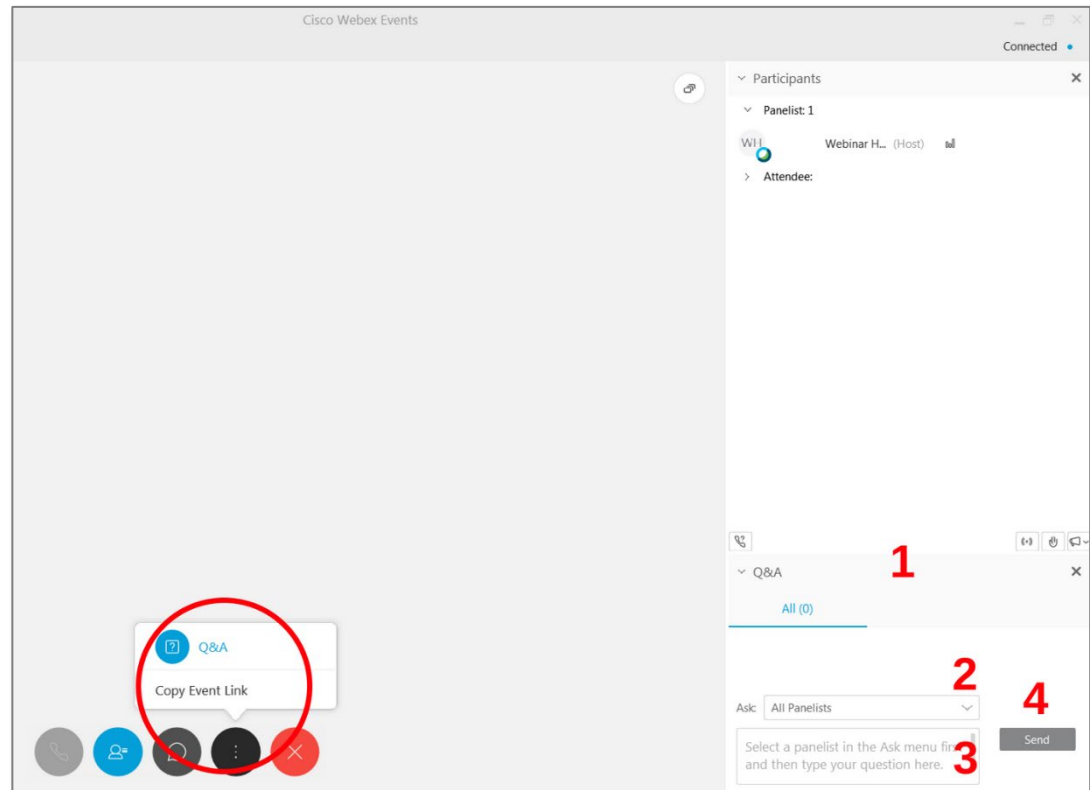
There may be no right answer, only choices
– the choice should make sense, reflect
ethical principles, and the basis should be
documented

Questions?



How to Use WebEx Q & A

1. Open the Q&A panel
2. Select “All Panelists”
3. Type your question
4. Click “Send”



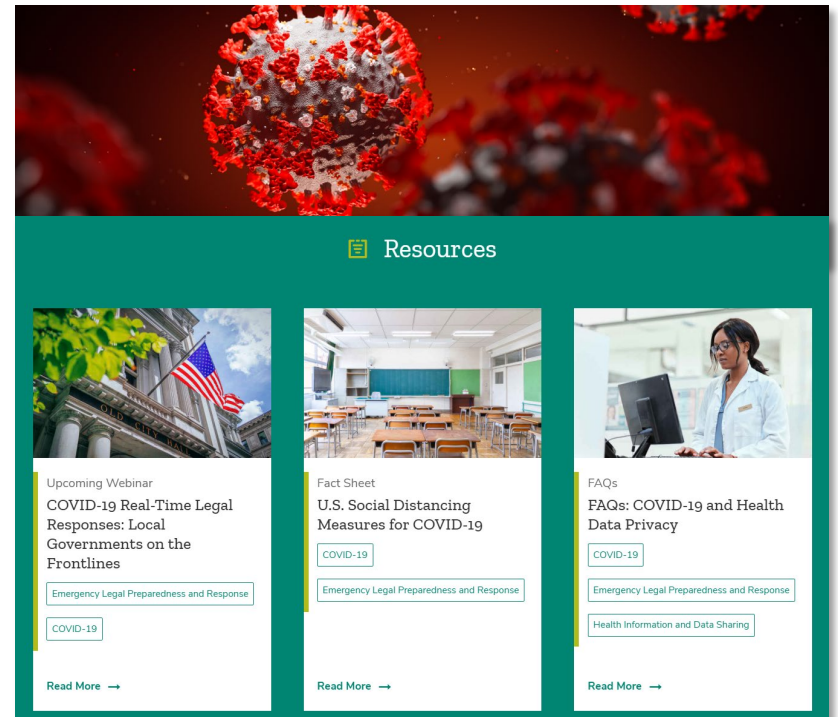
Thank you for attending

For a recording of this webinar and information about future webinars, please visit networkforphl.org/webinars

COVID-19: Real-Time Guidance, Resources & Information

View resources & request assistance at

networkforphl.org/covid19



The screenshot shows a webpage titled "Resources" with a green header. Below the header, there are three columns of content. The first column features a photo of a government building with an American flag and the text: "Upcoming Webinar COVID-19 Real-Time Legal Responses: Local Governments on the Frontlines". It includes a "COVID-19" tag, a "Read More" link, and a "Request Assistance" button. The second column features a photo of a classroom and the text: "Fact Sheet U.S. Social Distancing Measures for COVID-19". It includes a "COVID-19" tag, a "Read More" link, and a "Request Assistance" button. The third column features a photo of a woman in a lab coat at a computer and the text: "FAQs FAQs: COVID-19 and Health Data Privacy". It includes a "COVID-19" tag, a "Read More" link, and a "Request Assistance" button.