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Carter, M. (2007). Paradox of emergency preparedness: Can we be prepared for public health emergency, the. Oklahoma Bar Journal, 78(21), 1931-1942.

Chicago 7th ed.

Martha Rupp Carter, "Paradox of Emergency Preparedness: Can We Be Prepared for a Public Health Emergency, The," Oklahoma Bar Journal 78, no. 21 (August 4, 2007): 1931-1942

McGill Guide 9th ed.

Martha Rupp Carter, "Paradox of Emergency Preparedness: Can We Be Prepared for a Public Health Emergency, The" (2007) 78:21 Oklahoma B J 1931.

MLA 8th ed.

Carter, Martha Rupp. "Paradox of Emergency Preparedness: Can We Be Prepared for a Public Health Emergency, The." Oklahoma Bar Journal, vol. 78, no. 21, August 4, 2007, p. 1931-1942. HeinOnline.

OSCOLA 4th ed.

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# The Paradox of 'Emergency Preparedness': Can We Be Prepared for a Public Health Emergency?

By Martha Rupp Carter

An "emergency" is sudden, urgent, usually unexpected and requires immediate action.<sup>1</sup> As such, preparing for one seems at least somewhat unlikely. The traumas of Toronto's SARS epidemic, 9/11 and Hurricane Katrina cumulatively increased public awareness about how important public health preparedness is.

Public health experts predict another global outbreak of a flu strain for which we have no immunity and no vaccine is inevitable in the near future. "Bird flu," or avian H5N1 influenza, is feared as this next pandemic.<sup>2</sup> The six months needed to develop a vaccine once an outbreak begins<sup>3</sup> is certainly basis for alarm. Because a quick and ready vaccination fix will not be available, implementation and enforcement of public health measures are needed to endure and prevail. Who will implement those measures and manage such an emergency?

According to Health and Human Services Secretary Mike Leavitt, "When it comes down to managing the public health in a pandemic situation, it will be up to local public health authorities." An examination of Oklahoma's public health structure and powers is thus in order to understand the framework for preparedness.

## THE FRAMEWORK: OKLAHOMA'S PUBLIC HEALTH STRUCTURE

The Oklahoma State Commissioner of Health is responsible for general supervision of Okla-

homans' health and is the executive officer of the State Department of Health.<sup>5</sup> The commissioner coordinates the State Department of Health's activities with the federal government and other states and may accept and use their grants of money, personnel and property for public health and control of disease.<sup>6</sup>

Oklahoma's local level includes county boards of health, county health departments, county superintendents of health, district departments of health, cooperative departments of health, governing boards of cities or incorporated towns, city-county boards of health and city-county departments of health.

The office of county superintendent of health is created for each county that does not maintain a county department of health and participate in maintenance of a district department of health.<sup>7</sup> The commissioner appoints county superintendents who serve at the commissioner's pleasure.<sup>8</sup>

A county board of health, comprising five appointed members, is created in each county.<sup>9</sup> Among other duties, a county board of health

must establish and maintain a county department of health if in the best interests of the county.<sup>10</sup> Funding for a health department may be provided from the county general fund and proceeds of a levy under the Oklahoma Constitution at Article X, Section 9a.<sup>11</sup> There are 69 county health departments in Oklahoma.<sup>12</sup> A county health department, or any district or cooperative department of health, is to operate under the direction of a medical director. The commissioner appoints and supervises medical directors.<sup>13</sup>

The governing board of every Oklahoma city and town is empowered to serve ex-officio as the board of health for the municipality. They can appoint and fix the duties and compensation of a health officer and other personnel to enforce public health ordinances.<sup>14</sup> The governing boards may adopt public health ordinances and rules not inconsistent with State Board of Health rules, and, they may also enforce laws and rules required by the commissioner.<sup>15</sup>

Oklahoma counties and cities of sufficient populations may jointly create a city-county board of health,<sup>16</sup> and, pursuant to an agreement, a city-county health department; they are authorized to provide for the department's operation and selection of a director.<sup>17</sup> There are two city-county health departments, the Tulsa City-County Health Department and the Oklahoma City-County Health Department.

Under the supervision of its director, a city-county health department is to enforce and administer all municipal and county ordinances, rules and regulations, state laws, and State Board of Health rules and regulations.<sup>18</sup> The director of a city-county health department is to direct and supervise all public health activities in the county, except for incorporated cities and towns not in an agreement to operate their health department.<sup>19</sup>

A city-county board of health is to recommend ordinances, rules and regulations on public health preservation and promotion to the governing board of any city or town in its jurisdiction and to the board of county commissioners of the county within which it exists. The board is to assist in the formulation and adoption of uniform health ordinances, rules and regulations within its jurisdiction.<sup>20</sup>

## GENERAL PUBLIC HEALTH DUTIES AND POWERS

The matters on which the State Board of Health is authorized to adopt rules and regulations are illustrative and include: recommended immunization procedures; quarantine measures; exclusion of children from school; regulation of public meetings and gatherings in epidemic situations; regulation of vectors; control of vehicles capable of transmitting a communicable disease; detection and diagnosis of communicable disease; carriers of disease; disposal of infected body wastes and other materials; fumigation, cleaning and sterilization, and disinfection; and other necessary measures to prevent and control communicable disease.<sup>21</sup>

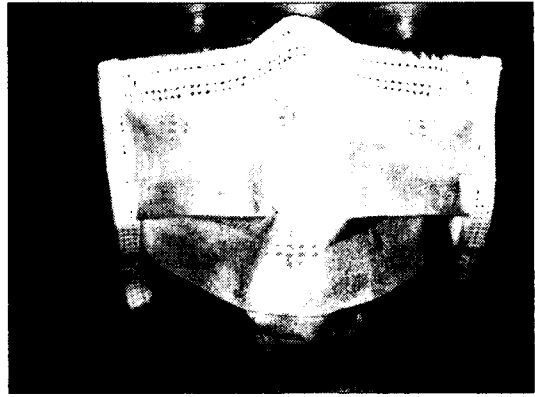
The commissioner's statutory duties include:

- 1) control, suppress, prevent the occurrence or spread of communicable, contagious or infectious disease;
- 2) segregate and isolate persons having or suspected of having such disease;
- 3) designate places of quarantine or isolation;
- 4) abate any nuisance injurious to public health;
- 5) investigate and study causes of disease and epidemics, mortality and the effects of localities, employment, conditions and circumstances on the public health;
- 6) investigate conditions of health, sanitation and safety of schools, prisons, public institutions, mines, public conveyances, camps, places of group abode, and all buildings and places of public resort, and recommend, prescribe and enforce health, sanitation and safety measures; and
- 7) advise state and local governments on health, sanitation and safety.<sup>22</sup>

The commissioner is authorized to hold hearings, issue orders, and has right of access to any premises for public health purposes.<sup>23</sup> The commissioner can conduct investigations, and inquiries.<sup>24</sup> The commissioner is empowered to issue subpoenas for witness attendance and production of books and records; a contempt proceeding may be filed in district court against any person who disobeys.<sup>25</sup> The public health code empowers the district judge to punish offenders for contempt.

“...must exclude from private or public schools persons with communicable disease until the period of isolation or quarantine has expired, or, until the local health official permits.”

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The commissioner can revoke, cancel or suspend for one year the public health code license or permit of any holder violating the code or any State Board of Health rule or standard.<sup>26</sup>

The county superintendent's powers and duties, performed under the commissioner's supervision, include:

- 1) abolish nuisances that are inimical to public health;
- 2) isolate persons infected with dangerous, communicable, infectious or contagious diseases;
- 3) control, suppress or prevent the occurrence or spread of such diseases;
- 4) enforce emergency health regulations of the county board of health;
- 5) enforce the Oklahoma Public Health Code and State Board of Health rules and regulations applicable to the officer's county; and
- 6) perform other duties and functions required by the commissioner.<sup>27</sup>

The medical director of a county health department and the director of a city-county health department are endowed with the powers, authority and duties conferred on county superintendents.<sup>28</sup>

Oklahoma's municipalities may enact and enforce ordinances, rules and regulations for public health not inconsistent with state law.<sup>29</sup> Municipalities may establish and regulate hospitals. And, they may make regulations to prevent the introduction of contagious diseases into the municipality and enforce quarantine laws within five miles of municipal limits.<sup>30</sup>

Oklahoma's governor, the commander-in-chief of the state militia, is authorized to call out the militia for purposes including protecting the public health.<sup>31</sup>

#### **VIOLATING LOCAL HEALTH OFFICER ORDER CARRIES CRIMINAL PENALTY**

When a local health officer determines or suspects that a person has a communicable disease, he may impose a quarantine.<sup>32</sup> Any person detained in quarantine who leaves the quarantine grounds or willfully violates any quarantine law or regulation commits a misdemeanor offense.<sup>33</sup>

It is also a misdemeanor crime to be affected with any contagious disease and expose others in any public place or thoroughfare except in a necessary removal in a manner not dangerous to the public health.<sup>34</sup> A local health officer can cause a person infected with a communicable disease to be removed to a hospital or similar place unless the person is sick in his own place of residence or cannot be moved without danger to his life.<sup>35</sup> No one can remove a person with a communicable disease from the place where the person is sick to any other place except in accordance with State Board of Health rules and regulations.<sup>36</sup>

Parents, guardians and teachers must exclude from private or public schools persons with communicable disease until the period of isolation or quarantine has expired, or, until the local health official permits.<sup>37</sup>

The State Board of Health is authorized to adopt rules for quarantine, isolation, impounding, immunization and disposal of animals to prevent and control zoonotic disease.<sup>38</sup> The commissioner can order quarantine, isolation, impounding, immunization or disposal of any animal determined to be the source of zoonotic disease.<sup>39</sup> Violating an order is a misdemeanor offense.<sup>40</sup> District courts may grant injunctive relief to compel compliance with the commissioner's order.<sup>41</sup>

Willfully failing or refusing to comply with an order of the commissioner, the State Board of Health or a local health officer, or, violating the terms and conditions of a quarantine or embargo are misdemeanor offenses.<sup>42</sup> A person who does an act for which a license or permit is required under the public health code without the license or permit commits a misdemeanor offense.<sup>43</sup>

District courts are authorized to grant injunctive relief to prevent a violation or to compel compliance with any provision of the public health code or any rule or order issued pursuant to the code.<sup>44</sup> In specified circumstances, the State Health Department has the authority to assess a penalty of \$10,000 per day of non-compliance with an order.<sup>45</sup>

### **SPECIALIZED EMERGENCY MANAGEMENT STATUTES**

#### **Catastrophic Health Emergency Powers Act**

Oklahoma's Catastrophic Health Emergency Powers Act (CHEPA)<sup>46</sup> is activated upon the occurrence of a "catastrophic health emergency"<sup>47</sup> as declared by the Oklahoma governor in an executive order.<sup>48</sup> "Catastrophic health emergency" means in part an imminent threat of an illness or health condition caused by a nuclear attack, bioterrorism or a chemical attack.<sup>49</sup> That definition combined with the definition of "bioterrorism"<sup>50</sup> allows CHEPA to operate for criminal conduct rather than naturally occurring events or disasters.

However, effective Nov. 1, 2007, CHEPA will apply to a pandemic occurrence as well as due to expansion of the definition of "catastrophic health emergency" to cover "the appearance of a novel or previously controlled or eradicated agent or biological toxin."<sup>51</sup>

CHEPA charges the "public health authority," the State Commissioner of Health or local health department<sup>52</sup> with investigating illness or health conditions that may cause a catastrophic health emergency, identifying exposed individuals, as well as closing, evacuating and decontaminating any facility reasonably believed to endanger public health.<sup>53</sup> The public health authority's orders accordingly are immediately enforceable by the "public safety authority" (the Commissioner of Public Safety or any local government agency acting for public safety).<sup>54</sup>

In addition to other responsibilities,<sup>55</sup> the public health authority may adopt and enforce measures for collection, storage, handling, destruction, treatment, transportation and disposal of contaminated waste. The public health authority may require any business or facility authorized to deal with contaminated waste under Oklahoma laws, and any landfill business, to accept contaminated waste or provide services or the use of the business, facility or property as a condition of licensure, authorization or the ability to continue doing business in the state.<sup>56</sup> The "use" of the business, facility or property may include transferring its management or supervision to the public health authority for a period of time not to exceed the termination of the declaration of the state of the catastrophic health emergency.<sup>57</sup>

CHEPA authorizes the public health authority to adopt and enforce measures for embalming, burial, cremation, interment, disinterment, transportation and disposal of human remains.<sup>58</sup> The public health authority is empowered to take possession or control of any human remains and to order disposal of human remains of a person who has died of a transmissible disease through burial or cremation within 24 hours of death.<sup>59</sup>

CHEPA authorizes the public health authority to purchase and distribute anti-toxins, serums, vaccines, immunizing agents, antibiotics and other pharmaceutical agents or medical supplies to prepare for or control a catastrophic health emergency.<sup>60</sup> If the emergency results in a shortage of these items, whether or not purchased, the public health authority may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation or other means, the use, sale, dispensing, distribution or transportation of the items during the emergency.<sup>61</sup>

The public health authority possesses emergency powers on licensing and appointment of health personnel during the catastrophic health emergency. The authority may require in-state health care providers<sup>62</sup> to assist in treating or examining individuals as a condition of licensure, authorization or the ability to continue to function as a health care provider in Oklahoma.<sup>63</sup> The authority may appoint and prescribe duties of out-of-state emergency health care providers to respond during the declared state of emergency.<sup>64</sup> The authority may waive licensing requirements, permits or fees required by

66 CHEPA does not pre-empt other laws or rules that preserve to a greater degree the powers of the public health authority. 99



the state and applicable rules or orders to allow providers to practice in Oklahoma.<sup>65</sup>

These are serious and significant powers for serious times.

However, CHEPA provides: "The rights of the people to liberty, bodily integrity, and privacy must be respected to the fullest extent possible consistent with maintaining and preserving the health and security of the public during a catastrophic health emergency."<sup>66</sup>

The governor is afforded expanded powers during a state of catastrophic health emergency. For example, the governor may suspend regulatory statutes on conducting state business, or orders or rules of any state agency, if compliance would prevent or delay action (including emergency purchases) by the public health authority. The governor may use all available resources of the government and its political subdivisions to respond. The governor may mobilize the National Guard, provide aid to and seek aid from other states under an interstate emergency compact, and, may seek aid from the federal government.<sup>67</sup>

Subject to not exceeding \$50 million in the fiscal year, the governor may transfer money from any fund available to the governor in the State Treasury when: 1) no appropriation is available to meet the emergency; or, 2) an appropriation is insufficient to meet the emergency; or, 3) available federal monies require the use of state or other public monies.<sup>68</sup>

CHEPA does not pre-empt other laws or rules that preserve to a greater degree the powers of the public health authority.<sup>69</sup> Some might argue that the broader powers in the public health code empower a public health authority to a greater degree than CHEPA's more specific provisions. During a catastrophic health emergency, in the event of a conflict between CHEPA and other state or local laws

or rules concerning public health powers, the provisions of CHEPA will apply.<sup>70</sup>

The governor or the state Legislature may terminate the declaration of a state of catastrophic health emergency.<sup>71</sup>

### OKLAHOMA EMERGENCY MANAGEMENT ACT OF 2003

The purposes of the Oklahoma Emergency Management Act of 2003 (EMA) are many. EMA creates the Oklahoma Department of Emergency Management and authorizes the creation of local organizations for emergency management<sup>72</sup> in counties and incorporated municipalities. EMA forces emergency planning through provisions mandating a state emergency operations plan and assuring that all state agencies and entities have written plans and procedures. In addition to conferring emergency powers on the governor and executive heads or governing bodies of political subdivisions, it provides for rendering mutual aid among political subdivisions, with other states and the federal government to perform emergency management functions and hazard mitigation.<sup>73</sup>

EMA covers both man-made disasters<sup>74</sup> and natural disasters.<sup>75</sup> "Emergency management" means preparation for and coordination of all emergency functions to prevent, minimize and repair injury and damage from natural or man-made disasters declared by the governor.<sup>76</sup>

Either the governor or the Legislature in a concurrent resolution may proclaim the existence of an emergency or its termination under EMA.<sup>77</sup> The governor has powers and duties under the EMA outside of an emergency<sup>78</sup> and additional emergency powers to exercise during the emergency.<sup>79</sup>

EMA allows political subdivisions in which disasters occur to declare a local emergency and to enter into contracts and incur obliga-

tions to combat such disaster.<sup>80</sup> Such a political subdivision is specifically authorized to exercise these powers "without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, and the appropriation and expenditure of public funds."<sup>81</sup>

In collaboration with other public and private agencies within the state, the director of each local organization for emergency management may develop mutual aid arrangements for reciprocal emergency management aid.<sup>82</sup> Each local organization for emergency management has the duty to render assistance in accordance with the provisions of the mutual aid arrangements.<sup>83</sup> Any municipal fireman or policeman engaged in emergency management activities while complying with EMA is considered as serving in his or her regular line of duty and entitled to applicable pension fund benefits.<sup>84</sup>

Requirements for a license to practice any professional, mechanical or other skill shall not apply to authorized emergency management workers with licenses from states rendering mutual aid during an emergency.<sup>85</sup>

The state of Oklahoma, its political subdivisions, officers or employees, and volunteers are not civilly liable for loss or injury to any person's company, corporation or other legal entity as a result of action during the emergency.<sup>86</sup> Persons who own or control real estate and voluntarily, without compensation permit use to shelter persons during an emergency or exercise are not civilly liable for negligently causing death or injury.<sup>87</sup>

The Oklahoma Department of Emergency Management may request the attorney general to bring civil action against those who violate or fail to comply with an order, refuse to admit authorized representatives, refuse to permit inspection, and refuse to furnish requested information or reports.<sup>88</sup> Willful violation of the Oklahoma Department of Emergency Management's rules, regulations or orders is a misdemeanor offense.<sup>89</sup>

## THE OKLAHOMA INTRASTATE MUTUAL AID COMPACT

The Oklahoma Intrastate Mutual Aid Compact<sup>90</sup> affords a system of intrastate mutual aid between participating in-state jurisdictions.<sup>91</sup> The intrastate mutual aid is for use to prevent, respond to and recover from any disaster resulting in a formal state of emergency in a participating jurisdiction.<sup>92</sup> "Emergency" means any occasion or instance for which assistance is needed to supplement local efforts and capabilities to save lives, to protect property and public health and safety, or to lessen or avert the threat of catastrophe.<sup>93</sup> The compact provides for planning requirements<sup>94</sup> and cooperation of participating jurisdictions to conduct disaster-related exercises, testing or other training activities outside of declared emergencies.<sup>95</sup>

The compact's provisions cover "jurisdictions," defined to mean "any county, city, town or municipal corporation of the State of Oklahoma represented by an elected governing body" and Sovereign Tribal Nations in Oklahoma.<sup>96</sup> All jurisdictions are automatically deemed a part of the statewide mutual aid system under the compact,<sup>97</sup> but can, upon the governing body's enactment of a resolution, elect not to participate or later withdraw. Providing the requested assistance, and its withdrawal, is in the sole discretion of the aiding jurisdiction.<sup>98</sup> Jurisdictions rendering aid may withhold resources as necessary to provide reasonable protection for their jurisdictions.<sup>99</sup>

Under its specific terms, the compact does not affect any other agreement to which a jurisdiction may be a party or enter.<sup>100</sup>

The compact does not dictate how a jurisdiction needing assistance declares an emergency. However, the compact's provisions apply only when requests<sup>101</sup> are made by and to the authorized representatives of the respective jurisdictions.<sup>102</sup> The compact allows no immunity, rights or privileges for any responding individual who is not requested and/or authorized to respond by a participating jurisdiction.<sup>103</sup> In this regard, officers or employees of a jurisdiction rendering aid under the compact are considered within the scope of employment of the requesting jurisdiction for tort liability and immunity purposes. No jurisdiction or its officers or employees rendering aid in another jurisdiction pursuant to the compact are liable for any act or omission in "good faith" while

so engaged, or, on account of the maintenance or use of any equipment or supplies.<sup>104</sup> "Good faith" does not include willful misconduct, gross negligence or recklessness.<sup>105</sup>

Each jurisdiction is required to provide for compensation and death benefits to its own officers and employees injured or killed while rendering assistance pursuant to the compact in the same manner and on the same terms as if the injury or death were sustained within its own jurisdiction.<sup>106</sup> No immunity is provided under the compact to private individuals or entities although the compact refers to an "emergency responder" as coming from the public or private sector,<sup>107</sup> and, to the best use of "assets both public and private."<sup>108</sup>

Under the compact, receiving jurisdictions are to reimburse the responding jurisdiction for any loss, damage, expense or cost incurred in operating equipment or providing services for the request.<sup>109</sup> Compensation expenses are not deemed reimbursable under these provisions.<sup>110</sup> The compact permits the aiding jurisdiction to wholly or partially assume such loss, damage, expense or other cost or to loan equipment or donate services to the receiving jurisdiction without charge or cost.<sup>111</sup> The jurisdictions are authorized to enter into agreement establishing a different allocation of cost.<sup>112</sup>

#### IMMUNITY FROM LIABILITY

A variety of statutory provisions may afford immunity from liability to private persons who assist the state and its local governments in managing emergencies. Immunities afforded under specialized emergency provisions have been discussed. These grants of immunity from liability are of the utmost importance to facilitate necessary public-private cooperation and partnership.

For example, under the Oklahoma Good Samaritan Act, persons who are licensed to treat human ailments, disease, pain and injury who, without a prior contractual relationship; under emergency circumstances that may lead to probable death or serious bodily injury; in good faith; voluntarily and without compensation; provide emergency care to an injured person or one in need of immediate medical aid, shall not be liable for damages for any acts or omissions except for committing gross negligence or willful or wanton wrongs in rendering care.<sup>113</sup>

And, any person, not just licensed professionals, who: without a prior contractual relationship; in good faith; provides emergency care of artificial respiration, restoration of breathing, preventing loss of blood, aiding heart action or circulation of blood; to a victim of an accident or emergency; shall not be liable for any civil damages as a result of acts or omissions.<sup>114</sup>

Under similar conditions, persons licensed to perform surgery or dentistry who provide emergency care requiring an operation or other form of surgery upon the victim of an accidental act are not liable for civil damages or subject to criminal prosecution for nonconsent.<sup>115</sup> Qualified persons who meet specified conditions and render emergency care or treatment outside of a medical facility by use of an automated external defibrillator are immune from civil liability for personal injury.<sup>116</sup>

Donors who meet requirements and make good faith donations of food to a charitable organization or nonprofit corporation are not liable for damages in any civil suit or subject to criminal prosecution for any injury resulting from the nature, age, condition or packaging of the donated food.<sup>117</sup>

A licensed architect or professional engineer who meets



66 Donors who meet requirements and make good faith donations of food to a charitable organization or nonprofit corporation are not liable for damages in any civil suit or subject to criminal prosecution...

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requirements and provides, upon request or with approval, architectural, structural, electrical, mechanical or other design professional services related to a national, state or local emergency caused by a natural disaster or catastrophic event is not liable for personal injury, wrongful death, property damage or other loss in performance of services for any publicly or privately owned structure, building, facility, project, utility equipment, machine process, piping or other system.<sup>118</sup>

Pursuant to the Volunteer Medical Professional Services Immunity Act, any person meeting requirements and participating in a medical reserve corps and assisting with emergency management, emergency operations or hazard mitigation in response to any emergency, man-made disaster, or natural disaster or participating in public health initiatives endorsed by a city, county or state health department in Oklahoma is not liable for civil damages.<sup>119</sup> Volunteer medical professionals who meet requirements are immune from civil liability in providing volunteer medical professional services at a free clinic.<sup>120</sup>

### LESSONS LEARNED FROM TORONTO'S SARS EPIDEMIC

The 2003 Toronto SARS epidemic lasted almost 14 weeks, March through June, 2003 in two phases of seven weeks each. The first phase began after a traveler from southeast Asia introduced SARS. The second began when the epidemic was almost under control and an undetectable SARS "superspreader" with no symptoms visited a Toronto hospital. The SARS epidemic was successfully brought under control using a combination of "old-fashioned" public health control measures without a SARS vaccine or rapid diagnostic test. These control measures included: public information about hygiene; use of masks, gloves, gowns and similar airborne infectious disease control measures; strict isolation of diagnosed SARS patients; quarantine measures for about 30,000 persons believed to have been exposed to SARS; closure of facilities where SARS transmission was occurring; and, international travel advisories.<sup>121</sup>

The numbers tell the story. There were 44 deaths; over 13,000 people were isolated; over 23,000 contacts were investigated; hotline calls amounted to 300,000 with a peak of 47,567 in one day. The most amazing number of all is 27; the Canadian public health authority used only

27 written orders directing persons to act.<sup>122</sup> The voluntary compliance of the Toronto population in the SARS epidemic was incredible.

The economic aspects of the SARS epidemic<sup>123</sup> drove a partnership between government and business in Toronto. The business community became directly involved in the resolution of the public health situation. The key lesson of SARS: "Voluntary compliance is the cornerstone of any emergency response; legal powers are ineffective in the absence of voluntary compliance."<sup>124</sup>

### CONCLUSION

Laws that form Oklahoma's public health structure include specialized emergency management enactments. These specialized laws run the gamut of coverage from natural to man-made catastrophes, disasters and emergencies. Oklahoma has attempted through its legal framework to be prepared. The fear is that despite the concerted planning, training and governmental coordination prescribed and facilitated by the laws, those efforts alone will not be enough to contend with an unknown catastrophe. Oklahoma's public health entities are better equipped for the future because they have the opportunity to learn from the Toronto SARS epidemic as well as emergencies within this nation.

The primary learning from SARS is that the fullest cooperation of private sector entities and individuals is a necessity if a pandemic flu, or similar health crisis, impacts Oklahoma. The state and its local governmental entities cannot manage a significant emergency without that cooperation and support. Absent compliance and cooperation, the ability of any public health system to vaccinate or otherwise assist large numbers of people will grind to a halt. Planning successfully for a pandemic requires planning for and enlisting cooperation from public and private entities.

To that end, it is prudent to consider all efforts designed to enlist cooperation. This includes continued legislative efforts to immunize cooperating persons and other entities from liabilities for acts and omissions during participation in an emergency.

1. Webster's Encyclopedic Unabridged Dictionary of the English Language, 1996, Random House Value Publishing, Inc.

2. [www.pandemicflu.gov/general/index.html](http://www.pandemicflu.gov/general/index.html); [www.health.ok.gov/program/cdd/flu/avian.html](http://www.health.ok.gov/program/cdd/flu/avian.html).

3. CNN.com – Leavitt: States will ration bird flu vaccine – June 6, 2006 at [www.cnn.com/2006/HEALTH/conditions/06/06/bird.flu.test.ap/index.html](http://www.cnn.com/2006/HEALTH/conditions/06/06/bird.flu.test.ap/index.html).

4. CNN.com – Leavitt: States will ration bird flu vaccine – June 6, 2006 at [www.cnn.com/2006/HEALTH/conditions/06/06/bird.flu.test.ap/index.html](http://www.cnn.com/2006/HEALTH/conditions/06/06/bird.flu.test.ap/index.html).

5. Okla. Stat. tit. 63, § 1-106(b)(1), (2) (2001).
6. Okla. Stat. tit. 63, §§ 1-106(b) (11) and (12) (2001).
7. Okla. Stat. tit. 63 § 1-203(a) (2001).
8. Okla. Stat. tit. 63, § 1-204 (2001).
9. Okla. Stat. tit. 63, § 1-201 (2001).
10. Okla. Stat. tit. 63, § 1-202(b), (c), (e), and (f) (2001).
11. Okla. Stat. tit. 63, § 1-205(a) (2001).
12. [www.health.state.ok.us/program/index.html](http://www.health.state.ok.us/program/index.html).
13. Okla. Stat. tit. 63, § 1-205 (d) (2001).
14. Okla. Stat. tit. 63, § 1-209 (2001).
15. Okla. Stat. tit. 63, § 1-209 (2001).
16. Okla. Stat. tit. 63, § 1-210 (2001).
17. Okla. Stat. tit. 63, § 1-214 A (2001).
18. Okla. Stat. tit. 63, §§ 1-214 D. and 1-215 (2001).
19. 63 Okla. Stat. tit. 63, § 1-215 (2001).
20. Okla. Stat. tit. 63, § 1-210 (2001).
21. Okla. Stat. tit. 63, § 1-502 (2001).
22. Okla. Stat. tit. 63, § 1-106 (B)(1) (2001).
23. Okla. Stat. tit. 63, § 1-106(B)(4) (2001).
24. Okla. Stat. tit. 63, § 1-106(B)(5) (2001).
25. Okla. Stat. tit. 63, § 1-106(B)(7) (2001).
26. Okla. Stat. tit. 63, § 1-106 (B)(10) (2001).
27. Okla. Stat. tit. 63, § 1-204 (2001).
28. Okla. Stat. tit. 63, § 1-215 (2001).
29. Okla. Stat. tit. 11, § 120A (Supp. 2005).
30. Okla. Stat. tit. 11, § 120A (Supp. 2005).
31. Okla. Const. art. VI, § 6.
32. Okla. Stat. tit. 63, § 1-504 (2001).
33. Okla. Stat. tit. 21, § 1195 (2001).
34. Okla. Stat. tit. 63, § 1199 (2001).
35. Okla. Stat. tit. 63, § 1-505 (2001).
36. Okla. Stat. tit. 63, § 1-506 (2001).
37. Okla. Stat. tit. 63, § 1-507 (2001).
38. Okla. Stat. tit. 63, § 1-508 A.1 (2001).
39. Okla. Stat. tit. 63, § 1-508 B. 1 (2001).
40. Okla. Stat. tit. 63, § 1-508 C (2001).
41. Okla. Stat. tit. 63, § 1-508 D (2001). Public officers and employees acting within the scope of their authority to control zoonotic disease are not liable for damages. Okla. Stat. tit. 63, § 1-508 B.2 (2001).
42. Okla. Stat. tit. 63, § 1-1701 A. 1 (2001).
43. Okla. Stat. tit. 63, § 1-1701 A. 4 (2001).
44. Okla. Stat. tit. 63, § 1-1701 B.1 (2001). "Code" includes the Public Health Code and statutes codified in Title 59 for regulation of professions, occupations for which the State Health Department issues licenses. Okla. Stat. tit. 63, § 1-1701 B. 3 (2001).
45. Okla. Stat. tit. 63, § 1-1701.1A (2001).
46. Okla. Stat. tit. 63, § 6101 (2001), et seq.
47. Okla. Stat. tit. 63, § 6102 11 (2001).
48. Okla. Stat. tit. 63, §§ 63, 6401, 6402 (2001).
49. Okla. Stat. tit. 63, § 6104 2 (2001).
50. Okla. Stat. tit. 63, § 6104 1 (2001). "Bioterrorism" means "the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population."
51. 2007 Okla. Sess. Laws, c. 473, to be codified at 63 O.S. § 6104, Senate Bill 399.
52. Okla. Stat. tit. 63, § 6104 11. (2001).
53. Okla. Stat. tit. 63, § 6302 (2001). To the extent practicable consistent with protection of public health, prior to destruction of property under CHEPA, the public health authority shall institute appropriate civil proceedings. Okla. Stat. tit. 63, § 6504 (2001).
54. Okla. Stat. tit. 63, § 6104 12 (2001); Okla. Stat. tit. 63, § 6302 C (2001).
55. Okla. Stat. tit. 63, §§ 6403, 6601, and 6701 (2001).
56. Okla. Stat. tit. 63, § 6501 (2001).
57. Okla. Stat. tit. 63, § 6501 B (2001).
58. Okla. Stat. tit. 63, § 6502 A. 1 (2001).
59. Okla. Stat. tit. 63, § 6502 A. 2. and 3 (2001).
60. Okla. Stat. tit. 63, § 6503 A (2001).
61. Okla. Stat. tit. 63, § 6503 B (2001).

62. "Health care provider" means any person or entity who provides health care services, including without limitation, physicians, pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses, paramedics, emergency medical or laboratory technicians, and ambulance and emergency medical workers. Okla. Stat. tit. 63, § 6104A. 6. (2001).

63. Okla. Stat. tit. 63, § 6602 (2001).
64. Okla. Stat. tit. 63, § 6602 2. (2001).
65. Okla. Stat. tit. 63, § 6602 2. b (2001).
66. Okla. Stat. tit. 63, § 6102 9 (2001).
67. Okla. Stat. tit. 63, § 6403 (2001).
68. Okla. Stat. tit. 63, § 6802 A., C., and D. 2 (2001).
69. Okla. Stat. tit. 63, §§ 6803, 6104 11 (2001).
70. Okla. Stat. tit. 63, § 6804 B (2001).
71. Okla. Stat. tit. 63, § 6403 (2001).
72. A "local organization for emergency management" means an organization created by state or local authority pursuant to the EMA to perform local emergency management functions. Okla. Stat. tit. 63, § 683.3 6. (2001). Qualified emergency management directors are required for all counties; municipalities must also have directors, or, create agreements with counties for emergency management. Okla. Stat. tit. 63, § 683.11 (2001).
73. Okla. Stat. tit. 63, § 683.2 (2001).
74. Man-made disasters are caused by acts of man, including terrorism, chemical spills or releases, and power shortages, that require assistance from outside the local political subdivisions. Okla. Stat. tit. 63, § 683.3 7. (2001).
75. Natural disasters means any natural catastrophe, such as tornadoes, flood waters, or drought, which reaches sufficient severity to warrant hazard mitigation or use of resources of other entities. Okla. Stat. tit. 63, § 683.3 8. (2001).
76. Okla. Stat. tit. 63, § 683.3 1 (2001).
77. Okla. Stat. tit. 63, § 683.9 (2001).
78. Okla. Stat. tit. 63, § 683.8 (2001).
79. Okla. Stat. tit. 63, § 683.9 (2001).
80. Okla. Stat. tit. 63, § 683.11 F. (2001).
81. Okla. Stat. tit. 63, § 683.11 F. (2001).
82. Okla. Stat. tit. 63, § 683.12 A. (2001).
83. Okla. Stat. tit. 63, § 683.12 A. (2001).
84. Okla. Stat. tit. 63, § 683.13 A. (2001).
85. Okla. Stat. tit. 63, § 683.13 C. (2001). "Emergency management worker" includes any full or part-time paid, volunteer, or auxiliary employee of this or other states, territories, possession or the District of Columbia, or the federal government, or any neighboring country or any political subdivision, thereof, or of any agency or organization, performing emergency management services under state supervision at any place in this state.
86. Okla. Stat. tit. 63, § 683.14 B. (2001), excepting gross, willful, wanton negligence.
87. Okla. Stat. tit. 63, § 683.14 B. (2001), excepting gross, willful, wanton negligence.
88. Okla. Stat. tit. 63, § 683.23 A. (2001).
89. Okla. Stat. tit. 63, § 683.23 C. (2001).
90. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.1, et seq.
91. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.2.
- A.
92. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.2 C.
93. 2006 Okla. Sess. Laws, c. 199, to be codified at 63 O.S. § 695.2 B.2.
94. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.4.
95. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.2 C.
96. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.2 B.1.
97. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.2 D.
98. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.4 D.
99. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.5.
100. 2006 Okla. Sess. Laws, c. 199, to be codified at 63 O.S. § 695.2 D.
101. Information to be included in the requests for aid include a description of the emergency service function needed (such as fire service, law enforcement, emergency medical, mass care, health and medical services, and search and rescue); the amount and type of personnel, equipment, materials and supplies needed and an estimate of time for which they will be needed; and, the specific place and time for staging the response. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.4 B.
102. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.4 B.

103. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.2
- C.
104. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.7.
105. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.7.
106. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.8.
107. 2006 Okla. Sess. Laws, c. 199, to be codified at 63 O.S. § 695.2
- B.3.
108. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.2
- C.
109. 2006 Okla. Sess. Laws, c. 199, to be codified at 63 O.S. § 695.9.
110. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.9.
111. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.9.
112. 2006 Okla. Sess. Laws, c.199, to be codified at 63 O.S. § 695.9.
113. Okla. Stat. tit. 76, § 5(a)(1) (2001).
114. Okla. Stat. tit. 76, § (a)(2) (2001).
115. Okla. Stat. tit. 76, § 5(a)(3) (2001).
116. Okla. Stat. tit. 76, § 5A A. (2001).
117. Okla. Stat. tit. 76, § 5.6 (2001).
118. Okla. Stat. tit. 76, § 5.8 (2001).
119. Okla. Stat. tit. 76, § 32 (Supp. 2005).
120. Okla. Stat. tit. 76, § 32 B. (Supp. 2005).
121. "The Public/Private Response to Sudden Disease Outbreak" June 30, 2006 Final Report prepared for the Alfred P. Sloan Foundation by Gene Matthews, JD, Director of the CDC Foundation Institute of Public Health. A \$45,000 grant to the Alfred P. Sloan Foundation resulted in a meeting in Toronto March 2 and 3, 2006, to comprehensively examine with key legal and business experts in the U.S. and Canada the public health and economic lessons learned from the SARS outbreak.
122. International Municipal Lawyers Association 2006 Annual Conference, Sept. 17-20, 2006, Portland, Oregon; Work Session V. Managing Critical New Public Health Concerns, presentation "Planning for a Pandemic: Lessons Learned from SARS," by Anna Kinastowski, City Solicitor, City of Toronto.

123. Twelve thousand people lost jobs; nine city-wide conventions cancelled in the summer of 2003; the cost to the Toronto economy for 2003 alone was over \$1 billion. "The Public/Private Response to Sudden Disease Outbreak" June 30, 2006 Final Report prepared for the Alfred P. Sloan Foundation by Gene Matthews, JD, Director of the CDC Foundation Institute of Public Health

124. International Municipal Lawyers Association 2006 Annual Conference, Sept. 17-20, 2006, Portland, Oregon; Work Session V. Managing Critical New Public Health Concerns, presentation "Planning for a Pandemic: Lessons Learned from SARS," by Anna Kinastowski, City Solicitor, City of Toronto.

#### ABOUT THE AUTHOR

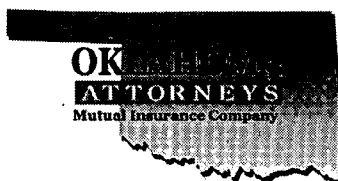


Martha Rupp Carter graduated from OSU with a B.A., honors in English, and obtained her J.D. from OU. Following five years of private practice with Sonberg and Waddell, she served in the City of Tulsa legal department for 19 years. She was appointed as Tulsa's city attorney, serving four years in this position. In June 2004, she was selected as the Tulsa City-County Health Department's general counsel.

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# CRIMINAL DEFENSE IN THE DEATH BELT III

Presented By:

OKLAHOMA CRIMINAL DEFENSE LAWYERS ASSOCIATION

&

THE OFFICE OF THE OKLAHOMA COUNTY PUBLIC DEFENDER

Thursday, August 23, 2007 & Friday, August 24, 2007

The Oklahoma City Marriott Hotel, NW Expressway

14 hours CLE (including 1 Ethics)

## Thursday Morning:

- 8:00 – 8:15      **Welcome & Introductory Remarks.** David Ogle, President, Oklahoma Criminal Defense Lawyers Association
- 8:15 – 9:05      **Handling the High Profile Case.** David Smith, Esq.
- 9:05 – 9:55      **Addressing Prosecutorial Misconduct at Trial.** Gary James, Esq.
- 9:55 – 10:10      **break**
- 10:10 -11:00      **Ethical Obligations When You Believe the State is Withholding Evidence.** David Autry, Esq.
- 11:00 – 11:30      **Devolving Standards of Decency: Death Penalty for Non-Homicide Sex Offenses.** Cindy Viol, Esq.
- 11:30 – 12:00      **Faith Based Interventions in the Death Penalty Process.** Jim Fowler, Vicki Werneke, Esq. and Rev. Mendle Adams
- 12:00 – 1:00      **break**

## Thursday Afternoon:

- 1:00 – 1:50      **Appellate Update.** Janet Chesley, Esq.
- 1:50 – 2:40      **When is it Best to Use/Not Use a Mental Health Expert?** Richard Burr, Esq.
- 2:40 – 2:55      **break**
- 2:55 – 3:45      **Representation of Foreign Nationals.** Danalynn Recer, Esq.
- 3:45 – 5:05      **The Colorado Method of Jury Selection- Introduction.** David Lane, Esq.
- 5:05              **SOCIAL GATHERING ---- LOCATION TO BE ANNOUNCED**

## Friday:

- 9:30 a.m. – 2:00 p.m. **The Colorado Method of Jury Selection (cont'd).** David Lane, Esq.

### -----REGISTRATION-----

COST: \$125 OCDLA MEMBER    \$160 NON-MEMBER    \$100 PUBLIC DEFENDER

NAME: \_\_\_\_\_ BAR # \_\_\_\_\_

ADDRESS: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

PAYMENT: VISA AMEX MC DISCOV # \_\_\_\_\_ Exp Date: \_\_\_\_\_

Check: payable OCDLA.

MAILING ADDRESS: Oklahoma Criminal Defense Lawyers Association,  
PO Box 2272, Oklahoma City, OK 73101-2272. Fax: 405-239-2595.  
Questions? Contact Brandon Pointer, 405-232-5959.

