

Quarantine and the Constitution

A brief discussion and review of
involuntary examination, treatment,
isolation, and quarantine and potential
conflicts with constitutional rights of
individuals and the community

Tracy L. Olson is an attorney and mediator at SMART SCHOFIELD SHORTER, PC. Mr. Olson graduated *cum laude* from Syracuse University where he received his JD and a certificate in National Security Law from the Institute National Security and Counterterrorism. Mr. Olson has been a member Disaster Legal Response Committee since 2011, and is the immediate past chair of the Committee.

tracyolson@utahlaw-smart.com

Utah Code Ann. § 26-1-30

The department [of Health] shall exercise the following powers and duties, in addition to other powers and duties established in this chapter:

(4) establish, maintain, and enforce rules necessary or desirable to carry out the provisions and purposes of this title to promote and protect the public health or to prevent disease and illness;

(5) investigate and **control the causes of epidemic**, infectious, communicable, and other diseases affecting the public health;

(6) provide for the detection, reporting, prevention, and **control of communicable**, infectious, acute, chronic, or any other disease or health hazard which the department considers to be dangerous, important, or likely to affect the public health;

. . .

(9) establish and operate programs necessary or desirable for the promotion or protection of the public health and the **control of disease** or which may be necessary to ameliorate the major causes of injury, sickness, death, and disability in the state, except that the programs may not be established if adequate programs exist in the private sector;

(10) **establish, maintain, and enforce isolation and quarantine, and for this purpose only, exercise physical control over property and individuals as the department finds necessary for the protection of the public health;**

(11) close theaters, schools, and other public places and forbid gatherings of people when necessary to protect the public health;

(12) abate nuisances when necessary to eliminate sources of filth and infectious and communicable diseases affecting the public health;

Detection of Public Health Emergencies Act

Utah Code Ann. § 26-23b, et seq.

Mostly investigative powers of enumerated, but also has privacy rights to individuals

The Utah Communicable Disease Control Act

Utah Code Ann. § 26-6-1, et seq.

Utah Code Ann. § 26-6-2(15)

“Quarantine” means the restriction of the activities of well individuals or animals who have been exposed to a communicable disease during its period of communicability to prevent disease transmission.

Utah Code Ann. § 26-6-2(14)

“Isolation” means the separation, for the period of communicability, of infected individuals or animals from others, in such places and under such conditions as to prevent the direct or indirect conveyance of the infectious agent from those infected to those who are susceptible or who may spread the agent to others.

Utah Code Ann. § 26-6-2(10)

"Infected individual" means an individual who harbors an infectious agent and who has manifest disease or inapparent infection. An infected individual is one from whom the infectious agent can be naturally acquired.

Utah Code Ann. § 26-6-3(1)

The department has authority to investigate and control the causes of epidemic infections and communicable disease, and shall provide for the detection, reporting, prevention, and control of communicable diseases and epidemic infections **or any other health hazard which may affect the public health.**

(the remainder of the subsections appear to address sexually transmitted diseases).

Utah Code Ann. § 26-6-4

- (1) The following individuals or groups of individuals are subject to examination, treatment, quarantine, or isolation under a department order of restriction:
 - (a) an individual who **is infected or suspected to be infected** with a communicable disease that poses a threat to the public health and who does not take action as required by the department or the local health department to prevent spread of the disease;
 - (b) an individual who **is contaminated or suspected to be contaminated** with an infectious agent that poses a threat to the public health and that could be spread to others if remedial action is not taken;
 - (c) an individual who **is in a condition or suspected condition** which, if exposed to others, poses a threat to public health, or is in a condition which if treatment is not completed will pose a threat to public health; and
 - (d) an individual who **is contaminated or suspected to be contaminated** with a chemical or biological agent that poses a threat to the public health and that could be spread to others if remedial action is not taken.

Utah Code Ann. § 26-6-4

(2) If an individual **refuses** to take action as required by the department or the local health department to prevent the spread of a communicable disease, infectious agent, or contamination, **the department or the local health department may order involuntary examination, treatment, quarantine, or isolation of the individual and may petition the district court to order involuntary examination, treatment, quarantine, or isolation** in accordance with Title 26, Chapter 6b, Communicable Diseases - Treatment, Isolation, and Quarantine Procedures.

Utah Code Ann. § 26-6-5

Any person who **willfully or knowingly** introduces any communicable or infectious disease into any county, municipality, or community is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

Utah Code Ann. § 26-6-27

(1) Information collected pursuant to this chapter in the possession of the department or local health departments relating to an individual who has or is suspected of having a disease designated by the department as a communicable or reportable disease under this chapter shall be held by the department and local health departments as **strictly confidential**. **The department and local health departments may not release or make public that information** upon subpoena, search warrant, discovery proceedings, or otherwise, except as provided by this section.

Utah Code Ann. § 26-6-27

(2) The information described in Subsection (1) may be released by the department or local health departments only in accordance with the requirements of this chapter and as follows:

...

(g) specific medical or epidemiological information may be released in such a way that no individual is identifiable;

(h) specific medical or epidemiological information may be released to a "health care provider" as defined in Section 78B-3-403, health care personnel, and public health personnel **who have a legitimate need to have access to the information in order to assist the patient, or to protect the health of others closely associated with the patient;**

(i) specific medical or epidemiological information regarding a health care provider, as defined in Section 78B-3-403, may be released to the department, the appropriate local health department, and the Division of Occupational and Professional Licensing within the Department of Commerce, **if the identified health care provider is endangering the safety or life of any individual by his continued practice of health care;** and

(j) specific medical or epidemiological information may be released in accordance with Section 26-6-31 if an individual is not identifiable.

Utah Code Ann. § 26-6-29

(1) Any individual or entity entitled to receive confidential information from the Department of Health or a local health department under this chapter, other than the individual identified in that information, who violates this chapter by releasing or making public confidential information, or by otherwise breaching the confidentiality requirements of this chapter, is **guilty of a class B misdemeanor**.

(2) This chapter does not apply to any individual or entity that holds or receives information relating to an individual who has or is suspected of having a disease designated by the department as a communicable or reportable disease under this chapter, if that individual or entity has obtained the information from a source other than the department or a local health department.

Utah Code Ann. § 26-6-30

- (1) The provisions of this chapter do not apply to:
 - (a) information that relates to an individual who is in the custody of the Department of Corrections, a county jail, or the Division of Juvenile Justice Services within the Department of Human Services;
 - (b) information that relates to an individual who has been in the custody of the Department of Corrections, a county jail, or the Division of Juvenile Justice Services within the Department of Human Services, if liability of either of those departments, a county, or a division, or of an employee of a department, division, or county, is alleged by that individual in a lawsuit concerning transmission of an infectious or communicable disease; or
 - (c) any information relating to an individual who willfully or maliciously or with reckless disregard for the welfare of others transmits a communicable or infectious disease.
- (2) Nothing in this chapter limits the right of the individual identified in the information described in Subsection 26-6-27(1) to disclose that information.

Communicable Diseases - Treatment, Isolation, and Quarantine Procedures

Utah Code Ann. § 26-6b-1, et seq.

Utah Code Ann. § 26-6b-2(3)

"Order of restriction" means an order issued by a department or a district court which requires an individual or group of individuals who are **subject to restriction** to submit to an examination, treatment, isolation, or quarantine.

Utah Code Ann. § 26-6b-2(5)

"Subject to restriction" as applied to an individual, or a group of individuals, means the individual or group of individuals is:

- (a) **infected** or **suspected to be infected** with a communicable disease that poses a threat to the public health and who does not take action as required by the department to prevent spread of the disease;
- (b) **contaminated** or **suspected to be contaminated** with an infectious agent that poses a threat to the public health, and that could be spread to others if remedial action is not taken;
- (c) **in a condition** or **suspected condition** which, if the individual is exposed to others, poses a threat to public health, or is in a condition which if treatment is not completed the individual will pose a threat to public health; or
- (d) **contaminated** or **suspected to be contaminated** with a chemical or biological agent that poses a threat to the public health and that could be spread to others if remedial action is not taken.

Utah Code Ann. § 26-6b-3

- (1) The [Department of Health or local health department] having jurisdiction over the location where an individual or a group of individuals subject to restriction are found may:
- (a) issue a **written** order of restriction for the individual or group of individuals pursuant to Section 26-1-30 or Subsection 26A-1-114(1)(b) upon compliance with the requirements of this chapter; and
 - (b) issue a **verbal** order of restriction for an individual or group of individuals pursuant to Subsection (2)(c).

(Verbal is only good for 24 hours in an emergency.)

Utah Code Ann. § 26-6b-3

- (2)(b)An order of restriction issued by a department shall:
- (i)in the opinion of the public health official, **be for the shortest reasonable period of time necessary to protect the public health;**
 - (ii)use the **least intrusive method of restriction** that, in the opinion of the department, **is reasonable** based on the totality of circumstances known to the health department issuing the order of restriction;
 - (iii)be in writing unless the provisions of Subsection (2)(c) apply; and
 - (iv)contain notice of an individual's rights as required in Section 26-6b-3.3.

Utah Code Ann. § 26-6b-3

- (2)(a) A department's determination to issue an order of restriction shall be based upon the totality of circumstances reported to and known by the department, including:
- (i) observation;
 - (ii) information that the department determines is credible and reliable information; and
 - (iii) knowledge of current public health risks based on medically accepted guidelines as may be established by the Department of Health by administrative rule.

Utah Code Ann. § 26-6b-3.2

(1) If the department cannot obtain consent to the order of restriction from an individual, or if an individual withdraws consent to an order under Subsection 26-6b-3.1(1)(b)(iv)(B), the department shall:

(a) give the individual or group of individuals **subject to the order of restriction** a written notice of:

(i) the order of restriction and any supporting documentation; and

(ii) the individual's right to a judicial review of the order of restriction; and

(b) file a petition for a judicial review of the order of restriction under Section 26-6b-4 in district court within:

(i) **five business days** after issuing the written notice of the order of restriction; or

(ii) if consent has been withdrawn under Subsection 26-6b-3.1(1)(b)(iv)(B), within five business days after receiving notice of the individual's withdrawal of consent.

(2)

(a) An **order of restriction remains in effect during any judicial proceedings** to review the order of restriction **if** the department files a petition for judicial review of the order of restriction with the district within the period of time required by this section.

(b) Law enforcement officers with jurisdiction in the area where the individual who is subject to the order of restriction can be located shall assist the department with enforcing the order of restriction.

Utah Code Ann. § 26-6b-3.3

(1) A written order of restriction issued by a department shall include the following information:

- (a) the identity of the individual or a description of the group of individuals subject to the order of restriction;
- (b) the identity or location of any premises that may be subject to restriction;
- (c) the date and time for which the restriction begins and the expected duration of the restriction;
- (d) the suspected communicable disease, infectious, chemical or biological agent, or other condition that poses a threat to public health;
- (e) the requirements for termination of the order of restriction, such as necessary laboratory reports, the expiration of an incubation period, or the completion of treatment for the communicable disease;
- (f) any conditions on the restriction, such as limitation of visitors or requirements for medical monitoring;
- (g) the medical or scientific information upon which the restriction is based;
- (h) a statement advising of the right to a judicial review of the order of restriction by the district court; and
- (i) pursuant to Subsection (2), the rights of each individual subject to restriction.

Utah Code Ann. § 26-6b-3.3 (cont.)

(2) **An individual subject to restriction has the following rights:**

- (a) the right to be **represented by legal counsel** in any judicial review of the order of restriction in accordance with Subsection 26-6b-4(3);
- (b) the right to be provided with **prior notice** of the date, time, and location of any hearing concerning the order of restriction;
- (c) the **right to participate** in any hearing, in a manner established by the court based on precautions necessary to prevent additional exposure to communicable or possibly communicable diseases or to protect the public health;
- (d) the right to **respond and present evidence** and arguments on the individual's own behalf in any hearing;
- (e) the right to **cross examine witnesses**; and
- (f) the right to **review and copy all records** in the possession of the department that issued the order of restriction which relate to the subject of the written order of restriction.

...

(4)

- (a) In addition to the rights of an individual described in Subsections (1) and (2), **an individual subject to an order of restriction may not be terminated from employment if the reason for termination is based solely on the fact that the individual is or was subject to an order of restriction.**
- (b) The department issuing the order of restriction shall give the individual subject to the order of restriction notice of the individual's employment rights under Subsection (4)(a).
- (c) An employer in the state, including an employer who is the state or a political subdivision of the state, may not violate the provisions of Subsection (4)(a).

Utah Code Ann. § 26-6b-5

(2) The petition under Subsection (1) shall be accompanied by:

(a) written affidavit of the department stating:

(i) a belief the individual or group of individuals are **subject to restriction**;

(ii) a belief that the individual or group of individuals who are subject to restriction **are likely to** fail to submit to examination, treatment, quarantine, or isolation if not immediately restrained;

(iii) this **failure would pose a threat** to the public health; and

(iv) the personal knowledge of the individual's or group of individuals' condition or the circumstances that lead to that belief; and

(b) a written statement by a **licensed physician or physician assistant** indicating the physician or physician assistant finds the individual or group of individuals are **subject to restriction**.

(3) The court shall issue an order of restriction requiring the individual or group of individuals to submit to involuntary restriction to protect the public health if the district court finds:

(a) there is a reasonable basis to believe that the individual's or group of individuals' condition requires involuntary examination, quarantine, treatment, or isolation pending examination and hearing; or

(b) the individual or group of individuals have refused to submit to examination by a health professional as directed by the department or to voluntarily submit to examination, treatment, quarantine, or isolation.

...

(This is the examination period and a qualified healthcare provider is required).

Utah Code Ann. § 26-6b-6

(1) The district court shall set a hearing regarding the involuntary order of restriction of an individual or group of individuals, to be held within 10 business days of the issuance of its order of restriction issued pursuant to Section 26-6b-5, unless the petitioner informs the district court prior to this hearing that the individual or group of individuals:

(a) are not subject to restriction; or

(b) have stipulated to the issuance of an order of restriction.

...

(3)(b) The court may, after a hearing at which the individual or group of individuals are present in person or by telephonic or other electronic means and have had the opportunity to be represented by counsel, **extend its order of restriction for a reasonable period, not to exceed 90 days**, if the court has reason to believe the individual or group of individuals are infected by or contaminated with:

(i) a communicable or possibly communicable disease that poses a threat to public health;

(ii) an infectious agent or possibly infectious agent that poses a threat to public health;

(iii) a chemical or biological agent that poses a threat to public health; or

(iv) a condition that poses a threat to public health, but, despite the exercise of reasonable diligence the diagnostic studies have not been completed.

(This is after the examination period).

Utah Code Ann. § 26-6b-6

(6)

(a) The district court shall order the individual and each individual in a group of individuals to submit to the order of restriction if, upon completion of the hearing and consideration of the record, it finds by **clear and convincing evidence** that:

(i) the individual or group of individuals are infected with a communicable disease or infectious agent, are contaminated with a chemical or biological agent, or are in a condition that poses a threat to public health;

(ii) there is no appropriate and less restrictive alternative to a court order of examination, quarantine, isolation, and treatment, or any of them;

(iii) the petitioner can provide the individual or group of individuals with treatment that is adequate and appropriate to the individual's or group of individuals' conditions and needs; and

(iv) it is in the public interest to order the individual or group of individuals to submit to involuntary examination, quarantine, isolation, and treatment, or any of them after weighing the following factors:

(A) the personal or religious beliefs, if any, of the individual that are opposed to medical examination or treatment;

(B) the ability of the department to control the public health threat with treatment alternatives that are requested by the individual;

(C) the economic impact for the department if the individual is permitted to use an alternative to the treatment recommended by the department; and

(D) other relevant factors as determined by the court.

(b) If upon completion of the hearing the court does not find all of the conditions listed in Subsection (6)(a) exist, the court shall immediately dismiss the petition.

(7) The order of restriction shall designate the period, subject to Subsection (8), for which the individual or group of individuals shall be examined, treated, isolated, or quarantined.

(8)

(a) The order of restriction may not exceed **six months** without benefit of a district court review hearing.

(b) The district court review hearing shall be held prior to the expiration of the order of restriction issued under Subsection (7). At the review hearing the court may issue an order of restriction for up to **an indeterminate period**, if the district court enters a written finding in the record determining by clear and convincing evidence that the required conditions in Subsection (6) will continue for an indeterminate period.

Utah Code Ann. § 26-6b-7

Periodic reviews

Health dept. has to reevaluate every 6 months to see if the condition still exists.

Authority and duty to fight epidemic disease.

- Utah Code Ann. §26-6-3 gives Department of Health power to "investigate and control the causes of epidemic infections and communicable disease."
- May designate which diseases are communicable under §26-6-7.
- Which individuals may be subject to involuntary order of restriction given in §26-6-4.

Order of restriction

- State Department of Health, or local Health Department may issue "order of restriction" in furtherance of fighting communicable disease.
- Patient may consent or not. Patients may also withdraw their consent.
- If patient does not consent or withdraws consent, Department of Health must file for review hearing within 5 days. §26-6b-3.2(1).

Hearing in district court

- Individuals have right to notice, representation by counsel; participate in any hearing; review and present evidence; present and cross-examine witnesses. §26-6b-3.3(2.)
- Court may allow waiver of the right to appear at hearing for good cause shown. §26-6b-4.

Treatment, release, or indefinite restriction

- After review by district court, individuals may be involuntarily held for an examination period under §26-6b-5 or longer under §26-6b-6. Under any circumstances, a review held at 6-months. §26-6b-6(8). After that, may be indeterminate.

Local Health Department Act

Utah Code Ann. § 26A-1, et seq

Utah Code Ann. § 26A-1-114

(1) A local health department may:

(a) subject to the provisions in Section 26A-1-108, **enforce state laws, local ordinances, department rules, and local health department standards and regulations relating to public health** and sanitation, including the plumbing code administered by the Division of Occupational and Professional Licensing under Title 15A, Chapter 1, Part 2, State Construction Code Administration Act, and under Title 26, Chapter 15a, Food Safety Manager Certification Act, in all incorporated and unincorporated areas served by the local health department;

(b) **establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;**

...

(d) establish and operate reasonable health programs or measures not in conflict with state law which:

(i) are necessary or desirable for the promotion or protection of the public health and the control of disease; or

(ii) may be necessary to ameliorate the major risk factors associated with the major causes of injury, sickness, death, and disability in the state;

(e) close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health;

Utah Code Ann. § 26A-1-114 (cont.)

(1) A local health department may:

(f) abate nuisances or eliminate sources of filth and infectious and communicable diseases affecting the public health **and bill the owner or other person in charge of the premises** upon which this nuisance occurs for the cost of abatement;

...

(k) **issue notices and orders necessary to carry out this part;**

...

(o) investigate suspected bioterrorism and disease pursuant to Section 26-23b-108; and

(p) provide public health assistance in response to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

Utah Code Ann. § 26A-1-121(1)

- (a) The board may make standards and regulations:
 - (i) not in conflict with rules of the Departments of Health and Environmental Quality; and
 - (ii) **necessary for** the promotion of public health, environmental health quality, injury control, and **the prevention of outbreaks and spread of communicable and infectious diseases.**
- (b) The standards and regulations under Subsection (1)(a):
 - (i) supersede existing local standards, regulations, and ordinances pertaining to similar subject matter; and
 - (ii) except as provided under Subsection (1)(c) and except where specifically allowed by federal law or state statute, **may not be more stringent than those established by federal law, state statute, or administrative rules adopted by the Utah Department of Health** in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Utah Code Ann. § 26A-1-121(1) (cont.)

(c)

(i) **The board may make standards and regulations more stringent than corresponding federal law, state statute, or state administrative rules for the purposes described in Subsection (1)(a), only if the board makes a written finding after public comment and hearing and based on evidence in the record, that corresponding federal laws, state statutes, or state administrative rules are not adequate to protect public health and the environment of the state.**

(ii) The findings shall address the public health information and studies contained in the record, which form the basis for the board's conclusion.

(d) **The board shall provide public hearings prior to the adoption of any regulation or standard.** Notice of any public hearing shall be published at least twice throughout the county or counties served by the local health department. The publication may be in one or more newspapers, if the notice is provided in accordance with this Subsection (1)(d).

(e) The hearings may be conducted by the board at a regular or special meeting, or the board may appoint hearing officers who may conduct hearings in the name of the board at a designated time and place.

(f) A record or summary of the proceedings of a hearing shall be taken and filed with the board.

Utah Code Ann. § 26A-1-121(2)

(2)

(a) A person aggrieved by an **action** or **inaction** of the local health department relating to the public health shall have an **opportunity for a hearing** with the local health officer or a designated representative of the local health department. The board shall grant a subsequent hearing to the person upon the person's written request.

(b) In an adjudicative hearing, a member of the board or the hearing officer may administer oaths, examine witnesses, and issue notice of the hearings or subpoenas in the name of the board requiring the testimony of witnesses and the production of evidence relevant to a matter in the hearing. The local health department shall make a written record of the hearing, including findings of facts and conclusions of law.

(c) **Judicial review** of a final determination of the local board may be secured by a person adversely affected by the final determination, or by the Departments of Health or Environmental Quality, **by filing a petition in the district court within 30 days after receipt of notice of the board's final determination.**

(d) The petition shall be served upon the secretary of the board and shall state the grounds upon which review is sought.

(e) The board's answer shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter together with the board's findings of fact, conclusions of law, and order.

(f) The appellant and the board are parties to the appeal.

(g) The Departments of Health and Environmental Quality may become a party by intervention as in a civil action upon showing cause.

(h) A further appeal may be taken to the Court of Appeals under Section 78A-4-103.

Utah Code Ann. § 26A-1-121(3)

Nothing in the provisions of Subsection (1)(b)(ii) or (c), shall limit the ability of a local health department board to make standards and regulations in accordance with Subsection (1)(a) for:

- (a) **emergency rules made in accordance with Section 63G-3-304;** or
- (b) items not regulated under federal law, state statute, or state administrative rule.

Utah Code Ann. § 26A-1-123

- (1) It is unlawful for any person, association, or corporation, and the officers of the association or corporation to:
 - (a) violate state laws or any **lawful** notice, order, standard, rule, or regulation issued under state laws or local ordinances regarding public health or sanitation;
 - (b) violate, disobey, or disregard any notice or order issued by a local health department pursuant to any state or federal law, federal regulation, local ordinance, rule, standard, or regulation relating to public health or sanitation;

...

Utah Code Ann. § 26A-1-123 (cont.)

- (5)
 - (a) Any person, association, corporation, or the officers of the association or corporation who violates any provision of this section is:
 - (i) on the first violation guilty of a **class B misdemeanor**; and
 - (ii) on a subsequent **similar violation within two years, guilty of a class A misdemeanor**.
 - (b) In addition any person, association, corporation, or the officers of the association or corporation, are liable for any expense incurred in removing or abating any nuisance, source of filth, cause of sickness, dead animal, health hazard, or sanitation violation.
- (6) Conviction under this section or any other public health law does not relieve the person convicted from civil liability for any act that was also a violation of the public health laws.
- (7) **Each day of violation of this section is a separate violation.**

The Constitution

4th Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The Constitution

14th Amendment, Section 1.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In re Smith, 146 N.Y. 68, 77–78, 40 N.E.
497, 499 (1895)

I think no one will dispute the right of the legislature to enact such measures as will protect all persons from the impending calamity of a pestilence, and to vest in local authorities such comprehensive powers as will enable them to act competently and effectively. That those powers would be conferred without regulating or controlling their exercise is not to be supposed, and the legislature has not relieved officials from the responsibility of showing that the exercise of their powers was justified by the facts of the case. The question here is not whether the legislature had the power to enact the provisions of section 24 of the health law, but whether the respondent has shown that a state of facts existed warranting the exercise of the extraordinary authority conferred upon him. Like all enactments which may affect the liberty of the person, this one must be construed strictly, with the saving consideration, however, that, as the legislature contemplated an extraordinary and dangerous emergency for the exercise of the power conferred, some latitude of a reasonable discretion is to be allowed to the local authorities upon the facts of a case. As the respondent has utterly failed to show any facts which warranted the isolation of the relators, they were properly discharged, and the order of the general term should be reversed, and that of the special term affirmed.

Compagnie Francaise de Navigation a Vapeur v. Bd. of Health of State of Louisiana, 186 U.S. 380, 387, 22 S. Ct. 811, 814–15, 46 L. Ed. 1209 (1902)

That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress, is beyond question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question. The doctrine was elaborately examined and stated in *Morgan's L. & T. R. & S. S. Co. v. Louisiana Bd. of Health*, 118 U. S. 455, 30 L. ed. 237, 6 Sup. Ct. Rep. 1114.

Jacobson v. Commonwealth of Massachusetts,
197 U.S. 11, 24–25, 25 S. Ct. 358, 360–61, 49 L.
Ed. 643 (1905) (citations omitted)

The authority of the state to enact this statute is to be referred to what is commonly called the police power,—a power which the state did not surrender when becoming a member of the Union under the Constitution. Although this court has refrained from any attempt to define the limits of that power, **yet it has distinctly recognized the authority of a state to enact quarantine laws and ‘health laws of every description;’ indeed, all laws that relate to matters completely within its territory and which do not by their necessary operation affect the people of other states.** According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.

Jew Ho v. Williamson, 103 F. 10, 17
(C.C.N.D. Cal. 1900)

‘It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the state. **There are, of necessity, limits beyond which legislation cannot rightfully go.** While every possible presumption is to be indulged in favor of the validity of a statute (*Sinking-Fund Cases*, 99 U.S. 700, 718, 25 L.Ed. 496), **the courts must obey the constitution, rather than the lawmaking department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed.**

Jew Ho v. Williamson, 103 F. 10, 23–24
(C.C.N.D. Cal. 1900)

Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal **discriminations**, between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.

Jew Ho v. Williamson, 103 F. 10, 26
(C.C.N.D. Cal. 1900)

It follows from the remarks that I have made that his quarantine cannot be continued, by reason of the fact that it is unreasonable, unjust, and oppressive, and therefore contrary to the laws limiting the police powers of the state and municipality in such matters; and, second, that it is discriminating in its character, and is contrary to the provisions of the fourteenth amendment of the constitution of the United States.

Reynolds v. McNichols, 488 F.2d 1378,
1382 (10th Cir. 1973)

Involuntary detention, for a limited period of time, of a person reasonably suspected of having a venereal disease for the purpose of permitting an examination of the person thus detained to determine the presence of a venereal disease and providing further for the treatment of such disease, if present, **has been upheld by numerous state courts when challenged on a wide variety of constitutional grounds as a valid exercise of the police power designed to protect the public health.**

Milner v. Duncklee, 460 F. Supp. 2d
360, 369 (D. Conn. 2006)

A seizure [under the 4th Amendment] in the civil context must also be reasonable, meaning that it must be “ ‘made only upon probable cause, that is, only if there are reasonable grounds for believing that the person seized is subject to seizure under the governing legal standard.’ ”
Glass, 984 F.2d at 58 (quoting *Villanova v. Abrams*, 972 F.2d 792, 795 (7th Cir.1992)).

Hickox v. Christie, 205 F. Supp. 3d 579,
584-85 (D.N.J. 2016)

Bad science and irrational fear often amplify the public's reaction to reports of infectious disease. Ebola, although it has inspired great fear, is a virus, not a malevolent magic spell. The State is entitled to some latitude, however, in its prophylactic efforts to contain what is, at present, an incurable and often fatal disease.

...

Public health officials responsible for containing the spread of contagious disease must be free to make judgments, even to some degree mistaken ones, without exposing themselves to judgments for money damages. As to the state causes of action, however, I will deny the motions to dismiss.

Hickox v. Christie, 205 F. Supp. 3d 579, 601 (D.N.J. 2016)

Where practicable, **due process** generally requires notice and a hearing in advance of a deprivation of liberty. *Zinermon v. Burch*, 494 U.S. 113, 127, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990). In an emergency situation, however, a post-deprivation hearing is acceptable. See, e.g., *Goss v. Lopez*, 419 U.S. 565, 582–83, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975) (in emergency school suspension context, allowing for notice and a hearing “as soon as practicable”); *Benn*, 371 F.3d at 174 (“[I]n an emergency situation, a short-term commitment without a hearing does not violate procedural due process.”) In such a case, the hearing should take place “as soon as practicable.” *Goss*, 419 U.S. at 582–83, 95 S.Ct. 729; see also *In re Barnard*, 455 F.2d 1370, 1374 (D.C.Cir.1971)(individual is entitled “to a hearing within a reasonable time to test whether the confinement is based on probable cause.”).

Liberian Cmty. Ass'n of Connecticut v. Malloy,
No. 3:16-CV-00201(AVC), 2017 WL 4897048, at
*11-12 (D. Conn. Mar. 30, 2017)

The question for the court, under clearly established quarantine case law, is not whether the quarantine was the least restrictive means available; but **whether the state's policies were “exercised in particular circumstances and in reference to particular persons in such an arbitrary, unreasonable manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons.”** *Jacobson*, 197 U.S. at 28.

...

... a temporary quarantine limited in duration to the incubation period of a virus responsible for an epidemic that killed over 11,000 individuals, was not objectively unreasonable.

Liberian Cmty. Ass'n of Connecticut v. Malloy,
No. 3:16-CV-00201(AVC), 2017 WL 4897048, at
*9 (D. Conn. Mar. 30, 2017)

“The doctrine of **qualified immunity** protects government officials from suits seeking to impose personal liability for money damages based on unsettled rights or on conduct that was not objectively reasonable.” *Turner v. Boyle*, 116 F. Supp. 3d 58, 91 (D. Conn. 2015) (quoting *Tenenbaum v. Williams*, 193 F.3d 581, 595-96 (2d Cir. 1999))(internal quotation marks omitted). To determine whether an individual is entitled to qualified immunity, the court must “engage in a two-part inquiry: whether the facts shown ‘make out a violation of a constitutional right,’ and ‘whether the right at issue was clearly established at the time of defendant's alleged misconduct.’ ” *Taravella v. Town of Wolcott*, 599 F.3d 129, 133 (2d Cir. 2010) (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)). “The question is not what a lawyer would learn or intuit from researching case law, but what a reasonable person in [the] defendant's position should know about the constitutionality of the conduct.” *Doninger v. Niehoff*, 642 F.3d 334, 345 (2d Cir. 2011) (citation omitted).

Liberian Cmty. Ass'n of Connecticut v. Malloy,
No. 3:16-CV-00201(AVC), 2017 WL 4897048, at
*9 (D. Conn. Mar. 30, 2017)

The Supreme Court has stated that “[w]hile this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.” *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (citations omitted)(internal quotation marks omitted)(alteration omitted). Further, “the clearly established law must be particularized to the facts of the case.” *Id.* at 552 (citation omitted)(internal quotation marks omitted). The second circuit has noted, however, that **“[e]ven where the law is clearly established and the scope of an official's permissible conduct is clearly defined, the qualified immunity defense also protects an official if it was objectively reasonable for him at the time of the challenged action to believe his acts were lawful.”** *Taravella v. Town of Wolcott*, 599 F.3d 129, 134 (2d Cir. 2010) (citation omitted)(internal quotation marks omitted).