5-22-20 Paramount Right to Protect

As we mature, we all learn lessons on balancing our individual rights with those of others. It is a life-long lesson. In my own childhood, as in yours, there were experiences regarding this difficult but critical lesson. One such memory involves going to my mother for advice and assistance with an unruly and combative person, Richard. Her advice was to leave him alone, as nothing could be done at that time. When pressed for an explanation, her answer was, "because he doesn't know it's wrong. He'll learn when he is older." I was five years old and Richard was three. As a five-year old I knew what my mother meant but it was oh, so difficult to accept.

As a health agent, I find that quite often people do not intend to harm another; they just did not take others into consideration. That consideration is the difference between the lesson not yet learned by that three-year-old and the actions of adults in the community. One thing is shared by adults and children: discussions of knowledge and intent are a waste of time and energy. It is the results of our actions that we must focus on.

Usually, this approach of focusing on the potential harm and pointing out the reasons for discontinuing a course of action, are enough to solve the problem without any further response from the Board of Health. But what do we during this once in a lifetime situation, when "adult" people are claiming they have the civil right to not follow orders and guidance intended to help all of us and to save lives?

Boards of Health have guidance and tools for handling difficult situations with uncooperative people. Aggrieved individuals have the right to a hearing. A Board of Health can issue fines, 21 D tickets, obtain administrative search warrants for entering property, and for recouping costs of a town's actions. The guidance also includes some fascinating legal cases where individual rights verses public rights have been put to the test of which one pre-empts the other.

In the early 1980's, the Arthur D Little company renovated a lab in Cambridge, Massachusetts for the purpose of testing substances used in chemical warfare. At first, the people of Cambridge did not realize what was in their midst. It is no wonder, since the substances were referred to as, "chemical surety

materials". And I guess to the Department of Defense, that is what they were, but to the average person, clouds of poisonous gases accidently or purposely leaking from the lab did not make them feel sure of their safety, but, rather, worry about their lack of it.

Once the actuality of the materials was realized, however, and the possible consequences considered, the public health official, Dr. Melvin Chalfen, issued an emergency regulation prohibiting the storage, transportation or handling of certain specified substance, including those handled at the Cambridge lab, until an independent group could present recommendations. In response, Arthur D. Little Company filed a suit against the City of Cambridge. Over the course of months, much scientific evidence was presented, along with comparisons of actual risks and perceived risks.

According to a paper published by the University of Houston, (monograph 85-9), those deliberations highlighted the difference between risk assessment, which is usually technical, and what poses an acceptable or unacceptable risk, which often includes more intuitive assessments, historical information and one's proximity to the risk. It was noted that if there were ever a leak of these toxins, one of the ways in which it may prove fatal, is the attraction to the site of ill-informed curiosity seekers.

The investigation also brought to the surface the benefits of comparing worse case scenarios with most probable case scenarios. Although a release of these toxic substances was considered to be unlikely due to the standard operating procedures of the lab, the right of the individual to be protected was upheld. Even if unlikely, accidents do happen. The local public health department's right to protect the public, no matter how slight the chance, was upheld by the court.

In a very different situation, an individual in 1950 decided to have a little at-home business of something akin to dentistry. He was affordable and had many satisfied customers. His specialty was fixing dentures and bridge work. He thought he had a constitutional right to practice his craft. However, the Commonwealth of Massachusetts felt differently. In this case of the Commonwealth vs. L. Frank Finnegan, it was decided that, "The right to engage in business must yield to the paramount right of government to protect the public

health by any rational means," a right known as police power. ((Druzik v. Board of Health of Haverhill, 324 Mass. 129, 139)

When necessary, after weighing the evidence, and without being capricious, a Board of Health does, in fact, have the authority to take measures to protect the public even if those measures result in a reduction of the rights of the individual posing the potential harm. They have not only the authority; they have the responsibility to do so. Abraham Lincoln said," *"My paramount object in this struggle is to save the Union"*. Boards of Health have a paramount object also, protecting the public, preventing public health problems, and promoting public health and safety.

Please, people. Do the right thing.

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