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The University's Right to Quarantine: Analyzing Student Health Laws With Regards to Epidemic Situations

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THE UNIVERSITY’S RIGHT TO QUARANTINE: ANALYZING STUDENT HEALTH LAWS WITH REGARDS TO EPIDEMIC SITUATIONS

By Audra Phillips*

American Universities have a policy for nearly everything: where you can or cannot ride your bike, what kind of parties you can have, what organizations can meet and when. However, most universities have failed to provide steadfast policies for one very important area: student health. Health officials agree that prevention is key when it comes to health, but many universities are not prepared to deal with student health issues on a small scale, let alone on a large scale. Nobody wants to think about what would happen if an epidemic occurred, but it is a situation that universities should prepare for nonetheless. In the event of a large-scale health event, The Ohio State University would follow advice from Ohio health directors about what to do with infected students. It is best to keep contagious individuals away from other students, which would most likely involve quarantining them. Quarantine is a very sensitive issue because it must balance utilitarian good versus individual rights. Waiting to obtain direction from Ohio health coordinators, no matter how efficient they may be, would cause undesirable waiting times to act on fast-spreading illnesses. Universities should take the initiative and be prepared for any type of outbreak by incorporating a policy on epidemic outbreaks into their handbooks. This action would be the best prevention possible and would give the university the authority to take the needed steps to ensure student health and safety. Because of the sensitivity of the issue, I propose that all universities, in particular The Ohio State University, be prepared for an epidemic of any kind and incorporate a policy for quarantine into the Code of Student Conduct.

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INTRODUCTION

Every spring, students at The Ohio State University engage in a rather strange activity called “Zombies vs. Humans.”¹ I see students with nerf guns peeking out of their backpacks or strapped to their hips old west style, with bandanas around their foreheads marking them “zombie” or “human.” The game is basically a hyped up version of “tag, you’re it” and the idea of the game is to protect yourself from the “zombies” so you do not get “tagged” or “infected.” I do not think it is a coincidence that the recent zombie hype in the media has come shortly after the anthrax, bird flu, mad cow, and flu scares in recent years.² What does all of this zombie fascination say about the public? I think it says that we are

¹ The activity is sanctioned by the university and is played at college campuses throughout the United States. “Human players must remain vigilant and defend themselves with socks and dart blasters to avoid being tagged by a growing zombie horde” Weed, Chris, Brad Sappington, Joe Sklover, Justin Quick, Trevor Moorman, Ben Beecher, and Max Temkin. "Humans vs. Zombies | The Official Site of the Humans vs. Zombies Game." Humans vs Zombies. N.p., n.d. Web. 15 Apr. 2013.

² All recent information on infectious disease outbreaks can be found here: http://www.bt.cdc.gov/recentincidents.asp
mistrusting of our governments and health departments and that we feel unprepared for any large-scale emergencies.

Obviously, the “zombie” fad is an extreme situation, but I think it says a great deal about our current state of affairs in the health department. We need to a better plan for any outbreaks of illness. Diseases can and do happen, most are contagious, and some are deadly.\(^3\) We need to plan better so that the public is educated and prepared for an emergency and so that in the event of any outbreak, we have policies in place that will not violate the rights of any individual. I think this prevention plan needs to start at a small-scale. The government has policies in place for outbreaks, including internationally.\(^4\) Outbreaks, however, do not begin on a large scale; they begin on a small-scale. In this article, I will outline a brief history of quarantine policies, followed by describing Ohio laws regarding quarantine, then The Ohio State University’s policies for health emergencies. Finally, I will discuss some relevant cases related to quarantines in America and in American universities. All of this information will show how universities should prepare for disease epidemics in order to protect the individual rights of students.

**PART I: THE HISTORY OF QUARANTINE**

Quarantine laws have a long and fraught history. As far back as history has been recorded, there have been laws separating healthy people from sick people.\(^5\) Leprosy has traditionally been the object of quarantine, coining such terms as

\(^3\) Even a disease as seemingly innocent and common as the flu can have devastating results. See “Estimating Seasonal Influenza-Associated Deaths in the United States: CDC Study Confirms Variability of Flu.” Centers for Disease Control and Prevention. Centers for Disease.


\(^5\) “Quarantine” comes from the Latin word for “forty,” which is how long ships were required to stay at bay in 14\(^{th}\) century Venice. Venice’s policy was enacted so that no diseases would enter the city. See http://www.pbs.org/wgbh/nova/body/short-history-of-quarantine.html.
“social leper” and “pariah.” Quarantine became really serious when the Black Plague, which was an outbreak of the bubonic plague.⁶

Quarantine first came to America in Boston during the 17th century, when Boston officials required ships to stay at bay much like the policy in Venice. Similarly, New York took on a policy preventing infected individuals from entering the city until they had been deemed healthy enough. Throughout the 18th and 19th centuries, quarantine laws were enforced surrounding all major cities because of the smallpox, yellow fever, and cholera epidemics. In 1879, the United States formed the National Board of Health, which was responsible for imposing national quarantine laws. The board failed, however, and was disbanded in 1883. The National Quarantine Act was passed in 1893, which imposed a national quarantine law as well as allowed state-run laws. The act set quarantine standards for the country.⁷

The most interesting case of quarantine in the United States occurred during World War I, when the government quarantined over 30,000 prostitutes to prevent them from spreading venereal diseases to United States soldiers. This quarantine was a violation of the prostitutes’ civil liberties, because the quarantine was involuntary.⁸

In 1967, the National Communicable Disease Center began to handle all quarantine responsibilities. The center is now known as the Centers for Disease Control (CDC). The Centers for Disease Control still handles quarantine cases today.

Prompted by the September 11th terrorist attacks, the Centers for Disease Control wrote the State Emergency Health Powers Act, a draft of which was proposed in December 2001. This act was the basis for many of the United States’

⁶“The act [Venice’s quarantine of ships] comes in the midst of the Black Death, a plague epidemic that eventually takes the lives of 14 to 15 million people across Europe, or up to one-fifth of the population.” See http://www.pbs.org/wgbh/nova/body/short-history-of-quarantine.html.
⁷All dates and laws obtained from http://www.pbs.org/wgbh/nova/body/short-history-of-quarantine.html.
⁸Prostitutes were considered women of “lewd morals” and were hence forcibly quarantined and treated for their illnesses. This is an example of trumping civil liberties for the sake of the “greater good.” See http://www.ncbi.nlm.nih.gov/pubmed/19801792.
policies regarding bioterrorism attacks, quarantines, and disease epidemic strategies. The act was put to the test in 2003 with the outbreak of SARS (severe acute respiratory syndrome) and succeeded in preventing the disease from spreading. Quarantine and isolation were used to prevent the spread of the disease. There has not been a known outbreak of SARS anywhere in the world since 2004. Currently, the United States still holds the power to quarantine individuals exposed to communicable and infectious diseases including: cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers, and SARS.

**PART II: OHIO LAWS REGARDING QUARANTINE**

Although federal law has a standard for quarantine, state laws vary widely. The federal laws for quarantine prevent the interstate spread of disease, while the

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9 “[The Act] provides state and local officials with the ability to prevent, detect, manage, and contain emergency health threats without unduly interfering with civil rights and liberties.” The Act attempted to provide for the “common good” without revoking individual liberties. See http://www.publichealthlaw.net/MSEHPA/MSEHPA.pdf.

10 “President George W. Bush adds SARS to the list of quarantinable diseases, which also include cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, and viral hemorrhagic fevers such as the Ebola and Marburg viruses.” See http://www.pbs.org/wgbh/nova/body/short-history-of-quarantine.html.

11 Isolation differs from quarantine in that the person or persons put in isolation are known to have the disease. Quarantine is for a person or persons who have been exposed to the disease, but may not actually have the disease. See http://www.cdc.gov/sars/quarantine/fs-isolation.html.

12 “By statute, U.S. Customs and Coast Guard officers are required to aid in the enforcement of quarantine rules and regulations. Violation of federal quarantine rules and regulations constitutes a criminal misdemeanor, punishable by fine and/or imprisonment.

Federal quarantine authority includes the authority to release persons from quarantine on the condition that they comply with medical monitoring and surveillance.” See http://www.cdc.gov/sars/legal/fs-legal.html.

13 “As a result of this authority, the individual states are responsible for intrastate isolation and quarantine practices, and they conduct their activities in accordance with their respective statutes.

State and local laws and regulations regarding the issues of compelled isolation and quarantine vary widely. Historically, some states have codified extensive procedural provisions related to
state laws prevent the spread of disease within the state itself.\textsuperscript{14} Ohio has a fairly thorough outline for policies regarding quarantine in the Ohio Revised Code. The Ohio Revised Code describes various state authority structures and the provisions they have over quarantine situations. Because Ohio laws are thorough, it would not be a giant step to modify these policies to the university setting and give the university some power to quarantine in case of an emergency situation. The reaction time to illness would be vastly improved so that the university would not have to wait on directions from the Ohio Board of Health or other such authorities. Most of the policies could be adapted to be incorporated in the Student Code of Conduct.

The Board of Health is responsible for imposing quarantines on modes of transportation. Additionally, the Board of Health can impose quarantines on houses of potentially infected persons or places where potentially infected persons may be located. The Board of Health can delegate “quarantine guards” who are given police powers to enforce quarantines.\textsuperscript{15}

Municipal Corporations have the power to create a quarantine hospital, which the district board would be in charge of. These hospitals must obtain the consent of the Municipal Corporation or township, but if the situation is an emergency, consent is not required.\textsuperscript{16}

\textsuperscript{14} See Interplay Between Federal and State/Local Laws: http://www.cdc.gov/sars/legal/fs-legal.html
\textsuperscript{15} See the Ohio Revised Code § 3707.04 Quarantine regulations. http://healthyamericans.org/reports/bioterror04/Quarantine.pdf
\textsuperscript{16} See the Ohio Revised Code § 3707.09 Quarantine regulations. http://healthyamericans.org/reports/bioterror04/Quarantine.pdf
The Department of Health is considered the supreme authority of matters regarding quarantine. The Department of Health is the supervisory power over all state emergency health matters involving quarantine.\textsuperscript{17}

The Center for Law and Public’s Health at Georgetown and Johns Hopkins Universities assessed state quarantine laws in a potential public health emergency situation. They compiled a list of all fifty states to see whether they had power to quarantine. Forty-nine out of fifty states were deemed to have quarantine power in the potential scenario.\textsuperscript{18}

Overall, the specificity of Ohio laws regarding quarantine situations would make it advisable for universities to adapt their own policies regarding emergency public health situations. In my opinion, a university, especially a public one such as The Ohio State University, should be considered a Municipal Corporation and have the power to enact such policies as they see fit to protect the lives and health of their student body from health and epidemic emergencies.

\textit{PART III: THE OHIO STATE UNIVERSITY’S HEALTH POLICY}

After researching various policies from The Ohio State University, I was unable to find any specific policies for quarantine of students, which led me to the argument for this text. I emailed Student Health Services, stated my research question, and asked what their policy would be in the event of a health emergency and potential epidemic. They replied saying that their direction would come from the state of Ohio.\textsuperscript{19}

\textsuperscript{17} “The Department of Health shall have supervision of all matters relating to the preservation of the life and health of the people and have supreme authority in matters of quarantine, which it may declare and enforce, when none exists, and modify, relax, or abolish, when it has been established.” See the Ohio Revised Code § 3701.13 Powers of departments. http://healthyamericans.org/reports/bioterror04/Quarantine.pdf

\textsuperscript{18} See http://healthyamericans.org/reports/bioterror04/Quarantine.pdf

\textsuperscript{19} The text of the received email stated in full: “Please do not interpret this as a legal opinion
Most of The Ohio State University’s policies for the health of students come from the Code of Student Conduct. The section titled “Endangering Student Safety” provides specific policies regarding hazing for students and other health hazards such as intimate partner violence. These topics are addressed specifically in the health guide, but there is no specific mention of epidemics or communicable and/or infectious disease policies.\(^{20}\)

Under the section titled, “Student Conduct System Abuse,” a policy is outlined for students who fail to comply with the policies mentioned in the Student Code of Conduct. Under this policy any student who fails to comply is subject to disciplinary sanctions imposed by a hearing officer or board.\(^{21}\)

I think a university with its own police force and its own policies in play for student misconduct should be prepared to effectively deal with health matters of said students. Although an epidemic would be an extreme and unlikely situation, it is a situation that is best prepared for. The most tragic emergencies are the ones that have not been properly prepared for.

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\(^{20}\) The policy reads in full, “Endangering behavior Taking or threatening action that endangers the safety, physical or mental health, or life of any person, or creates a reasonable fear of such action. Relationship violence or intimate partner abuse may constitute endangering behavior” (page 3). My interpretation of this policy would be that potentially being infected by an infectious disease would constitute “endangering behavior” and should be treated as such by the code, up to and including quarantine of supposedly infected students.

\(^{21}\) The guide states that such disciplinary sanctions could be the following: “Examples include, but are not limited to, making restitution for property damage or misappropriation of university property or services, or the property of any person, residence hall contract termination or reassignment to another room, restriction of access to specified campus facilities and/or property, research assignments, community service projects, special workshop participation, and/or referral to medical resources or counseling personnel.” If the university has the power to “restrict access to specified campus facilities,” then I think they could be granted the authority to quarantine individuals, which is essentially the same tactic as restricted access.
PART IV: QUARANTINE CASES IN THE LAW AND THE NEWS

Although there have not been many recent quarantine cases, the few that have happened are interesting and relevant to the purpose of this text. These cases highlight the tension between individual rights and the common good and provide points of interest with relation to universities enacting their own quarantine and emergency health procedures.

A recent case involving quarantine is that of Andrew Speaker, a lawyer who traveled the world on a wedding and honeymoon trip while infected with multi-drug resistant tuberculosis. The Centers for Disease Control was alerted to the possibility of his illness and detained him upon his return to the United States. Speaker’s case is interesting because it involves both international issues with quarantine as well as involuntary detainment.

I think Speaker’s case was fraught with ineffectual methods to curtail his illness as well as confusion regarding policies. It seems that if the United States had had clearer laws regarding quarantine they could have more effectually managed Speaker’s situation and made him feel more willing to protect the health of others. In the same way, I feel that if an epidemic were to break out on a university campus, the non-specific policies with regards to quarantine would be a hindrance to the safety of the student and faculty body. Specific policies would protect individual rights while maintaining the greater good of the majority.

I realize I have stated “specific policies” but have been very non-specific about what these policies should be. While a plan of action is beyond the scope of this paper, I think that the Ohio Revised Code and The Ohio State University’s

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22 Ironically, Speaker was an Atlanta (also the location of the CDC headquarters) personal-injury lawyer, who was subject to involuntary quarantine upon his return to the United States after his travels (involuntary subject to quarantine seems like a personal injury to me). See http://en.wikipedia.org/wiki/Andrew_Speaker
23 International quarantine is beyond the scope of this text, but still provides a point of interest for cultural differences regarding civil liberties.
24 See http://www.americanbar.org/content/dam/aba/migrated/adminlaw/awardsprogram/08GSwinneres say.authcheckdam.pdf for a counterargument for less strict quarantine laws.
Code of Student Conduct provide an efficient starting point for The Ohio State University to create its own plan of action regarding a medical emergency. I think the policy could be modeled off of the Ohio Revised Code Municipal Corporations would be an excellent starting point for The Ohio State University to begin its plan of action.

A quarantine case specifically related to the university setting is that of a group of students at Carleton College in Northfield, Minnesota. The group of students was traveling to China for a study abroad trip when they were thrown in the mist of the SARS outbreak in 2003. Upon their return to Carleton, the five students were quarantined for three days in the dean’s office after one of the students came down with a fever. The case is relevant because the students were forced to display prudence after their release from the dean’s office. Other students were suspicious of them, but because the college had no official policy regarding quarantine, they were unsure how far they could go in interacting with other students.\(^{25}\)

Much confusion and uncertainty could have been alleviated if the college had a specific policy to deal with the emergency situation. Although the student was not infected with SARS, the situation inspires a series of what-ifs that are of concern to university faculty and students alike.\(^{26}\)

These two cases, in particular the Carleton College case, provide examples of the problem with a lack of quarantine policy at the lower levels. While both turned out fine in the end, the possibility that a serious situation could occur is motivation enough that policies should be enacted and enforced regarding epidemic emergencies. If these cases had not turned out so well in the end, they most likely would have spurred action and created more of a stir in the media. I do not want to see a case with an unfortunate outcome to have to occur for us to act on forming policies for large-scale emergency medical situations.


\(^{26}\) David Ward, president of the American Council of Education was quoted as saying, “It’s always harder when you’re trying to deal with it without an official policy, but I’ve been impressed with this customized response.” See http://www.nytimes.com/2003/05/12/us/from-china-sea-to-us-campus-quarantined.html?pagewanted=all&src=pm.
**CONCLUSION**

Of all the things a college education has taught me, it is that it is necessary to be prepared for any situation, and not to procrastinate until the last minute. If universities expect student to be prepared for the real world, should they not do the same as well? Although less frequent than in past times, infectious disease outbreaks do occur and they can be fatal. It is time to stop procrastinating or relying on the state to tell the university what to do in times of emergency medical situations, and to enact our own policies to prevent the spread of illness. Specific policies will make students and faculty feel respected and will protect their personal rights in the event an outbreak does occur. Balancing civil liberties with the wellness of the majority is one of the foundations for American society. It is important that universities across the nation focus on extending those same rights to student and faculty members so that in case of a infectious disease outbreak, they are able to stop the spread of disease in a timely and effective manner. Instituting quarantine policies that respect individuals and protect the majority is an important part of providing a safe and healthy environment to everyone at the university.