Learning from the Flint Water Crisis: Restoring and Improving Public Health Practice, Accountability, and Trust

Colleen Healy Boufides, Lance Gable, and Peter D. Jacobson

By now, the facts of the Flint water crisis are well-known. Briefly, Michigan's governor declared a financial emergency in Flint in 2011 and appointed an emergency manager, transferring all powers from city executive and legislative officials to an emergency manager accountable only to the governor. In April 2014, the emergency manager changed the city's drinking water source as a cost-saving measure, resulting in elevated lead levels in the city's drinking water. Tens of thousands of Flint children were exposed to high levels of lead in the water for well over a year before the water was finally switched back to its original source in October 2016.[1]

Elsewhere, two of us have analyzed the complex legal framework that contributed to the Flint water crisis.[2] In this article, we examine two key implications from that analysis. First, we assess the importance of adequate legal preparedness in dealing with complicated legal arrangements and multiple statutory responsibilities. We then address alternative accountability measures when public officials fail to protect the public's health and explore mechanisms that may help restore the community's trust and confidence in governmental public health.

Implications for Public Health Policy and Practice

The Flint water crisis raised many political, societal, and ethical issues, including concerns about the disproportionate application of Michigan's emergency manager law in communities of color.[3] The crisis also involved a complex set of laws, comprised of two distinct legal regimes — public health and safe drinking water — and multiple governmental agencies. Though the emergency manager's appointment added to this existing complexity by eliminating all city-level authority, the appointment did not alter county, state, or federal agencies' authority to intervene.[4] Thus, the crisis raises crucial questions about the barriers that impeded a swift public health response.

One key factor that likely contributed to implementation errors is inadequate legal preparedness. Legal preparedness requires both an understanding of laws and legal authority and an ability to use law effectively and coordinate across jurisdictions.[5] Inter-agency coordination is crucial to deploying statutory oversight and accountability mechanisms. Though strategically embedded in laws such as the federal Safe Drinking Water Act and Michigan's Public Health Code, these

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mechanisms are not self-executing and were not timely utilized in Flint. Instead, agencies repeatedly deferred to one another, acted within their own silos, failed to compel information sharing, or declined to intervene.[6]

Another challenge that surfaced in Flint relates to risk analysis and communication. Reports and released emails suggest that some government officials delayed sharing information publicly and intervening due to incomplete information.[7] Yet many of these statements (coupled with the prolonged nature of the crisis) also reflect a reluctance to heed Flint residents' concerns, challenge preexisting assumptions, rigorously employ legal investigative authority, and share information. While the risks of premature communication should be considered, government actors must weigh those factors against the equally significant risks of delaying action.

Public health agencies must preserve their role as trusted risk communicators by consistently and timely providing credible, unbiased information to the public, addressing community concerns, and fairly considering conflicting data. When a legal intervention is not (or not yet) warranted, public health agencies must be prepared to utilize non-legal tools to inform and protect the public, such as issuing health advisories, educating residents, or leveraging the department's bully pulpit to sound the alarm. In Flint, government officials' failures to listen to and communicate with the public contributed to the ongoing community backlash.

Jacobson et al. previously observed that public health is often characterized by a risk-averse culture prone to underestimating risks of delay while overestimating risks of acting too soon.[8] But evolving issues inherently involve gaps in understanding and thus both action and inaction must be based on conscious, proactive decisions. Likewise, public health agencies must preserve their role as trusted risk communicators by consistently and timely providing credible, unbiased information to the public, addressing community concerns, and fairly considering conflicting data.[9] When a legal intervention is not (or not yet) warranted, public health agencies must be prepared to utilize non-legal tools to inform and protect the public, such as issuing health advisories, educating residents, or leveraging the department's bully pulpit to sound the alarm.[10] In Flint, government officials' failures to listen to and communicate with the public contributed to the ongoing community backlash.

Public Health Accountability Mechanisms

In the aftermath of a serious public health failure like the Flint water crisis, it is necessary to ask why so many government officials who could have acted sooner instead downplayed the risks and exacerbated the harm. When government officials fail to uphold their significant responsibility to safeguard the public's health, several mechanisms may be used to achieve accountability on behalf of those who were harmed.

The most immediate accountability methods often emerge outside of government from advocates, journalists, and researchers who marshal community support, media scrutiny, and scientific evidence to highlight health risks that may otherwise go unheeded. These strategies can often be deployed quickly and create political pressure to intervene, especially if coupled with more formal efforts to impose public accountability through electoral processes. In Flint, two factors greatly constrained community members' and the media's effectiveness in holding public officials accountable: Flint residents' disempowerment through structural racism (a set of longstanding institutional and cultural barriers to racial equality); and the lack of democratic accountability resulting from the emergency manager's appointment. Community, journalistic, and scientific voices eventually pushed government leaders to act, but far too late to avoid serious public health consequences.

A second set of accountability mechanisms resides within the government. State and local agencies often have capacity to conduct internal oversight activities through an ombudsperson, while legislative oversight committees can pursue accountability for executive branch officials. These approaches were underutilized in the context of the Flint water crisis. Two independent panels — the governor-appointed Flint Water Advisory Task Force and the Michigan Civil Rights

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Commission — assessed the causes of the crisis but did not have authority to implement their recommendations. Neither the governor nor the legislature took direct steps to hold officials accountable through firing, sanctions, or other public rebuke.

A third set of mechanisms pursues accountability through the judicial system using civil tort claims or criminal prosecution. Numerous civil lawsuits have been filed against government officials alleging gross negligence, willful and wanton misconduct, and civil rights violations for decisions that caused or exacerbated the crisis. Though civil claims are attractive because tort theories align with the type of harm suffered by Flint residents, qualified immunity renders the resolution of these lawsuits uncertain and long-delayed. However, a recent court decision held that claims based on constitutional civil rights violations could proceed against emergency managers and employees of the Michigan Department of Environmental Quality, finding that these officials committed "an egregious violation of the right to bodily integrity."[11]

Sensing a vacuum of accountability through other approaches, Michigan prosecutors have levied criminal charges against 15 government officials in relation to the Flint water crisis, including involuntary manslaughter charges against two high-ranking state health officials for not warning the public about a Legionnaire's Disease outbreak ostensibly associated with the water switch. Criminal prosecution can be an effective method of assessing blame and it frequently represents a politically visible way to reprimand public officials. Using criminal law for governmental accountability has significant downsides though, including incentivizing public health officials to overreact to impending risks (which may undermine future public responses to such warnings) and setting a precedent for politically-motivated charges for routine mistakes.[12]

Despite these mechanisms, achieving accountability for the Flint water crisis has remained elusive. One lesson from the crisis is that accountability mechanisms break down when legal, structural, and political impediments coalesce.

Strategies for Restoring Community Trust

The strategies described above focus largely on allocating blame, restoring a sense of justice, and obtaining resources and monetary compensation to address the Flint community's lasting physical and emotional harms. But accountability is important for another purpose as well — a purpose which courts may not be equipped to fulfill. Accountability is essential to restoring community trust in governmental public health and in turn health departments' ability to fulfill their responsibilities.

It is clear that the Flint water crisis eroded trust and confidence in government, including public health.[13] Once lost, it is much harder to restore trust than to retain it. This disintegration of social capital has likely affected not only the Flint community's sense of security, wellbeing, and cohesion, but also other communities, especially communities of color that may see the crisis as the latest in a long line of affronts against their rights, needs, and dignity. Other jurisdictions, particularly in more conservative areas, may face different challenges in overcoming general concerns about governmental intrusion. The loss of trust has likely damaged the morale and confidence of the public health workforce in Flint and beyond. Although there is no one strategy that we can suggest for building trust, some general approaches might be considered.

First, trust-building needs to be intentional and ongoing. For example, health departments must be transparent and regularly seek community input. Doing so is usually a health department strength using community engagement processes such as health impact and community needs assessments. Obtaining community buy-in and working with elected (i.e., democratically accountable) officials will facilitate trust as well as community ownership of both successes and mistakes.

Second, if a mistake is made, health departments can demonstrate integrity by telling the public what went wrong and how it will be fixed. In handling mistakes or controversial matters, the communication must be timely and accurate; otherwise, the community is likely to distrust the department's efforts to remedy mistakes and correct deficiencies going forward.

Third, health departments must be held accountable for mistakes, as described earlier. The failure to hold anyone accountable for the Flint water crisis has contributed to the community's pervasive distrust of the health department. But because neither compensation, substantive legal changes, nor criminal charges are likely to restore trust, alternative accountability mechanisms are needed. In this context, the accountability emphasis should be focused on restorative and community justice principles, which focus on healing communities rather than simply placing blame.[14]

Fourth, basic competency matters. As Platt et al. noted in another context, "...the public may not have the knowledge to judge competency as experts; however, they are likely to have an instinctual knowledge or perception of system capacity."[15] Cumulative mistakes undermined the Flint community's view of the health department's competency, thereby exacerbating distrust. Health departments may help to restore

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public confidence in their competence by actively seeking input from respected outside experts until trust is restored and thereafter welcoming such input when offered.

Health Justice in Flint

Health justice after the Flint water crisis requires restoring physical, economic, social and emotional health within the Flint community, as well as making legal and practice changes to prevent recurrence of similar crises. The justice-seeking process must involve examining and confronting the political, ethical, social, and legal factors that contributed to the crisis; holding accountable the actors and structures that caused the crisis to happen; restoring trust in a community deprived for years of a democratically-accountable and representative local government; and equipping public health practitioners to respond swiftly to future public health threats.

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