

# ***New York City Is Requiring Vaccinations Against Measles.***

## ***Can Officials Do That?***

Mandatory vaccination is rare, but it has been done — and upheld by the courts. While judges have allowed health officials to fine citizens for refusing, forced vaccinations are highly unusual.

Mayor Bill de Blasio announcing a public health emergency at the Williamsburg branch of the Brooklyn Public Library. He warned that failure to comply with compulsory vaccinations would result in a \$1,000 fine. Credit John Taggart for The New York Times



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**By Donald G. McNeil Jr.**      April 9, 2019

Faced with an expanding measles outbreak, Mayor Bill de Blasio of New York declared a public health emergency on Tuesday and [ordered a program of mandatory vaccination in parts of Brooklyn](#).

Such a health order is rare but not unheard-of in American history, medical experts said. It has occurred several times.

The Supreme Court ruled more than a century ago that mandatory vaccination was legal, although the court drew a distinction between punishing citizens for refusing and actually vaccinating them by force.

Nonetheless, both of those tactics have been imposed in the past 120 years — as long ago as a 1900 plague outbreak in San Francisco, and as recently as a measles outbreak in Philadelphia in 1991.

The New York vaccination order is written in a way that seems to leave open both possibilities, depending on how strictly the city chooses to enforce it.

Mayor de Blasio said New Yorkers in the affected neighborhoods who refuse to let themselves or their children be vaccinated could be fined \$1,000.

But the order issued by the health commissioner, Dr. Oxiris Barbot, said anyone who has not been vaccinated and cannot prove they are immune to measles or produce a medical exemption “shall be vaccinated.”

Below the commissioner’s signature — outside the actual text of the order — is an added warning saying failure to comply is a misdemeanor and can lead to fines or imprisonment.

On Tuesday, Dr. Barbot said persistent refusals would be handled on a “case-by-case basis, and we’ll have to confer with our legal counsel.”

The defining case in the field, according to Daniel A. Salmon, director of the Institute for Vaccine Safety at the Johns Hopkins Bloomberg School of Public Health, is the 1905 Supreme Court ruling in *Jacobson v. Massachusetts*.

The court upheld the authority of states to enforce compulsory vaccination on the grounds that, when danger loomed, an individual’s freedom could be subordinated to the common good.

The plaintiff, Henning Jacobson, was a Cambridge, Mass., pastor who had been vaccinated against smallpox as a child in Sweden and claimed it had caused him lifelong suffering.

He also argued that vaccination was an “invasion of his liberty” under the 14th Amendment. During a smallpox outbreak, he refused to let himself or his son be vaccinated and was fined \$5.

Massachusetts was then one of 11 states with compulsory vaccination laws, but it did not allow vaccination by force. By a 7-to-2 vote, the court let the fine stand and said imprisonment could also have been imposed.

But Justice John Harlan wrote for the majority that individuals could not be forcibly vaccinated.

Yet vaccination by force was used in 1991 in Philadelphia, said Dr. Paul A. Offit, director of the Vaccine Education Center at the Children’s Hospital of Philadelphia.

A measles outbreak that year infected over 1,400 people and killed several children. It had begun in two fundamentalist churches that rejected modern medicine and practiced faith healing.

A court ordered that the children in those churches be vaccinated. Their families did not resist.

“They were a peaceful lot,” Dr. Offit recalled. “Once it was the law of the city, they realized it and they were pretty placid about it.”

(One church’s pastor had vaccinated her dog because the law required it, he said, yet her son died of an infection with Hib bacteria, which is prevented by a vaccine routinely given to children at two months.)

City and state health commissioners often have vast powers. Most public health laws were written in the 19th century, when cities were regularly swept by waves of cholera, yellow fever and smallpox that killed thousands.

In the 1892 cholera outbreak, New York City’s health commissioner, Dr. Cyrus Hudson, was asked by a congressional committee what the limits of his powers were. He answered that [he could even seize City Hall and turn it into a hospital.](#)

In the 1990s, when a few New Yorkers with multi-drug-resistant tuberculosis — mostly homeless men — refused to take antibiotics, they were held involuntarily in a locked ward of Bellevue Hospital and forced to take medicine until they were no longer contagious.

Forced vaccination, however, is more politically sensitive than quarantines or forced treatment. Vaccines are given to healthy persons — sometimes infants — instead of to those who are sick and clearly endangering others.

Smallpox vaccination was made mandatory in parts of Europe as early as 1806, but the first attempt at forced vaccination in this country occurred in San Francisco's Chinatown in 1900. The city nearly exploded into riots, said Dr. Howard Markel, director of the University of Michigan's Center for the History of Medicine.

### **Measles Outbreak Explained: Your Questions Answered**

The disease was declared eliminated in 2000. So far this year, there have been more than 100 cases.



As he described it in his book “When Germs Travel,” the entire neighborhood was cordoned off by police on March 7, 1900, less than 24 hours after local health officials tentatively concluded that a scrap-wood dealer found dead in a basement cot in a dime-a-night boardinghouse had perished from plague.

Plague was then common in China and in 1899 had reached Honolulu's Chinatown. A "controlled burn" of a few plague-infested houses ordered by the city board of health had gotten out of control and burned down 4,000 houses, leaving thousands homeless.

Anti-Chinese prejudice was rampant in California, and the Chinese were terrified that what had happened in Hawaii would be repeated.

The San Francisco quarantine was lifted on March 9, in part because employers needed their workers. Health inspectors and police began searching the community for the sick, beating anyone who resisted.

In May, the surgeon general in Washington telegraphed orders that federal health officials should take over response to the outbreak, cordon off Chinatown again, prevent all Chinese and Japanese people from leaving the city, disinfect all their homes — and inoculate them all with an experimental plague vaccine.

(The national panic was so great that the secretary of the Treasury briefly issued orders that all Asians could be denied transport by common carrier anywhere in the country.)

The vaccine had been invented just three years earlier by [Waldemar Haffkine, an Orthodox Jew](#) who had been driven out of Russia by anti-Semitism and had moved his laboratory to India.

The second quarantine went on for weeks, and Chinatown faced starvation until local merchants donated food. The Chinese press reported that the Haffkine vaccine had killed some Indians and that a few Chinatown residents who accepted it had fallen ill.

The Chinese Consolidated Benevolent Association, a civic group, sued, and a federal district judge stopped the vaccinations, saying the order singled out Asians for no medical reason.

Ultimately, the vaccination effort was dropped because the governor asked President William McKinley to step in. The local federal health official had started issuing orders so sweeping that they effectively prevented all Californians from leaving the state without his permission.

Even fining people for refusing to be vaccinated has a complex history, Dr. Salmon said. In Britain, he noted, fines have sometimes been imposed repeatedly for repeated refusals.

“People lost their houses and became martyrs,” he said.

Also, fines create inequities because some can afford them and some cannot. “You end up punishing people based on their ability to pay,” Dr. Salmon said.

There is almost always a backlash.

In Britain, the Vaccination Act of 1853 galvanized the creation of an anti-vaccination movement, and in the United States, the Anti-Vaccination League of America was founded three years after *Jacobson v. Massachusetts* was decided.