

Legal Principles in Risk Communication

Legal and Ethical Understanding

- Staff handling a health crisis should have knowledge of the relevant laws and ethical considerations pertaining to the crisis

Objective

- To introduce the existing sources of law
- To ascertain from a legal perspective whether or not information should be released
- To identify the possible legal implications of disclosure/ non-disclosure

Sources of Law

- Federal Constitution
- Statutes
- Regulations
- General Orders
- Government directives and circulars
- Common Law

Government Circulars and Directives

- Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1983
 - Peraturan 19
- Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980
 - Perkara 17
 - Perkara 4
- Pekeliling Perkhidmatan Bil. 1 Tahun 1985
= non-disclosure

Non-disclosure

- Government policy, program or decision on any issue
- Any factual information relating to department
- Explanation of incident or report

BUT

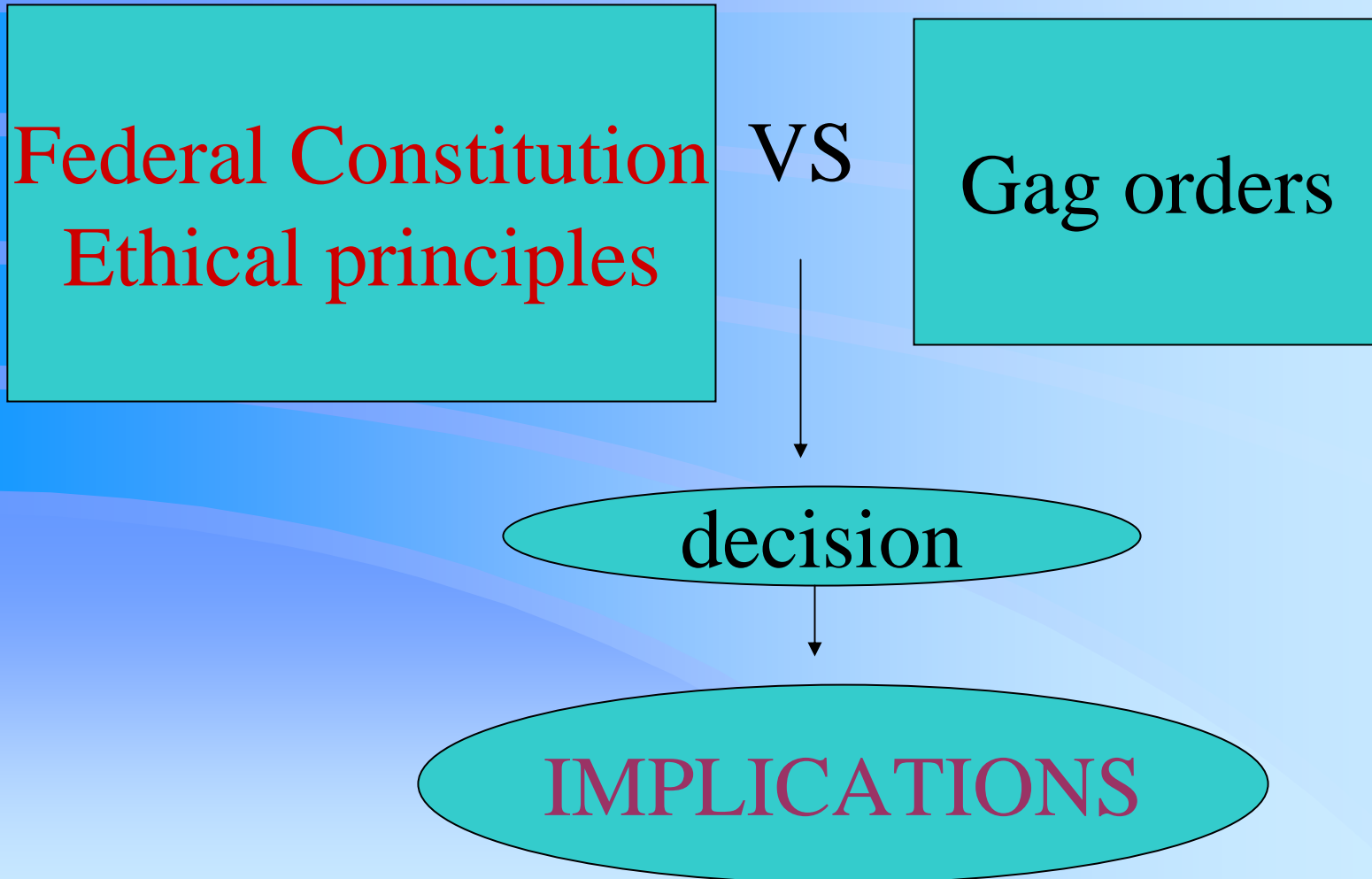
- People should have access to information in a democratic society
 - Allows for expression of constitutionally protected rights in Art 10 and 5 of the Federal Constitution
- Disclosure in good faith is a valid defense to a criminal action under the Penal Code s93

Federal Constitution - Article 10

10(1) Subject to clauses(2), (3) and (4) – every citizen has the right to freedom of speech and expression

Restrictions are imposed in the interest of national security, public order, etc

THE CONFLICT



information

Authorised Officer

Communications Officer

PUBLIC

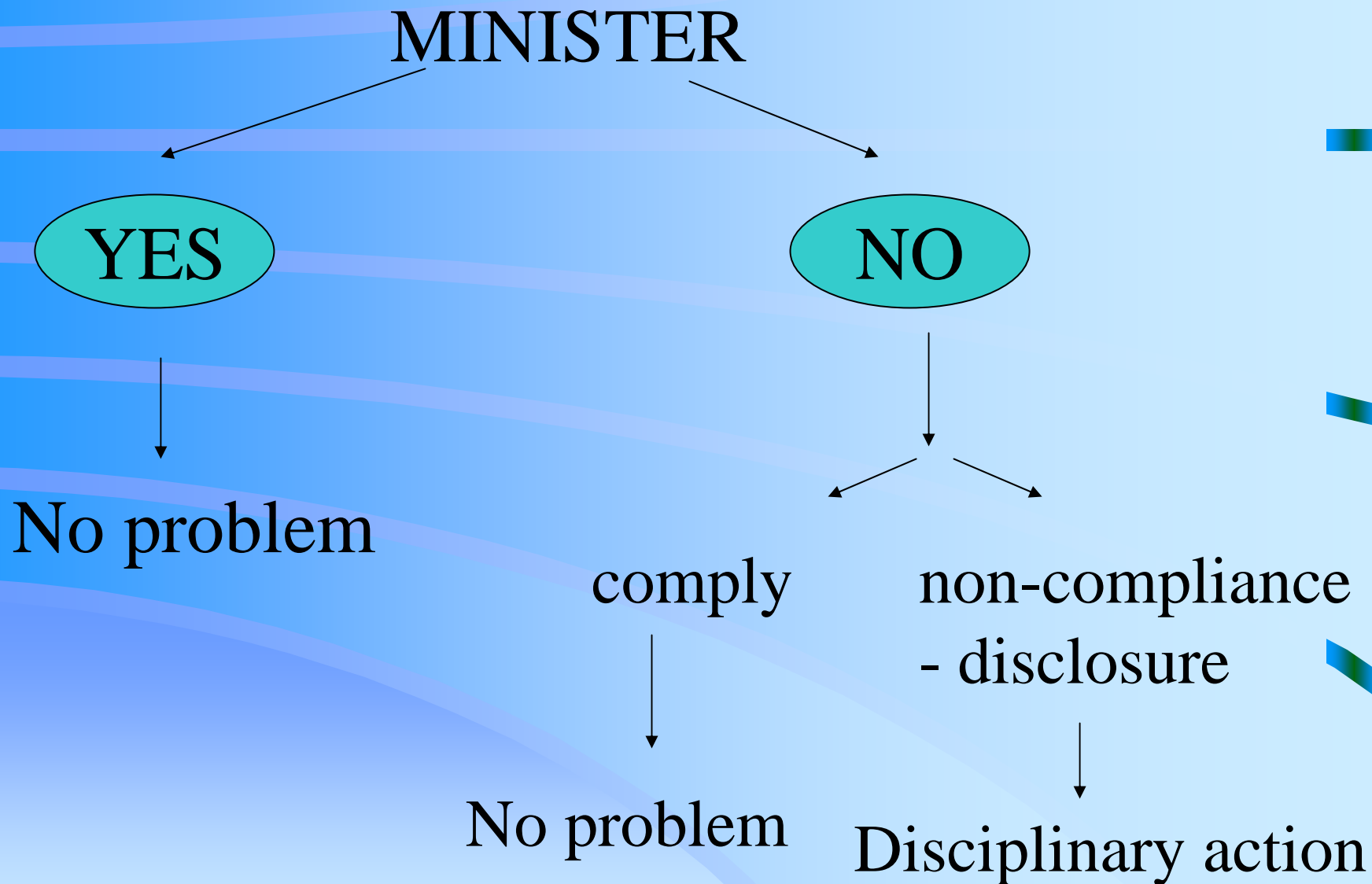
Minister's approval



Liabilities of authorised officers

- Subject to statutory duties of non-disclosure
 - E.g. PCID, Food Act, OSHA, Pesticides Act...
- Breach – offence under the statute, penalty as prescribed under the statute – e.g. fine and /or imprisonment
- + disciplinary action may be taken

Communications officer



Further legal implications

- Negligence
- Breach of Confidentiality
- Defamation
- Public Nuisance

Negligence

- Liability may exist either for disclosure or failure to disclose depending on circumstances
- Need to prove three elements
 - Duty of care
 - Breach of standard of care
 - Damage/causation

Breach of Confidentiality

- Both legally and ethically wrong
- Protects special relationships of trust – e.g. between health care providers and patients
- Consider the context in which the information was given/ received –

Breach of Confidentiality - exceptions

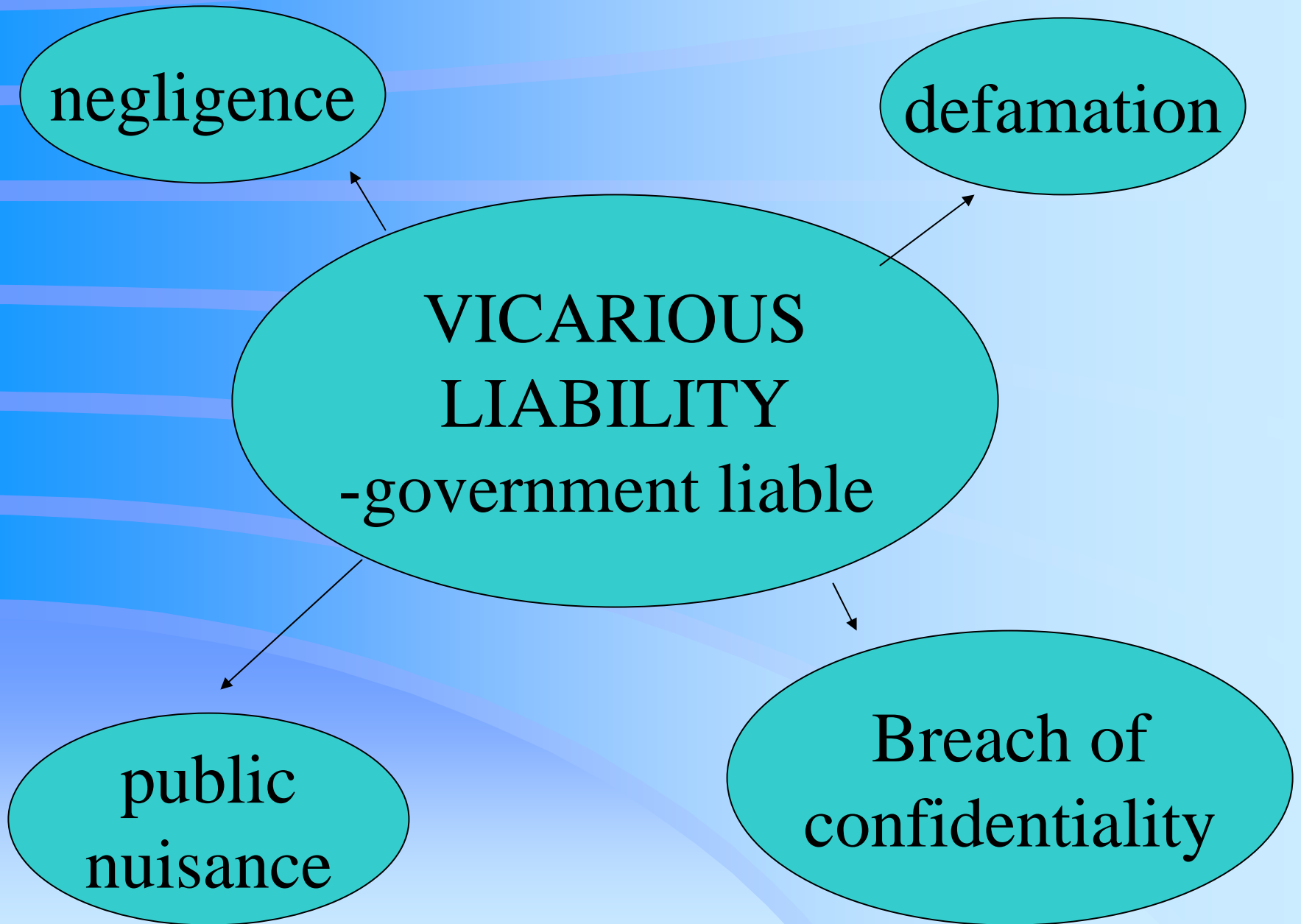
- Sharing information with other health care providers
 - For effective management of crisis information
- If required by law
- In public interest – to prevent a greater danger to the public at large

Defamation

- Publication oral or written which may tarnish a person's reputation
- Defences
 - justification
 - qualified privilege (public interest)

Public Nuisance

- If disclosure/non-disclosure results in injury to a class of persons in a particular area the government as protector of public health and safety may be liable
- An offence under section 268 of the Penal Code



Case Studies

Nipah outbreak

Enterovirus

Hand foot
& mouth disease

Haze

Nipah outbreak

- WHO should have released information?
 - Refer to government circulars –
- Should ANY information have been released if information was lacking/insufficient?
 - Negligence? If info released was wrong/info withheld?

Nipah outbreak

- Vaccination - effective?
 - To state effective – negligence?
- Discovery of actual virus – nipah not JE
 - What information to release? Is failure to release negligent?
 - General public
 - Vaccinated group