



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

September 2, 2003

Michael Caldwell, M.D., M.P.H.
President
New York State Association of County Health Officials
Dutchess County Dept. of Health
387 Main Street
Poughkeepsie, New York 12601

Re: DOH GC Opinion No.03-04
Quarantine Powers of Local Health
Officers and Local Boards of Health

Dear Dr. Caldwell:

Dennis Whalen, Executive Deputy Commissioner, has asked that I respond to Dr. Lloyd Novick's May 9, 2003 letter, seeking clarification of the authority of local health officials, particularly with regard to the power to isolate and quarantine individuals exposed to or infected with a communicable disease. As indicated below, both local health officers and local boards of health have the power to isolate and quarantine individuals exposed to or infected with a communicable disease designated in the State Sanitary Code. There is considerable variation among counties regarding who exercises the powers of local health officers and local boards of health. Therefore, the general guidance provided in this letter should be supplemented by specific advice from each county's legal advisor.

Brief Summary

A "local health officer" includes a county health commissioner; the health commissioner of a city having a population of 50,000 or more; a public health director; a county health director in counties or cities having populations of less than 150,000 according to the 1970 or subsequent federal census, but without a charter or optional or alternative form of government; and the officer of a city having a population of less than 50,000, town, village, or part-county or consolidated health district who administers and manages public health programs within such jurisdiction. Each can exercise the powers of a local health officer.

A "local board of health" is the board of health of a county, part-county, city, village, town or consolidated health district. In some situations a county legislature may serve as the

board of health. In villages the board of health is the board of trustees of the village; in towns the board of health is the town board. Since the Public Health Law provides for either the abolition of certain local health districts or their continuation as a subdivision of the county, or part-county, health district, the activity and authority of town and village boards of health will vary based upon local actions taken. In addition, under Article 9 of the State Constitution and the Municipal Home Rule Law, county charters can reallocate the administrative responsibilities of the agencies of local government among the agencies. As a result, a county charter may give to other county agencies or bodies the powers which the Public Health Law gives to a board of health. Given the variety of local actions that several counties may have undertaken, local health officers should consult with their own legal advisors to confirm what bodies exercise the powers of the local board of health in their jurisdictions. The Department has no central registry of such information.

The Public Health Law requires every local board of health and every local health officer to guard against the introduction of communicable diseases designated in the State Sanitary Code by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases. The law authorizes local boards of health and local health officers to provide for the care and isolation of cases of communicable disease in a hospital or elsewhere when necessary for protection of the public health and, subject to the provisions of the State Sanitary Code, to prohibit and prevent all contact and communication with or use of infected premises, places and things, and to require, and if necessary, provide the means for their thorough cleansing before general contact and use is resumed. The law requires health officers to investigate the circumstances and to seek a court order committing non-compliant individuals afflicted with a communicable disease to a hospital or institution established for the care of persons suffering from such communicable disease. Pursuant to these provisions both local health officers and local boards of health have the power and primary responsibility to isolate and quarantine individuals exposed to or infected with a communicable disease designated in the State Sanitary Code.

Discussion

The term "local health officer" is defined in Public Health Law ("PHL") § 2(j) as the "health officer of a county, part-county, city, village, town, or consolidated health district." A county commissioner of health has all the powers and duties of a local health officer. See PHL § 352(2). In "unorganized" counties having a population of less than 150,000 according to the 1970 or subsequent federal census, but no charter or optional or alternative form of government, the county legislature may appoint a county health director "who shall have all the powers prescribed in section three hundred fifty-two of [the PHL]" See PHL § 356.) In counties of less than 250,000 population, a public health director acting with appropriate medical consultation may be employed in lieu of a commissioner of health to administer and manage public health functions in a county. See 10 NYCRR §§ 11.180 through 11.182. The terms "health officer" or

“local health officer” are defined in 10 NYCRR § 1.1(d) to mean and include “the health officer, or other officer of a municipality, by whatever title he [sic] may be known, having the usual powers and duties of a health officer of a municipality.” The term “local health officer” is more clearly defined in 10 NYCRR § 11.1 to mean (1) the commissioner of health of a county or a city having a population of 50,000 or more and having an established health department; (2) a public health director; (3) a county health director appointed pursuant to PHL § 356 in “unorganized” counties having a population of less than 150,000 according to the 1970 or subsequent federal census, but no charter or optional or alternative form of government; and (4) the officer of a city having a population of less than 50,000, town, village or consolidated health district who administers and manages public health programs within such jurisdiction and who has the general powers and duties specified in the PHL. Each can exercise the powers of a local health officer.

As to local boards of health, as a general proposition, the boards of health of all county and part-county health districts have the same powers and duties. The board of health in a county or part-county health district created under PHL § 340 has the powers set forth in PHL § 347, et seq., including the powers and duties of a local board of health. See PHL § 308. PHL § 356 designates the legislatures of certain small counties (“unorganized” counties having a population of less than 150,000 according to the 1970 or subsequent federal census, but no charter or optional or alternative form of government) as the local board of health and provides that they, too, “shall have all the powers and duties of a board of health of a county or part-county health district.”

A differentiation among powers exercised by county boards of health arises when they respond to local conditions, such as the availability of resources or enactment of charters. PHL § 602(6) permits the State Commissioner of Health to approve a public health services plan in which the county provides reduced services, as long as the services the county does not provide can be provided by the State or through contract. This can result in “partial service” health departments in which state district offices provide some services within a county. Similarly, PHL § 341 provides for either the abolition of certain local health districts or their continuation within a county or part-county health district as a subdivision of the county or part-county health district. Thus, in one county the town and village boards of health may be active participants in public health while a different county or part-county health district may be more centralized. In villages the board of health is the board of trustees of the village; in towns the board of health is the town board. See PHL § 302. PHL § 356 does not address the relationship between a county board of health created under its terms and pre-existing town and village boards of health. Therefore, such pre-existing town and village boards of health might have greater autonomy in county and part-county health districts governed by PHL § 356 than they would in county and part-county health districts formed under PHL § 340.

In addition, under Article 9 of the State Constitution and the Municipal Home Rule Law, county charters can reallocate the administrative responsibilities of local government agencies. As a result, a charter may give the county legislature or some other local agency powers which the PHL gives to a board of health. The scope and exercise of that power would, of course, be subject to any provisions of the PHL or State Sanitary Code. The Department does not maintain a summary of county charter provisions. Given the variety of possible local actions that several counties may have undertaken, the county commissioners and public health directors should consult with their own legal advisors to confirm what bodies exercise the powers of the local board of health. The Department has no central registry of such information.

With regard to the power to isolate and quarantine, PHL § 2100 states:

1. Every local board of health and every health officer shall guard against the introduction of such communicable diseases as are designated in the sanitary code, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases.
2. Every local board of health and every health officer may:
 - (a) provide for care and isolation of cases of communicable disease in a hospital or elsewhere when necessary for protection of the public health and,
 - (b) subject to the provisions of the sanitary code, prohibit and prevent all intercourse and communication with or use of infected premises, places and things, and require, and if necessary, provide the means for the thorough purification and cleansing of the same before general intercourse with the same or use thereof shall be allowed.

In addition, PHL § 2120 requires health officers, upon receipt of a complaint from a physician that a person is afflicted with a communicable disease and is unable or unwilling to conduct himself and to live in such a manner as not to expose members of his family or household or other persons with whom he may be associated to danger of infection, to investigate the circumstances and to seek a court order committing the individual to a hospital or institution established for the care of persons suffering from such communicable disease. Pursuant to these provisions both local health officers and local boards of health have the power to isolate and quarantine individuals exposed to or infected with a communicable disease designated in the State Sanitary Code. The State Sanitary Code places the primary responsibility for such isolation and quarantine on local health officers, see 10 NYCRR §§ 2.6, 2.25(d), (e) and (f), and 2.29.

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I also want to take this opportunity to confirm the New York State Department of Health's position that local health officers and local boards of health may quarantine and isolate only patients infected with or exposed to communicable diseases determined to be dangerous to the public health by the New York State Public Health Council and listed in 10 NYCRR § 2.1. We understand that local health officers are concerned that they be able to respond quickly to communicable disease threats in their communities. By authorizing the State Commissioner of Health to add diseases to the communicable disease list in 10 NYCRR § 2.1 between its meetings, the Public Health Council has assured that expeditious response will be possible. The Department looks forward to continuing to work effectively and collaboratively with local health officers to meet the challenges of communicable disease control.

Very truly yours,

Donald P. Berens, Jr.
General Counsel

cc: Dennis Whalen
Dr. Lloyd Novick
JoAnn Bennison

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