

# Harassment of Public Health Officials: Emerging Legal Issues

2022 Legal Pre-Conference  
In association with the NC Public Health Association



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## Speakers and topics

 <p>Lisa Macon Harrison</p> <p>Public health official harassment</p>	 <p>Kristina Wilson</p> <p>Open meetings</p>	 <p>Kristi Nickodem</p> <p>Civil remedies; Workplace safety</p>
 <p>Shea Denning</p> <p>Criminal remedies</p>	 <p>Jill Moore</p> <p>Moderator</p>	



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# Open Meetings

“Official meetings” of “public bodies”



143-318.10

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# What is a public body?

- 2 or more members
- Elected, appointed, or otherwise intentionally created
- Governmental (not private)
- Authorized to exercise any one of 5 public functions

## Functions

- Legislative
- Policy-making
- Quasi-judicial
- Administrative
- Advisory

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## Are local health boards public bodies?

- ✓ 2 or more members
- ✓ Elected, appointed, or otherwise intentionally created
- ✓ Governmental (not private)
- ✓ Authorized to exercise any one of 5 public functions

What about health advisory committees?

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## What rights does the open meetings law provide?



- Right of access
  - Notice
  - Opportunity to attend in person
- Access includes the right to attend, photograph, and video.
  - 143-318.14
- No general right to speak at meetings.

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# Open meetings may have multiple parts

## Board Meeting

Government Speech



## Public Comment

Designated Public Forum



# Free Speech “Forum” Analysis



“Congress shall make no law...abridging the freedom of speech...”

## Limitations on speech depend on the forum

- Parks are just about the only places that are always open to public expression.
- A government can open places as a forum for public discourse, subject to limitations.
- Public comment periods are statutory designated public forums.



## Speech that is not First Amendment protected

- The First Amendment does not create an unqualified right to any type of speech
- Some speech is not protected by the First Amendment:
  - Obscenity
  - Fighting Words
  - Perjury
  - Blackmail
  - True Threats

## Public Comment Periods

Who can speak and what can they say?

Anyone, about almost anything that relates to the jurisdiction of the public body.



## Rules for Public Comment

- **§ 160A-81.1.; § 153A-52.1 Public comment period during regular meetings.**
- The council/board shall provide at least one period for public comment per month at a regular meeting of the council.
- The board may adopt reasonable rules governing the conduct of the public comment period, including rules
  - (i) fixing the maximum time allotted to each speaker,
  - (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions,
  - (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and
  - (iv) providing for the maintenance of order and decorum in the conduct of the hearing.



## Meaning of Decorum

- A common definition of “decorum” is “correct or proper behavior that shows respect and good manners.”
- Comment policies use various words to describe the decorum standard, including prohibitions on vulgar language, profanity, inappropriate gestures, insults, personal attacks, or accusations.
- Policies may also take the positive approach, encouraging speakers to be courteous and respectful.



## Maintaining Order



A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by the presiding officer, willfully refuses to leave the meeting is guilty of a Class 2 misdemeanor.

G.S. 143-318.17

## Closed Sessions

Limited authority to meet in closed session

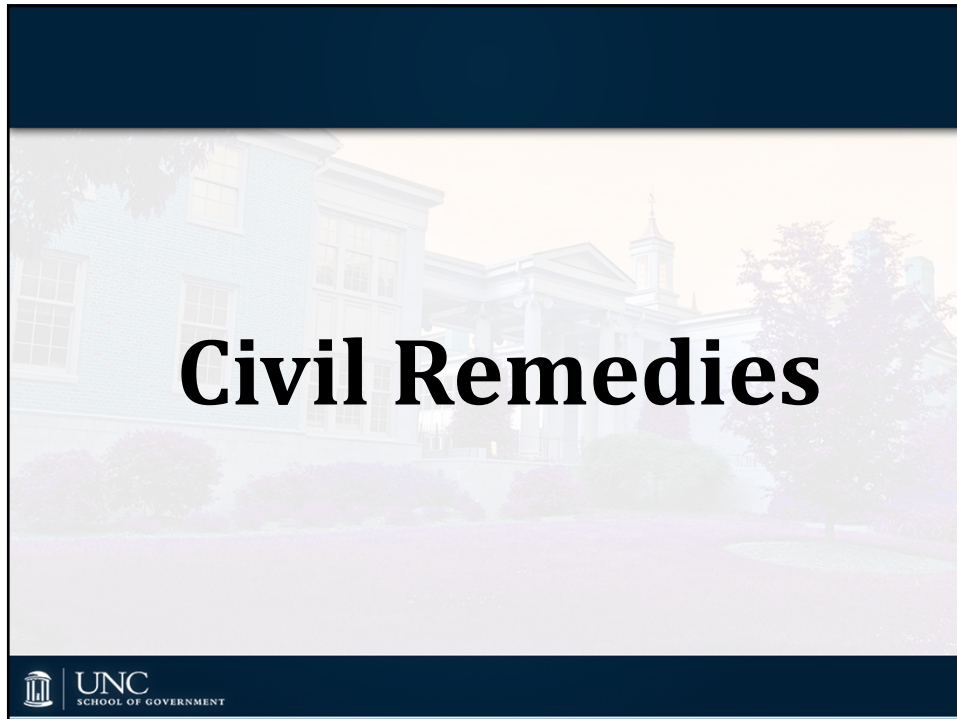
**Process:** Motion in open session, stating general purpose of closed session



## Closed Session Purposes

- Preserve confidentiality of records
- Prevent premature disclosure of scholarship, prize, honorary degree, or similar award
- Preserve attorney-client privilege
- Discuss economic development
- Discuss bargaining position for property acquisition
- Consider performance, qualifications, appointment, of public employees and public officers (not members of the board itself or other boards)
- Matters involving alleged criminal misconduct
- Discuss local board of education emergency response and safety
- Public safety as it pertains to terrorism
- To view a recording released pursuant to 132-1.4A (body cam footage from law enforcement)





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## Intentional Infliction of Emotional Distress (IIED)

- Plaintiff must allege:
  - (1) **extreme and outrageous conduct**
  - (2) which is intended to cause and does cause
  - (3) **severe emotional distress** to another.

*Norton v. Scotland Mem'l Hosp., Inc.*, 250 N.C. App. 392, 397 (2016).

- Conduct that is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”



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## Malicious Prosecution

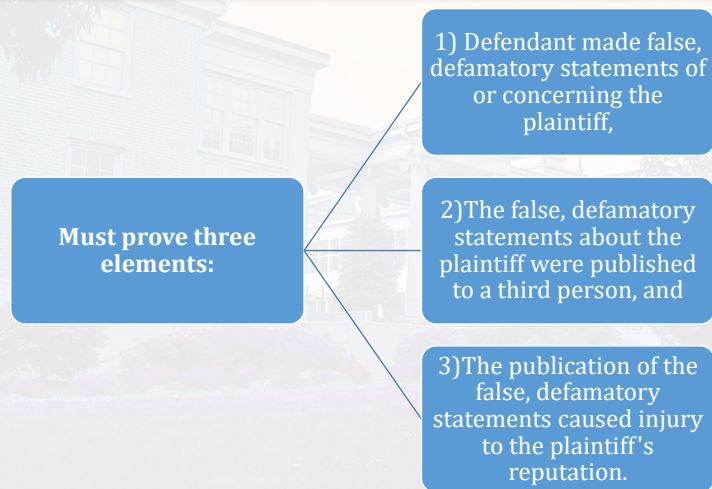
- Plaintiff must show that the defendant
  - (1) initiated or participated in the earlier proceeding,
  - (2) did so maliciously,
  - (3) without probable cause, and
  - (4) the earlier proceeding ended in favor of the plaintiff.

*Turner v. Thomas*, 369 N.C. 419, 425, 794 S.E.2d 439, 444 (2016)
- If earlier proceeding was civil, must involve special damages, such as an arrest of the person, seizure of property, or the loss of a legally protected right.
- Proving malice:
  - “Motivated by personal spite and a desire for revenge” or
  - Acted with “reckless and wanton disregard” for plaintiffs’ rights.

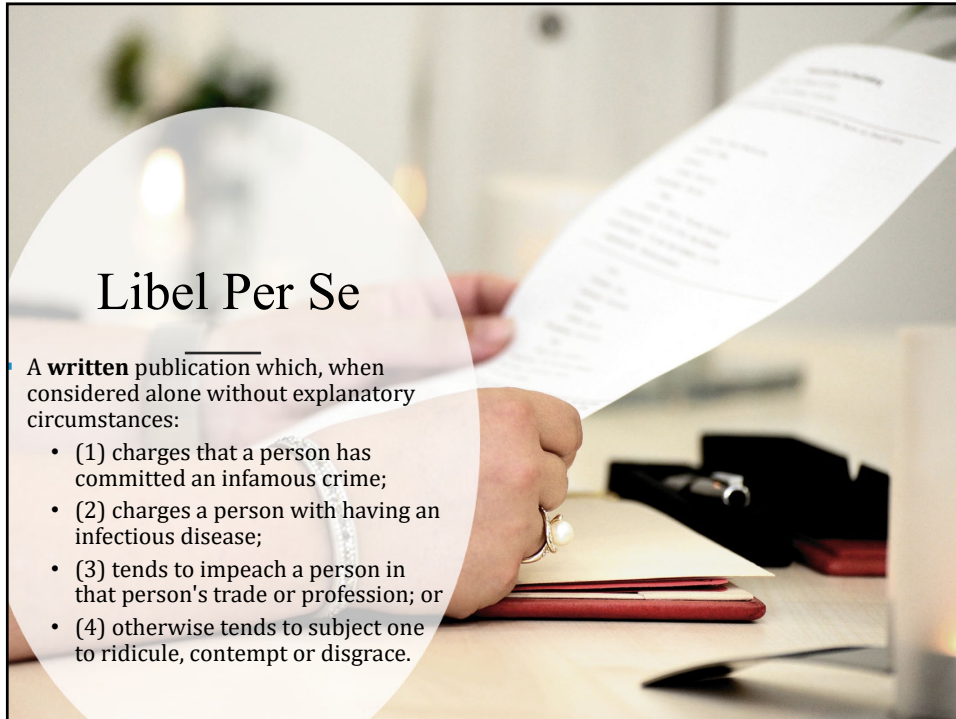


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## Defamation



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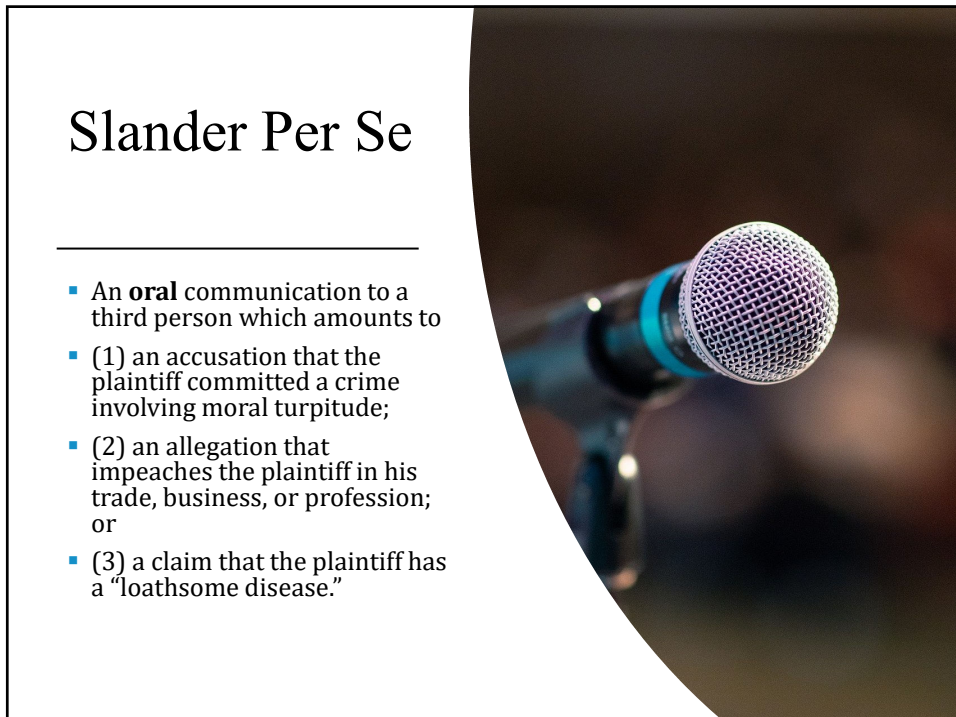


## Libel Per Se

A **written** publication which, when considered alone without explanatory circumstances:

- (1) charges that a person has committed an infamous crime;
- (2) charges a person with having an infectious disease;
- (3) tends to impeach a person in that person's trade or profession; or
- (4) otherwise tends to subject one to ridicule, contempt or disgrace.

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## Slander Per Se

An **oral** communication to a third person which amounts to

- (1) an accusation that the plaintiff committed a crime involving moral turpitude;
- (2) an allegation that impeaches the plaintiff in his trade, business, or profession; or
- (3) a claim that the plaintiff has a "loathsome disease."

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## “Actual Malice” Standard

**Public Official  
+ Defamation  
Related to  
Official  
Conduct =  
Higher  
Burden of  
Proof**

- Must prove statement was made with “**actual malice**”:
  - (1) With knowledge that it was false, or
  - (2) With reckless disregard of whether it was false or not.
- In North Carolina, the “public official” designation applies to government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.

## Workplace Safety

## Duty to Provide a Safe Workplace

- An employer has a **duty** to provide a safe working environment under the federal Occupational Safety and Health Act.
- Applies to employers through federal OSHA or through an OSHA-approved state program.
- **General Duty Clause:**
  - N.C.G.S. 95-129: “Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees.”



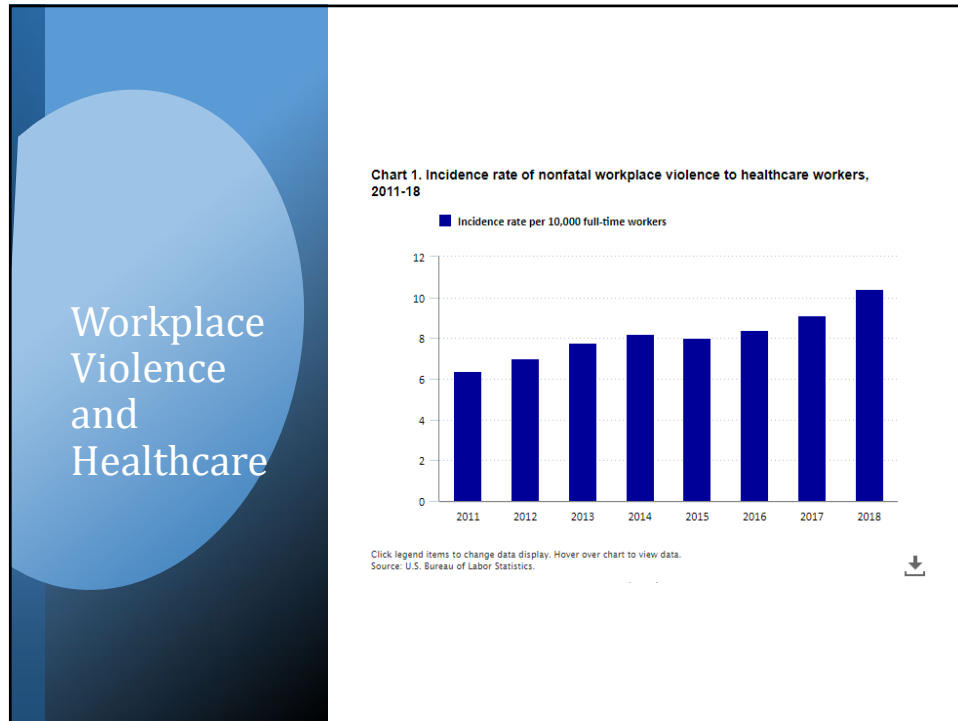
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## General Duty Clause

### Four Elements Necessary For a GDC Violation:

- The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
- The hazard was recognized in the industry;
- The hazard was causing or was likely to cause death or serious physical harm; and
- There was a feasible and useful method to correct the hazard.

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## General Duty Clause

***Secretary of Labor v. Integra Health Management, Inc. (2019)***

Employee fatality due to client violence

- OSHA issued “serious” citation on the basis of a General Duty Clause violation--- employees were exposed to the hazard of being physically assaulted by clients with a history of violent behavior.
- ALJ and OSHRC upheld the citation

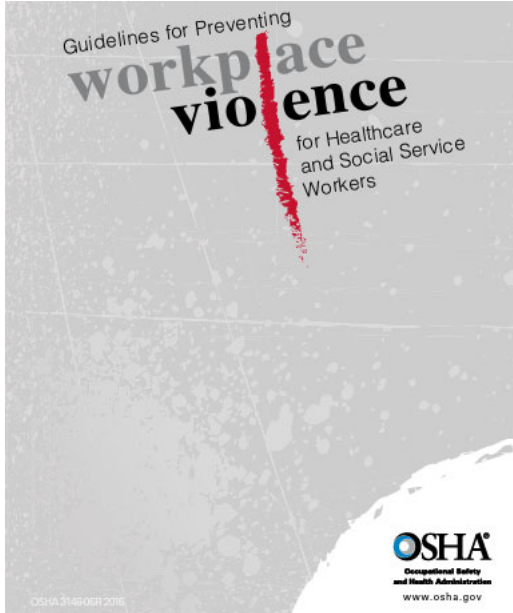
Abatement measures

- Creating a written workplace violence prevention program;
- Putting procedures in place to communicate any incidence of workplace violence to all employees who could potentially be exposed;
- Providing additional training on how employees can respond to a workplace violence incident;
- Providing employees with a reliable way to summon assistance when needed; and
- Establishing liaisons with local law enforcement agencies.

UNC SCHOOL OF GOVERNMENT

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Guidelines for Preventing  
**workplace  
violence**  
for Healthcare  
and Social Service  
Workers

OSHA  
Occupational Safety  
and Health Administration  
www.osha.gov


OSHA 3148-05R1 2016

**Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers**

OSHA Publication 3148

<https://www.osha.gov/workplace-violence>

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Discussion  
&  
questions

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