

# NC Local Health Director Legal Authorities

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# NC Local Health Directors

# Every county has:

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## Local health department

- A single-county or multi-county agency that provides public health services (AKA local public health agency)

## Local board of health

- A board empowered to exercise the legal powers and duties of a board of health (AKA governing board)

## Local health director

- An employee and officer of the department who meets certain education & experience criteria and who is authorized to carry out powers and duties prescribed by law

# Appointment of the local health director

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County health department

- County board of health

District health department

- District board of health

Consolidated human services (CHS) agency

- County manager appoints CHS director with advice and consent of CHS board; CHS director appoints health director with county manager's approval

Public health authority

- Public health authority board

# Education & experience requirements

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A local health director must have a medical doctorate or one of the following combinations of education and experience:

- Master's in public health administration and one year experience in health programs or services;
- Master's in other public health discipline and three years' experience in health programs/services;
- Master's in public administration and two years' experience in health programs/services;
- Master's in field related to public health and three years' experience in health programs/services; or
- Bachelor's in public health administration or public administration and three years' experience in health programs/services.



# Local health director powers and duties

## G.S. 130A-41 (LHD powers & duties)

- Administer public health programs
- Hire/dismiss employees
- Enforce local public health rules
- Investigate & control communicable diseases
- Isolation & quarantine authority
- Enforce immunization laws
- Investigate & control rabies
- Abate public health nuisances & imminent hazards
- Disseminate public health information and promote health
- Advise local officials
- Enter contracts (subject to local limitations)

## Elsewhere in G.S. 130A

- Rabies vaccination clinic
- Embargo authority
- Access to records
- Etc.

## Elsewhere in G.S.

- Approve jail medical plan
- Relocation of graves
- Etc.

## Regulations and other

- Compliance, budget, etc.



# Public Health Remedies

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# Public Health Remedies

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**Injunction**

**Public health  
nuisance**

**Imminent hazard**

**Embargo**

**Administrative  
penalties**

**Permit actions**

**Misdemeanor  
charge**

**Infraction  
(smoking only)**



# Public health remedies that are (almost) all-purpose

## Injunction (civil) – G.S. 130A-18

- What it is: A court order that compels someone to do something, or refrain from doing something. TRO, preliminary injunction, permanent injunction.
- When it can be used: When a person violates a NC public health statute or rule, or a local board of health rule.
- How to use this remedy:
  - Determine and document the violation
  - Work with attorney to determine if injunctive relief is appropriate and what evidence needs to be assembled
  - Attorney files the action in Superior Court

## Misdemeanor charge (criminal) – G.S. 130A-25

- What it is: A criminal charge. Public health law violations are charged as class 1 misdemeanors.
- When it can be used: When a person violates any NC public health statute or rule except those pertaining to smoking in public places.
- How to use this remedy:
  - Determine and document the violation
  - Consult with attorneys (assistant DA, department)
  - Initiate charge with magistrate in county where violation occurred
  - Magistrate issues criminal summons (arrest warrant possible but less likely)
  - Prepare for trial in District Court

# Public health remedies for dangerous conditions on property

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## Public Health Nuisance Order – G.S. 130A-19

- What it is: An order directing a property owner or other person in charge of property to abate a public health nuisance.
- When it can be used: When a condition on property substantially and unreasonably interferes with the public health.
- How to use this remedy:
  - Determine and document conditions creating a public health nuisance
  - Local health director issues abatement order
  - If violator does not comply, local health director may work with attorney to enforce the abatement order in Superior Court

## Imminent Hazard Order – G.S. 130A-20

- What it is: An order directing a property owner or other person in charge of property to abate an imminent hazard.
- When it can be used: When a condition on property is an imminent hazard, which is defined as a situation that is likely to cause any of the following:
  - Immediate threat to human life, or
  - Immediate threat of serious physical injury, or
  - Immediate threat of serious adverse health effects, or
  - Serious risk of irreparable damage to the environment.
- How to use this remedy:
  - Determine and document existence of imminent hazard
  - Local health director may choose: order person in charge of property to abate the imminent hazard, *or* directly abate the imminent hazard

## Discussion Questions

Do these situations on property constitute:

- An imminent hazard?
- A public health nuisance?
- Both?
- Neither?

Is the health department *allowed* to do anything about these conditions?

In your opinion, *should* the health department do anything?





*Image source: pixabay.com*



*Image source: pexels.com*

# Imminent hazard orders and the pandemic

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Imminent hazard authority was used in different ways at different times:

- To close restaurants and bars in spring 2020
- To cancel events that exceeded statewide gathering limits
- To order public places to require customers/guests to wear masks indoors

A provision in the 2021 state budget limited or prevented some of these uses of imminent hazard authority beginning in 2023 (see S.L. 2021-180, sec. 19E.6)

# Changes to G.S. 130A-20 (S.L. 2021-180, sec. 19E.6, effective 1/1/23)

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## **Local imminent hazards**

- Local health director may order abatement of an imminent hazard on a “specific identified” property.

## **Statewide imminent hazards (*statewide* means 2/3 or more of counties)**

- State Secretary of Health & Human Services may determine that a class or category of properties constitutes a statewide imminent hazard and order owners, operators, or other persons in control of such properties to abate the hazard for a period of up to 7 days.
- Secretary’s order valid for up to 7 days; may be extended for up to 30 days at a time with notice to Governor and concurrence of Council of State.

## **Secretary of Environmental Quality’s imminent hazard authority**

- State Secretary of Environmental Quality may use imminent hazard authority to enforce the provisions of Ch. 130A Art. 9 (Solid Waste Management) and Art. 10 (NC Drinking Water Act) in accordance with the provisions that apply to the HHS Secretary’s authority.

# Public health remedies with narrower or more limited application

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## Administrative penalties

- A monetary fine that may be imposed locally only for violations of local on-site wastewater rules, or for state or local smoking law violations.

## Permit actions

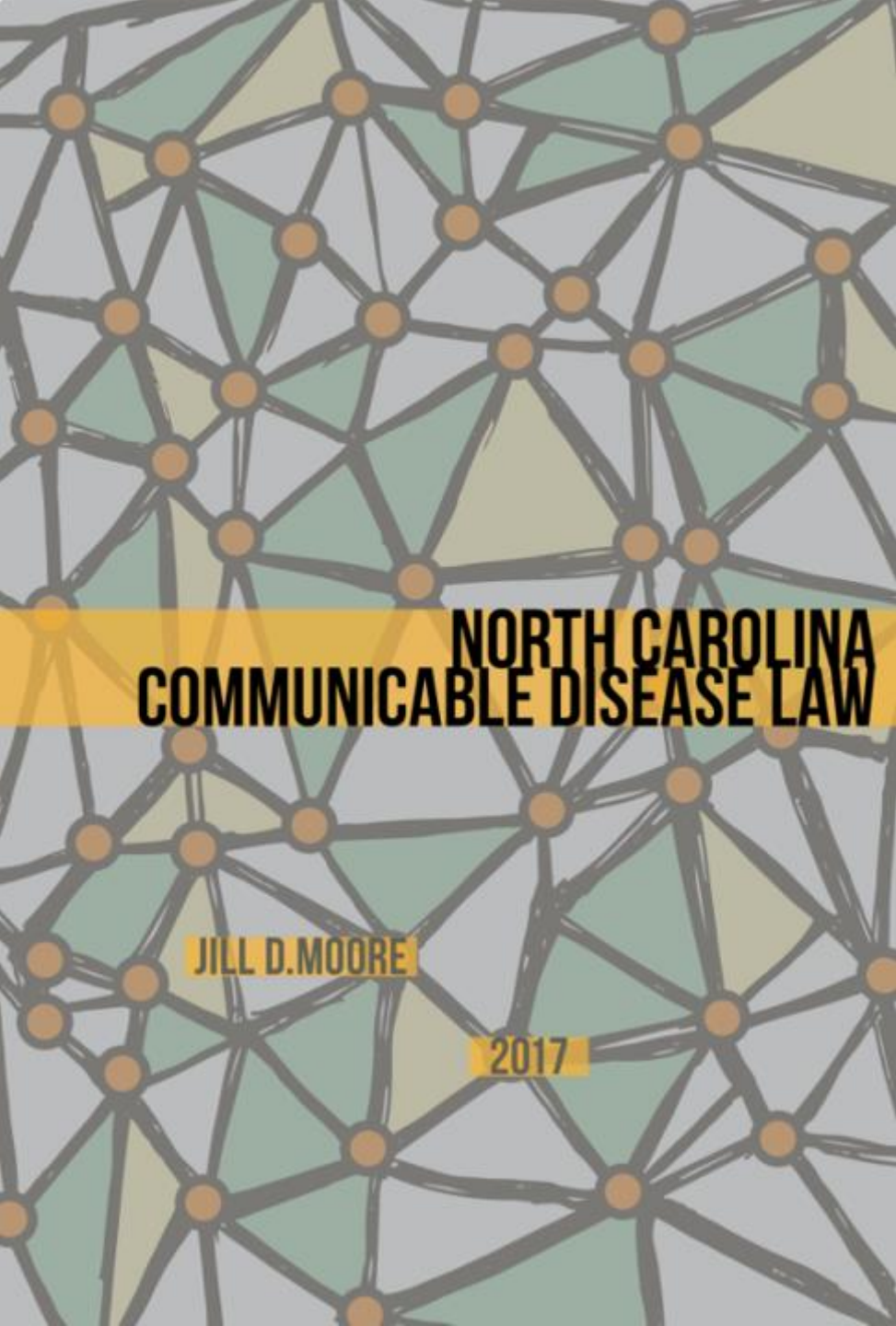
- Procedure for suspending or revoking a permit

## Embargo

- An order to detain food or drink that is adulterated or misbranded

## Infraction (smoking only)

- A citation that may be issued to an individual who continues smoking in violation of smoking laws



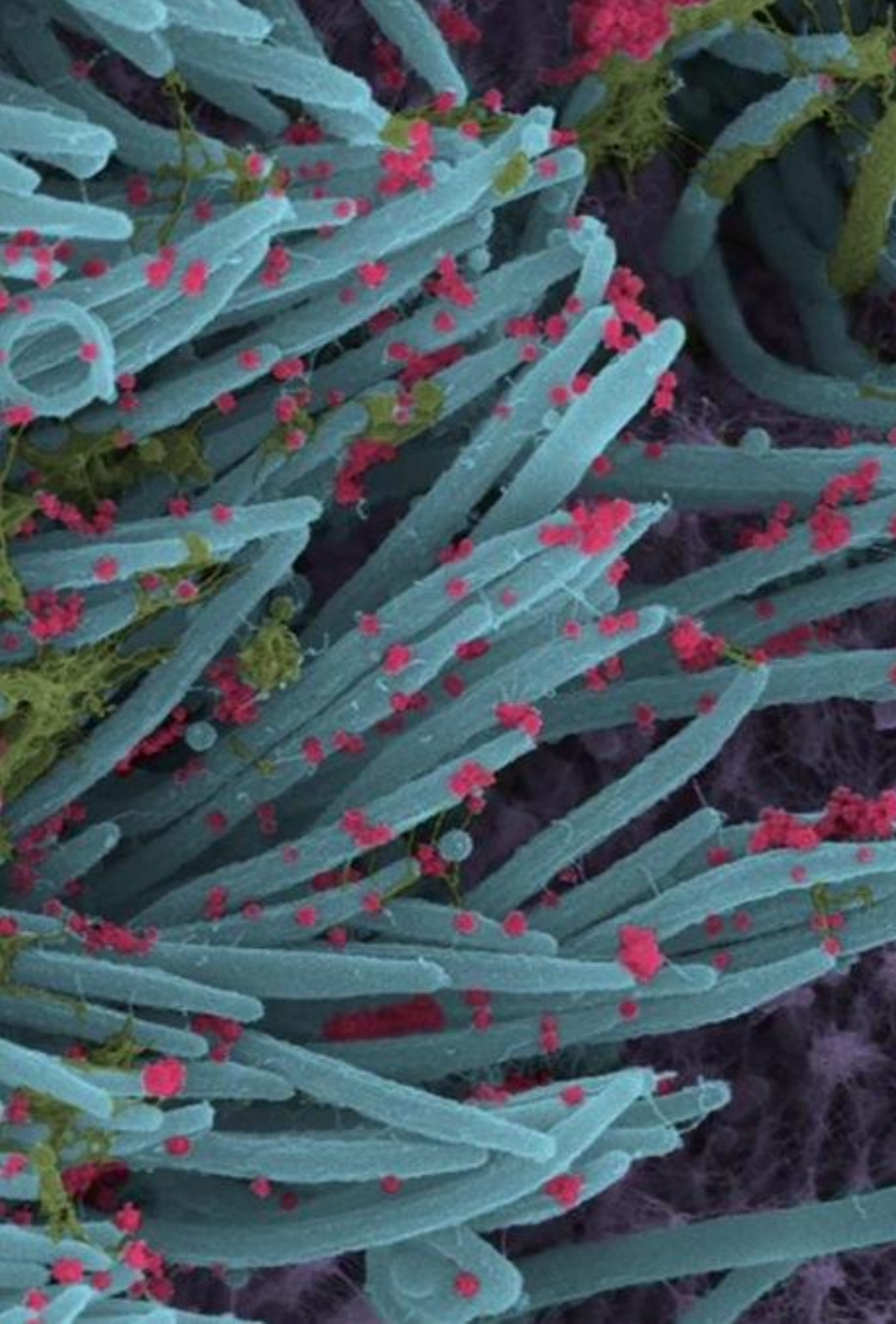
**NORTH CAROLINA  
COMMUNICABLE DISEASE LAW**

JILL D. MOORE

2017

# NC Communicable Disease Law

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# Communicable Disease Control Measures

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G.S. 130A-144(f) requires all persons to comply with control measures

G.S. 130A-144(g) authorizes the Commission for Public Health to adopt rules prescribing control measures

10A NCAC 41A. 0201 is the primary rule that applies to diseases for which control measures have not previously been established

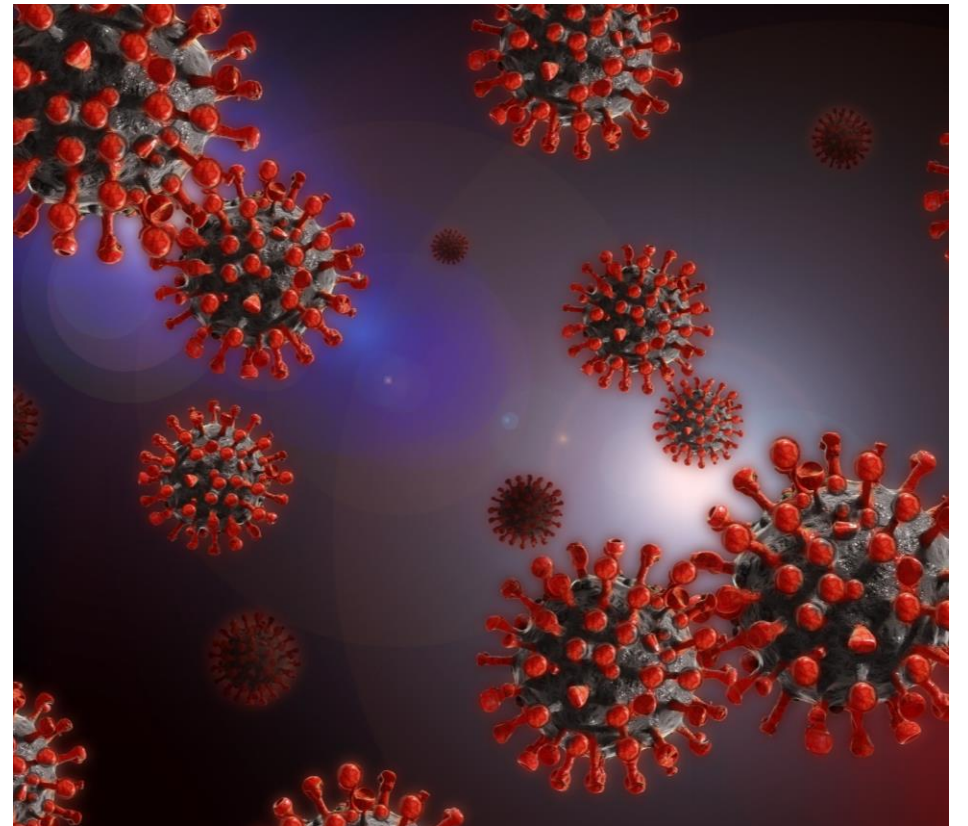
- Incorporates by reference control measures specified in CDC guidelines & recommended actions
- Sets out principles that must be used in applying control measures



# Control Measures: Emerging Diseases

## Challenges:

- Interpretation and implementation of CDC guidelines and recommended actions
- Evolution of control measures as understanding of the disease develops



# Public health actions to control communicable disease: Requirements versus recommendations

## Examples of public health requirements

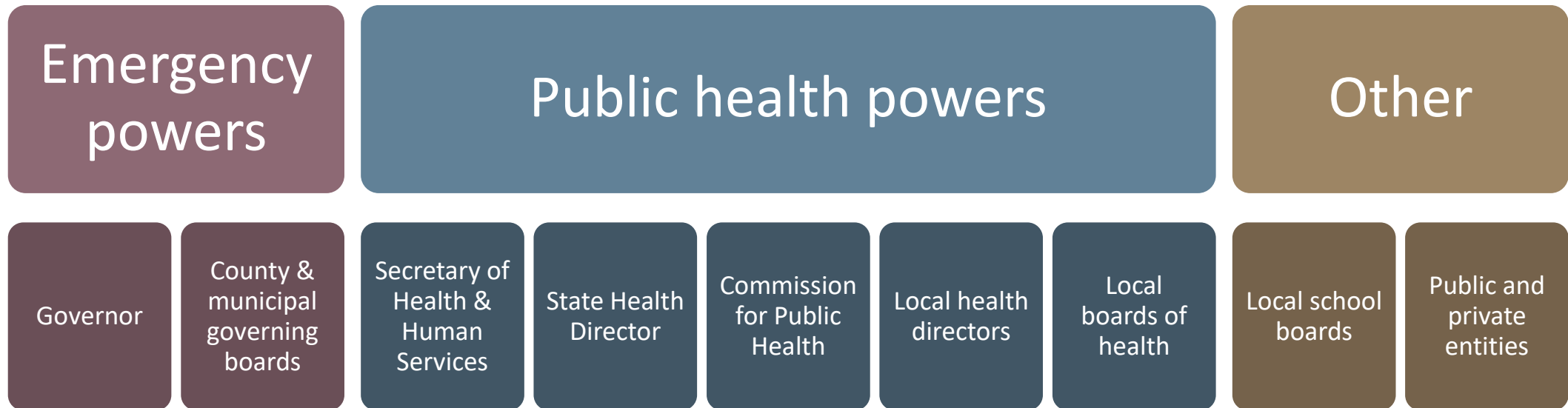
- Isolation or quarantine orders
- Imminent hazard abatement orders
- Other control measures that are specified in the NC communicable disease rules, or derived from CDC guidelines & recommended actions, or devised based on criteria in state rule

## Examples of public health recommendations

- Avoiding contact with others when ill
- Annual flu and updated covid vaccinations
- Hand hygiene, optional use of personal protective equipment

# Who takes which legal actions in a communicable disease emergency under current law?

Legislative framework: The NC General Assembly adopts the laws that establish the scope of legal authority for all actions



# Isolation & Quarantine: Definitions

(G.S. 130A-2)

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## Isolation (infected)

- Limit on freedom of movement or freedom of action of a person infected or suspected to be infected

## Quarantine (exposed)

- Limit on freedom of movement or freedom of action of a person exposed or suspected of being exposed
- Limit on access to an area contaminated with infectious agent
- Limit on freedom of movement or action of an unimmunized person when immunizations required to control outbreak

HEALTH DEPARTMENT LETTERHEAD

**COVID-19 (Coronavirus Disease 2019) ISOLATION ORDER**

COVID-19 is a respiratory virus that can cause illness including fever, cough, shortness of breath, chills, muscle pain, sore throat, new loss of taste or smell, or other symptoms listed here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>. In some patients COVID-19 causes severe illness and death. It is passed from person to person, including by coughing or sneezing. On January 30, 2020, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020 the U.S. Department of Health and Human Services declared a public health emergency in the United States for COVID-19. On March 10, 2020, Governor Cooper declared a state of emergency in North Carolina due to COVID-19. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 13, 2020 the President of the United States declared that the COVID-19 pandemic in the United States constitutes a national emergency. The primary mode of transmission of COVID-19 in the community is from person-to-person. Preventing the spread of COVID-19 is critical to protecting the public's health. The further spread of COVID-19 in the community could have severe public health consequences.

You have been diagnosed or are reasonably suspected to be infected with the virus that causes COVID-19. Your infection requires public health restrictions under this order to prevent further spread of infection. You must comply with this order until you meet the requirements for discontinuation of isolation, outlined below, that indicate you are no longer at risk for spreading the virus to others.

I, \_\_\_\_\_ (name), Health Director of \_\_\_\_\_ Local Health Department, pursuant to authority vested in me by North Carolina General Statute (G.S.) 130A-145, issue this isolation order to \_\_\_\_\_ (Person's name) (Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_).

**REQUIREMENTS OF THIS ORDER**

Restrictions of Movement:

Remain at (address) \_\_\_\_\_ until the following conditions for discontinuation of isolation are met, as provided in guidance from the Centers for Disease Control and Prevention (available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>): At least 3 days (72 hours) have passed since recovery, defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath);

AND EITHER:

1. At least 10 days have passed since symptoms first appeared; OR
2. You have received two negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from two consecutive respiratory specimens collected ≥24 hours apart.

If you plan to move to a new address or leave the county, you are required to obtain approval from the \_\_\_\_\_ Local Health Department at ( ) \_\_\_\_\_.

Required Actions:

Contact the health department immediately if you develop new or worsening symptoms like fever, cough, or shortness of breath.

If medical evaluation is needed, seek medical care. Before seeking medical care, call ahead and get instructions from the provider before arriving at the medical office, clinic or hospital. If EMS transport indicated, it should occur with pre-notification to Emergency Medical Services (EMS) and with all recommended infection control precautions in place. Next notify the \_\_\_\_\_ Local Health Department at ( ) \_\_\_\_\_.

If a medical emergency arises and you need to call 911, inform the First Responders that you have or are suspected of having COVID-19. Next notify the \_\_\_\_\_ Local Health Department at ( ) \_\_\_\_\_.

Adhere to all guidance from the Center for Disease Control and Prevention for persons with suspected or confirmed COVID-19 that is provided with this isolation order and found at: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/10Things.pdf> and <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>.

Keep a log of visitors to your home using the form provided. Notify any visitors to your home of your isolation status.

Other requirements: \_\_\_\_\_

# Isolation & Quarantine: Orders (G.S. 130A-145)

Who may order: Local health director or State Health Director

When order is authorized: when and so long as public health is endangered, all other reasonable means for correcting the problem exhausted, and no less restrictive alternative exists

Time limit on orders limiting freedom of movement: 30 calendar days maximum. If longer period needed to protect public health, health director must institute action in Superior Court seeking extension.

Person subject to order limiting freedom of movement may seek court review by instituting action in Superior Court:

- Hearing within 72 hours (excluding Saturday & Sunday)
- Person entitled to appointed counsel if indigent
- Court shall reduce or terminate unless it determines by preponderance of evidence that limitation is reasonably necessary to prevent or limit spread of disease

# Amendments to G.S. 130A-145 (S.L. 2021-180, sec. 19E.6, effective 1/1/23)



Image source: pexels.com

**State Health Director** (but not local health directors) may order isolation or quarantine for a ***class or category of persons*** for up to **7 days**, upon a determination that it is necessary for public health.

Period of isolation/quarantine for a class or category of persons may be extended for up to **30 days** at a time.

Method for extending order depends on whether order applies ***statewide***, defined as involving 2/3 or more of counties:

**Statewide** orders:

- State Health Director must notify Governor,
- Governor must obtain concurrence of Council of State, and
- Superior Court must approve the extension.

Orders that apply **less than statewide**: State Health Director may institute an action in Superior Court for approval of the extension.



Image source: commons.wikimedia.org

# The board of health & the health director

# Powers and duties of a board of health (BOH)



Image source: commons.wikimedia.org

- Appoint the local health director (unless the agency is a consolidated human services agency)
- Adopt local public health rules, AKA board of health rules
- Adjudicate disputes regarding local public health rules
- Impose local public health fees
- Make policy for local public health agency
- Satisfy state accreditation requirements for BOHs



# Who has which legal authorities? Example of COVID-19 response

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## Local health director

- Isolation or quarantine orders
- Investigate and control communicable disease
- Administer public health programs
- Enforce public health laws & rules
- Abate imminent hazards
- Disseminate public health information and promote health
- Advise local officials

## Local board of health

- Rulemaking for the general public
- Policy-making for the health department



Questions?