

## **Enforcing the Communicable Disease Laws**

### **Enforcement Options**

1. Civil enforcement – GS 130A-18 authorizes a local health director to ask a superior court judge to order a person to comply with communicable disease control measures. A person who fails to comply with the court's order could be held in contempt of court.
2. Criminal enforcement – GS 130A-25 makes any violation of the public health laws and rules a criminal misdemeanor. A person who fails to follow communicable disease control measures violates GS 130A-144(f), which requires all persons to comply with control measures, and also whichever state rule establishes the particular control measure. (For example, a person who fails to comply with HIV control measures violates 10A NCAC 41A.0202, a person who fails to comply with TB control measures violates 10A NCAC 41A.0205, etc.)

### **How to Use the Criminal Enforcement Option: A Step-by-Step Guide**

1. Go to the magistrate.
2. Show the magistrate the law. Do not assume the magistrate will be familiar with it—they probably will not be. Specifically, show the magistrate:
  - a. GS 130A-25, which says that a violation of the public health laws and rules is a misdemeanor,
  - b. GS 130A-144(f), which requires all persons to comply with communicable disease control measures, and
  - c. The specific control measure that the person violated (this will be in the communicable disease rules—Title 10A of the NC Administrative Code, Subchapter 41A).
3. Show the magistrate the isolation order and GS 130A-145 (the law that authorizes the health director to issue the isolation order).
4. Tell the magistrate whatever you need to tell him or her to support your assertion that the person has violated control measures. It is not a violation of confidentiality laws to give the magistrate whatever information is necessary to enforce the communicable disease control laws (see GS 130A-143(6)).
  - a. Although you are allowed to disclose communicable disease information for this purpose, be aware that the information is still protected by GS 130A-143. Both public health staff and the magistrate are required not to release the information except as that law allows.

5. The magistrate issues an arrest warrant or a criminal summons. The magistrate must specify which law was violated. They should put GS 130A-25 and GS 130A-144(f).
  - a. Warrants pose a tricky issue for public health staff who want to protect confidentiality. A warrant has to be specific enough to give the person adequate notice of which law they've violated. The magistrate may not think GS 130A-144(f) is specific enough—they may want to specify which control measure was violated. But if the specific rule violation is put in the warrant, the person's communicable disease or condition might be revealed. It is not a violation of confidentiality laws to identify the communicable disease or condition in the warrant, but it is important to think of confidentiality as a control measure and not disclose sensitive information when you don't have to.
  - b. If the magistrate wants to cite more than just the statute, perhaps he or she would be willing to cite just 10A NCAC 41A.0200 (which refers to control measures in general without reference to a specific disease or condition). However, it is ultimately up to the magistrate to decide how much detail to put in the warrant.
6. Work with the DA to assemble evidence.

### How to Use the Civil Enforcement Option: A Step-by-Step Guide

1. Go to your county attorney.
2. Unless you have already shared it with your county attorney, show the county attorney the law. Do not assume the county attorney will be familiar with it—they probably will not be unless they have handled other communicable disease violations for you. Specifically, show the county attorney:
  - a. GS 130A-18, which says that a local health director can ask the judge to order a person to comply with control measures or an isolation or quarantine order,
  - b. GS 130A-144(f), which requires all persons to comply with communicable disease control measures, and
  - c. The specific control measure the person has not complied with (this will be in the communicable disease rules—Title 10A of the NC Administrative Code, Subchapter 41A).
    - i. For example, failure to notify sex partners of HIV+ status violates 10A NCAC 41A.0202; failure to complete medication regimen for tuberculosis violates 10A NCAC 41A.0205, etc.
3. If an isolation or quarantine order has been issued, show the county attorney the order and GS 130A-145 (the law that authorizes the health director to issue the isolation or quarantine order).

- a. When possible, show the isolation or quarantine order to the county attorney before it is issued to ensure that all essential elements for enforcement are contained in the order.
4. Tell the county attorney, as succinctly as possible, all the information you have about the case—including any information that you feel may hurt your case. **DON'T MAKE YOUR ATTORNEY FIND OUT THE PROBLEMS WITH YOUR CASE FOR THE FIRST TIME WHEN YOU ARE BEING CROSS-EXAMINED ON THE WITNESS STAND.** Your communications with your attorney are privileged and are not usually subject to disclosure. It is not a breach of confidentiality to discuss matters concerning enforcement of the communicable disease laws with your attorney and it is not a violation of GS 130A-143.
  - a. Although you are allowed to disclose communicable disease information for this purpose, be aware that the information is still protected by GS 130A-143. Both public health staff and the county attorney are required not to release the information except as that law allows.
5. The county attorney will prepare a “complaint” (this is the legal term for the document used to start a case). Civil complaints are usually much broader than criminal indictments but they still must specify how the person committed some wrong. The county attorney should therefore specify which law or rule was violated. They should always put GS 130A-18 and GS 130A-144(f), and, if an isolation or quarantine order was issued, GS 130A-145. They also should cite the specific rule or rules (remember the control measures are in the rules) and the most important violations of control measures. The county attorney will need you to explain how the rule or law was violated, and the consequences to public health if the law is not enforced.
  - a. Complaints pose a tricky issue for public health staff who want to protect confidentiality but still need to be sure the laws are enforced (see comments above in 5.a. under criminal enforcement). But unlike a criminal warrant or indictment that requires greater specificity, a broader statement of the violation that does not directly identify the disease should be easier in a civil complaint. A cite to violations of GS 130A-144 or GS 130A-145 and 10A NCAC 41A.0200 (which refers to control measures in general without reference to a specific disease or condition) should be sufficient. However, the county attorney may suggest putting more information in the complaint depending on the particular judge in the case.
6. Depending on how urgent the circumstances are requiring enforcement, the county attorney will probably also file a motion for a temporary restraining order (TRO).
  - a. A TRO allows the county attorney to go directly to a superior court judge and ask him to issue an order requiring compliance, even if the other party is not present at the TRO hearing. This is called an *ex parte* proceeding. It should only be used for truly critical cases where there is no time to lose and the danger to the public health is great (for example, a patient with active TB is getting ready to get on a bus full of people on a cross-country

- trip, or a person suspected of being exposed to SARS is refusing to stay in quarantine).
- i. Although a TRO hearing can be done *ex parte*, be aware that in many cases the judge still wants the other side to have an opportunity to be heard, even if it's only on one or two hours' notice.
  - b. At the TRO hearing, the judge has a great deal of discretion on what level of evidence is required. The county attorney will probably attach affidavits or statements sworn under oath to the judge with the motion for a TRO, and the judge may find those sufficient to issue the TRO. Or, the judge may decide to take limited testimony from the main witnesses on one or both sides. The judge can also require, or on request from a party allow, testimony from multiple witnesses in a proceeding very similar to a full-blown trial. The county attorney can best prepare you for what level of evidence the judge wants.
  - c. Even if the judge allows your TRO, that doesn't necessarily mean the judge is going to rule in your favor on the ultimate issue. It just means the judge thinks there's enough evidence to make sure nothing happens between the time of the TRO and the time of the preliminary injunction hearing (see next step) that would make it impossible or very difficult to gain compliance later (for example, the judge thinks there's enough evidence that the person may leave town, or enter the general population and expose multiple people to disease).
  - d. The TRO will require compliance with the control measures, statutes, or isolation or quarantine order during the 10 days or until the hearing and a decision, whichever is less. The TRO will then expire unless a preliminary injunction is ordered.
7. The TRO only lasts for a maximum of 10 days from the date it is issued, and then the court must hold a preliminary injunction (PI) hearing.
- a. In practice, the court often will hold the PI hearing in less than 10 days, and sometimes in as little as 1 or 2 days, unless both sides agree that it can be held later.
  - b. If the judge rules in the health department's favor, the PI will remain in effect until a hearing on the case on the merits, which could be months or even years later. Often, especially for health law violations, if a TRO and PI are issued in favor of the local health department, the person will comply and the case will be dropped before a hearing on the merits would ever occur. A TRO or PI might also be lifted by the judge if the condition posting the health threat resolves itself (for example, if the incubation period for disease passes without the person developing symptoms; or a person gets a required test; or a person completes a full course of treatment; etc.).
8. Work with the county attorney to assemble evidence and develop a plan.
- a. The county attorney will need to provide sufficient evidence to prove that the person has violated control measures. You will need to provide

documentation, staff that can testify to direct knowledge of violations, partners or other persons who can testify to direct knowledge of violations, test results, lab cultures, x-rays, expert witnesses, copies of notes documenting that control measures were given, isolation orders, notes about follow-up visits, appointment schedules showing missed appointments, etc.

- b. The person who issued the order, usually the local health director, also needs to be available to the judge when the judge is considering the evidence.
  - c. Know what you want the judge to do about the control measure violation. Do you want the person to be tested? Ordered to show up at the health department to take medications? Do you want them to stay at home and stay away from work until the period of communicability passes? Do you want them to be ordered to name their contacts? Do you want the judge to make it clear that they are going to go to jail for contempt if they disobey the judge's order and give them a deadline for compliance? You and the county attorney need to have a plan for what you want the judge to do or the judge may do nothing.
9. The county attorney is crucial to a TRO or PI because they know the judges in the jurisdiction and this is one of the few times when an attorney has some chance to pick the judge to hear the case. The attorney is stuck with the superior court hearing cases, but can choose a judge to go to for a TRO who they believe is more likely to rule for the local health department.
10. Make sure the county attorney files the case in SUPERIOR COURT, NOT district court! The statute specifically says you must go to superior court. A district court order would probably be invalid. Some county attorneys spend most of their time in district court and might miss this point, so please point this out to them.
11. Tell your county attorney to feel free to call one of us for help, advice, forms, or just consolation when frustrated by the process.