

MAHBB

Assisting Massachusetts Boards of Health through
training, technical assistance and legal education



MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS COVID-19 Legal Authority of Local Boards of Health to Issue Isolation and Quarantine Orders 4.2.2020

Public health professionals, especially local health departments and boards of health, are facing many questions from local public officials, residents, parents, health care providers, and others about COVID-19. MAHB's series of documents are meant to provide answers and guidance to health departments, boards of health and others. **This document is provided *for educational purposes only* and is not to be construed as legal advice. For legal advice, please contact your city or town attorney.**

QUESTION: What legal authority do Boards of Health have to issue isolation and quarantine?

ANSWER: The authority of a board of health to respond to public health emergencies is embedded in many different state laws and regulations. The Massachusetts Supreme Judicial Court has made it clear that “[t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means.” Druzik vs. Bd. of Health of Haverhill, 324 Mass. 129, 139 (1949) (citing Lawrence v. Bd of Registration on Med., 239 Mass. 424, 428 (1921)).

Local boards of health are on the front line of preventing the spread of infectious diseases like COVID-19 and many of the powers given to local boards of health to prevent the spread of infectious diseases are contained in Mass. Gen. Laws ch. 111, §§ 95-105. For instance, Section 95 permits boards of health to issue orders requiring that any infected person be isolated, and that any person exposed to an infected person be

quarantined. This broad power is not without limitations, however. The board must act in a reasonable fashion that balances the interests of the individual with the interests of the general public. See Jacobson v. Massachusetts, 197 U.S. 11, 27-30 (1905).

Per MDPH regulations, Isolation means “separation, for the period of communicability, of infected persons from others in such places and under such conditions as will prevent the direct or indirect transmission of an infectious agent to susceptible people or to those who may spread the agent to others.” Quarantine means “restricting the freedom of movement of well persons . . . who have been exposed to a communicable disease for a period of time relating to the usual incubation period of the disease, in order to prevent effective contact with those not so exposed.”¹ Both strategies are designed to prevent the spread of this infectious disease.

Massachusetts law requires that isolation and quarantine orders be issued in the “least restrictive setting.”² Boards must first attempt to educate the affected person to secure voluntary isolation or quarantine.³ When this is successful, there is no need for a written or oral order.⁴ Generally, voluntary self-quarantine or self-isolation results in a confinement to the person’s residence.

In the rare case that a person refuses to self-isolate or self-quarantine, the board can issue a written order. The order must include the identity of the person subject to isolation or quarantine, the date and time that isolation or quarantine begins and the duration of the period it remains in effect, the reason for the isolation or quarantine, the place of the isolation or quarantine, any special instructions, the legal authority under which the order is issued; and notice that the person can appeal the order by contacting the board of health with the board’s contact information included in the order.⁵ If the affected person violates the order, DPH and/or the local board of health may apply to a Superior Court judge for an order to enforce the isolation or quarantine.⁶

¹ 105 CMR 300.020.

² 105 CMR 300.210(B)(2).

³ 105 CMR 300.210(B)(1)(a).

⁴ 105 CMR 300.210(B)(1)(b).

⁵ 105 CMR 300.210(D)(1).

⁶ 105 CMR 300.201(G)(2).

It is crucial in situations like the current COVID-19 pandemic that boards of health, public safety departments, and the public at-large work together to assure coordination and cooperation. The Department of Public Health (DPH) and the Center for Disease Control and Prevention (CDC) have helpful guidance on their websites.

Discontinuance of Home Isolation

The CDC provides excellent guidance for determining when isolation and quarantine can be lifted. Persons with COVID-19 may discontinue home isolation when at least 72 hours have passed since recovery (resolution of fever without the use of fever-reducing medication) and improvement in respiratory symptoms; and at least 7 days have passed since symptoms first appeared. Persons may also discontinue isolation or quarantine after receiving a negative result from a test with one nasopharyngeal swab specimen (NP swab).⁷ The board of health will monitor a person's condition and will rescind the order or the self-isolation when either of these recovery scenarios occur.

Discontinuance of Home Quarantine

A person exposed to an infected individual, but who has no symptoms, needs to be quarantined for 14 days. If the person does not become ill during the 14-day period, the person may discontinue quarantine. Again, the local board of health will monitor the person's condition and will rescind the order or the self-quarantine when this occurs.

Discontinuance of Patients in Healthcare Settings

COVID-19 patients can be discharged from a hospital whenever "clinically indicated."⁸ The treating physician will make this determination. A test-based strategy is no longer required, but if done, only one NP swab is necessary at each sampling performed at least 24 hours apart. While not required, a test-based strategy is recommended by the CDC for persons hospitalized and those returning to a long-term or assisted-living facility. The hospital should be coordinating with local and state public health authorities.

⁷ Centers for Disease Control and Prevention, Discontinuation of Home Isolation for Persons with COVID-19 (Interim Guidance), available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>.

⁸ Centers for Disease Control and Prevention, Discontinuation of Transmission-Based Precautions and Disposition of Patients with COVID-19 in Healthcare Settings (Interim Guidance), available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-hospitalized-patients.html>.

City and town attorneys are solely responsible for providing legal advice to their clients and MAHB urges boards of health and other municipal officials to consult with them prior to issuing any emergency orders.

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