

# CONTROL MEASURES AND PUBLIC HEALTH EMERGENCIES

A TEXAS BENCH BOOK

**Sec. 81.085. AREA QUARANTINE; CRIMINAL PENALTY.** (a) If an outbreak of a communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. The commissioner may impose an area quarantine, if the commissioner has reasonable cause to believe that persons or property in the area may be infected or contaminated with a communicable disease during the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with the department. A health authority that imposes an area quarantine shall give written notice to the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.

The department may impose additional disease control measures in a quarantine area that considers necessary and most appropriate to arrest, control, and prevent the spread of the disease. Absent preemptive action by the department under Chapter 418, Government Code (Texas Disaster Act), the department may impose measures in a quarantine area under the authority's jurisdiction if the health authority considers necessary and most appropriate to prevent a threat to the public health.

The department may impose measures in a quarantine area in an adjacent jurisdiction if the health authority considers necessary and most appropriate officials or

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# **CONTROL MEASURES AND PUBLIC HEALTH EMERGENCIES**

**A TEXAS BENCH BOOK**

Leah R. Fowler, Editor

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## **PURPOSE**

The purpose of this bench book is to serve as a guide for judges who evaluate public health control measures and public health authorities who implement such control measures, such as quarantine and isolation, particularly during a public health emergency. This area of the law is in sufficient flux that the statutes cited and principles stated in this bench book should not be considered definitive at a later date but can be used as a basis from which to further research and understand this area of law.

## **DISCLAIMER**

Viewpoints reflected in this publication do not represent any official policy or position of the University of Houston, the University of Houston Law Center, the University of Houston Health Law & Policy Institute, or the Department of State Health Services.



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# CHAPTER 1

## INTRODUCTION

Since the terrorist attacks of September 11, 2001, and the subsequent anthrax bioterrorism attacks, public health emergency law has experienced significant reforms in efforts to better prepare for and respond to a variety of public health emergency threats. Texas has experienced several public health emergency threats in recent years, some of which necessitated the implementation of control measures such as quarantine and isolation. The law is continually evolving in this area as we respond to and learn from new threats, including infectious diseases (e.g., COVID-2019, SARS, Ebola Virus Disease, and Zika Virus Disease), natural disasters (e.g., Hurricane Ike, Hurricane Harvey, and Tropical Storm Imelda), and man-made emergencies (e.g., Texas City oil refinery explosion, Deepwater Horizon oil rig explosion, and the West fertilizer plant explosion).

The Texas Constitution contains an open courts provision which ensures every person has access to the justice system and a day in court.<sup>1</sup> The possible disruption of this vital aspect of our society during an acute public health emergency, such as a major hurricane, or a protracted public health emergency, such as pandemic influenza, led to the creation of this bench book and the forms included in its appendices. The purpose of this book is to lay out briefly which laws govern during a public health emergency and what role the courts play in ensuring the critical balance between the government’s duty to protect the public’s health and an individual’s legally protected rights.

While laws regarding quarantine and isolation of individuals, property, and carriers are included in this book, a massive disaster would likely require use of the provisions of the Texas Disaster Act and those on area quarantine. Under the Texas Disaster Act, the Governor may “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster.”<sup>2</sup> The Texas Disaster Act does not explicitly give the Governor any authority over the judicial branch or allow the closing of the courts.

### *A Note on Terminology*

The use of certain terms in this area of law can be confusing. “Control measures” are used to prevent the introduction, transmission, and spread of disease and are defined by a non-exclusive list which includes quarantine, isolation, restriction, detention, decontamination, disinfection, disinfestation, immunization, chemoprophylaxis, preventive therapy, prevention, and education.<sup>3</sup> Texas law does not contain definitions of “isolation” and “quarantine” that apply to the sections of law

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1 TEX. CONST. art. I § 13  
2 TEX. GOV. CODE § 418.016(a).  
3 See TEX. HEALTH & SAFETY CODE § 81.082(f).

discussed in this bench book.<sup>4</sup> The word “management” when referring to management of a person with a communicable disease is also undefined.<sup>5</sup>

In common speech and occasionally in the law, the terms isolation and quarantine are used interchangeably, but they have different meanings for clinicians. Historically, quarantine referred to detention under enforced isolation of those suspected of carrying a communicable disease, originating with a 30-day (*trentino*), then later 40-day (*quarantino*), isolation period popularized in 14th century European port cities. The term *quarantino* was derived from the Italian *quaranta giorni*, meaning forty days, the time within which it was believed people stricken with the plague would either die or recover and become noninfectious.<sup>6</sup> Quarantine, which applies to healthy individuals who may have been exposed to a communicable disease, is defined in federal regulations as the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease. Isolation, which applies to individuals already known to be infected, is defined in federal regulations as the separation of an individual or group reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease.<sup>7</sup>

These different uses of terminology can further complicate the intersection of public health and the law. Ensuring a shared understanding of these terms is key to effective public health law implementation.

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4 “Quarantine” and “quarantine period” with respect to infected animals are defined in TEX. HEALTH & SAFETY CODE § 826.002(9) and 25 TEX. ADMIN. CODE § 169.22(25) respectively, but there are no broader definitions.

5 See TEX. HEALTH & SAFETY CODE § 81.151.

6 Paul S. Sehdev, The Origin of Quarantine, 35 CLINICAL INFECTIOUS DISEASES 1071, 1072 (2002), doi: 10.1086/344062.

7 42 C.F.R. § 70.1.

## CHAPTER 2

# FEDERAL V. STATE JURISDICTION

### *Introduction*

States and, by delegation, local governments have the primary responsibility to protect the public's health. The federal government has a limited scope of authority with respect to public health as it is restricted to the enumerated powers in the U.S. Constitution. However, public health emergencies present a complicated intersection of authority between a state's constitutional duty to protect public health and the federal government's constitutional responsibility for national defense and regulation of interstate commerce.

### *Federal Government*

The federal government is authorized to exercise powers specifically enumerated in the U.S. Constitution, and all remaining powers are reserved to the states.<sup>8</sup> Two Constitutional provisions, the Commerce Clause and the Taxing and Spending Clause, permit the federal government to regulate certain public health activities. The Commerce Clause grants Congress the authority to regulate international and interstate commerce.<sup>9</sup> As applied to public health, the federal government has the authority to make laws and regulate in areas affecting international and interstate transmission of disease. The Taxing and Spending Clause grants Congress the authority to tax and spend for the general welfare and national defense.<sup>10</sup> It is through the taxing and spending power that the federal government is authorized to allocate funding and other resources to a state to assist with a state response to a public health emergency.

Federal public health powers are vested in the President of the United States, the Department of Health and Human Services (DHHS), and the Centers for Disease Control and Prevention (CDC). A key public health role of the President is to issue Executive Orders listing communicable diseases for which quarantine may be ordered to prevent the introduction, transmission, or spread of communicable diseases from foreign countries or between states.<sup>11</sup> The Secretary of Health and Human Services is authorized to make and enforce regulations to prevent the spread of disease within federal jurisdiction, including implementing such control measures as quarantine and isolation, inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals.<sup>12</sup> However, the Secretary may only implement quarantine or isolation measures related to communicable diseases so designated by Executive Order.<sup>13</sup> Currently, the following diseases are designated for federal quarantine action:

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8 U.S. CONST. art. I, § 8; U.S. CONST. amend. X.

9 U.S. CONST. art. I, § 8 cl. 3.

10 U.S. CONST. art. I, § 8, cl. 1.

11 42 U.S.C. § 264(b).

12 42 U.S.C. § 264.

13 42 U.S.C. § 264(b).

cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers, severe acute respiratory syndromes, and pandemic influenza.<sup>14</sup>

Federal law also authorizes the Secretary to care for and treat quarantined individuals and assist states and localities in enforcing their own quarantine orders. The Secretary may, in turn, request help from states and localities in enforcing federal quarantines.<sup>15</sup> Violation of a federal quarantine order carries fines of up to \$1,000, one year in jail, or both.<sup>16</sup>

## **Texas**

Through the police powers reserved to them by the 10th Amendment of the Constitution, states have the authority to protect the health, safety, morals, and general welfare of the people. The power to implement public health control measures, including quarantine and isolation, is a well-established exercise of state police power.<sup>17</sup>

In Texas, the Communicable Disease Prevention and Control Act defines the roles and responsibilities for public health control measures in both standard and emergency situations.<sup>18</sup> On the local level, the local health authority (LHA) has supervisory authority and control over the administration of communicable disease control measures within their jurisdiction unless specifically preempted by the state.<sup>19</sup> Rights and duties during public health emergencies are delegated between the Executive Commissioner of the Texas Health and Human Services Commission (HHSC), the Commissioner of the Texas Department of State Health Services (DSHS), and the LHA. Ensuring cooperation between these entities is essential to responding adequately to a public health emergency.

Under Texas law, LHAs are competent and reputable physicians licensed and residing in Texas<sup>20</sup> who serve for a term of two years (with no term limits)<sup>21</sup> to perform duties prescribed by law as necessary to implement and enforce laws to protect the public health and any duties prescribed by DSHS. The duties of an LHA include: establishing, maintaining, and enforcing quarantine in the LHA's jurisdiction; aiding DSHS with local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation within the LHA's jurisdiction; reporting the presence of contagious, infectious, and dangerous epidemic diseases in the jurisdiction to DSHS; reporting to DSHS on any subject on which it is proper for a report to DSHS to be made; and aiding DSHS in enforcing proper rules, requirements, ordinances, sanitation laws, quarantine rules, and vital statistics collection.<sup>22</sup> LHAs may be removed for cause.<sup>23</sup>

14 Exec. Order No. 13295, 68 Fed. Reg. 17255 (Apr. 4, 2003), as amended by Exec. Order No. 13375, 70 Fed. Reg. 17299 (Apr. 1, 2005) and Exec. Order No. 13674, 79 Fed. Reg. 45671 (July 31, 2014).

15 42 U.S.C. §§ 243, 249.

16 42 U.S.C. § 271.

17 See *Jacobson v. Massachusetts*, 197 U.S. 11 (1905); *Compagnie Française de Navigation à Vapeur v. State Board of Health, Louisiana*, 186 U.S. 380 (1902).

18 TEX. HEALTH & SAFETY CODE Chapter 81

19 TEX. HEALTH & SAFETY CODE § 81.082.

20 TEX. HEALTH & SAFETY CODE § 121.022.

21 TEX. HEALTH & SAFETY CODE § 121.023.

22 TEX. HEALTH & SAFETY CODE § 121.024.

23 TEX. HEALTH & SAFETY CODE § 121.025.

LHAs must be appointed in municipalities or counties with established local health departments<sup>24</sup> or public health districts<sup>25</sup> as well as in municipalities or counties receiving grants from DSHS for essential public health services.<sup>26</sup> In jurisdictions with a local health department or public health district, the local health department director<sup>27</sup> or public health district director,<sup>28</sup> as applicable, serves as the jurisdiction's LHA, provided the director is a physician. If the local health department director or public health district director is not a physician, the non-physician director shall appoint a physician as the LHA for the jurisdiction, subject to the approval of the DSHS and the appropriate oversight authority, i.e., either (a) the local health department municipal governing body or county commissioners court, as applicable,<sup>29</sup> or (b) the members of the public health district.<sup>30</sup> The governing body of the municipality or the commissioners court of a county may appoint an LHA if the jurisdiction does not have an organized local public health department or district.<sup>31</sup>

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24 TEX. HEALTH & SAFETY CODE § 121.033.

25 TEX. HEALTH & SAFETY CODE § 121.045.

26 TEX. HEALTH & SAFETY CODE § 121.028(b).

27 TEX. HEALTH & SAFETY CODE § 121.033(b).

28 TEX. HEALTH & SAFETY CODE § 121.045(b).

29 TEX. HEALTH & SAFETY CODE § 121.033(d).

30 TEX. HEALTH & SAFETY CODE § 121.045(d).

31 TEX. HEALTH & SAFETY CODE § 121.028(a).





# CHAPTER 3

## DISTRIBUTION OF EXECUTIVE BRANCH AUTHORITY IN TEXAS

The Governor, Department of State Health Services (DSHS), local health authorities (LHAs), and individual Texans hold various levels of authority and responsibility for actions regarding communicable diseases in Texas. The Texas Communicable Disease Prevention and Control Act (Chapter 81 of the Health & Safety Code), along with the Texas Disaster Act (Chapter 418 of the Government Code), specify these roles. This chapter will review the relevant statutes, organizing information according to the relevant people and entities involved.

### ***Statewide Authority***

#### *Disaster Declaration*

The Governor’s authority during a public health emergency is based on (1) the Texas Disaster Act, which allows for state and local declarations of a state of disaster;<sup>32</sup> and (2) the Texas State of Emergency Act, which allows the Governor to proclaim a state of emergency upon application of a locality.<sup>33</sup> The Governor may, by Executive Order or proclamation, declare a State of Disaster if a disaster has occurred or the occurrence or threat of a disaster is imminent.<sup>34</sup> Once a State of Disaster is declared, the preparedness and response aspects of the State Emergency Management Plan are activated.<sup>35</sup> During a State of Disaster, the Governor has the power to suspend laws relating to the normal order of state business and state agency provisions, orders, or rules.<sup>36</sup> The governor’s office shall compile and maintain a comprehensive list of regulatory statutes and rules that may require suspension.<sup>37</sup>

The Governor may recommend to localities the evacuation of all or part of the population from a stricken or threatened area in the state if necessary for the preservation of life or other disaster mitigation, response, or recovery.<sup>38</sup> If the Governor determines that a disaster can be adequately addressed without invoking all the powers and duties of a full State of Disaster declaration, the Governor may, by proclamation or Executive Order, issue a limited purpose disaster declaration which allows only for (1) the suspension of provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster; and (2) at the request of a political subdivision, the waiver or suspension of a deadline imposed by a statute or the orders or rules of a state agency on the political subdivision, if reasonably

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32 TEX. GOV. CODE ch. 418.  
33 TEX. GOV. CODE ch. 433.  
34 TEX. GOV. CODE § 418.014(a).  
35 TEX. GOV. CODE § 418.015(b).  
36 TEX. GOV. CODE § 418.016.  
37 TEX. GOV. CODE § 418.0155(a)  
38 TEX. GOV. CODE § 418.018.

necessary to cope with a disaster.<sup>39</sup> A State of Disaster declared by the Governor may not continue for more than 30 days unless renewed by the Governor. The Texas Legislature may terminate a State of Disaster by law at any time.<sup>40</sup>

The presiding officer of the governing body of a local political subdivision, such as a county or municipality, may declare a local state of disaster applicable to their jurisdiction.<sup>41</sup> A declaration of local disaster activates the appropriate recovery and rehabilitation aspects of all applicable local or interjurisdictional emergency management plans and authorizes the furnishing of aid and assistance under the declaration. The appropriate preparedness and response aspects of the plans are activated as provided in the plans and take effect immediately after the local state of disaster is declared.<sup>42</sup> The county judge or the mayor of a municipality may order the evacuation of all or part of the population from a stricken or threatened area under the jurisdiction and authority of the county judge or mayor if the county judge or mayor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery.<sup>43</sup> A local state of disaster may not be continued or renewed for more than seven days except with the consent of the governing body of the political subdivision.<sup>44</sup>

The Texas Division of Emergency Management (TDEM) is a component of the Texas A&M University System.<sup>45</sup> TDEM prepares and maintains the State Emergency Management Plan, assists in the development of local emergency management plans, and helps coordinate efforts between the federal, state, and local governments.<sup>46</sup>

Under the Texas Communicable Disease Prevention and Control Act, the Commissioner of the DSHS is responsible for statewide implementation and administration of communicable disease control measures in Texas.<sup>47</sup> Additionally, in times of public health disasters, the Commissioner may require reports regarding communicable diseases in addition to those already required by rule.<sup>48</sup> The Governor and the Commissioner may act together to declare a Public Health Disaster. A Public Health Disaster may be declared if both the Governor declares a State of Disaster and the Commissioner makes a determination that there is an immediate threat from a communicable disease that (1) poses a high risk of death or serious long-term disability to a large number of people, and (2) creates a substantial risk of public exposure to the disease's high level of contagion or the method by which the disease is transmitted.<sup>49</sup> A Public Health Disaster may continue for not more than 30 days and may be renewed once by the Commissioner for an additional 30 days.<sup>50</sup>

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39 TEX. GOV. CODE § 418.025.

40 TEX. GOV. CODE § 418.014(c).

41 TEX. GOV. CODE § 418.108(a).

42 TEX. GOV. CODE § 418.108(d).

43 TEX. GOV. CODE § 418.108(f).

44 TEX. GOV. CODE § 418.108(b).

45 TEX. GOV. CODE § 418.041(a).

46 TEX. GOV. CODE §§ 418.041-.044.

47 TEX. HEALTH & SAFETY CODE § 81.004.

48 TEX. HEALTH & SAFETY CODE § 81.041(f).

49 TEX. HEALTH & SAFETY CODE § 81.003(7).

50 TEX. HEALTH & SAFETY CODE § 81.082(d).

### *Reportable Diseases and Investigations*

DSHS defines which diseases are considered reportable diseases in Texas and maintains related registries.<sup>51</sup> If a patient (person or animal) has or is suspected of having a reportable disease, a report must be made to the LHA by one of the following individuals: physicians; dentists; veterinarians; local school authorities; or the person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facilities performing laboratory examinations.<sup>52</sup> Reports to the LHA or DSHS upon suspicion or knowledge of a reportable disease must be made by a professional registered nurse; an administrator or director of a public or private, temporary or permanent child-care facility; an administrator or director of a nursing home, personal care home, adult respite care center, or day activity and health services facility; an administrator of a home health agency; an administrator or health official of a public or private institution of higher education; an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet; a superintendent, manager, or health official of a public or private camp, home, or institution; a parent, guardian, or householder; a health professional, including a physician; an administrator or health official of a penal or correctional institution; emergency medical service personnel; a peace officer; or a firefighter.<sup>53</sup> LHAs must pass all reports along to DSHS.<sup>54</sup>

DSHS also has the authority to investigate cases of communicable diseases in the state and determine the status of any outbreaks. The LHA must cooperate with DSHS during these investigations.<sup>55</sup> An investigator for DSHS may take samples as needed for testing and must offer samples of the same materials to the owner of the material in question.<sup>56</sup> Corresponding to the right to take samples is the right of inspection and right of entry into non-residential areas for both DSHS and LHAs.<sup>57</sup>

### *Implementation of Control Measures*

An LHA has supervisory authority and control over the administration of communicable disease control measures within their jurisdiction. However DSHS may preempt an LHA with respect to the administration of control measures at the local level and may modify the control measures implemented by the LHA.<sup>58</sup> If necessary, DSHS may also return involuntarily hospitalized nonresidents to the custody of the relevant agency in their home state.<sup>59</sup>

.....  
51 TEX. HEALTH & SAFETY CODE § 81.041.

52 TEX. HEALTH & SAFETY CODE § 81.042(a)-(d). Detail of reporting requirement is found at 25 TEX. ADMIN. CODE § 97.2.

53 TEX. HEALTH & SAFETY CODE § 81.042(e).

54 TEX. HEALTH & SAFETY CODE § 81.043.

55 TEX. HEALTH & SAFETY CODE § 81.061.

56 TEX. HEALTH & SAFETY CODE § 81.063.

57 TEX. HEALTH & SAFETY CODE §§ 81.064-.065.

58 TEX. HEALTH & SAFETY CODE § 81.082; see page 9 for the definition of control measures and page 23 for a discussion on control measure implementation.

59 TEX. HEALTH & SAFETY CODE § 81.083(j).

DSHS has the authority, with reasonable cause to believe an individual has been exposed to or infected by a communicable disease, to order the person to submit to control measures.<sup>60</sup> The order must be written and delivered in person or via registered or certified mail and remains in effect until the individual is no longer infected or until expiration of the longest usual incubation period for the suspected disease.<sup>61</sup>

DSHS may order control measures for a group of five or more individuals who have been exposed or are suspected of having been exposed to a communicable disease. The order must be in writing and delivered personally or by certified or registered mail to each member of the group. If names and addresses for all group members are not known at the time of the order, DSHS must publish notice in the newspaper of general circulation in the impacted counties stating: DSHS has reasonable cause to believe that a group is ill with, has been exposed to, or is the carrier of a communicable disease; the suspected time and place of exposure; the orders from DSHS; instructions to an individual to provide information if the individual knows or reasonably suspects that the individual was at the place of the suspected exposure during the time at issue; that DSHS may make an application for court orders; and that a criminal penalty applies to an individual who is a member of the group and knowingly refuses to implement or allow the implementation of the ordered control measures.<sup>62</sup> A peace officer, including a sheriff or constable, may use reasonable force to secure the members of a group subject to a control measures order and prevent the members from leaving the group or other individuals from joining the group.<sup>63</sup>

#### *Potentially Infected or Contaminated Property*

DSHS may also impose control measures on property. DSHS may quarantine the property suspected of being infected or contaminated to allow medical or technical examination. Notice of the action must be delivered to the owner of the property either in person or via registered or certified mail. If the property in question is land, a notice on the land is also required. DSHS may, by written order, require the owner of the property to impose control measures as feasible. The quarantine must be removed and/or the property returned if it is found to be uncontaminated or after effective control measures. If there are no effective control measures, DSHS may require the owner to destroy non-land property or seal off or securely fence land or structures.<sup>64</sup> A peace officer, including a sheriff or constable, may use reasonable force to secure a property subject to a court order and prevent an individual from entering or leaving the property subject to the order.<sup>65</sup>

#### *Area Quarantines*

The DSHS Commissioner may establish an area quarantine if there is a communicable disease outbreak in the state. There must be reasonable cause to believe the individuals or property involved have been infected or contaminated. If needed to cover the impacted area, DSHS may enter into cooperative agreements with neighboring states to share information and coordinate control

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60 TEX. HEALTH & SAFETY CODE § 81.083(b).  
61 TEX. HEALTH & SAFETY CODE § 81.083(c)-(d).  
62 TEX. HEALTH & SAFETY CODE § 81.083(k)-(l).  
63 TEX. HEALTH & SAFETY CODE § 81.083(m).  
64 TEX. HEALTH & SAFETY CODE § 81.084.  
65 TEX. HEALTH & SAFETY CODE § 81.084(l).



measures. DSHS must publish notice of the area quarantine in a newspaper of general circulation each week and may use all other reasonable means to inform persons in the area of the quarantine and needed actions. DSHS may also, during a Public Health Disaster, request the disclosure of an individual's immunization records and take appropriate actions if the person is not adequately immunized.<sup>66</sup> A peace officer, including a sheriff or constable, may use reasonable force to secure a quarantine area and prevent an individual from entering or leaving the quarantine area.<sup>67</sup>

#### *Carriers or Private Conveyances*

DSHS may also impose control measures on private or common carriers and private conveyances while the vehicle or craft in question is in Texas. DSHS may, when there is reasonable cause to believe the vehicle traveled through an area infected or contaminated by a communicable disease, order the owner or operator to stop the vehicle at its place of entry into the state and provide relevant information on passengers and cargo. DSHS may also impose technically feasible control measures and order the owner to pay any related costs.<sup>68</sup>

#### **Local Authority**

##### *Reportable Diseases and Investigations*

It is the role of the LHA<sup>69</sup> to maintain records of all reportable disease cases in the area and report this information to DSHS.<sup>70</sup> Like DSHS investigators, the LHA has the right of inspection and right of entry to inspect any non-residential area.<sup>71</sup> The LHA is the lead on administration of control measures in the LHA's jurisdiction, absent preemption by DSHS.<sup>72</sup>

##### *Implementation of Control Measures*

The LHA has the same authority as DSHS to impose control measures on an individual or group.<sup>73</sup>

##### *Potentially Infected or Contaminated Property*

The LHA has the same authority as DSHS with regard to control of property.<sup>74</sup>

##### *Area Quarantines*

The LHA may impose an area quarantine within the LHA's jurisdiction only after consulting with DSHS. The LHA must give written notice of the quarantine to the governing body of each affected

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66 TEX. HEALTH & SAFETY CODE § 81.085.  
67 TEX. HEALTH & SAFETY CODE § 81.085(j).  
68 TEX. HEALTH & SAFETY CODE § 81.086.  
69 See discussion in Chapter 2 on the definition of local health authority in Texas law.  
70 TEX. HEALTH & SAFETY CODE § 81.043.  
71 TEX. HEALTH & SAFETY CODE §§ 81.064-.065.  
72 TEX. HEALTH & SAFETY CODE § 81.082.  
73 *Id.*  
74 TEX. HEALTH & SAFETY CODE § 81.084.

county or municipality as soon as practicable. If the LHA is administering the quarantine, the LHA must publish notice of the area quarantine in a newspaper of general circulation each week and may use all other reasonable means to inform persons in the area of the quarantine about needed actions. The LHA may terminate the area quarantine only with the consent of DSHS.<sup>75</sup>

The LHA may also designate facilities within the LHA’s jurisdiction to provide services during a Public Health Disaster or area quarantine.<sup>76</sup>

During area quarantines, the governing body of the municipality or hospital district or the commissioners court of the affected county may suspend admission of patients seeking elective treatment, except for indigent patients the district, county, or municipality is otherwise required to care for, in order to provide quarantine or isolation facilities.<sup>77</sup>

#### *Carriers or Private Conveyances*

The LHA has similar authority to DSHS to address suspected infections involving carriers or conveyances.<sup>78</sup>

#### *Penalties for Non-Compliance*

Individuals must not knowingly conceal their exposure or the exposure of their dependent(s) to a communicable disease during an investigation by DSHS or the LHA.<sup>79</sup> Such concealment or attempts to conceal are Class B misdemeanors, which are punishable by a fine not to exceed \$2,000, confinement in jail up to 180 days, or both.<sup>80</sup> Knowingly concealing, removing, or disposing of an infected or contaminated animal or object that is under investigation is also a Class B misdemeanor.<sup>81</sup> It is a Class A misdemeanor to knowingly refuse entry or inspection to DSHS, the LHA, or a peace officer.<sup>82</sup> A Class A misdemeanor is punishable by a fine not to exceed \$4,000, confinement in jail up to one year, or both.<sup>83</sup>

Failure to comply with control measure orders or removal, alteration, or destruction of quarantine devices are Class B misdemeanors.<sup>84</sup> A person who is subject to a protective custody order or temporary detention order issued by a court commits a Class A misdemeanor if the person resists or evades apprehension by a sheriff, constable, or other peace officer enforcing the order or resists or evades transport to an appropriate inpatient health care facility or other suitable facility under the order. It is also a Class A misdemeanor to assist a person in resisting or evading apprehension.<sup>85</sup>

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75 TEX. HEALTH & SAFETY CODE § 81.085.  
76 TEX. HEALTH & SAFETY CODE § 81.082(c-1).  
77 TEX. HEALTH & SAFETY CODE § 81.085(g).  
78 TEX. HEALTH & SAFETY CODE § 81.086.  
79 TEX. HEALTH & SAFETY CODE § 81.066.  
80 TEX. HEALTH & SAFETY CODE § 81.066(b); TEX. PENAL CODE § 12.22.  
81 TEX. HEALTH & SAFETY CODE § 81.067.  
82 TEX. HEALTH & SAFETY CODE § 81.068.  
83 TEX. PENAL CODE § 12.21.  
84 TEX. HEALTH & SAFETY CODE §§ 81.087-.088.  
85 TEX. HEALTH & SAFETY CODE § 81.212.

If an individual is subject to a court order,<sup>86</sup> that person is financially responsible for the needed treatment unless the individual is indigent and uninsured.<sup>87</sup> The relevant county or hospital district is financially responsible if the individual is an indigent, uninsured resident of that county or district;<sup>88</sup> otherwise the state may pay for indigent and uninsured patients.<sup>89</sup>

Failure to abide by area quarantine orders is a felony of the third degree, which is punishable by two to 10 years of imprisonment and a possible fine of up to \$10,000.<sup>90</sup> Knowingly transporting people or property that the person knows or suspects is infected or contaminated with a communicable disease that is a threat to the public health into this state is a Class A misdemeanor. If the person acts with the intent to harm or defraud, it is a felony of the third degree.<sup>91</sup>

### *Municipal Powers*

Both Type-A General Law municipalities and Home Rule municipalities<sup>92</sup> have certain powers related to control of communicable diseases. Type-A General Law municipalities may stop, detain, and examine someone who is coming from a place infected or believed to be infected with a communicable disease.<sup>93</sup> Those municipalities may adopt rules necessary to suppress disease and enforce those rules within 10 miles of the municipality.<sup>94</sup> A Home Rule municipality may also adopt rules to protect its residents against communicable disease and provide for the establishment of quarantine stations and emergency hospitals.<sup>95</sup>

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86 See Chapter 4 for more information.

87 TEX. HEALTH & SAFETY CODE § 81.083(f).

88 TEX. HEALTH & SAFETY CODE § 81.083(g).

89 TEX. HEALTH & SAFETY CODE § 81.083(h).

90 TEX. HEALTH & SAFETY CODE § 81.085(h); TEX. PENAL CODE § 12.34.

91 TEX. HEALTH & SAFETY CODE § 81.089.

92 See TEX. LOC. GOV'T CODE ch. 5.

93 TEX. HEALTH & SAFETY CODE § 122.005(a)(1).

94 TEX. HEALTH & SAFETY CODE § 122.005(b)(2).

95 TEX. HEALTH & SAFETY CODE § 122.006.



## CHAPTER 4

# ROLE OF TEXAS COURTS DURING A PUBLIC HEALTH EMERGENCY

If those subject to control measures ordered by the Department of State Health Services (DSHS) and the local health authority (LHA) comply voluntarily, the role of the courts is minimal. The courts' main responsibility is to hear cases and issue orders as needed when an individual does not comply with the imposed control measures, with a focus on ensuring that the proper balance is found between the protection of public health and the protection of individual rights. DSHS or the LHA may seek a court order when an individual is infected or reasonably suspected of being infected with a communicable disease that is an immediate threat to the public health and that person fails to comply with the ordered control measures. A showing of non-compliance is not required if a Public Health Disaster exists.<sup>96</sup> Court orders may also be sought with respect to contaminated property from the county or district court where the property is located.<sup>97</sup> Given the sensitive information at issue in these cases, the presiding judge of a county or district court may issue protective orders or otherwise limit disclosure of any medical or epidemiological information disclosed during the related proceeding before that information is entered into evidence or otherwise disclosed.<sup>98</sup>

County judges and mayors have the authority to order mandatory evacuations of areas threatened or impacted by a disaster. A county judge or mayor may order the use of reasonable force to remove anyone who does not comply with the evacuation order. Anyone who knowingly fails to comply with the order can be found civilly liable to the governmental entity or nonprofit agency working with the government for the costs of any rescue efforts.<sup>99</sup>

Notably, the material presented in this chapter represents the procedures specified in statute. However, the supreme court of Texas has the authority to modify or suspend court proceedings affected by a disaster during the pendency of a disaster declaration. If the supreme court is unable to act, this authority is delegated to the chief justice. If the chief justice is unable to act, the authority is delegated to the court of criminal appeals. If the court of criminal appeals is unable to act, the authority is delegated to its presiding judge. During all disaster declarations, courts, agencies, and lawyers involved in court proceedings should review any orders from the supreme court or the delegated authority in order to determine any changes to court proceedings. During all disaster declarations, courts, agencies, and lawyers involved in court proceedings should review any orders from the chief justice of the supreme court or the delegated authority in order to determine any changes to court proceedings.<sup>100</sup> A modification or suspension of procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor may not extend

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96 TEX. HEALTH & SAFETY CODE § 81.083(e).

97 TEX. HEALTH & SAFETY CODE § 81.084.

98 TEX. HEALTH & SAFETY CODE §§ 81.046(g), .103(k)

99 TEX. GOV. CODE § 418.185; *see also* TEX. GOV. CODE § 418.1181.

100 TEX. GOV. CODE § 22.0035.



for more than 90 days from the date the order was signed unless renewed by the chief justice of the supreme court or the delegated authority.<sup>101</sup>

### ***Orders for Management of Persons with Communicable Diseases***

A court order for the management of a person with a communicable disease (OMPCD) is sought for judicial enforcement of the imposition of control measures to prevent the spread of disease. Under Texas law, control measures include: quarantine, isolation, restriction, detention, decontamination, disinfection, disinfestation, immunization, chemoprophylaxis, preventive therapy, prevention, and education.<sup>102</sup> Given the breadth of this list, an OMPCD may seek diverse types of management. The OMPCD may include, but is not limited to, requiring immunizations, quarantine, and isolation, as well as compelling testing of an individual and forcing medical treatment.

A sworn written application for an OMPCD shall be filed by the municipal, county, or district attorney at the request of the LHA or by the Attorney General at the request of DSHS. The application must be filed in the district court in the county in which the person resides, is found, or is receiving court-ordered health services. The case may be transferred upon the application of the person or the person's attorney to the person's county of residence upon a showing of good cause if the application was not originally filed therein.<sup>103</sup> In cases where a person is receiving services under a temporary management order in a county other than where the order was entered and an extended order is being sought, the county where the order was issued shall pay any expenses for transporting the person back for proceedings under the extended order request.<sup>104</sup>

The application for an OMPCD must include a medical evaluation and a copy of the written orders from DSHS or the LHA unless the applicant is seeking outpatient treatment for the person suspected of having a communicable disease, in which case the orders are not required.<sup>105</sup> The application must state whether temporary or extended management is being sought. It must refer to the individual by initials instead of by full name and must state the person's address, county of residence, and a statement that the person is infected or is suspected of being infected with a communicable disease that is a threat to the public health. The application must also include a statement that the person meets the criteria for an OMPCD. If an order for inpatient treatment is being sought, the application must also include a statement that the person has failed or refuses to comply with the written control measure orders of DSHS or the LHA.<sup>106</sup>

The medical evaluation included in the application must be dated and signed by the DSHS Commissioner or designee or by the LHA with the concurrence of the DSHS Commissioner. The evaluation affidavit must include: the name and address of the examining physician; name and address of the person examined or to be examined; the date and place of the examination; and a brief diagnosis, if applicable, of the person's physical and mental condition. Also, if applicable, the evaluation must state the period during which the person has been under the examining physician's care and a description of

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101 [TEX. GOV. CODE § 22.0035\(b\)](#).

102 [TEX. HEALTH & SAFETY CODE § 81.082](#).

103 [TEX. HEALTH & SAFETY CODE § 81.151](#).

104 [TEX. HEALTH & SAFETY CODE § 81.157\(b\)](#).

105 [TEX. HEALTH & SAFETY CODE § 81.151\(d\)](#).

106 [TEX. HEALTH & SAFETY CODE § 81.152](#).

the provided treatment. The affidavit must also include the opinion of DSHS or the LHA and reasons therefore that the person is infected or reasonably suspected of being infected with a public health-threatening communicable disease and is a threat to self or will continue to endanger the public health if not examined, observed, or treated. If an extended management order is being sought, information must be included about why treatment is expected to last for more than 90 days.<sup>107</sup>

If DSHS or the LHA is seeking management for a group of five or more, a single application may be filed for the group if DSHS or the LHA reasonably suspects the group has been exposed to or is infected with a communicable disease and each person individually meets the requirements for an OMPCD.<sup>108</sup> The same provisions that apply in cases involving individuals apply to group cases with the following exceptions: (1) any statement or determination regarding the conduct of a member of the group must apply to the majority of its members, (2) any finding or statement regarding compliance must apply to all members of the group, and (3) any notice being sent to the group must also be published in a local newspaper of general circulation. The notice must state that the group is appointed one attorney, but any individual member may request an individual attorney. The notice must also include instructions for people who suspect they may be part of the group to contact DSHS or the LHA. An affidavit of medical evaluation for a group may be based on an individual evaluation if the physician believes it to be representative of the majority of the group's condition.<sup>109</sup> The application for a group must also contain the following information: (1) a description of the group and the location where the group members may be found; (2) a narrative of how the group was exposed or infected; (3) an estimate of the number in the group; (4) to the extent known, the name, address, and county of residence for each member; (5) information that the applicant sought the name, address, and county of residence for those not known and a statement about why the information is unavailable; and (6) a statement that the members have failed or refuse to comply with orders if inpatient treatment is being sought.<sup>110</sup>

Within 24 hours of the filing of the application, the judge must appoint an attorney to represent an individual if the person does not already have an attorney. A language or sign interpreter must also be appointed in that time period if necessary. The person's attorney must receive all records and papers in the case and be granted access to all hospital and physician records.<sup>111</sup> If a group is involved, the judge must appoint an attorney to represent the group and must appoint an individual attorney for each person who so requests if the person does not already have an individual attorney.<sup>112</sup>

The judge must set the hearing on an application for OMPCD to take place within 14 days of the service of the application to the person. The hearing may be held within the first three days of that time period only if neither the person nor the person's attorney objects. Continuances up to the 30th day after service may be granted on a motion by either party and a showing of either agreement of the parties or good cause for the continuance.<sup>113</sup>

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107 TEX. HEALTH & SAFETY CODE § 81.158.

108 TEX. HEALTH & SAFETY CODE § 81.151(e).

109 TEX. HEALTH & SAFETY CODE § 81.1511.

110 TEX. HEALTH & SAFETY CODE § 81.152(d).

111 TEX. HEALTH & SAFETY CODE § 81.153.

112 TEX. HEALTH & SAFETY CODE § 81.1531.

113 TEX. HEALTH & SAFETY CODE § 81.154.

The person and the person’s attorney are entitled to copies of the application and written notice of the time and location of the hearing immediately after the hearing date is set. Service may be made in person or, if the person is a minor or is the subject of a guardianship or conservatorship, by certified mail to the person’s parent, guardian, or conservator. The court shall appoint a guardian ad litem if the person is a minor without a guardian or conservator and the minor’s parents cannot be found.<sup>114</sup>

If the person’s attorney requests the information at least 48 hours before the hearing time, the attorney representing DSHS or the LHA must provide, within a reasonable time before the hearing: (1) citations to the sections of Texas Health & Safety Code Chapter 81 that will be relied upon at the hearing, (2) information about each witness who may testify, (3) a brief description of why court-ordered management is believed necessary, and (4) a list of alleged acts the attorney will seek to prove at the hearing. The judge may admit information not disclosed in this notice if the admission would not deprive the person of a fair opportunity to contest the information.<sup>115</sup>

The person at issue in the application is entitled to remain free pending the hearing unless detained under a protective order or other provision of Texas Health & Safety Code Chapter 81.<sup>116</sup>

The judge may set the hearing for any suitable location in the county that is not likely to harm the public or person at issue. If the person or the person’s attorney so requests, the hearing must be held at the county courthouse. The LHA shall advise the court of any needed control measures to prevent transmission of a communicable disease during the hearing. The person is entitled to be present at the hearing but may waive this right or, if the LHA advises the court that the person must remain in isolation or quarantine because exposure to the judge, jurors, or the public would jeopardize their health and safety, the individual may be ordered to appear only by teleconference or other means. The hearing must be public unless the person or person’s attorney requests that the hearing be closed, and the judge determines that there is good cause to do so. The hearing must be held on the record, and the state must prove its case by clear and convincing evidence.<sup>117</sup> If temporary management is sought, the hearing must take place before the court unless the person or person’s attorney requests a jury. If extended management is sought, a jury is required unless that right is waived in writing, under oath, in a document signed by the person or the person’s attorney. The waiver must be made at least seven days before the scheduled hearing date, and the court must find good cause in order to allow the waiver. No jury fee is allowed, and the jury may not make findings regarding the types of services to be provided.<sup>118</sup> The person or person’s attorney may waive the right to cross-examine witnesses through a written waiver. The court may admit the medical evaluation as evidence and consider it competent medical testimony.<sup>119</sup>

If the court orders treatment, a facility must be designated by the petitioner (i.e., DSHS or the LHA). The DSHS Commissioner or LHA will designate potential treatment facilities for these

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114 TEX. HEALTH & SAFETY CODE § 81.155.  
115 TEX. HEALTH & SAFETY CODE § 81.156.  
116 TEX. HEALTH & SAFETY CODE § 81.160.  
117 TEX. HEALTH & SAFETY CODE § 81.169.  
118 TEX. HEALTH & SAFETY CODE § 81.170.  
119 TEX. HEALTH & SAFETY CODE § 81.172(c).

cases,<sup>120</sup> and any one of the designated facilities may be selected. The LHA may designate only a facility in the county in which the application is being filed. If no facility exists in the county in which the application is filed, only the Commissioner may designate the facility to be used.<sup>121</sup>

If the application for OMPCD is denied, the court shall enter an order so denying the request and ordering the immediate release of the person if the person is not free at the time the order is written.<sup>122</sup>

If the standard for a temporary OMPCD is met, the judge must enter an order stating that: (1) the judge or jury found that the person is likely to cause serious harm to self or continue to endanger the public health if not examined, observed, isolated, or treated as a result of a communicable disease with which the person is infected or reasonably suspected of being infected, and (2) the person has failed or refused to follow written orders from DSHS or the LHA. The order must state that the measures to be taken may last no longer than 90 days. DSHS, along with the head of the selected facility, must provide to the court a general program of treatment within 14 days of the order being issued. Upon receipt, the program must be incorporated into the court order.<sup>123</sup>

If the standard for an extended OMPCD is met, the court must enter an order stating the court or the jury, as applicable, found the person is likely to cause serious harm to self or continue to endanger the public health if not examined, observed, isolated, or treated as a result of a communicable disease with which the person is infected or reasonably suspected of being infected and the person has failed or refused to follow written orders from DSHS or the LHA. The order must also state the person's condition is expected to continue for more than 90 days. The court's findings may not be based on the medical evaluation alone, and testimony, including competent medical testimony, shall be heard. The order must state that the necessary control measures are not authorized to continue for more than 12 months. DSHS, along with the head of the selected facility, must provide to the court a general program of treatment to be provided within 14 days of the order being issued. Upon receipt, the program must be incorporated into the court order.<sup>124</sup>

If the person is found to be infected or reasonably suspected of being infected with a communicable disease, to have failed or refused to follow the written orders of the LHA or DSHS, and to meet the criteria for an OMPCD, the judge may hear additional evidence relating to alternative settings for care before entering an order. In determining a setting for care, the judge must consider the recommendation for the appropriate health care facility designated by the LHA or the DSHS Commissioner. The judge may enter an order committing the person to a facility for inpatient care or requiring the person to participate in other communicable disease management programs.<sup>125</sup>

In cases where outpatient services are ordered, the court shall designate an LHA to monitor the person's compliance and order the facility head to cooperate with the LHA for such monitoring.

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120 Please note that pursuant to TEX. HEALTH & SAFETY CODE § 81.159, the Commissioner may designate any facility other than a nursing home or custodial care home licensed under TEX. HEALTH & SAFETY CODE Chapter 242 or an Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/IID) licensed under Chapter 252.

121 TEX. HEALTH & SAFETY CODE § 81.159.

122 TEX. HEALTH & SAFETY CODE § 81.171.

123 TEX. HEALTH & SAFETY CODE § 81.172.

124 TEX. HEALTH & SAFETY CODE § 81.173.

125 TEX. HEALTH & SAFETY CODE § 81.174.

Within two weeks of the entry of the court’s order for outpatient treatment, the LHA or DSHS shall submit a general program of treatment to be provided that has been prepared in cooperation with the facility head. The court shall incorporate the program into the order. The LHA or DSHS must notify the court if the person fails to comply with the court order or a substantial change is made in the general program of treatment.<sup>126</sup>

Facilities must comply with an OMPCD to the extent they have the necessary resources. Private facilities may be designated only with the consent of the facility head and upon an application signed by the person or the person’s guardian requesting such designation and agreeing to pay for the care, unless the court orders treatment at a private facility. The court may order treatment at a private facility with no cost to the state, municipality, or hospital district if a State of Disaster, Public Health Disaster, or area quarantine is in place; the facility is within the impacted area; and the judge determines there is no public health care facility within that area with the capacity to treat the person.<sup>127</sup> Federal facilities may be used if the court receives written notice from the federal agency that runs the facility saying that it has the needed resources. However, the state court maintains jurisdiction over the person regardless of the facility used.<sup>128</sup>

The sheriff or constable shall accompany the person to the designated facility. Of note, a female attendant must accompany a female patient. The LHA or DSHS will instruct the sheriff or constable on any control measures that may be necessary during transportation.<sup>129</sup> The head of the facility shall give the attendant a written statement acknowledging acceptance of the person and any personal property. A copy of the acknowledgement must be filed with the court clerk after admitting the individual and receiving the writ of commitment from the court. The court clerk will issue two writs of commitment to the attendant so that a copy may be left with the facility head.<sup>130</sup>

### ***Protective Custody Orders***

A temporary protective custody order may be issued before the filing of an application for an OMPCD if the judge or magistrate takes testimony that an application for an OMPCD and an application for a protective order will be submitted the following business day and the judge or magistrate determines that there is probable cause to believe the person represents a substantial risk of serious harm to self or others to the extent that the person can not be at liberty pending the filing of the applications. A temporary protective custody order terminates at 4 p.m. the business day following the issuance of the order if the applications are not filed by that time. If the necessary applications are timely filed, the order may continue to allow the court reasonable time to rule on the applications.<sup>131</sup>

A motion for a regular protective order may be filed by the municipal, county, or district attorney on behalf of the LHA or by the attorney general on behalf of DSHS in the court in which an application for OMPCD is pending. The motion must state the DSHS’s or LHA’s belief that the person meets the necessary criteria for court-ordered management and the basis for this belief, including a

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126 TEX. HEALTH & SAFETY CODE § 81.175.

127 TEX. HEALTH & SAFETY CODE §§ 81.175(d)-(e), .177.

128 TEX. HEALTH & SAFETY CODE § 81.178.

129 TEX. HEALTH & SAFETY CODE § 81.179.

130 TEX. HEALTH & SAFETY CODE §§ 81.180-.181.

131 TEX. HEALTH & SAFETY CODE § 81.162(f)-(g).



representation from a credible person, the conduct of the person at issue, or the circumstances under which the person at issue was found.<sup>132</sup>

The application must include a medical evaluation with the same information required for an OMPCD as well as information about why the person poses a substantial risk of serious harm to self or others if not immediately restrained.<sup>133</sup> The judge may designate a magistrate to issue protective orders in the judge's absence as needed.<sup>134</sup>

To issue a protective order, the judge or magistrate must find that the LHA or DSHS has stated its opinion and the details forming the basis of its opinion that the person is infected or reasonably suspected of being infected with a communicable disease that presents an immediate threat to public health. If applicable, the judge or magistrate must also find that the person has failed or refused to comply with the LHA's or DSHS's written orders. The judge or magistrate may consider only the application and medical evaluation in ruling on the motion unless additional evidence is needed to make a fair determination of the matter.<sup>135</sup>

The order, if granted, must direct a peace officer to take the person into protective custody and transport the person to an appropriate inpatient health facility that is on the DSHS Commissioner's or the LHA's designated facility list. The order may direct an ambulance and emergency medical services staff to transport the person to the appropriate facility. If an appropriate inpatient facility is not available, the person shall be transported to a facility deemed suitable by the LHA.<sup>136</sup> Private facilities may be used only if the head of the facility agrees and the person or person's guardian requests a private facility and agrees to pay for such care. The court may also order treatment at a private facility. The court may order treatment at a private facility with no cost to the state, municipality, or hospital district if: (1) a State of Disaster, Public Health Disaster, or area quarantine is in place; (2) the facility is within the impacted area; and (3) the judge determines there is no public health care facility within that area with the capacity to treat the person.<sup>137</sup> Federal facilities may be used if the court receives written notice from the federal agency that runs the facility saying that it has the needed resources. The state court maintains jurisdiction over the person regardless of whether a federal facility is used.<sup>138</sup> Public or private facilities need to comply only to the extent resources are available. The person will remain at the facility until a probable cause hearing is held.<sup>139</sup>

The judge or magistrate shall appoint an attorney for the person at issue if the person did not have one at the time the protective custody order was signed and, within a reasonable time, provide to the person and the person's attorney written notice that the person has been placed under a protective custody order, the grounds for the order, and the time and place for the probable cause hearing.<sup>140</sup>

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132 TEX. HEALTH & SAFETY CODE § 81.161.  
133 TEX. HEALTH & SAFETY CODE §§ 81.158, .161.  
134 TEX. HEALTH & SAFETY CODE § 81.161(e).  
135 TEX. HEALTH & SAFETY CODE § 81.162.  
136 TEX. HEALTH & SAFETY CODE § 81.163.  
137 TEX. HEALTH & SAFETY CODE §§ 81.163(e), .177.  
138 TEX. HEALTH & SAFETY CODE § 81.178.  
139 TEX. HEALTH & SAFETY CODE § 81.163(c).  
140 TEX. HEALTH & SAFETY CODE § 81.164.

The purpose of the probable cause hearing is to determine if there is probable cause to believe the person presents a substantial risk of serious harm to self or others that would preclude the person from being free pending an OMPCD and that DSHS or the LHA has stated its opinion and the basis therefore that the person is infected with or reasonably suspected of being infected with a communicable disease that is an immediate threat to the public health. The hearing must be held within 72 hours of the person's detention or the next business day following the conclusion of the 72 hours if that occurs on a weekend or legal holiday. A 24-hour postponement is allowed if an extreme emergency exists due to extremely hazardous weather conditions. Additional postponements are allowed if the area where the hearing will be held or where the person is found is under a declaration of Public Health Disaster. In those instances, the hearing may be postponed until after the disaster has ended. The magistrate or a master designated by the judge conducts the hearing and may include evidence that would not be admissible at a subsequent commitment hearing. The state may use the medical evaluation in order to prove its case.<sup>141</sup> The individual at issue may appear at the hearing by teleconference or other means if the judge or magistrate finds the person's presence at the hearing is appropriate but the LHA has advised that the person should remain in isolation or quarantine as exposure to those at the hearing would jeopardize the health and safety of the judge, jurors, or the public.<sup>142</sup>

Upon a finding that an adequate factual basis exists to support probable cause that the person presents a substantial risk of serious harm to self or others and may not be at liberty pending the OMPCD, the magistrate or master must order the person to remain in protective custody. The magistrate or master must arrange for the person to be returned to the health facility or other appropriate place and send to the facility affidavits and other materials used as evidence in the hearing along with a notification regarding the probable cause hearing.<sup>143</sup> This information must also be filed with the district court that entered the original order for protective custody.<sup>144</sup>

The head of the designated facility must detain the person subject to a protective order pending an OMPCD or the person's release or discharge. The designated facility must be an appropriate inpatient facility on the list of those designated by the DSHS Commissioner or the LHA. A non-medical facility used to detain persons charged or convicted of a crime may only be used for up to 72 hours and only if the person is isolated from those charged or convicted of a crime, the consent of that facility's medical director has been obtained, and the facility has respiratory isolation capability for airborne communicable diseases.<sup>145</sup>

The magistrate or master shall order the release of the person if the magistrate or master determines after the hearing that no probable cause exists. The person should then be returned to the location where the person was apprehended, the person's place of residence, or another suitable location. The head of the facility must release the person if: the head of the facility does not receive notice that a probable cause hearing was held and further detention ordered within the prescribed time, an OMPCD is not entered within the prescribed time, or the LHA or DSHS Commissioner determines the person no longer meets the criteria for a protective order.<sup>146</sup>

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141 TEX. HEALTH & SAFETY CODE § 81.165.

142 TEX. HEALTH & SAFETY CODE § 81.165(d).

143 See Appendix D for the statutory form of the notice.

144 TEX. HEALTH & SAFETY CODE § 81.166.

145 TEX. HEALTH & SAFETY CODE § 81.167.

146 TEX. HEALTH & SAFETY CODE § 81.168.



The sheriff or constable shall accompany the person to the designated facility, and a female attendant must accompany a female patient. The LHA or DSHS shall instruct the sheriff or constable about any control measures that may be necessary during transportation.<sup>147</sup> The head of the facility shall give the attendant a written statement acknowledging acceptance of the person and any personal property and file a copy of the statement with the court clerk after admitting the individual and receiving the writ of commitment. The court clerk will issue two writs of commitment to the attendant so that both the attendant and the facility have a copy.<sup>148</sup>

### ***Modification of an OMPCD or Protective Custody Order***

At the request of the LHA or DSHS, the appropriate attorney shall request a modification of an OMPCD to allow for outpatient treatment from the court that entered the original commitment order. The reason for the change request must be made in detail and must include an affidavit from a physician who treated the person at issue within the seven days preceding filing of the modification request. The person at issue must receive notice and, if a hearing is requested, have an attorney appointed. If neither the person nor any interested party requests a hearing, the judge may rule based on the modification request and physician's affidavit. If the court grants the modification request, the court must designate the LHA to monitor the person's compliance. The modified order may last only as long as the original order would have lasted.<sup>149</sup>

A court that entered an order for outpatient treatment may set a hearing on its own motion, the motion of the relevant attorney's office acting on behalf of the LHA or DSHS, or the motion of an interested person to determine if the order should be modified. If a hearing is scheduled, the person at issue shall have an attorney appointed and shall receive notice similar to that required before a hearing on an application for an OMPCD. No jury is required at the hearing.<sup>150</sup> The original outpatient order remains in effect if the modification is not granted.<sup>151</sup>

A person may be detained pending a modification order under an order for temporary detention. The appropriate attorney's office shall make the motion for a temporary detention order on behalf of the LHA or DSHS. The application must state that the person meets the criteria for a commitment order and that detention in an inpatient facility is needed to evaluate the proper setting for court-ordered care. The application must explain the basis for the applicant's statements. The court shall decide on the basis of the application whether a temporary detention order is appropriate. To order temporary detention of an individual, the court must find that there is probable cause to believe the opinions stated in the application are valid. If the person does not have an attorney at the time the temporary detention order is signed, the court must appoint one. Within 24 hours of the person's detention, a written notice must be provided by the court to the person's attorney stating that the person has been placed under a temporary detention order, the grounds for the order, and the time and place of the modification hearing.<sup>152</sup>

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147 TEX. HEALTH & SAFETY CODE § 81.179.

148 TEX. HEALTH & SAFETY CODE §§ 81.180-.181.

149 TEX. HEALTH & SAFETY CODE § 81.182.

150 TEX. HEALTH & SAFETY CODE § 81.183.

151 TEX. HEALTH & SAFETY CODE § 81.185(d).

152 TEX. HEALTH & SAFETY CODE § 81.184.

If granted, a temporary detention order will instruct a peace officer to take the person in question into custody and transport the person to an appropriate inpatient facility or, if an appropriate inpatient facility is not available, a facility deemed appropriate by the LHA. The order may direct an ambulance and emergency medical services staff to transport the person to the appropriate facility. A temporary detention order may not last longer than 72 hours, excluding weekends, holidays, and time as needed during an extreme weather emergency. The person must be released if the facility does not receive notice within the 72-hour period that a modification hearing was held at which continued detention was ordered.<sup>153</sup>

An order for outpatient services may also be modified at the modification hearing if the court determines that the person continues to meet the criteria for an OMPCD and has either not complied with the original order or has suffered a deterioration that makes outpatient services inappropriate. Such modification is not mandatory even if the court makes the requisite findings. The court's decision must be supported by an affidavit of medical evaluation prepared by the LHA or DSHS. In response, the court may order a revision of the outpatient services or provide for inpatient services.<sup>154</sup>

### ***Renewal of an Extended Management Order***

At the request of DSHS or the LHA, the appropriate attorney must file an application to renew an order for extended management. The application must explain in detail why the renewal is required and why a less restrictive setting is not appropriate for further care. The application must include an affidavit of medical evaluation based on an examination conducted within 30 days of filing. The LHA or DSHS must sign the affidavit. Upon the filing of the application, the court must appoint an attorney for the person at issue. The person or the person's attorney may request a hearing or the court may set a hearing on its own motion. At the hearing, the application is considered an original motion for an extended OMPCD. If no hearing is set, the medical evaluation shall be considered competent medical testimony. The court may not renew an order unless it finds the person meets the standards for an extended management order.<sup>155</sup>

### ***Rehearing, Re-examination, or Appeal***

A motion for rehearing on an OMPCD may be held upon a showing of good cause. The court may stay the order and release the person pending the rehearing if the court is satisfied that the person does not meet the criteria for a protective order. Bond may be imposed if the person is not detained.<sup>156</sup>

A person subject to an extended OMPCD may request a re-examination and a hearing to determine if the person still meets the requirements for an OMPCD. The request must be filed in the county where the person is receiving services. Upon a showing of good cause, the court may require a re-examination and schedule a related hearing. The court must notify the LHA, DSHS, and head of the facility providing services to the person if a re-examination or hearing is scheduled. The head of the facility shall arrange for the re-examination upon receiving the court's notice. The court is not required to order the hearing or re-examination if the request is made within six months of the

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153 TEX. HEALTH & SAFETY CODE § 81.185.  
154 TEX. HEALTH & SAFETY CODE § 81.186.  
155 TEX. HEALTH & SAFETY CODE § 81.187.  
156 TEX. HEALTH & SAFETY CODE § 81.188.

original order or similar request. If the LHA or DSHS determines the person no longer meets the criteria for an OMPCD, the facility must immediately release the person. If the LHA or DSHS believes the person continues to meet the criteria for an OMPCD, the LHA or DSHS must file an affidavit of medical evaluation within 10 days of the filing of the re-examination and hearing request.<sup>157</sup> A court may set a hearing on a request for re-examination if an affidavit of medical evaluation calling for continued management has been filed within 10 days of the request being filed or, within the same time period, the person has not been discharged. The court will appoint an attorney for the person and provide notice of the hearing to the person, the person's attorney, DSHS or the LHA, and the head of the facility where the person is receiving treatment. A physician not on staff at the facility shall be designated by the court to examine the person and file an affidavit stating the person's diagnosis and recommended treatment. The person may request examination by a physician of the person's choice if the person agrees to bear any related expense. The hearing is held before the judge, not a jury, and is similar to a hearing for an OMPCD. If DSHS or the LHA determines that the person must remain in isolation or quarantine and that exposure to the judge or the public would jeopardize the health and safety of those persons and the public health, the judge may order that the individual may not appear in person and may appear only by teleconference or other means. If there is clear and convincing evidence that the person continues to meet the standard for the original order, the court shall dismiss the request. Otherwise, the court must order the head of the facility to discharge the person at issue.<sup>158</sup>

Appeals are also allowed from an OMPCD, renewal, or modification of such an order. The appeal must be filed in the court of appeals for the county in which the order was entered. Notice of appeal must be filed within 10 days of the signing of the order. Upon filing of the appeal, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals. The trial judge may stay the order and release the person, with or without requiring an appearance bond, pending the appeal if the judge is satisfied the person does not meet the standards for a protective order. The courts of appeals and supreme court are required to give these appeals preference over all other cases on the docket. Rules regarding time to file briefs and docket cases may be suspended.<sup>159</sup>

### ***Treatment at the Facility***<sup>160</sup>

The person may be allowed out of the facility under a pass from the facility head allowing the person to leave for not more than 72 hours. The LHA or DSHS must concur before the facility head may grant a pass. Specified conditions may be placed on the pass.<sup>161</sup> A person outside a facility under a pass may be detained and returned to the facility based on a signed certificate authorizing the person's return by the facility head, the LHA, or DSHS, or the filing of such a certificate with the magistrate requesting that the person's return be ordered. A certificate may be issued if the signer

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157 TEX. HEALTH & SAFETY CODE § 81.189.

158 TEX. HEALTH & SAFETY CODE § 81.190.

159 TEX. HEALTH & SAFETY CODE § 81.191.

160 Discussed below are the sections of the code on treatment at the facility that are most likely to impact the courts. Additional information on records, adequacy of treatment, and similar provisions may be found in Texas Health & Safety Code Chapter 81. These sections are relevant only if an individual is admitted to the facility under a court order for the management of a person with a communicable disease.

161 TEX. HEALTH & SAFETY CODE § 81.193.

believes the person is absent from the facility without authority, has violated a condition of a pass, or has experienced a deterioration in his or her condition.<sup>162</sup>

The person may be transferred to a federal facility if: (1) authorized by the LHA or DSHS, (2) the federal agency sends notice that facilities are available for which the patient is eligible, (3) notice of the transfer is sent to the court, and (4) the court enters an order approving the transfer.<sup>163</sup>

Prior to discharge, the LHA or DSHS must prepare a continuing care plan if continued care is required.<sup>164</sup> A person must be discharged upon expiration of the court order and may be discharged before the expiration of the order at the direction of the LHA or DSHS. A discharge certificate, prepared by the LHA or DSHS, must be filed with the court that entered the order and notice must be given to the facility head.<sup>165</sup>

### ***Property Cases***

In cases involving property, upon the filing of a petition and a showing that the owner has failed to comply with proper orders from DSHS or the LHA and that DSHS or the LHA has reason to believe that the property is or may be contaminated by or infected with a communicable disease that presents an immediate threat to the public health, the court may grant injunctive relief. The owner of the property is responsible for all related costs and may be required by the court to execute a bond. If the court finds that the property was improperly quarantined or is not contaminated, the court must order DSHS or the LHA to remove the quarantine and return the property to its owner.<sup>166</sup>

### ***Area Quarantines***

If the DSHS Commissioner or one or more LHAs has determined that an environmental or toxic agent, including a communicable disease, has been introduced into the environment, they may impose an area quarantine as discussed in Chapter 3. No role for the courts during an area quarantine is specified other than the authority of the commissioners court of the affected county or the governing body of the municipality or hospital district to suspend admission of patients seeking elective treatment – except for indigent patients that the district, county, or municipality is otherwise required to care for – in order to provide quarantine or isolation facilities.<sup>167</sup>

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162 TEX. HEALTH & SAFETY CODE § 81.194.

163 TEX. HEALTH & SAFETY CODE § 81.199.

164 TEX. HEALTH & SAFETY CODE § 81.192.

165 TEX. HEALTH & SAFETY CODE §§ 81.195-.197.

166 TEX. HEALTH & SAFETY CODE § 81.084.

167 TEX. HEALTH & SAFETY CODE § 81.085(g).

## CHAPTER 5

# PROTECTED HEALTH INFORMATION AND PUBLIC HEALTH

Health care providers have legal and ethical duties to maintain patient confidentiality. State and federal laws set standards for the protection of certain health information while allowing for disclosures to a public health authority preventing or controlling disease, injury, or disability.<sup>168</sup>

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA)<sup>169</sup> prohibits individually identifiable health information created or received by a health care provider, health plan, employer, or health care clearinghouse from being disclosed to others without the written authorization of the individual, except for disclosures for certain specified purposes, such as treatment, payment, or health care operations.<sup>170</sup> The federal Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH)<sup>171</sup> enhances HIPAA enforcement by adding new provisions and strengthens individuals' control over and access to their protected health information. These federal statutes set minimum national standards, though states may provide even greater privacy protections.<sup>172</sup> The Texas health information privacy protections are distributed throughout several state statutes and regulations, including the Texas Medical Practice Act<sup>173</sup> and the Texas Medical Records Privacy Act.<sup>174</sup>

### *Types of Health Information*

The federal regulations within the HIPAA Privacy Rule,<sup>175</sup> Security Rule,<sup>176</sup> and Omnibus Rule<sup>177</sup> require appropriate safeguards to ensure the privacy of individuals' protected health information (PHI) and electronic protected health information (ePHI). These regulations set limits and conditions on the uses and disclosures that may be made of such information without patient authorization. There are four important definitions within the federal privacy rules to explore: (1) health information, (2) individually identifiable health information, (3) protected health information, and (4) electronic protected health information.

168 45 C.F.R. § 164.512(b).

169 Health Insurance Portability and Accountability Act, Pub. L. No. 104-191, 110 Stat. 1936 (1996).

170 42 U.S.C. § 1320d-6(a); 45 C.F.R. §§ 164.502, 164.508, 164.510.

171 Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226 (2009) (enacted as part of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115).

172 45 C.F.R. § 160.203(b).

173 TEX. OCC. CODE ch. 151-170.

174 TEX. HEALTH & SAFETY CODE ch. 181.

175 Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82462 (Dec. 28, 2000); Standards for Privacy of Individually Identifiable Health Information, 67 Fed. Reg. 53182 (Aug. 14, 2002), 45 C.F.R. pts. 160, 164.

176 Health Insurance Reform: Security Standards, 68 Fed. Reg. 8334 (Feb. 20, 2003), 45 C.F.R. pts. 160, 162, 164.

177 Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules, 78 Fed. Reg. 5566 (Jan. 25, 2013), 45 C.F.R. pts. 160, 164.

### *Health Information*

Health information means any information, including genetic information, whether oral or recorded in any form or medium that:

- (1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.<sup>178</sup>

### *Individually Identifiable Health Information*

Individually identifiable health information is a subset of health information, including demographic information collected from an individual, that:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
  - (i) That identifies the individual; or
  - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.<sup>179</sup>

### *Protected Health Information*

PHI means individually identifiable health information:

- (1) Except as provided in the exclusions of paragraph (2) below, that is:
  - (i) Transmitted by electronic media;
  - (ii) Maintained in electronic media; or
  - (iii) Transmitted or maintained in any other form or medium.
- (2) Protected health information excludes individually identifiable health information:
  - (i) In education records covered by the Family Educational Rights and Privacy Act, as amended, at 20 U.S.C. 1232g;
  - (ii) In records described at 20 U.S.C. 1232g(a)(4)(B)(iv) concerning adult and post secondary students' medical treatment records;
  - (iii) In employment records held by a covered entity in its role as employer; and
  - (iv) Regarding a person who has been deceased for more than 50 years.<sup>180</sup>

.....  
178 45 C.F.R. § 160.103.

179 *Id.*

180 *Id.*



Examples of PHI include commonly used identifiers such as name, address, birth date, and Social Security number as well as information about an individual's past, present, or future physical or mental health or condition.

### *Electronic Protected Health Information*

Information that is either (i) transmitted by electronic media, or (ii) maintained in electronic media as referenced in the definition of PHI is considered ePHI.<sup>181</sup>

## ***Applicability of Health Information Privacy Rule to Entities***

### *Covered Entities and Business Associates*

Covered entities and business associates must comply with HIPAA Privacy and Security Rules to protect PHI and ePHI. The federal definition of covered entities include:

- (1) A health plan (an individual or group plan that provides, or pays the cost of, medical care).
- (2) A health care clearinghouse (a public or private entity that processes or facilitates the processing of health information).
- (3) A health care provider (any provider of health care or medical services or supplies, and any other persons or organization who furnishes, bills, or is paid for health care in the normal course of business).<sup>182</sup>

Business associates include a person or entity that performs certain functions or activities on behalf of, or as a service to, a covered entity that involve the use or disclosure of protected health information. Examples of business associates include (1) organizations or persons that provides data transmission services with respect to PHI to a covered entity and that requires access on a routine basis to such PHI; or (2) subcontractors that create, receive, maintain, or transmit PHI on behalf of the business associate.<sup>183</sup>

The Texas Medical Records Privacy Act (TMRPA)<sup>184</sup> provides additional protections to individuals regarding their PHI and is broader in scope than HIPAA. Under the TMRPA, a covered entity includes any person who for financial or professional gain or on a nonprofit basis engages in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting PHI.<sup>185</sup> The Texas definition of covered entity also includes business associates, health care payers, governmental units, computer management companies, schools, health researchers, health care providers, and internet site providers.<sup>186</sup> Significantly, a covered entity includes any person who either (1) comes

.....  
181 *Id.*

182 *Id.*

183 *Id.*

184 TEX. HEALTH & SAFETY CODE ch. 181.

185 TEX. HEALTH & SAFETY CODE § 181.001(b)(2)(A).

186 *Id.*



into possession of PHI<sup>187</sup> or (2) obtains or stores PHI.<sup>188</sup> This also includes their agents, employees, and contractors if they create, receive, obtain, use, or transmit PHI.<sup>189</sup> Under Texas law, a covered entity must comply with mandatory training for employees on state and federal laws regarding PHI according to specific timelines.<sup>190</sup>

### *Public Health Authorities*

The authorization and disclosure requirements of the Privacy Rule do not apply to governmental public health authorities responsible for public health matters as part of its official mandate.<sup>191</sup> Public health authorities may include (1) a federal agency such as the Department of Health and Human Services (DHHS), the Centers for Disease Control and Prevention (CDC), or the Food and Drug Administration (FDA); (2) a state agency such as the Texas Department of State Health Services (DSHS); (3) a local public health department; or (4) an entity under contract with such public health authorities.

However, when a public health authority also provides health care services such as immunizations or clinical care, it is participating in covered functions which makes the entity a health plan, health care provider, or health care clearinghouse and must comply with the Privacy Rule with respect to those health care functions. Public health agencies and departments that perform both public health functions as well as covered functions may organize as a hybrid entity to comply with Privacy Rule requirements.<sup>192</sup> These hybrid entities designate the components which provide health care services as the portion of the organization that must comply with the Privacy Rule.<sup>193</sup> For example, DSHS is a hybrid entity with designated health care components separate from its public health functions.<sup>194</sup>

### *Judiciary*

Court records are not covered under HIPAA because the judiciary is not a covered entity. A covered entity may disclose PHI in the course of any judicial or administrative proceeding in response to a court order or a subpoena, discovery request, or other lawful process so long as reasonable efforts have been made to notify the individual or a qualified protective order has been secured.<sup>195</sup> Once PHI has been produced in compliance with the requirements, it becomes part of the court record. Under the Texas Communicable Disease Prevention and Control Act, a judge of a county or district court may issue a protective order or take other action to limit disclosure of medical or epidemiological information furnished to a public health district, local health department, local health authority

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187 TEX. HEALTH & SAFETY CODE § 181.001(b)(2)(B).  
188 TEX. HEALTH & SAFETY CODE § 181.001(b)(2)(C).  
189 TEX. HEALTH & SAFETY CODE § 181.001(b)(2)(D).  
190 TEX. HEALTH & SAFETY CODE § 181.101(a).  
191 45 C.F.R. § 164.501.  
192 45 C.F.R. § 164.103.  
193 45 C.F.R. § 164.105(a)(2).  
194 25 TEX. ADMIN. CODE § 1.501.  
195 45 C.F.R. § 164.512(e).

(LHA), or the DSHS before that information is entered into evidence or otherwise disclosed in a court proceeding.<sup>196</sup>

### ***PHI Disclosure for Public Health Purposes***

Under the HIPAA Privacy Rule, covered entities may disclose PHI without authorization to the following persons or officials for public health purposes:

- (1) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.<sup>197</sup>
- (2) An official of a foreign government agency that is acting in collaboration with a public health authority, provided the disclosure is at the direction of a public health authority.<sup>198</sup>
- (3) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation.<sup>199</sup>

Texas allows for additional disclosures of PHI for public health purposes, including to the American Red Cross and first responders. The TMRPA does not prohibit the American Red Cross from accessing any information necessary to perform its duties to provide biomedical services, disaster relief, disaster communication, or emergency leave verification services for military personnel.<sup>200</sup>

The Texas Communicable Disease Prevention and Control Act allows for disclosure of information linking a person who is exposed to a person with a communicable disease as well as required disclosure of monitored individuals to first responders. Medical or epidemiological information, including information linking a person who is exposed to a person with a communicable disease, may be released:<sup>201</sup>

- (1) for statistical purposes if released in a manner that prevents the identification of any person;
- (2) with the consent of each person identified in the information;
- (3) to medical personnel treating the individual, appropriate state agencies in Texas or another state, an LHA or local health department, or federal, county, or district courts to comply with rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information;
- (4) to appropriate federal agencies, such as the CDC, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case

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196 TEX. HEALTH & SAFETY CODE § 81.046(g).

197 45 C.F.R. § 164.512(b)(1)(i).

198 *Id.*

199 45 C.F.R. § 164.512(b)(1)(iv).

200 TEX. HEALTH & SAFETY CODE § 181.056.

201 TEX. HEALTH & SAFETY CODE § 81.046(c).

- or suspected case of a communicable disease or health condition;
- (5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information;
- (6) to a designated infection control officer;
- (7) to governmental entities that provide first responders who may respond to a situation involving a potential communicable disease of concern and need the information to properly respond to the situation; or
- (8) to a local health department or LHA for a designated monitoring period based on the potential risk for developing symptoms of a communicable disease of concern.<sup>202</sup>

A local health department or LHA is required to provide to first responders the physical address of a person who is being monitored by the local department or LHA for a communicable disease for the duration of the disease’s incubation period.<sup>203</sup> First responders are defined as public safety employees or volunteers whose duties include responding rapidly to an emergency. Examples of first responders include peace officers, fire protection personnel, certified firefighters or members of an organized volunteer firefighting unit, and individuals certified as emergency medical services personnel by DSHS.<sup>204</sup> The local health department, LHA, or other governmental entity, as applicable, shall remove the person’s physical address from any computer-aided dispatch system after the monitoring period expires.<sup>205</sup> Only the minimum necessary information may be released to first responders and local health departments or LHAs for a designated monitoring period, as determined by an LHA, local health department, governmental entity, or DSHS.<sup>206</sup>

During a Public Health Disaster, including an outbreak of a communicable disease,<sup>207</sup> reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to law enforcement personnel and first responders solely for the purpose of protecting the health or life of a first responder or the person identified in the report, record, or information. In such a release, only the minimum necessary information may be released as determined by the LHA, local health department, or DSHS.<sup>208</sup>

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202 TEX. HEALTH & SAFETY CODE § 81.046(c).

203 TEX. HEALTH & SAFETY CODE § 81.046(c-1).

204 TEX. GOV’T CODE § 421.095(1).

205 *Id.*

206 TEX. HEALTH & SAFETY CODE § 81.046(c-2).

207 While not defined in Texas statute, the Centers for Disease Control and Prevention define *outbreak* as “the occurrence of more cases of disease, injury, or other health condition than expected in a given area or among a specific group of persons during a specific period. Usually, the cases are presumed to have a common cause or to be related to one another in some way. Sometimes distinguished from an epidemic as more localized, or the term less likely to evoke public panic...” See Centers for Disease Control and Prevention Office of Public Health Scientific Services, *Principles of Epidemiology in Public Health Practice: An Introduction to Applied Epidemiology and Biostatistics* (3<sup>rd</sup> ed. July 2, 2014), <http://www.cdc.gov/OPHSS/CSELS/DSEPD/SS1978/Glossary.html#outbreak>.

208 TEX. HEALTH & SAFETY CODE § 81.046(f).

### ***Confidentiality Obligations of Public Health Authorities***

The federal Public Health Service Act limits the DHHS from releasing sensitive statistical and epidemiological data that are either identifiable or potentially identifiable for any purpose other than the purpose for which it was supplied unless the individual has consented to release or publication.<sup>209</sup>

Under the Texas Communicable Disease Prevention and Control Act, reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for authorized communicable disease prevention and control purposes.<sup>210</sup> These records are not public information and may not be released or made public on subpoena or otherwise except in limited circumstances.<sup>211</sup>

.....  
209 42 U.S.C. § 242m(d).

210 TEX. HEALTH & SAFETY CODE § 81.046(a).

211 TEX. HEALTH & SAFETY CODE § 81.046(b).



## CHAPTER 6

# MASS CASUALTY AND MASS FATALITY INCIDENTS

Some public health emergencies may result in large numbers of casualties, i.e., people killed or injured by an outbreak of disease, accident, bioterrorism attack, or other disaster. Emergency management and public health preparedness authorities often separate mass casualty planning and response into two distinct categories: (1) mass casualty incidents (MCIs) which focus on medical treatment of living casualties and (2) mass fatality incidents (MFIs) which focus on management of deceased casualties. There is no static numerical threshold to determine whether an incident rises to the level of MCI or MFI. MCIs and MFIs are usually declared when the number of casualties (patients or fatalities) in a jurisdiction at a given time rises to a level which cannot be effectively managed using local health care and emergency resources. Such incidents require external emergency coordination and assistance.<sup>212</sup>

Both MCIs and MFIs require planning efforts and cross-jurisdictional cooperation to manage these situations effectively. Whereas some jurisdictions, such as rural communities, will need to engage MCI or MFI protocols in response to an incident with a small number of casualties, jurisdictions with more resources and greater capacity, such as major urban areas, may be able to manage the same situation within its existing infrastructure. For example, 10 simultaneous patients may overwhelm a rural emergency department and EMS trauma system and may constitute an MCI, whereas a large urban city may routinely manage similar patient levels.

### *Mass Casualty Incidents*

In the public health context, mass casualties can result, for example, from a naturally occurring communicable disease, the introduction of biological agents by criminal actors, or precipitated by a natural disaster such as a hurricane. The central tenet of MCI planning and response is the coordination of local, regional, state, and federal resources to confront an event that has exhausted local resources.

Jurisdictions can prepare for MCIs by incorporating mass casualty planning into their emergency management plans. The Texas Department of Public Safety Division of Emergency Management maintains the State Emergency Management Plan<sup>213</sup> and the Public Health and Medical Annex contains guidance on MCI and MFI coordination and response.<sup>214</sup> Each county and incorporated city in Texas is required to maintain an emergency management agency or participate

212 See WORLD HEALTH ORG., MASS CASUALTY MANAGEMENT SYSTEMS: STRATEGIES AND GUIDELINES FOR BUILDING HEALTH SECTOR CAPACITY 9 (2007), [http://www.who.int/hac/techguidance/MCM\\_guidelines\\_inside\\_final.pdf](http://www.who.int/hac/techguidance/MCM_guidelines_inside_final.pdf); PAN AM. HEALTH ORG., ESTABLISHING A MASS CASUALTY MANAGEMENT SYSTEM 3 (2001); TEX. DEP'T OF STATE HEALTH SERV., MASS FATALITY MANAGEMENT PLANNING TOOLKIT 9 (Feb. 2015), <https://www.dshs.state.tx.us/commmprep/planning/toolkits/2015-Mass-Fatality-Management-Planning-Toolkit.pdf>.

213 37 TEX. ADMIN. CODE § 7.11. The State Emergency Management Plan and Annexes are available at <https://tdem.texas.gov/state-of-texas-emergency-management-plan/>.

214 PUBLIC HEALTH AND MEDICAL ANNEX (ESF-8), STATE OF TEXAS EMERGENCY MANAGEMENT PLAN (Jan. 2017), [https://tdem.texas.gov/wp-content/uploads/2020/01/2020\\_01\\_28\\_Texas\\_Public\\_Health\\_and\\_Medical\\_Annex\\_ESF8.pdf](https://tdem.texas.gov/wp-content/uploads/2020/01/2020_01_28_Texas_Public_Health_and_Medical_Annex_ESF8.pdf).

in a local or interjurisdictional emergency management agency.<sup>215</sup> Each local emergency management agency is required to prepare and maintain a local emergency management plan.<sup>216</sup> An emergency plan contains a basic plan and numerous annexes. The basic plan outlines a jurisdiction's approach to emergency operations and provides general guidance for emergency management activities, while the annexes describe in more depth the operational details. Jurisdictions can incorporate mass casualty and mass fatality planning in their emergency management plans in a way similar to the state emergency management plan. Emergency management plans are reviewed annually and must be updated every five years.<sup>217</sup> An emergency management plan may provide that failure to comply with the plan or with a rule, order, or ordinance adopted under the plan is an offense.<sup>218</sup> The plan may prescribe a punishment for the offense, but may not prescribe a fine that exceeds \$1,000 or confinement in jail for a term that exceeds 180 days.<sup>219</sup>

Emergency response is the responsibility of the local jurisdiction. MCIs, by definition, require assistance from a neighboring or encompassing jurisdiction. Texas law has specified a sequence for requesting assistance. The law requires that localities first seek assistance from the county's local or interjurisdictional emergency management program.<sup>220</sup> If local and mutual aid resources prove inadequate, the local government may then request assistance from the state by contacting the local Disaster District Committee Chairperson, who is the commanding officer of the Texas Highway Patrol district or sub-district in which the jurisdiction is located.<sup>221</sup> Texas is divided into disaster districts and a Disaster District Committee is established for each to coordinate the deployment of emergency assets within its district.<sup>222</sup> The Disaster District Committee will contact the Texas Division of Emergency Management State Operations Center if the resources of a disaster district are inadequate.

A local jurisdiction may request regional public health and medical coordination from the Department of State Health Services (DSHS) Health Service Region office if an incident overwhelms the resources of a local jurisdiction (whether or not the local jurisdiction also has a local health authority). Texas is divided into 11 Health Service Regions, but for administrative purposes are served by eight regional offices that coordinate public health responses.<sup>223</sup> Health Service Region offices can provide assistance and help coordinate public health responses for the cities and counties within its jurisdiction.<sup>224</sup> Health Service Region offices can also activate a Regional Health and Medical Operations Centers (RHMO) to coordinate regional public health and medical response.<sup>225</sup> If

.....  
215 37 TEX. ADMIN. CODE § 7.11.

216 37 TEX. ADMIN. CODE § 7.12.

217 *Id.*

218 TEX. GOV. CODE § 418.173(a).

219 TEX. GOV. CODE § 418.173(b).

220 TEX. GOV. CODE § 418.102(b).

221 37 TEX. ADMIN. CODE § 7.24.

222 TEX. GOV. CODE § 418.113(a)-(c).

223 Tex. Dep't of State Health Serv., Cent. for Health Statistics, *Texas County Numbers and Public Health Regions*, [https://www.dshs.state.tx.us/chs/info/info\\_txco.shtm](https://www.dshs.state.tx.us/chs/info/info_txco.shtm).

224 PUBLIC HEALTH AND MEDICAL ANNEX (ESF-8), STATE OF TEXAS EMERGENCY MANAGEMENT PLAN (Jan. 2017), [https://tdem.texas.gov/wp-content/uploads/2020/01/2020\\_01\\_28\\_Texas\\_Public\\_Health\\_and\\_Medical\\_Annex\\_ESF8.pdf](https://tdem.texas.gov/wp-content/uploads/2020/01/2020_01_28_Texas_Public_Health_and_Medical_Annex_ESF8.pdf).

225 *Id.*



necessary, the DSHS may activate the State Medical Operations Center (SMOC) to serve as the state public health and medical coordination center.<sup>226</sup>

Regional Advisory Councils (RACs) also play a role in MCI response as the principal function of a RAC is to develop, implement, and monitor a regional EMS trauma system plan.<sup>227</sup> RAC plans include contingencies for alternate health care locations to augment surge capacity once the surge capacity of a hospital is exceeded by patient demand.<sup>228</sup> Texas is divided into 22 Trauma Service Areas<sup>229</sup> and a RAC serves each Trauma Service Area.<sup>230</sup>

### ***Mass Fatality Incidents***

MFIs may occur as a result of one isolated event, such as an explosion with multiple fatalities, or as a result of an MCI which has devolved into a situation with multiple deaths. As with MCIs, an MFI occurs when the number of fatalities overwhelms a jurisdiction's infrastructure.<sup>231</sup> MFIs introduce additional complexities as resources may be needed to recover and identify the victims, determine the causes of deaths, provide temporary storage of human remains, and ultimately release the remains and personal effects to the victims' families.<sup>232</sup>

MFIs often require collaboration between public health authorities and medico-legal authorities. A medico-legal authority is either a justice of the peace or a medical examiner. Any county having a population of more than two million shall establish and maintain the office of medical examiner, otherwise it is served by a justice of the peace. If a county establishes an office of the medical examiner, all powers and duties of justices of the peace in such county relating to the investigation of deaths and inquests vest in the office of the medical examiner.<sup>233</sup>

One of the primary duties of a medico-legal authority is to conduct an inquest, or an investigation to determine the cause of death and whether the death was caused by an unlawful act.<sup>234</sup> For MFI purposes, the Texas Code of Criminal Procedure requires an inquest by the medico-legal authority when (1) the cause or circumstances of death are unknown; (2) a person dies within 24 hours after admission to a hospital or institution (applicable only for medical examiner inquests); (3) a person dies without having been attended by a physician; (4) a person dies while attended by a physician who is unable to certify the cause of death; (5) the circumstances of the death of any person

.....  
226 *Id.* at 7.

227 TEX. DEP'T OF STATE HEALTH SERV., REGIONAL ADVISORY COUNCIL AND REGIONAL TRAUMA SYSTEM ESSENTIAL CRITERIA RAC IMPLEMENTATION GUIDELINES, 1 (Aug. 2009), [https://www.dshs.state.tx.us/emstraumasystems/Essential-Criteria-\\_revised\\_.pdf](https://www.dshs.state.tx.us/emstraumasystems/Essential-Criteria-_revised_.pdf).

228 PUBLIC HEALTH AND MEDICAL ANNEX (ESF-8), STATE OF TEXAS EMERGENCY MANAGEMENT PLAN (Jan. 2017), [https://tdem.texas.gov/wp-content/uploads/2020/01/2020\\_01\\_28\\_Texas\\_Public\\_Health\\_and\\_Medical\\_Annex\\_ESF8.pdf](https://tdem.texas.gov/wp-content/uploads/2020/01/2020_01_28_Texas_Public_Health_and_Medical_Annex_ESF8.pdf).

229 25 TEX. ADMIN. CODE § 157.122(b).

230 25 TEX. ADMIN. CODE § 157.123.

231 TEX. DEP'T OF STATE HEALTH SERV., MASS FATALITY MANAGEMENT PLANNING TOOLKIT, 9 (Feb. 2015), <https://www.dshs.state.tx.us/commprep/planning/toolkits/2015-Mass-Fatality-Management-Planning-Toolkit.pdf>.

232 *Id.* at 4.

233 TEX. CODE CRIM. PROC. art. 49.25 § 12.

234 TEX. CODE CRIM. PROC. art. 49.01(2).

are such as to lead to suspicion that the death was caused by unlawful means.<sup>235</sup> If an MFI is suspected to be an infectious disease outbreak, DSHS and its public health partners will coordinate with and provide guidance on the communicable disease investigation to the medico-legal authority.<sup>236</sup> In the event that a justice of the peace who serves the precinct is not available to conduct an inquest, the inquest shall be conducted by the nearest available justice of the peace in the county. If no other justice of the peace serving the county is available, the County Judge shall initiate the inquest.<sup>237</sup>

Another function of the medico-legal authority is to conduct or order the performance of an autopsy.<sup>238</sup> An autopsy is a post-mortem examination of the body to determine the cause of death.<sup>239</sup> An autopsy is not required for every inquest,<sup>240</sup> but an autopsy shall be performed if (1) the medico-legal authority determines that an autopsy is necessary to confirm the cause of death; (2) the deceased was a child younger than six years old and the death was determined to be unexpected or the result of abuse or neglect; or (3) so ordered by the district attorney.<sup>241</sup> A medico-legal authority, however, may not order a person to perform an autopsy on the body of a person whose death was caused by Asiatic cholera, bubonic plague, typhus fever, smallpox, or by a communicable disease during a Public Health Disaster.<sup>242</sup>

A body or a body part that is subject to an inquest must be disposed according to the directions of the medico-legal authority.<sup>243</sup> The medico-legal authority, for example, may order a disinterment if a body or body part subject to an inquest was buried prior to an investigation.<sup>244</sup> Similarly, a body subject to an inquest may not be cremated unless the body is identified and the medico-legal authority has issued a signed certificate stating that an autopsy was performed on the body or that an autopsy was unnecessary.<sup>245</sup> A body generally cannot be cremated within 48 hours after the time of death as indicated on the death certificate but may proceed if the death certificate indicates that death was caused by Asiatic cholera, bubonic plague, typhus fever, smallpox, or if the medico-legal authority waives the requirement in writing.<sup>246</sup> During a Public Health Disaster, the DSHS Commissioner may designate other communicable diseases for which cremation within 48 hours of the time of death is authorized.<sup>247</sup>

.....  
235 TEX. CODE CRIM. PROC. art. 49.04, 49.25 § 6.

236 TEX. DEP'T OF STATE HEALTH SERV., MASS FATALITY MANAGEMENT PLANNING TOOLKIT, 4 (Feb. 2015), <https://www.dshs.state.tx.us/commprep/planning/toolkits/2015-Mass-Fatality-Management-Planning-Toolkit.pdf>.

237 TEX. CODE CRIM. PROC. art. 49.07(c).

238 TEX. CODE CRIM. PROC. art. 49.10.

239 TEX. CODE CRIM. PROC. art. 49.01(1).

240 TEX. CODE CRIM. PROC. art. 49.10(c).

241 TEX. CODE CRIM. PROC. art. 49.10(e).

242 TEX. CODE CRIM. PROC. art. 49.10(d).

243 TEX. CODE CRIM. PROC. art. 49.09.

244 TEX. CODE CRIM. PROC. art. 49.09(a).

245 TEX. CODE CRIM. PROC. art. 49.09(b).

246 TEX. CODE CRIM. PROC. art. 49.25 § 10a.

247 *Id.*

# APPENDICES



## APPENDIX A

### QUICK REFERENCE CONTACT LIST

Agency	Website	Phone Number
<b>Federal</b>		
Centers for Disease Control and Prevention	<a href="http://www.cdc.gov/">http://www.cdc.gov/</a>	800-CDC-INFO
Federal Emergency Management Agency	<a href="http://www.fema.gov/">http://www.fema.gov/</a>	800-621-FEMA
Office of the Assistant Secretary for Preparedness and Response	<a href="http://www.phe.gov/">http://www.phe.gov/</a>	202-205-2882
Office of the Surgeon General	<a href="https://www.hhs.gov/surgeongeneral/index.html/">https://www.hhs.gov/surgeongeneral/index.html/</a>	202-260-2549
Public Health Service Commissioned Corps	<a href="https://www.usphs.gov/">https://www.usphs.gov/</a>	240-453-6000
<b>State</b>		
Texas Department of State Health Services (DSHS)	<a href="https://dshs.texas.gov/">https://dshs.texas.gov/</a>	888-963-7111
Governor's Office	<a href="http://gov.texas.gov/">http://gov.texas.gov/</a>	800-843-5789
Office of General Counsel, DSHS	<a href="https://dshs.texas.gov/exec-team/counsel.aspx">https://dshs.texas.gov/exec-team/counsel.aspx</a>	512-776-6440
Regional and Local Services, DSHS	<a href="https://www.dshs.texas.gov/regions/">https://www.dshs.texas.gov/regions/</a>	512-776-7770
Health Emergency Preparedness and Response Section, DSHS	<a href="https://www.dshs.texas.gov/commprep/">https://www.dshs.texas.gov/commprep/</a>	512-776-7219
Texas Division of Emergency Management	<a href="https://tdem.texas.gov/">https://tdem.texas.gov/</a>	512-424-2208

#### **Suggested Local Contacts**

- Local Health Authority
- Local health department or public health district
- County Judge and County Commissioners Court
- Mayor and City Council
- City Attorney
- County Attorney
- Local office of emergency management



## **APPENDIX B**

### **QUICK JURISDICTION AND VENUE REVIEW**

#### **Court Order for the Management of Person with a Communicable Disease (OMPCD)**

- District court in county where the person resides, is found, or is receiving court-ordered health services
- If not originally filed in county where the person resides, court may transfer case to that county upon showing of good cause

#### **Order for Protective Custody**

- May be filed only in court in which an application for an OMPCD is pending or was filed

#### **Re-examination**

- Must be filed in the county where the person is receiving services

#### **Appeals on OMPCD, Renewals, or Modifications**

- Court of Appeals for the county from which the order was entered

#### **Area Quarantines**

- Commissioners court can restrict elective admissions to hospitals in order to provide isolation or quarantine facilities





## **APPENDIX C**

### **ACRONYMS**

<b>CDC</b>	Centers for Disease Control and Prevention
<b>DHHS</b>	Department of Health and Human Services
<b>DSHS</b>	Texas Department of State Health Services
<b>ePHI</b>	Electronic Protected Health Information
<b>FDA</b>	Food and Drug Administration
<b>HIPAA</b>	Health Insurance Portability and Accountability Act of 1996
<b>HITECH</b>	Health Information Technology for Economic and Clinical Health Act of 2009
<b>HHSC</b>	Texas Health and Human Services Commission
<b>LHA</b>	Local Health Authority
<b>MCI</b>	Mass Casualty Incident
<b>MFI</b>	Mass Fatality Incident
<b>OMPCD</b>	Order for the Management of a Person with a Communicable Disease
<b>PHI</b>	Protected Health Information
<b>RAC</b>	Regional Advisory Council
<b>RHMOC</b>	Regional Health and Medical Operations Center
<b>SMOC</b>	State Medical Operations Center
<b>TDEM</b>	Texas Division of Emergency Management
<b>TMRPA</b>	Texas Medical Records Privacy Act



**APPENDIX D**  
**CONTROL MEASURES FOR INDIVIDUALS AND GROUPS**  
**FLOWCHARTS AND SAMPLE FORMS**

**FLOWCHARTS**

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*Implementation of Control Measures on an Individual*..... p. 57  
*Implementation of Control Measures on a Group of 5 or More*..... p. 59

**SAMPLE FORMS**

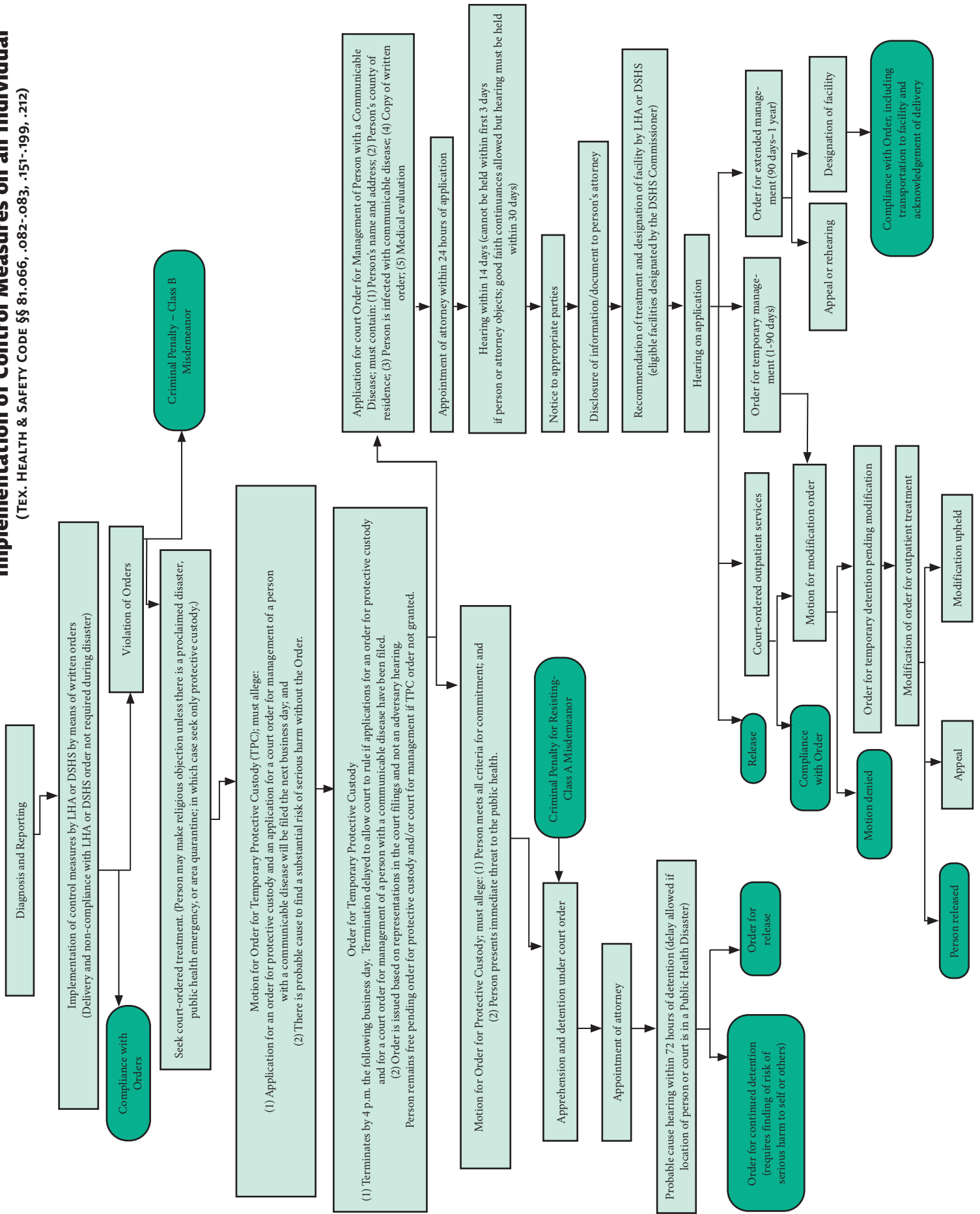
---

*Order of Control Measures*..... p. 61  
*Application for Court Order for the Management of a Person with a Communicable Disease*..... p. 63  
*Medical Evaluation Affidavit*..... p. 65  
*Notice to Parties of Hearing on Management Application*..... p. 67  
*Order on Application for Court Order for Management of a Person  
with a Communicable Disease*..... p. 69  
*Writ of Commitment*..... p. 71  
*Statement Acknowledging Acceptance of the Person  
and Any Personal Property*..... p. 73  
*Motion for Temporary Protective Custody*..... p. 75  
*Order for Temporary Protective Custody*..... p. 77  
*Motion for Protective Custody*..... p. 79  
*Notification of Probable Cause Hearing*..... p. 81  
*Order for Continued Detention*..... p. 83  
*Order for Release*..... p. 85  
*Designation of Facility*..... p. 87



# Implementation of Control Measures on an Individual

(TEX. HEALTH & SAFETY CODE §§ 81.066, .082-.083, .151-.199, .212)

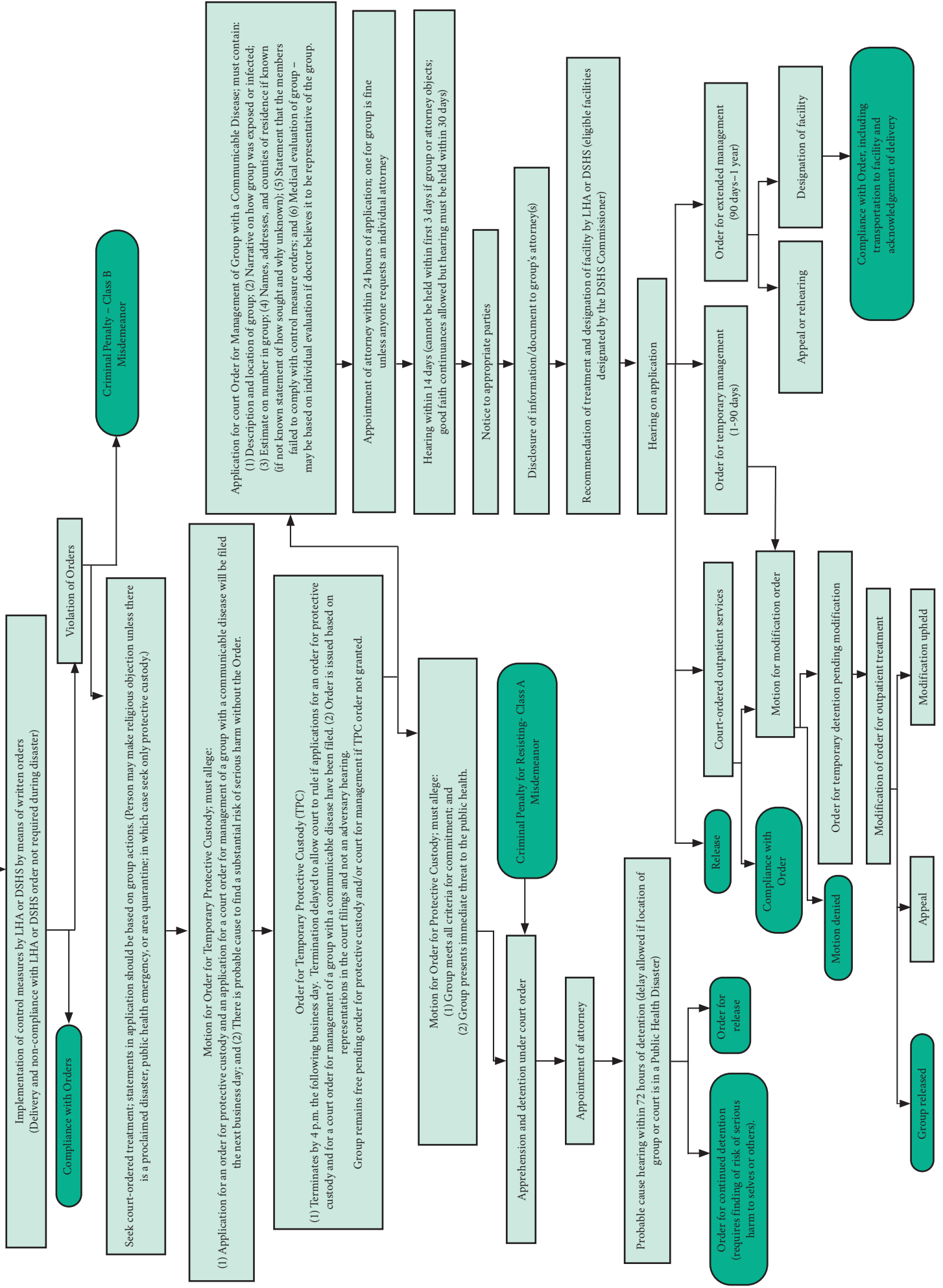






# Implementation of Control Measures on a Group of 5 or More

(TEX. HEALTH & SAFETY CODE §§ 81.066, .082-.083, .151-.199, .212)





**ORDER OF CONTROL MEASURES<sup>248</sup>**

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Pursuant to Texas Health & Safety Code § 81.083, I, the *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)*, hereby issue this Order imposing *(specified control measures)* on you, *(name or description of person or group)*.

This Order is being issued in response to reasonable cause to believe that you are infected with, have been exposed to, or are a carrier of a communicable disease and therefore may be a threat to yourself or others.

**You are hereby ordered to submit to the Department of State Health Services and/or the Local Health Authority for testing. You must also *(describe control measures here or name of facility to which person or group should report)*.**

Additional information regarding any control measures to be implemented will be provided to you in a timely manner.

**Failure to abide by this Order and further instructions from the Department of State Health Services and/or the Local Health Authority may result in criminal penalties ranging from a Class B misdemeanor to a felony in the third degree.**

If you have any questions, information, or concerns, please contact *(insert contact information here)*.

This Order is issued under my authority as *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)* on this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

---

*Print name below; sign on the line.*

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248 Texas statute does not specify a form for an Order of Control Measures. This is a sample form to be issued by the Commissioner of the Department of State Health Services or the Local Health Authority. Boldface language in the form is believed imperative for the average impacted person to read.



**APPLICATION FOR COURT ORDER FOR THE MANAGEMENT OF  
A PERSON WITH A COMMUNICABLE DISEASE<sup>249</sup>**

---

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

**Application for Court Order for the Management of a Person  
with a Communicable Disease**

The (*insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction* authorized under Texas Health and Safety Code § 121.021), by counsel, hereby respectfully applies to the Court for an Order for the Management of a Person with a Communicable Disease.

1. On (*date*), written orders from (*insert appropriate title: the Commissioner of the Department of State Health Services or the Local Health Authority*) were issued. *See Exhibit A.*
2. The person on whom the orders were imposed, (*initials of person, address, county of residence; if group, change wording as needed and supply description and location of group, estimated number, names, address, and counties of residence as known or statement regarding why they are not known must follow*), is or is believed to be infected with a communicable disease that could constitute a threat to the public health.
3. The attached Affidavit of Medical Evaluation, *Exhibit B*, details the person's current condition and is submitted in support of this application.
4. The applicant, upon information and belief, alleges that the person is likely to cause serious harm to self or continue to endanger the public health if not examined, observed, isolated, or treated as a result of a communicable disease.

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<sup>249</sup> To be filed in the district court in which the person is found, resides, or is receiving court-ordered services by the attorney general on behalf of DSHS or the municipal, county, or district attorney on behalf of the Local Health Authority.

5. The applicant further alleges that the person has not complied with the orders issued (*Exhibit A*).

WHEREFORE, based upon the above, the applicant respectfully requests this Court to order (*temporary or extended*) management of the above referenced person.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_





6. I am of the opinion that the proposed patient is infected with a communicable disease that presents a threat to the public health. As a result of that communicable disease, the proposed patient: \_\_\_\_\_ is likely to cause serious harm to self;

\_\_\_\_\_ will continue to endanger the public health if not examined, observed, or treated. The detailed basis for this opinion is as follows: *(insert detailed information and reasoning)*.

7. *(If seeking a protective custody order:)* I am further of the opinion that the proposed patient presents a substantial risk of serious harm to self or others if not immediately restrained. The proposed patient's harmful behavior demonstrates that the proposed patient cannot remain at liberty. The detailed basis for this opinion is as follows: *(insert detailed information and reasoning)*.

8. *(If seeking extended management:)* I am further of the opinion that the proposed patient's condition is expected to continue for more than 90 days. The detailed basis for that opinion is as follows: \_\_\_\_\_ . See Exhibit \_\_\_\_\_.

Signed: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public, \_\_\_\_\_ County, Texas

My commission expires: \_\_\_\_\_

**NOTICE TO PARTIES OF HEARING ON MANAGEMENT APPLICATION<sup>251</sup>**

---

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

I, the undersigned hearing officer, hereby notify the parties and attorneys involved in the above captioned action that a hearing has been set for the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at (*time and location*).

The individuals to be so notified are: (*names, addresses, and phone numbers as appropriate*).

This hearing will be held to hear evidence on the application for an order from this Court for management of (*initials of person or description of group*).

Date: \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_

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<sup>251</sup> Notice to be issued by the trial judge.



**ORDER ON APPLICATION FOR COURT ORDER FOR MANAGEMENT OF  
A PERSON WITH A COMMUNICABLE DISEASE<sup>252</sup>**

---

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

**Order**

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, the undersigned hearing officer, heard evidence concerning the need for court ordered management of \_\_\_\_\_ (hereinafter referred to as the proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others and/or has failed to comply with legally issued control measure orders.

I have examined the affidavit of medical evaluation and \_\_\_\_\_ (*list other evidence considered*). Based on the evidence, I find that the proposed patient is likely to cause serious harm to self and/or continue to endanger the public health as a result of infection or possible infection by (*name of disease*) if management is not ordered. (*If order for extended treatment: I additionally find that the proposed patient's condition is expected to continue for more than 90 days.*)

In accordance with these findings, I hereby ORDER the proposed patient to submit to examination, observation, isolation, and/or treatment as determined by the Local Health Authority, Department of State Health Services, and/or head of the facility at which the proposed patient is seen. (*If order is for outpatient services: I hereby appoint the Local Health Authority to monitor the proposed patient's compliance and order the head of the facility providing treatment to the proposed patient to cooperate with the Local Health Authority as needed to fulfill the terms of this order.*)

Treatment and related activities under this Order may be continued no longer than (*90 days or 12 months, depending on whether it is a temporary or extended order*).

SO ORDERED THIS: \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_

.....  
252 Order to be entered by trial judge.



**WRIT OF COMMITMENT<sup>253</sup>**

.....

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
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**Writ of Commitment**

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, the undersigned, entered an order directing treatment of (*initials of proposed patient*) at (*name of facility*), a copy of which is attached hereto.

In accordance with this Court's Order and this Writ, the sheriff or constable is hereby ordered to accompany the proposed patient to (*name of facility*) and apply any control measures needed during such transportation as determined by the Department of State Health Services or the Local Health Authority.

SO ORDERED THIS: \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_

.....  
253 To be issued by trial judge. Two copies will be given to the sheriff or constable transporting the patient – one for the sheriff or constable and one for the head of the facility.





**STATEMENT ACKNOWLEDGING ACCEPTANCE OF THE PERSON  
AND ANY PERSONAL PROPERTY<sup>254</sup>**

.....

No. \_\_\_\_\_

THE STATE OF TEXAS	§	IN THE _____ DISTRICT COURT
FOR THE BEST INTEREST	§	
AND PROTECTION OF	§	IN AND FOR
_____	§	
	§	_____ COUNTY, TEXAS

**Acknowledgement of Delivery of Patient and Personal Belongings**

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (*initials of patient*) was delivered by sheriff or constable to (*name of facility*). As the head of the facility, I hereby acknowledge receipt of (*initials of patient*) and the following personal property of the patient's: (*list personal property*). I will ensure treatment commences pursuant to the orders of the Court in this matter and instructions from the Department of State Health Services or the Local Health Authority.

Signed: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public, \_\_\_\_\_ County, Texas

My commission expires: \_\_\_\_\_

.....  
254 To be written by the head of the treating facility. One copy must be given to the sheriff or constable who delivered the patient, and one copy must be filed with the court clerk after the person is admitted and the writ of commitment is received.



**MOTION FOR TEMPORARY PROTECTIVE CUSTODY<sup>255</sup>**

.....

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

**Motion Seeking Temporary Protective Custody**

The (*insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction* authorized under Texas Health and Safety Code § 121.021), by counsel, hereby respectfully applies to the Court for an Order for Temporary Protective Custody of (*initials of individual*).

1. On (*date*), written orders from (*insert appropriate title: the Commissioner of the Department of State Health Services or the Local Health Authority*) were issued. *See Exhibit A.*
2. The person on whom the orders were imposed, (*initials of person, address, county of residence; or, if group, description and location of group, estimated number, names, address, and counties of residence as known or statement regarding why they are not known must follow*), is or is believed to be infected with a communicable disease that could constitute a threat to the public health.
3. An application for an order for management of a person with a communicable disease and motion for protective custody will be filed with this Court during the next business day.
4. The applicant, upon information and belief, alleges that there is probable cause to believe the person poses a substantial risk of serious harm to self or others should he remain at liberty pending orders on the above-referenced motion and application.

.....  
255 Motion to be filed in the court where the motion for protective custody and application for court management of a person with a communicable disease will be filed. To be submitted by the attorney general on behalf of DSHS or the municipal, county, or district attorney on behalf of the Local Health Authority.

WHEREFORE, based upon the above, the applicant respectfully requests this Court to order temporary protective custody for the above-referenced person/group.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

**ORDER FOR TEMPORARY PROTECTIVE CUSTODY**

.....

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

**Order**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, the undersigned hearing officer, reviewed evidence concerning the need for temporary protective custody for \_\_\_\_\_ (hereinafter referred to as the proposed patient).

Based on the evidence, I find that the proposed patient is likely to cause serious harm to self or others should the proposed patient remain free at this time due to the proposed patient's suspected infection with a communicable disease.

In accordance with these findings, I hereby ORDER the proposed patient to submit to examination, observation, isolation, and/or treatment as determined by the Local Health Authority, Department of State Health Services, and/or head of the facility at which the proposed patient is seen. *(If order is for outpatient services: I hereby appoint the Local Health Authority to monitor the proposed patient's compliance and order the head of the facility providing treatment to the proposed patient to cooperate with the Local Health Authority as needed to fulfill the terms of this Order.)*

This ORDER terminates at 4 p.m. on \_\_\_\_\_ (*next business day*) unless a motion for protective custody and an application for a court order for treatment of a person with a communicable disease is filed prior to that time.

SO ORDERED THIS: \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_



**MOTION FOR PROTECTIVE CUSTODY**

.....

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

**Motion for Protective Custody**

The (*insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction* authorized under Texas Health and Safety Code § 121.021), by counsel, hereby respectfully applies to the Court for an order directing (*initials of person*) to submit to protective custody.

1. On (*date*), written Orders from (*insert appropriate title: the Commissioner of the Department of State Health Services or the Local Health Authority*) were issued. *See Exhibit A.*
2. The person on whom the Orders were imposed, (*initials of person, address, county of residence; or, if group, description and location of group, estimated number, names, address, and counties of residence as known or statement regarding why they are not known must follow*), is or is believed to be infected with a communicable disease that could constitute a threat to the public health.
3. The attached Affidavit of Medical Evaluation, *Exhibit B*, details the person’s current condition and is submitted in support of this application.
4. The applicant, upon information and belief, alleges that the person is likely to cause serious harm to self and/or constitute an immediate threat to the public health if not examined, observed, isolated, or treated as a result of a communicable disease. This allegation is based on: (*detailed basis for belief*).
5. The applicant further alleges that the person has not complied with the issued Orders (*Exhibit A*).



WHEREFORE, based upon the above, the applicant respectfully requests this Court to order protective custody for (*initials*).

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

**NOTIFICATION OF PROBABLE CAUSE HEARING<sup>256</sup>**

.....

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

**Notice of Probable Cause Hearing**

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the undersigned hearing officer heard evidence concerning the need for protective custody of \_\_\_\_\_ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney \_\_\_\_\_ have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on \_\_\_\_\_ (*date of notice*).

I have examined the Affidavit of Medical Evaluation and \_\_\_\_\_ (*other evidence considered*). Based on the evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self (yes\_\_\_\_\_ or no \_\_\_\_\_) or others (yes\_\_\_\_\_ or no \_\_\_\_\_), such that the proposed patient cannot be at liberty pending final hearing, because the proposed patient is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and the proposed patient has failed or refused to comply with the Orders of the health authority or the Department of State Health Services delivered on \_\_\_\_ (*date of service*).

Date: \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_

.....  
256 The language in this notification to be issued by the trial judge is as required by statute.



**ORDER FOR CONTINUED DETENTION<sup>257</sup>**

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No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

**Order**

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, the undersigned hearing officer, heard evidence concerning probable cause supporting the need for protective custody of \_\_\_\_\_ (hereinafter referred to as the proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others, an immediate threat to the public health, and/or has failed to comply with legally issued control measure orders.

I have examined the Affidavit of Medical Evaluation and \_\_\_\_\_ (*list other evidence considered*). Based on the evidence, I find that the proposed patient is likely to cause serious harm to self and/or poses an immediate threat to the public health if the proposed patient does not remain in protective custody.

In accordance with these findings, I hereby ORDER the proposed patient to remain under the care of (*name of facility providing temporary protective custody*).

SO ORDERED THIS: \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_

---

<sup>257</sup> Order to be issued by the trial judge.



**ORDER FOR RELEASE<sup>258</sup>**

.....

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

**Order**

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, the undersigned hearing officer, heard evidence concerning probable cause supporting the need for protective custody of \_\_\_\_\_ (hereinafter referred to as the proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others, an immediate threat to the public health, and/or has failed to comply with legally issued control measure orders.

I have examined the Affidavit of Medical Evaluation and \_\_\_\_\_ (*list other evidence considered*). Based on the evidence, I find that there is insufficient cause to believe the proposed patient is likely to cause serious harm to self and/or poses an immediate threat to the public health if the proposed patient does not remain in protective custody.

In accordance with these findings, I hereby ORDER the proposed patient to be released by (*name of facility providing temporary protective custody*).

SO ORDERED THIS: \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_

.....  
258 Order to be issued by the trial judge.



**DESIGNATION OF FACILITY<sup>259</sup>**

.....

No. \_\_\_\_\_

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____	§ § § § §	IN THE _____ DISTRICT COURT  IN AND FOR  _____ COUNTY, TEXAS
---	-----------------------	--

**Designation of Health Facility**

Pursuant to Chapter 81 of the Texas Health and Safety Code, I, the undersigned (*insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction*), do hereby designate the following appropriate in-patient health facility as a suitable place for detention of the person who is the subject of this suit: \_\_\_\_\_ (*insert name and location of designated facility*).

*(If a Local Health Authority: This facility has previously been designated to provide services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease by the Commissioner of the Department of State Health Services.)*

Done at \_\_\_\_\_ County, Texas, on this the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*Title*

.....  
259 Designation to be submitted to the court by the Commissioner of the Department of State Health Services or the Local Health Authority.





**APPENDIX E**  
**CONTROL MEASURES FOR PROPERTY**  
**FLOWCHART AND SAMPLE FORMS**

**FLOWCHART**

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*Implementation of Control Measures on Property* ..... p. 91

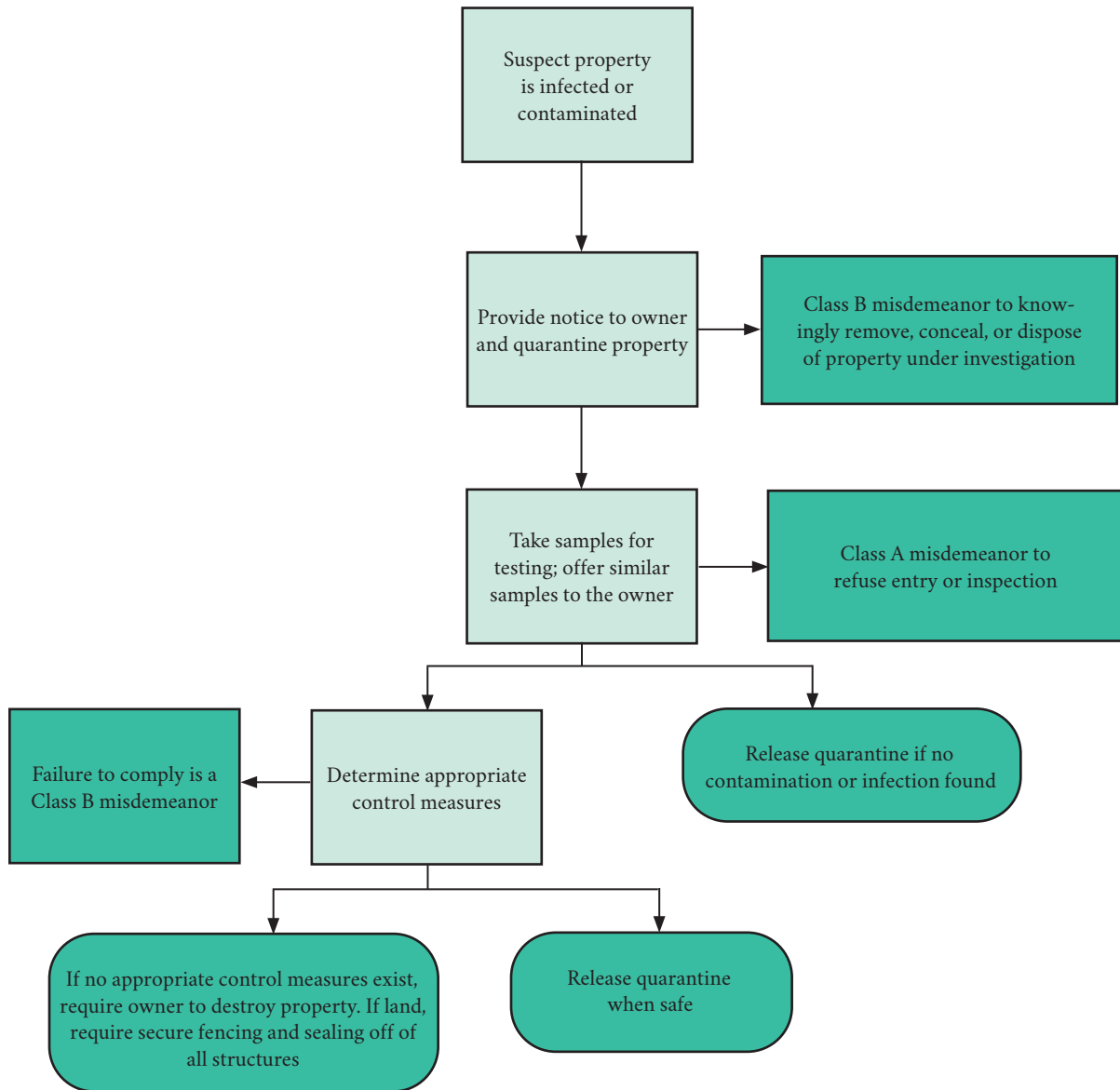
**SAMPLE FORMS**

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*Order of Control Measures for Property* ..... p. 93  
*Property Destruction Order* ..... p. 95  
*Termination of Control Measures Regarding Property* ..... p. 97



**Implementation of Control Measures on Property**  
 (TEX. HEALTH & SAFETY CODE §§ 81.063-.065, .067-.068, .084, .087-.088)





**ORDER OF CONTROL MEASURES FOR PROPERTY<sup>260</sup>**

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Pursuant to Texas Health & Safety Code § 81.084, I, the *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)*, hereby issue this Order imposing *(specified control measures)* on *(description of property)*.

Based on information and belief, you are the *(insert appropriate title: owner, person in control, registered agent for corporate owner, or registered agent for the corporate person in control)* of *(insert description of property)*.

This Order is being issued based on reasonable cause to believe that the *(insert animal or property)* is or may be infected or contaminated by a communicable disease that could constitute a threat to the public health.

**You are hereby ordered to authorize entry to and submit the *(insert animal or property)* to investigation by the Department of State Health Services and/or the Local Health Authority. The property at issue may not be moved, caused to move, or allowed to move from its current location until authorization is received from the Department of State Health Services or Local Health Authority.**

Additional information regarding any technically feasible control measures to be implemented will be provided to you in a timely manner.

*(Insert if real property: **Until further notice, ingress to or egress from the property is prohibited except by authorized public health personnel. A copy of this notice shall be posted on the land and at a place convenient to the public in the county courthouse.**)*

If you have any questions, information, or concerns or if you are not the owner, person in control, or registered agent for the *(insert animal or property)*, please contact *(insert contact information here)*.

**Failure to abide by this Order and further instructions from the Department of State Health Services and/or the Local Health Authority may result in criminal penalties ranging from a Class B misdemeanor to a felony in the third degree.**

This Order is issued under my authority as *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)* on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*Print name below; sign on the line.*

---

<sup>260</sup> Texas statute does not specify a form for an Order of Control Measures for Property. This is a sample form to be issued by the Commissioner of the Department of State Health Services or the Local Health Authority. Boldface language in the form is believed imperative for the average impacted person to read.



**PROPERTY DESTRUCTION ORDER<sup>261</sup>**

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Pursuant to Texas Health & Safety Code § 81.084, I, the *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)*, hereby issue this Order directing you to destroy *(description of property)*.

*(Substitute if real property: Pursuant to Texas Health & Safety Code § 81.084, I, the (insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction), hereby issue this Order directing you to securely fence off and seal (description of property).)*

Based on information and belief, you are the *(insert appropriate title: owner, person in control, registered agent for corporate owner, or registered agent for the corporate person in control)* of *(insert description of property)*.

This Order is being issued following an investigation that has determined that there are no feasible and effective control measures available to address the property's contamination with *(insert name of communicable disease)*.

**Failure to abide by this Order and further instructions from the Department of State Health Services and/or the Local Health Authority may result in criminal penalties ranging from a Class B misdemeanor to a felony in the third degree.**

If you have any questions, information, or concerns or if you are not the owner, person in control, or registered agent for the *(insert animal or property)*, please contact *(insert contact information here)*.

This Order is issued under my authority as *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)* on this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

*Print name below; sign on the line.*

---

261 Texas statute does not specify a form for a Property Destruction Order. This is a sample form to be issued by the Commissioner of the Department of State Health Services or the Local Health Authority. Boldface language in the form is believed imperative for the average impacted person to read.





**TERMINATION OF CONTROL MEASURES REGARDING PROPERTY<sup>262</sup>**

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Pursuant to Texas Health & Safety Code § 81.084, I, the *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)*, hereby terminate my previous order imposing *(specified control measures)* on the following property: *(insert appropriate description)*.

This Termination is being issued based on reasonable cause to believe that the control measures previously imposed have been successful and the property is no longer a threat to the public health.

If you have any questions, information, or concerns, please contact *(insert contact information here)*.

This Termination is effective on this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

-----  
*Print name below; sign on the line.*

---

262 Texas statute does not specify a form for a Termination of Control Measures Regarding Property. This is a sample form to be issued by the Commissioner of the Department of State Health Services or the Local Health Authority.



**APPENDIX F**  
**CONTROL MEASURES FOR CARRIERS OR CONVEYANCES**  
**FLOWCHART AND SAMPLE FORMS**

**FLOWCHART**

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*Implementation of Control Measures on Common Carriers or Private Conveyances..... p. 101*

**SAMPLE FORMS**

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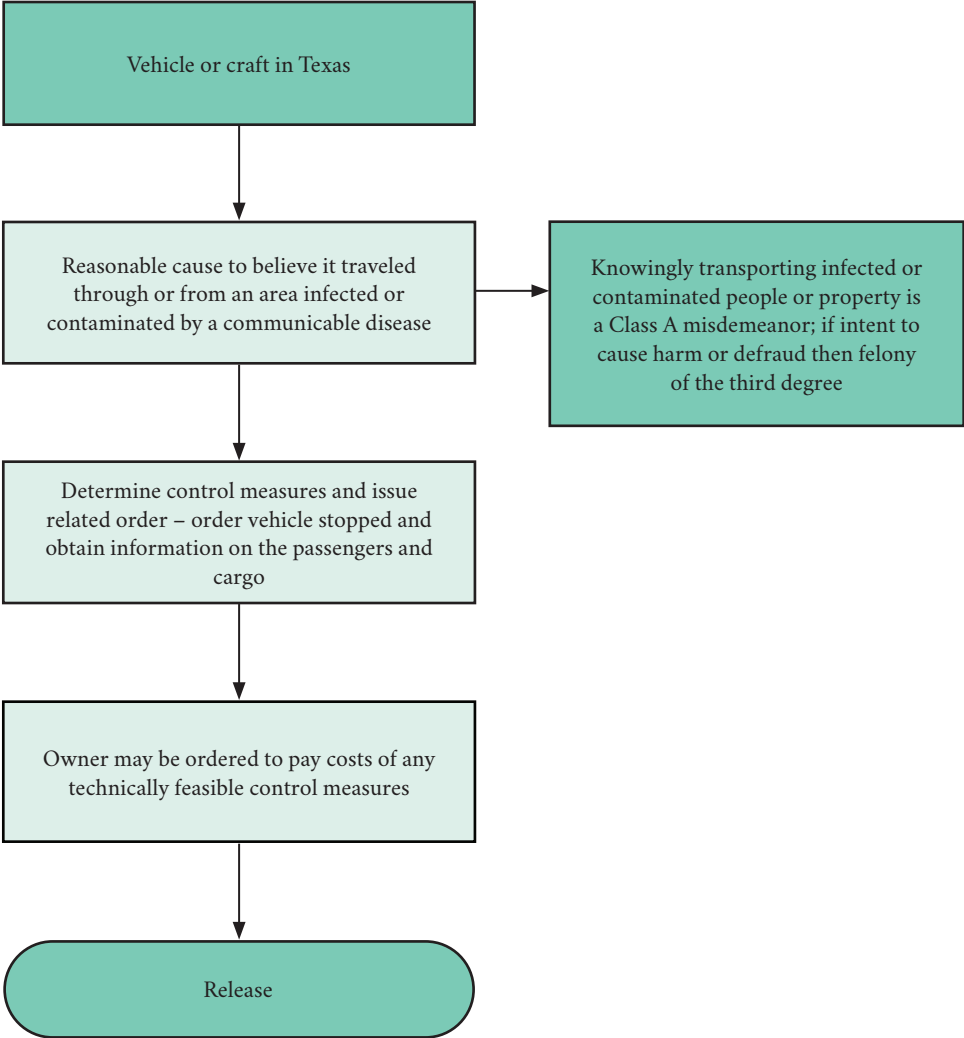
*Order of Control Measures for Carrier or Conveyance..... p. 103*

*Termination of Control Measures for Carrier or Conveyance..... p. 105*



# Implementation of Control Measures on Common Carriers or Private Conveyances

(TEX. HEALTH & SAFETY CODE §§ 81.086, .089)





## ORDER OF CONTROL MEASURES FOR CARRIER OR CONVEYANCE<sup>263</sup>

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Pursuant to Texas Health & Safety Code § 81.086, I, the (*insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction*), hereby issue this Order imposing (*specified control measures*) on (*description of carrier or vehicle*).

You have been identified as the (*insert appropriate title: owner, operator, or authorized agent in control*) of the described carrier or conveyance.

This Order is being issued based on reasonable cause to believe that the vehicle traveled through an area infected or contaminated by a communicable disease that could constitute a threat to the public health.

**You are hereby ordered to stop the carrier or vehicle at its present location and submit to investigation by the Department of State Health Services and/or the Local Health Authority.**

**At this initial stage in the investigation, the following information is required and must be provided by you by (*insert deadline*):**

1. List of operators, crewpersons, and passengers of the vehicle
2. All cargo carried by the vehicle
3. Any illness or suspected illness experienced by any operator, passenger, or crewperson of the vehicle
4. Any condition on board during the journey that may have led to spreading of any communicable disease
5. Any medical or health instructions provided to you or imposed on the vehicle or any of its occupants or cargo during the journey

Additional information regarding any technically feasible control measures to be implemented will be provided to you in a timely manner.

---

<sup>263</sup> Texas statute does not specify a form for an Order of Control Measures for Carrier or Conveyance. This is a sample form to be issued by the Commissioner of the Department of State Health Services or the Local Health Authority. Boldface language in the form is believed imperative for the average impacted person to read.



**Failure to abide by this Order and further instructions from the Department of State Health Services and/or the Local Health Authority may result in criminal penalties ranging from a Class B misdemeanor to a felony in the third degree.**

If you have any questions, information, or concerns, please contact (*insert contact information here*).

This Order is issued under my authority as (*insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction*) on this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

-----  
*Print name below; sign on the line.*

**TERMINATION OF CONTROL MEASURES FOR CARRIER OR CONVEYANCE<sup>264</sup>**

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Pursuant to Texas Health & Safety Code §81.086, I, the *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)*, hereby terminate my previous order imposing *(specified control measures)* on the following vehicle or carrier: *(insert appropriate description)*.

This Termination is being issued based on reasonable cause to believe that the control measures previously imposed have been successful and the vehicle and related persons and cargo impacted are no longer a threat to the public health.

If you have any questions, information, or concerns, please contact *(insert contact information here)*.

This Termination is effective on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*Print name below; sign on the line.*

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264 Texas statute does not specify a form for a Termination of Control Measures for Carrier or Conveyance. This is a sample form to be issued by the Commissioner of the Department of State Health Services or the Local Health Authority.



**APPENDIX G**  
**AREA QUARANTINE**  
**FLOWCHART AND SAMPLE FORMS**

**FLOWCHART**

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*Area Quarantine* ..... p. 109

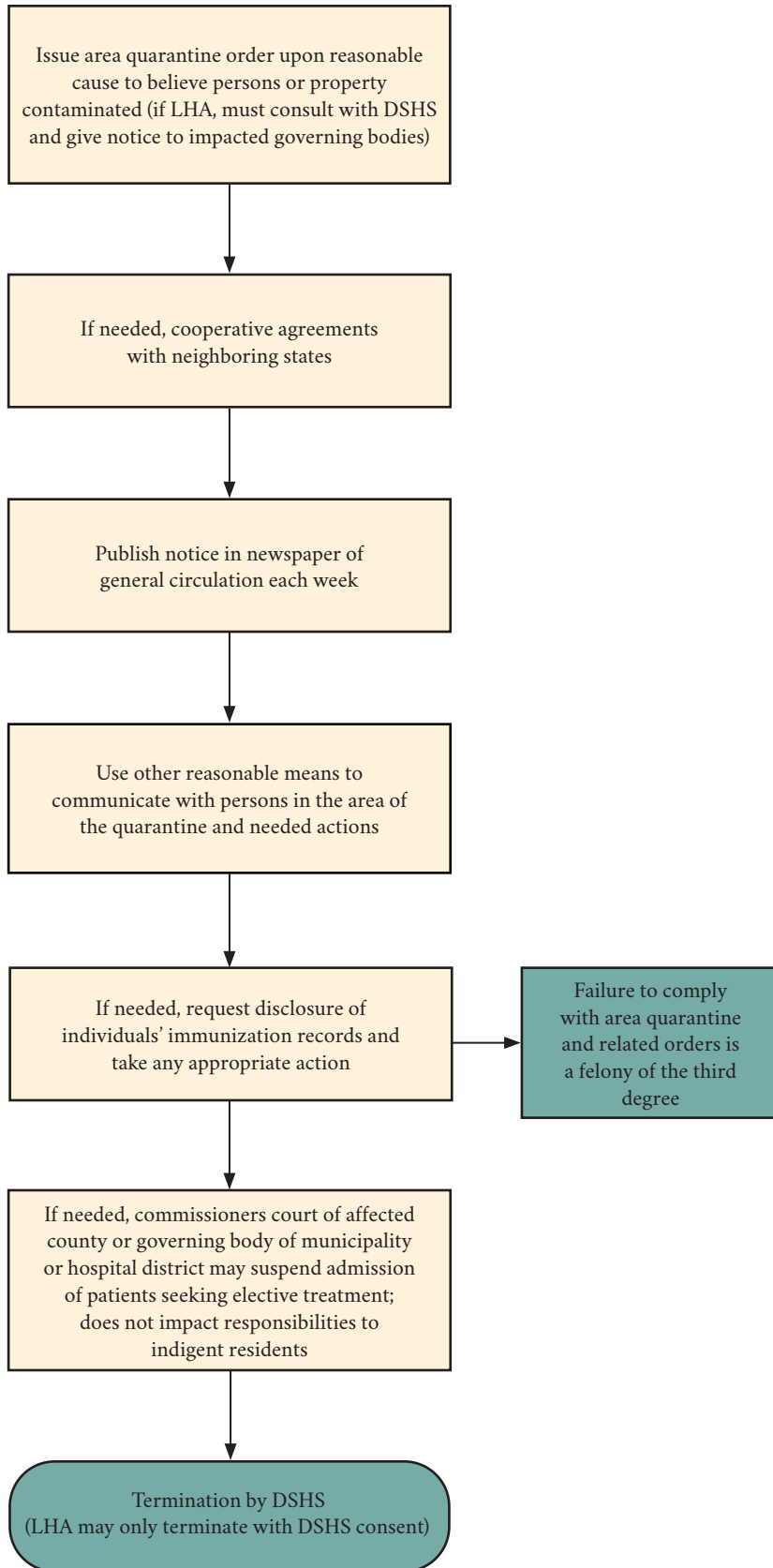
**SAMPLE FORMS**

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*Order Imposing an Area Quarantine* ..... p. 111  
*Area Quarantine Notice for Publication* ..... p. 113  
*Request for Immunization Information* ..... p. 115  
*Order Regarding Admission to Particular Health Facilities* ..... p. 117  
*Termination of Area Quarantine* ..... p. 119



**Area Quarantine**  
(TEX. HEALTH & SAFETY CODE § 81.085)





**ORDER IMPOSING AN AREA QUARANTINE<sup>265</sup>**

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Pursuant to Texas Health & Safety Code § 81.085, I, the (*insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction*), hereby issue this Order imposing an area quarantine.

**The area covered by this quarantine includes:** (*insert appropriate description: address for real property, county, appraisal district, municipality, etc.*).

The imposition of this Order is required based on information and belief that an outbreak of a communicable disease has occurred and impacted the quarantined area.

**Individuals in the quarantined area must** (*insert appropriate control measures here*).

Individuals covered by the quarantine are prohibited by law from: concealing or attempting to conceal their exposure to a communicable disease; prohibiting entry or impeding an investigation by the Department of State Health Services or the Local Health Authority; knowingly concealing, removing, or destroying an item that is under investigation; and failing to comply with all ordered control measures.

Additional control measures, if needed, will be explained in further written instructions.

**Failure to comply with area quarantine orders constitutes a felony of the third degree.**

This quarantine will remain in effect until further notice. Once the area has been determined not to pose a threat to the public health, the area quarantine will be terminated.

Additional information about this quarantine and imposed control measures will be published weekly in (*insert name of newspaper of general circulation*). Other means of communication may also be used.

If you have any questions, information, or concerns, please contact (*insert contact information here*). Please contact us immediately if you believe you have been exposed to or are infected by (*name of disease*).

The outbreak may affect an area or areas outside my jurisdiction. In such a case, you may be contacted by public health officials from that area.

This Order is issued under my authority as (*insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction*) on this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

*Print name below; sign on the line.*

---

<sup>265</sup> Texas statute does not specify a form for an Order Imposing an Area Quarantine. This is a sample form to be issued by the Commissioner of the Department of State Health Services or the Local Health Authority. Boldface language in the form is believed imperative for the average impacted person to read.





**AREA QUARANTINE NOTICE FOR PUBLICATION<sup>266</sup>**

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**An area quarantine has been imposed on (area)** by the *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)* due to a potential threat to the public health.

**Individuals in the quarantined area must (insert appropriate control measure here).**

Individuals covered by the quarantine are prohibited by law from: concealing or attempting to conceal their exposure to a communicable disease; prohibiting entry or impeding an investigation by the Department of State Health Services or the Local Health Authority; knowingly concealing, removing, or destroying an item that is under investigation; and failing to comply with all ordered control measures.

If you have any questions, information, or concerns, please contact *(insert contact information here)*.

**Please contact us immediately if you believe you have been exposed or are infected by (name of disease).**

Information about this quarantine will be published on a weekly basis in this newspaper. Please continue to review these notices for additional, updated information.

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<sup>266</sup> Texas statute does not specify a form for an Area Quarantine Notice for Publication. This is a sample notice to be provided by the Commissioner of the Department of State Health Services or the Local Health Authority to the newspaper of general circulation in the affected area. Boldface language in the notice is believed imperative for the average impacted person to read.



**REQUEST FOR IMMUNIZATION INFORMATION<sup>267</sup>**

---

Pursuant to the authority invested in me by Texas Health & Safety Code § 81.085 during a Public Health Disaster, I, the Commissioner of the Department of State Health Services, hereby request all immunization records for *(insert individual's name and identifying information here)*, who is currently in an area covered by an area quarantine.

Please note this information may be disclosed without the patient's permission under the Health Insurance Portability and Accountability Act (HIPAA) provisions regarding public health activities and information required to be disclosed by law.

This request is issued under my authority as Commissioner of the Department of State Health Services on this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

-----  
*Print name below; sign on the line.*

---

<sup>267</sup> Texas statute does not specify a form for a Request for Immunization Information. This is a sample form to be issued by the Commissioner of the Department of State Health Services during a Public Health Disaster to individuals within the quarantine area.



**ORDER REGARDING ADMISSIONS TO PARTICULAR HEALTH FACILITIES<sup>268</sup>**

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WHEREAS this *(insert name of county, municipality or hospital district)* is under an area quarantine issued on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the *(insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction)*;

WHEREAS, in accordance with the area quarantine order, treatment, isolation, and quarantine quarters must be provided to individuals at an appropriate health facility;

WHEREAS appropriate facilities are available in the impacted area at *(insert name of facility)*;

IT IS HEREBY ORDERED that *(insert name of facility)* suspend admission of patients seeking elective treatment to the extent such suspension would not violate the Indigent Health Care and Treatment Act and operate as a quarantine, isolation, and/or treatment facility in cooperation with the Local Health Authority or the Department of State Health Services.

This Order is issued pursuant to the power invested in *(insert this court or this body)* by Texas Health & Safety Code § 81.085 on this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

-----  
*Print name below; sign on the line.*

.....  
268 Order to be issued by the commissioners court of the affected county or governing body of the municipality or hospital district.



**TERMINATION OF AREA QUARANTINE<sup>269</sup>**

---

Pursuant to Texas Health & Safety Code § 81.085, I, the (*insert appropriate title: Commissioner of the Department of State Health Services or Local Health Authority for insert name of jurisdiction*), hereby terminate my previous order imposing an area quarantine on the following area: (*insert appropriate description: address for real property, county, appraisal district, municipality, etc.*).

This Termination is being issued because the area has been determined within a reasonable degree of medical and scientific certainty to no longer pose a threat to the public health.

If you have any questions, information, or concerns, please contact (*insert contact information here*).

(*Use only if issued by Local Health Authority: This Termination is made with the consent and agreement of the Department of State Health Services.*)

This Termination is effective on this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_  
*Print name below; sign on the line.*

---

<sup>269</sup> Texas statute does not specify a form for a Termination of Area Quarantine. This is a sample form to be issued by the Commissioner of the Department of State Health Services or the Local Health Authority.



**UNIVERSITY OF HOUSTON LAW CENTER  
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