
Coates' Canons Blog: Delegating Local Health Director Legal Powers & Duties

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It doesn't happen every day, but it does happen regularly: a North Carolina community is affected by a public health problem that requires an urgent response. Perhaps it is an outbreak of a communicable disease, like the H1N1 pandemic that reached North Carolina in the spring of 2009. Or it could be an imminent threat from an environmental health hazard, like the fire that occurred at a Wake county chemical storage facility in 2006. These are dramatic examples but they represent public health issues that arise regularly, though not on a predictable schedule.

Local health directors have legal authority to take quick action to protect the public health in these scenarios. But what happens if the health director is out of town and unreachable, or present but unable to act? Can someone else exercise the health director's powers and duties?

The short answer is yes. Almost all of the statutory duties of a North Carolina local health director may be delegated to another appropriate person. But what are those duties? To whom can they or should they be delegated? What should be documented? What are the special considerations for consolidated human services agencies? And finally, who needs to know about the health director's delegation decisions?

Local Health Director Powers and Duties

Each county in North Carolina is served by an agency that is responsible for public health. In most counties that agency is the local health department, but in some counties it's a consolidated human services agency or a public health authority. Each of these local agencies must have a director. The term "local health director" includes county health directors, district health directors, public health authority directors, and the directors of consolidated human services agencies or their designees. The local health director must have education and experience related to health care or public health. (In a consolidated agency, if the director does not have such experience, he or she must appoint a person who does.)

In addition to serving as the administrative head of the agency, local health directors have powers and duties that come from multiple sources of law. Some, but not all, are listed in a statute with the title "Powers and duties of a local health director" (G.S. 130A-41). Others appear elsewhere in Chapter 130A or in other laws. I've categorized and described local health director powers and duties in more detail here.

Directors are responsible for running an agency, which obviously cannot be done single-handedly, so there are a number of health director duties that are routinely carried out by other agency employees. Deciding who will do which of those routine duties may involve delegation, but that is not the focus of this post. Rather, I want to focus on the powers and duties a local health director may exercise to address the kinds of things I described in the first paragraph of this post—the more extraordinary authorities that are given to a local health director to deal with an urgent public health problem. Some examples are:

- Abating an imminent hazard (G.S. 130A-20)
- Undertaking communicable disease investigations and ensuring that communicable disease control measures are in place (G.S. 130A-144)
- Ordering isolation or quarantine (G.S. 130A-145)
- Ordering confinement of animals under the rabies control laws (G.S. Chapter 130A, Article 6, Part 6)

These are significant powers and they involve the exercise of the police power. I don't think it's an accident that our statutes explicitly give them to a public official with significant public health expertise. Therefore, my starting assumption is that the local health director ordinarily will exercise the powers and duties herself. But what if that's not possible? What if the health director is traveling and unreachable at the time they need to be exercised? Or is himself affected by the

communicable disease that needs to be controlled? I'm sure readers can imagine other scenarios that could render a health director unavailable.

It is because of those “what ifs” that health directors should identify in advance who should exercise legal powers and duties if the director cannot, and delegate authority to that person. If it's unclear who has the authority to act in the face of an urgent public health threat, an already-bad situation could get much worse. Determining in advance who has what authority is therefore an act of prevention – the very thing public health specializes in.

Authority to Delegate Health Director Powers and Duties

Most of the statutory powers and duties of a local health director may be delegated. G.S. 130A-6 states it simply: “Whenever authority is granted by this Chapter upon a public official, the authority may be delegated to another person authorized by the public official.” There is a statutory exception for embargo, which is the limited authority a local health director has under G.S. 130A-21 to detain food or drink that may be hazardous or linked to a communicable disease investigation. The authority provided under that section may not be delegated to the local environmental health specialists who enforce state sanitation requirements.

Choosing a Delegate

To whom should a local health director assign the authority to act in the director's absence? The statute simply states that authority “may be delegated to another person authorized by the public official.” It doesn't specify who that person should be, and the choice of a person is likely to vary from one department to the next. In other words, I have no across-the-board answer to this question, but I can offer a few of my thoughts for your consideration.

First and foremost, a person exercising local health director authority needs to have a meaningful connection to the public health agency. The delegate will need access to the substantive public health expertise that is required to exercise the health director's duties in accordance with best practices as well as the law, and may need to coordinate health department staff or speak for the department. This suggests to me that the first place to look for a delegate probably should be the health department itself. However, local organization of public health duties will influence this decision. Regardless of whether a delegate is a health department employee or another county official, it will be important for the delegate to be familiar with the purpose and scope of the authority he or she may be called upon to exercise, and the agency staff who will be involved in carrying out the duties associated with it.

Second, the health director should consider whether to identify a single person to exercise local health director powers and duties or whether to assign different duties to different people. This decision will also be affected by local organization and resources. For example, some departments have designated deputy health directors who are in a good position to step fully into the role of local health director. In other places, it may make more sense to spread the duties out.

Third, while the statute does not by its terms limit the pool of people from whom a delegate may be chosen, I believe the health director should limit his or her delegations of the extraordinary authorities under discussion here to other public officials or employees. The duties in question involve the exercise of the police power—a state power which has been delegated to the local health director via the various statutes. In the absence of express authority to delegate those powers to a private entity, I wouldn't recommend it.

Finally, I recommend that a local health director identify primary and contingent delegates. The primary delegate would be the person the health director expects to exercise authority in the health director's absence. The contingent delegate would step up if for some reason the primary delegate is also unavailable when the need presents itself. Some directors may even wish to identify more than one contingent delegate. If that were done, it would be important to be clear about the order in which the delegates would be called upon.

I'm certain those are not all of the considerations, and I welcome readers' thoughts about any others. Please share them in the comments, or send me an email.

Documenting the Delegation of Authority

There is no statute or regulation that specifically addresses documentation of delegations of local health director authority,

but there is no doubt that it should be documented. Such documentation may be legally important if, for example, an exercise of legal authority is challenged. Legal considerations aside, it is the practical thing to do. Health department staff and local officials certainly need to know who is authorized to take action so that it can be done efficiently. The public may need or want to know as well. Documentation should be reviewed periodically and updated as needed.

Special Considerations for Consolidated Human Services Agencies

In some counties, local public health is part of a consolidated human services agency (CHSA) that includes other departments or programs such as social services or aging. In those counties, public health services are provided by the CHSA, and public health legal duties are exercised through the CHSA as well.

The person in charge of a CHSA is the consolidated human services (CHS) director. By statute, when a CHSA is created and the agency includes public health, the CHS director or the director's designee automatically acquires most of the legal powers and duties of a local health director. G.S. 153A-77(e), 130A-43(c). A CHS director also has duties that go beyond those of a traditional local health director, largely reflecting the CHS director's role as the chief administrator for other human services programs.

The CHS director may exercise local health director authorities or delegate them to another person. This delegation may well be in effect at all times, not just when the CHS director is unavailable—even with respect to the powers to respond to urgent public health threats.

In choosing a delegate, a CHS director has some additional considerations, beyond those I outlined previously. Most significantly, a CHSA that includes public health must have a designated person who meets the statutory education and experience requirements to be a local health director. The law creating the CHS director position does not specify the education or experience requirements for that person. Most of the current CHS directors in North Carolina have a background in either social services or public health, and several meet the statutory requirements to be a local health director. A CHS director who does not meet local health director requirements must appoint another individual who does. G.S. 153A-77(e). The law does not expressly require the CHS director to delegate local health director powers and duties to that person, but the CHS director certainly may.

Letting Others Know the Delegation Decisions

At the risk of stating the obvious, I want to conclude with this reminder: Delegation decisions should not only be documented, they should be shared. There are many others who need to know who has the authority to do what, especially when the need to act is urgent. Who are those people? The answer may vary somewhat from one place to another, but at a minimum, I would suggest that the information be shared with the following people locally:

- The delegates themselves.
- The county manager.
- County officials or program directors or supervisors who will report to and/or provide or arrange employee support for the delegate when action is needed.
- The governing board for the agency.

State agencies may need to have ready access to this information as well. In particular, the state Division of Public Health needs to be able to get this information promptly upon request. State officials often have concurrent authority in the types of events I described at the beginning of this post. For example, the state secretary of health and human services may abate imminent hazards, and the state health director may order isolation or quarantine. In practice, these actions are almost always taken by local officials, but because the state's concurrent authority exists, it is especially important that the state be able to identify who may act locally to ensure state and local efforts are coordinated, and so that the state may provide assistance to local officials or help coordinate efforts across counties.

Links

- canons.sog.unc.edu/?p=7603
- www.ncleg.net/gascritps/statutes/statutelookup.pl?statute=130A-41



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- www.sog.unc.edu/resources/faqs/what-are-powers-and-duties-local-health-director
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-20
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-144
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-145
 - www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_130A/Article_6.html
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-6
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-21
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-77
 - www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-43