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## Coates' Canons Blog: Ebola and the Law of Isolation and Quarantine in North Carolina

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Just over a month ago, the first case of Ebola virus disease to be diagnosed in the United States occurred in Dallas, Texas. It was considered an “imported” case, meaning that the infected individual, Thomas Eric Duncan, contracted the virus elsewhere (Liberia) before traveling to this country. There have since been three additional cases diagnosed in the U.S. Two of the cases were contracted in Dallas by nurses who provided treatment for Mr. Duncan. While a number of other people had contact with Mr. Duncan during his illness—family members and friends, as well as health care workers—no one else contracted the disease. Sadly, Mr. Duncan did not survive his illness. However, both of the infected nurses have recovered.

The fourth case diagnosed in the United States was imported by Dr. Craig Spencer, a physician who had treated Ebola patients in Guinea. Dr. Spencer is hospitalized and is reported to be in serious but stable condition at the time of this writing.

As a result of the four infections, a number of people have been placed under quarantine orders in different parts of the United States. In Dallas, Mr. Duncan’s close contacts were quarantined for 21 days—the incubation period for the Ebola virus. At present, three individuals who had close contact with Dr. Spencer are in quarantine in New York. In a handful of other highly reported cases, **other health care workers and travelers from west African countries have been placed under quarantine orders**. Some of those quarantines have been questioned or criticized by **medical and public health professionals** and **legal experts**, and at least one **lawsuit challenging a quarantine order** for a non-health care worker has been filed. (The case of Kaci Hickox, a nurse who publicized her intention to violate a quarantine order in Maine and then did so, is changing so rapidly as I write that I’ve abandoned efforts to report the latest and would refer you to your favorite search engine for an update.)

What is the law of isolation and quarantine in North Carolina? Several years ago I wrote a **health law bulletin** examining that question in a fair amount of detail. Although the bulletin has aged a bit, the law has not changed and I hope you will read it if you would like a full treatment of the subject. I also have an on-line resource addressing several topics in communicable disease law that is available **here**. Both the bulletin and the on-line resource were written to address all types of communicable disease outbreaks, so they may have more information than Coates’ Canons readers need or want at this time. This post distills the information a bit, identifying the top 10 things to know about isolation, quarantine, and general communicable disease law, and how it applies to Ebola in particular.

Before we get into the top ten, I want to note that as of this writing there have been no diagnoses of Ebola in North Carolina. However, public health officials and others have been preparing for the possibility that Ebola could occur in our state for several months. Following my “top ten” list, there are several links to additional resources about Ebola, including the North Carolina Department of Health and Human Services’ Ebola website. I hope you will check it out.

### Top Ten Things to Know about Isolation and Quarantine in North Carolina

**1. Isolation is for people who are infected (or are suspected of being infected); quarantine is for people who have been exposed (or are suspected of having been exposed).**

Legal definitions of the terms “isolation authority” and “quarantine authority” are found in **G.S. 130A-2**.

**2. Isolation or quarantine is legally authorized “only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.” G.S. 130A-145(a).**

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There are no North Carolina cases interpreting or applying these requirements. The most recent quarantine case in North Carolina was reported in 1913 and involved a statute that was repealed decades ago. However, cases from other jurisdictions have supported the principles expressed in the current North Carolina statute. Courts in New Jersey and New York have required public health officials seeking to detain individuals with communicable diseases to prove that the specific individual posed a risk to the public that was not remote or speculative, *City of Newark v. J.S.*, 652 A.2d 265 (N.J. Super. 1993); have stated that detention is improper if something else, such as directly observed therapy, could protect the public health as effectively, *id.*; but have supported orders restricting a person's movement when the person has demonstrated unwillingness or inability to comply with less restrictive measures, *City of New York v. Antoinette R.*, 165 Misc.2d 1014, 630 N.Y.S.2d 1008 (1995).

**3. North Carolina law gives the authority to issue isolation or quarantine orders to the state health director or a local health director.G.S. 130A-145(a).**

The state or local health director may delegate this authority to another appropriate public official. **G.S. 130A-6.** It is a good idea to have a written delegation plan that assures that someone who is authorized to issue orders is available at any time.

**4. In North Carolina, an isolation or quarantine order may require physical separation of the person from the public if physical separation is a scientifically supported disease control measure. However, orders may, and often do, require a person to comply with communicable disease control measures that do not require physical separation from the public.**

In North Carolina, a person who is suspected or known to have Ebola must be isolated in a health care facility and remain isolated until he or she is determined to be Ebola-free.

A person who is suspected or known to have been exposed to Ebola must comply with communicable disease control measures for 21 days. The specific control measures that apply to the person will be based on an assessment of the person's risk of exposure. At a minimum, a person who is classified as having a low (but not zero) risk of exposure must monitor and record his body temperature and symptoms every 12 hours, isolate himself and notify the local health department immediately if symptoms develop, keep a log of visitors to his residence and public venues he visits, and notify the local health department if he plans to move to a new address or leave the country. A person with a high-risk exposure may be ordered to monitor her body temperature and symptoms plus be available for in-person visits by a public health nurse; keep a log of visitors to her home; refrain from using public transportation; refrain from going to public places, congregate gatherings, or work; and maintain a three-foot distance from others in non-congregate settings, such as while jogging in a public park.

North Carolina local health directors have received template isolation and control measure order forms from the state Division of Public Health.

**5. Communicable disease control measures are established in administrative rules that have been adopted by the North Carolina Commission for Public Health.**

For most diseases, including Ebola, the rules direct public health officials to derive control measures from the guidelines and recommended actions of the Centers for Disease Control and Prevention (CDC). In North Carolina, the state Division of Public Health takes the lead in determining the specific control measures and disseminating them to local health departments. Control measures may address a wide variety of topics and be addressed to a wide variety of people, not just those who are infected or exposed. For example, for Ebola, there are control measures addressing everything from assessing patients, to personal protective equipment for health care providers, to waste disposal.

**6. Communicable disease control measures reflect both research and practice experience with a disease, and may be modified to reflect new knowledge. Sometimes this modification occurs in the course of responding (or preparing to respond) to a particular disease event.**

The state saw this happen during the **2009 H1N1 influenza pandemic** and we are seeing it again with Ebola. Control measures addressing personal protective equipment (PPE) for health care workers have been modified, as have the

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requirements for exposed persons. As of October 30, the requirements for persons with higher-risk exposures were made much more stringent, requiring almost complete separation from the general public.

**7. If an isolation or quarantine order restricts a person's movement in a fashion that prevents the person from being able to attend to basic needs such as food or medicines, public health officials are obliged to ensure those needs are met.**

There is no law prescribing how this is to be done; it must be worked out on a case-by-case basis. Other government officials or agencies may need to provide assistance to the individuals or their families as well. For example, the child of a quarantined parent may need a temporary placement, a worker who is not paid during a period of quarantine may need financial or other assistance—there are a number of scenarios that could arise and create different types of needs.

**8. If an isolation or quarantine order restricts a person's freedom of movement, the person may petition a superior court for review of the order. G.S. 130A-145(d).**

The person who is the subject of the order may institute an action in superior court, and the court must conduct a hearing within 72 hours (excluding Saturdays and Sundays). The action may be filed either in the superior court of the county where the limitation is imposed or in the Wake county superior court. The subject of the order is entitled to an attorney. If he or she is indigent, a court-appointed attorney must be provided.

The court must terminate or reduce the limitation if it determines by a preponderance of the evidence that the limitation is not reasonably necessary to prevent or limit the spread of the disease or condition. The burden of producing sufficient evidence to show the limitation is not reasonably necessary is on the person affected by the order.

**9. A person who fails to comply with communicable disease control measures or an isolation or quarantine order may be charged with a class 1 misdemeanor and sentenced for a period of up to two years. G.S. 130A-25.**

This applies to any communicable disease control measure established by the Commission for Public Health, as well as to isolation or quarantine orders. A person who is subject to any of the control measures for Ebola described under point 4 above could thus be charged with a misdemeanor. The template isolation and control measure order forms for Ebola that local health directors have received include a statement notifying the subject of the order of this potential liability.

**10. If a person violates control measures or an order and is charged with a misdemeanor, special laws provide for arrest and detention in a manner intended to limit other persons' risk of exposure.**

The arrest and detention of a person with a disease or condition that may spread through close contact creates public health concerns, since taking the person to a magistrate's office or the local jail could result in others being exposed. Because of these concerns, North Carolina's criminal procedure laws allow for arrests and detentions that minimize the exposure of others to the arrested person.

A law enforcement officer who arrests an individual for violating an order that limits the person's freedom of movement may detain the person in an area designated by the state health director or a local health director until the individual's first appearance before a judicial official. At the first appearance, the judicial official must consider whether the person poses a threat to the health and safety of others. If the judicial official determines by clear and convincing evidence that the person does pose a threat, the official must deny pretrial release and order the person to be confined in an area the official designates after receiving recommendations from the state health director or local health director.

**Resources for Further Information**

North Carolina Department of Health and Human Services Ebola website

CDC Ebola website

World Health Organization (WHO) Ebola website

American Public Health Association's Ebola fact sheet



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SOG On-Line Resource on North Carolina Communicable Disease Law

## Links

- [www.nytimes.com/2014/10/31/us/kaci-hickox-nurse-under-ebola-quarantine-takes-bike-ride-defying-maine-officials.html](http://www.nytimes.com/2014/10/31/us/kaci-hickox-nurse-under-ebola-quarantine-takes-bike-ride-defying-maine-officials.html)
- [www.nejm.org/doi/full/10.1056/NEJMe1413139?query=featured\\_ebola%20&](http://www.nejm.org/doi/full/10.1056/NEJMe1413139?query=featured_ebola%20&)
- [blogs.law.harvard.edu/billofhealth/2014/10/26/ebola-quarantines-remembering-less-restrictive-alternatives/](http://blogs.law.harvard.edu/billofhealth/2014/10/26/ebola-quarantines-remembering-less-restrictive-alternatives/)
- [www.courant.com/news/connecticut/hc-connecticut-father-sues-ebola-1029-20141028-story.html](http://www.courant.com/news/connecticut/hc-connecticut-father-sues-ebola-1029-20141028-story.html)
- [sogpubs.unc.edu/electronicversions/pdfs/hlb84.pdf](http://sogpubs.unc.edu/electronicversions/pdfs/hlb84.pdf)
- [www.sog.unc.edu/resources/microsites/north-carolina-public-health-law/overview-nc-communicable-disease-control-law-additional-resources-topic](http://www.sog.unc.edu/resources/microsites/north-carolina-public-health-law/overview-nc-communicable-disease-control-law-additional-resources-topic)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-2](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-2)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-145](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-145)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-6](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-6)
- [reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2041%20-%20epidemiology%20health/subchapter%20a/subchapter%20a%20rules.pdf](http://reports.oah.state.nc.us/ncac/title%2010a%20-%20health%20and%20human%20services/chapter%2041%20-%20epidemiology%20health/subchapter%20a/subchapter%20a%20rules.pdf)
- [www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/Pandemic%20H1N1%20%26%20Schools.pdf](http://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/Pandemic%20H1N1%20%26%20Schools.pdf)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-25](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-25)
- [www.ncdhhs.gov/ebola/](http://www.ncdhhs.gov/ebola/)
- [www.cdc.gov/vhf/ebola/](http://www.cdc.gov/vhf/ebola/)
- [www.who.int/csr/disease/ebola/en/](http://www.who.int/csr/disease/ebola/en/)
- [www.getreadyforflu.org/EbolaFacts.htm](http://www.getreadyforflu.org/EbolaFacts.htm)