
Coates' Canons Blog: Rabies Prevention and Control: Integrating Recent Research into North Carolina's Legal Framework

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UPDATE: The rabies law was amended in 2017. A revised version of this post is available [here](#).

Your dog, Duke, is outside in the yard and has an unexpected encounter with a raccoon. The raccoon bit Duke and there is a small break in the skin on his leg. At this point, the public health system's rabies prevention and control laws and programs are set in motion. This post briefly walks through the legal framework for responding to suspected rabies exposures, including issues such as booster shots, euthanasia, and confinement. It also addresses a recent development in the public health veterinary research community that may result in local health directors authorizing shorter confinement observation and quarantine periods in certain circumstances. Read on to find out what will happen to Duke.

Required vaccination

The cornerstone of the rabies law is the requirement that dogs, cats, and ferrets four months and older must be currently vaccinated against rabies. G.S. 130A-185. Dogs are required to wear rabies tags at all times and may be impounded if they are found at-large without a tag. G.S. 130A-192. State law also requires cats and ferrets to wear tags, but a local government may adopt an ordinance exempting them from this requirement. If an animal owner fails to comply with these requirements, the owner may be charged with a Class 1 misdemeanor or the local health director may seek an injunction. G.S. 130A-18; G.S. 130A-25. In our story, let's assume that Duke is 8 years old. He was first vaccinated when he was 12 weeks old and then received a booster one year later, consistent with the recommended schedule for puppies. Since then, the schedule slipped a little bit. He received a three-year vaccine when he was about 4.5 years old but hasn't received any since that time. Therefore, he is about 6 months late on his vaccination.

Exposed?

After Duke's run-in with the raccoon, you should notify the local health director or animal services department about the potential exposure. [Note: the rest of this post will refer to the health director as the decision-maker because that is how the law is written but some health directors have delegated these duties to animal services officials in other departments, which is authorized pursuant to G.S. 130A-6.]

The health director will evaluate the facts of the situation and determine whether Duke has been "exposed to the saliva or nervous tissue of a proven rabid animal or animal reasonably suspected of having rabies that is not available for laboratory diagnosis." G.S. 130A-197. Let's consider two alternative versions of our story:

- **Version 1:** Assume Duke attacked the raccoon and killed it. Because the raccoon's body is available, the health director will likely send its head to the laboratory for rabies testing. If the test comes back negative, Duke will not be considered to have been exposed to rabies. If it comes back positive, unsatisfactory, indeterminate, or "test not performed," Duke will likely be considered exposed.
- **Version 2:** Assume the raccoon ran away after biting Duke. Because the prevalence of rabies in raccoons is high, the health director will almost certainly conclude that Duke was exposed.

Sometimes these situations are not so clear cut. The health director will need to evaluate all of the facts of the particular situation and decide whether he or she "reasonably suspects" that there has been an exposure. In making this determination, the director will rely on guidance from the state Division of Public Health Communicable Disease Branch and the U.S. Centers for Disease Control, and may consult with the state's public health veterinary team. Let's assume for

the purpose of our story that the health director concluded that Duke was exposed to rabies.

Exposed!

Once you learn that Duke was exposed to rabies, the public health or animal services officials will outline your options for managing his exposure. The law offers a couple of options:

- Animal currently vaccinated: If the animal (1) has a current vaccination that was administered more than 28 days prior to the exposure and (2) is given a booster dose of rabies vaccine within 5 days of the exposure, it is not necessary to destroy or quarantine the animal. Recently revised guidance from the National Association of State Public Health Veterinarians (NASPHV) recommends that owners obtain a booster shot for the dog or cat within four days and monitor it for 45 days after an exposure to watch for signs of illness.
- Animal never vaccinated or vaccination is overdue: If the animal has never been vaccinated or was vaccinated before but follow-up vaccinations are overdue (e.g., Duke), the owner has two options – euthanasia or quarantine. Pursuant to the statute, the health director can order quarantine “at a facility approved by the local health director for a period up to six months, and under reasonable conditions imposed by the local health director.” The quarantine is intended to keep the exposed animal away from people and other animals for the duration of the incubation period for the rabies virus.

The guidance from NASPHV, which was published in March 2016, provides new information about how public health officials should manage exposures for dogs, cats, and ferrets that have never been vaccinated or who are overdue for a vaccination. If the guidance is followed, public health practice in the state regarding postexposure management will change significantly and animals may be quarantined for much shorter periods of time.

Quarantine vs. Observation

Until recently, the research strongly suggested the need for euthanasia or a six-month quarantine for animals that were never vaccinated as well as those that were overdue for their vaccinations. As a result, many health directors currently require 6 month quarantines. Because the law states that the quarantine be at “a facility” approved by the health director, many require that the animal be housed at the shelter or a veterinary hospital. The cost of impounding an animal for this extended period of time can be high and, as a result, some owners elect to euthanize the animal instead. Some health directors allow some or all of the quarantine period to be completed in the home, subject to certain restrictions and continuing oversight.

The revised NASPHV guidance recommends a complex approach that differentiates between animals that have never been vaccinated and those that are overdue. This change in course is based on research indicating that an animal that is overdue for a vaccination is likely to mount a robust immune response if a booster is provided. The new NASPHV recommendations are as follows:

- Dogs, cats, and ferrets that have never been vaccinated should be euthanized immediately or placed in strict quarantine for 4 months (dogs and cats) or 6 months (ferrets). The quarantine should be in an enclosure that precludes direct contact with people or other animals. If quarantined, the animal should be vaccinated within 96 hours of exposure. If the vaccination is delayed, public health officials should consider extending the quarantine period.
- A dog or cat that has documentation showing it was vaccinated at least once previously should receive a booster vaccination within 96 hours of exposure. In addition, the owner should keep the animal under his or her control and observe it for 45 days for signs of illness. If the booster is delayed, public health officials should consider increasing the observation period. Note that the guidance does *not* recommend quarantine for these animals.
- If an owner states that the dog or cat has had a rabies vaccination in the past but does not have the documentation to prove it, the guidance offers two options: (1) follow the quarantine approach for described above for animals that have never been vaccinated or (2) consider allowing blood testing to evaluate whether there is evidence a robust immune response upon booster vaccination.
- A ferret that has a lapsed vaccination should be “evaluated on a case-by-case basis” to determine the appropriate management.

With these revised guidelines now available from a respected national organization of public health veterinarians, many

have asked whether local health directors should change the way they are handling quarantines. In our story, such a change in practice could have a pretty dramatic impact on Duke. Without a change, Duke would be quarantined either at a facility or at home for a period up to 6 months. If the new guidance is followed, Duke (with documentation and a timely booster) could be allowed to go home. But is there legal authority for the health director to change course and follow the new guidance?

Authority

State law allows the health director to exercise discretion when imposing quarantine on an exposed animal. The law provides that quarantine may be “for a period up to six months, and under reasonable conditions imposed by the local health director.” G.S. 130A-197. Arguably, the flexibility afforded by this language provides the director with the authority to make judgment calls about different types of animals and situations. Health directors have been relying on this flexibility for many years to adapt the quarantine policies applicable in their jurisdictions.

The NC Division of Public Health (Division) recently sent all local health directors a memorandum recommending that local boards of health adopt a rule that requires local health directors to follow the NASPHV guidance. (Note that the term “local board of health” includes a county board of health, a district board of health, a consolidated human services board, a public health authority board, or a board of county commissioners that has assumed the powers and duties of a board of health.) The memorandum included a model board of health rule for the health departments and their governing boards to consider. The model rule adopts by reference the NASPHV guidance and states that the guidance must be treated as the required control measures for management of rabies exposures in dogs and cats. This formulation is not unusual in the field of communicable disease law, as other statutes and regulations adopt by reference standards or guidance issued by a variety of public health agencies and organizations. (Jill Moore discusses the incorporation by reference of communicable disease control measures [here](#))

Boards of health clearly have the authority to adopt such a rule. These boards “have the responsibility to protect and promote the public health” and “have the authority to adopt rules necessary for that purpose.” G.S. 130A-39(a). They are also specifically authorized to adopt by reference standards adopted by “a generally recognized association,” which would include NASPHV. G.S. 130A-39(f). This type of rule would also be in line with the five requirements outlined by the Court of Appeals in a 1996 decision related to local board of health rules related to smoking. The Court explained:

“a board of health acts within its rule making powers when it enacts a regulation which (1) is related to the promotion or protection of health, (2) is reasonable in light of the health risk addressed, (3) is not violative of any law or constitutional provision, (4) is not discriminatory, and (5) does not make distinctions based upon policy concerns traditionally reserved for legislative bodies.”

City of Roanoke Rapids v. Peedin, 124 N.C. App. 578 (1996). A board of health rule that incorporates by reference recommendations from a nationally recognized public health association and does not make any modifications or policy changes to those recommendations would appear to be well within their rulemaking authority.

What would be the benefit of adopting such a rule?

1. **Clear direction:** A rule would provide public health and animal services officials with clear direction for management of these exposure incidents and relieves some of the pressure involved with exercising discretion based on the minimalist “up to six months” statutory language. The health director will still need to exercise some discretion in these situations but the roadmap provided by the new guidance will become the starting point for all of the director’s decisions.
2. **Uniformity of practice:** If all or most of the local boards of health adopt such a rule, there will likely be more uniformity in public health practice across the state. This could be perceived as a benefit for both the public and the government actors involved.
3. **Enforceability:** The rule has the force of law. Members of the public often push back against these quarantine orders and they struggle with the ambiguity of the current state law. It may be easier for a health director to obtain compliance with an order or pursue enforcement of an order if it is supported not only by the NASPHV guidance

but also a rule adopted by the governing board of the public health agency. Board of health rules are enforceable both criminally and civilly.

4. **County-wide applicability:** If the policy goal is uniformity in the county, it would be more appropriate to adopt a board of health rule rather than an ordinance adopted by the board of county commissioners. By definition, a board of health rule applies throughout the county whereas a county ordinance applies only in the unincorporated areas of the county (unless a municipality elects to be governed by the county ordinance).

A potential drawback to adopting such a rule is that the health director will have less flexibility when making decisions related to many postexposure management situations. Some health directors or communities may prefer to allow the health director to exercise more discretion.

Conclusion

It is likely that local officials have the authority under current state law to follow the NASPHV guidance because health directors can order quarantine for “up to six months” and impose “reasonable conditions” on the quarantined animal. Orange County Animal Services, for example, adopted a policy recently that implements the NASPHV guidance relying entirely on the discretion afforded by the state law. Following up on the Division’s recent guidance, other local public health governing boards may, however, want to consider supplementing the state law by adopting a board of health rule that specifically adopts the guidance by reference.

Circling back to our buddy, Duke, let’s recap the two very different potential outcomes of this policy decision. Depending on which approach the health director takes, Duke could face either (1) a quarantine of up to six months or (2) a booster shot and a ride home. Governing boards, public health and animal services professionals, and others in the community are faced with an important decision that can have a significant impact on the public’s health, pets and their owners, as well as the public officials charged with enforcing the rabies laws. I expect to see this area of the law and public health practice evolve in the coming months and years.

Links

- canons.sog.unc.edu/rabies-prevention-control-integrating-recent-research-north-carolinas-legal-framework/
- ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_130A/GS_130A-185.pdf
- ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_130A/GS_130A-192.pdf
- ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_130A/GS_130A-18.pdf
- ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_130A/GS_130A-25.pdf
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- ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_130A/GS_130A-197.pdf
- epi.publichealth.nc.gov/cd/rabies/control.html
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