

CONTROL MEASURES AND PUBLIC HEALTH EMERGENCIES

A TEXAS BENCH BOOK

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CONTROL MEASURES AND PUBLIC HEALTH EMERGENCIES

A TEXAS BENCH BOOK

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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, such as quarantine and isolation, particularly in the face of a catastrophic event such as a pandemic flu. 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 and Policy Institute, or the Department of State Health Services.

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CHAPTER 1

INTRODUCTION

Since September 11, 2001, legislatures and courts have begun to examine previously existing law on public health emergencies, including control measures such as quarantine, and how the courts would be run should such an emergency strike. In Texas, the need to understand these contingencies becomes increasingly important each hurricane season, as was demonstrated during the recent disasters caused by Hurricanes Katrina, Rita and Ike.

The Texas Constitution discusses Texas' open courts policy, which is based on the importance of everyone having access to justice and to a day in court. The likelihood that this important aspect of our society could be disrupted during a public health emergency, such as a major hurricane or a more long-term emergency such as a pandemic flu, has led to the creation of this bench book and the forms included in its appendix. 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 that the balance between public safety and individual rights is not forgotten.

While laws regarding quarantine and isolation of individuals, property, and carriers are included in this book, it is likely that in the case of a massive, wide-scale disaster that the provisions of the Texas Disaster Act and those on area quarantine would be the most widely used. 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.”¹ The Texas Disaster Act does not explicitly give the Governor any authority over the judicial branch or allow the closing of the courts. Texas “area quarantine” law is also more streamlined than that involving individuals (see Chapter 4 for more information on area quarantine law).

A Note on Terminology

The use of certain terms in this area of law can be confusing. Texas law does not contain definitions of “isolation” and “quarantine” that apply to the sections of law discussed in this bench book.² “Control measures” are defined through a list of terms that are not themselves defined,³ and the word “management” when referring to management of a person with a communicable disease is also undefined.

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, often with

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1 TEX. GOV. CODE § 418.016.

2 Quarantine and isolation with respect to infected animals are defined in Texas Health & Safety Code § 826.002 and 25 TEX. ADMIN. CODE § 169.22 respectively, but there are no broader definitions.

3 See TEX. HEALTH & SAFETY CODE § 81.082(f).

a 40 day timeframe. 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.⁴

These different uses of terminology can further complicate the intersection of public health and the law. Ensuring that all parties involved know how the terms are being used is key to effective public health law implementation.

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4 42 C.F.R. § 70.1.

CHAPTER 2

FEDERAL V. STATE JURISDICTION

Introduction

The main control measures used during a public health emergency are quarantine and isolation. The terms quarantine and isolation are both used with respect to separating those infected with or exposed to a highly contagious illness. A quarantine involves separating people who have potentially been exposed to the illness but are not yet ill, while isolation relates to those who are already infected.⁵ Both state and local health departments have the authority to impose quarantines. In addition, federal authorities may also intervene as they find necessary,⁶ as further explained below.

Federal Government

Federal public health powers are vested in the President, Department of Health and Human Services, and the Centers for Disease Control and Prevention. The authority for federal quarantines and other similar public health control measures arises from the Commerce Clause.⁷ The federal government's power to tax and spend for the general welfare also plays a role in federal public health authority.⁸

The key role of the President is to issue an executive order listing communicable diseases for which quarantine may be ordered.⁹ The Secretary of Health and Human Services' authority relates only to the communicable diseases thereby defined. With that caveat, the Secretary of Health and Human Services may make and enforce regulations to prevent the introduction and spread of communicable diseases.¹⁰

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.¹¹ Violation of a federal quarantine order carries fines of up to \$1,000, one year in jail, or both.¹²

In 2005, the Centers for Disease Control and Prevention proposed regulations that would have expanded the use of isolation and quarantine orders while limiting individual rights that courts have previously required.¹³ There was considerable pushback against the proposed rule changes, and

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5 Kathleen S. Swendiman and Jennifer K. Elsea, *FEDERAL AND STATE QUARANTINE AND ISOLATION AUTHORITY*, 1, Congressional Research Service, Order Code RL33201 (last updated January 23, 2007); see also p. 9.

6 *Id.* at 2.

7 *Id.* at 4. The Commerce Clause is Article I, Section 8, Clause 3 of the United States Constitution.

8 *PUBLIC HEALTH LAW AND ETHICS: A READER* (Lawrence O. Gostin, ed., University of California Press, 2000), p. 175.

9 42 U.S.C. § 264(b).

10 42 U.S.C. § 264.

11 42 U.S.C. §§ 243, 249.

12 42 U.S.C. § 271.

13 Control of Communicable Diseases, Proposed Rule, 70 Fed. Reg. 71892 (Nov. 30, 2005) (to be codified at

ultimately, a significantly pared-down Direct Final Rule went into effect on February 25, 2013, which clarified the definitions of isolation and quarantine and made other minor, non-substantive changes to existing regulations.¹⁴

Texas

The power to quarantine and impose isolation is a well established power of the states as an exercise of their police power.¹⁵ It is extremely useful in order to protect the public from contagious disease or illness.

In Texas, the Communicable Disease Prevention and Control Act establishes the control measures to be used and how to use them in response to a communicable disease outbreak.¹⁶ On the local level, the local health authority (HA) is the main contact for establishing and implementing control measures and ensuring public safety. The duties of the HA are specified in law and include quarantine authority.¹⁷ Rights and duties during public health emergencies are delegated between the Commissioner of Health, the Texas Department of State Health Services (DSHS), and the HA. Ensuring cooperation between these entities is essential to responding adequately to a public health emergency.

Under Texas law, HAs are competent and reputable physicians licensed and residing in Texas¹⁸ who serve for a term of two years, with no term limits,¹⁹ 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 HA include: establishing, maintaining, and enforcing quarantine in the HA's jurisdiction; aiding DSHS in relation to local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation within the HA'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.²⁰ HAs may be removed for cause.²¹

HAs must be appointed in municipalities or counties with established local health departments or public health districts²² as well as in municipalities or counties receiving grants from DSHS for

42 C.F.R. pt. 70, 71).

14 Control of Communicable Diseases: Interstate; Scope and Definitions, Rule, 77 FED. REG. 75880 (Dec. 26, 2012) (codified at 42 C.F.R. §§ 70.1, 70.6)

15 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).

16 Texas Health & Safety Code, Chapter 18. Control measures are defined as including: immunization, detention, restriction, disinfection, decontamination, isolation, quarantine, disinfestation, chemoprophylaxis, preventive therapy, prevention, and education.

17 See Texas Health & Safety Code, Chapter 121.

18 TEX. HEALTH & SAFETY CODE § 121.022.

19 TEX. HEALTH & SAFETY CODE § 121.023.

20 TEX. HEALTH & SAFETY CODE § 121.024.

21 TEX. HEALTH & SAFETY CODE § 121.025.

22 TEX. HEALTH & SAFETY CODE §§ 121.033, .045.

essential public health services.²³ The governing body of the municipality or the commissioners court of a county appoints the HA if the jurisdiction does not have an organized local public health department or district.²⁴ In areas with organized local health departments and/or public health districts, the department or district director is appointed by the municipality's governing body or the commissioners court. The director acts as the HA unless the HA is not a physician, in which case the director appoints the HA.²⁵

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23 TEX. HEALTH & SAFETY CODE § 121.028.

24 TEX. HEALTH & SAFETY CODE § 121.028.

25 TEX. HEALTH & SAFETY CODE §§ 121.033, .045.

CHAPTER 3

DISTRIBUTION OF EXECUTIVE BRANCH AUTHORITY IN TEXAS²⁶

Various levels of authority and responsibility for actions regarding communicable diseases in Texas are held by the Governor, Department of State Health Services, local health authorities, and individual Texans. 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 Texas Government Code), specify the roles of the various players. This chapter will largely be a review of the relevant statutes, with the goal of organizing the information according to the particular people or entities involved and to help readers more easily find relevant sections.

Statewide Authority

Disaster Declaration

The Governor's authority during a public health emergency is based on the Texas Disaster Act.²⁷ Additional emergency powers afforded to the Governor may also be found in Chapter 433 of the Texas Government Code. The Governor has the authority to issue related executive orders and is granted the power to declare a state of disaster and to, thereby, initiate the state emergency management plan and suspend laws relating to the normal order of business for the government and state agencies.²⁸ The Governor may also order the evacuation of affected areas²⁹ and waive or suspend statutory deadlines or regulatory deadlines during the effective dates of the disaster declaration.³⁰

The Department of Public Safety (DPS) houses the Texas Division of Emergency Management, which had been part of the Governor's Office prior to September 2009. The Division 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.³¹

Under the Texas Communicable Disease Prevention and Control Act, the Commissioner of Health is responsible for statewide implementation and administration of communicable disease control measures in Texas.³² Additionally, in times of public health disasters, the Commissioner may require reports regarding communicable diseases in addition to those already required by rule.³³ The

.....
26 Please see the discussion in Chapter 2 on the different uses of terms by clinicians versus statutory use of terms.
27 See Texas Government Code, Chapter 418.
28 TEX. GOV. CODE §§ 418.014-016.
29 TEX. GOV. CODE § 418.018.
30 TEX. GOV. CODE §§ 418.016, .1075.
31 TEX. GOV. CODE, Chapter 418.
32 TEX. HEALTH & SAFETY CODE § 81.004.
33 TEX. HEALTH & SAFETY CODE § 81.041(f).

Commissioner may declare a public health disaster for a period of not more than 30 days and renew that declaration for an additional 30 days.³⁴

Reportable Diseases and Investigations

The Department of State Health Services (DSHS) defines which diseases are considered reportable diseases in Texas and maintains related registries.³⁵ If a patient (person or animal) has or is suspected of having a reportable disease, a report must be made to the local health authority by the following individuals: physicians, dentists, veterinarians, local school authorities, and the person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facilities performing laboratory examinations.³⁶ Reports to the local health authority 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 adult day-care center; 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.³⁷ Local health authorities must pass all reports along to DSHS.³⁸

DSHS also has the authority to investigate cases of communicable diseases in the state and determine the status of any outbreaks; the health authority at the local level must cooperate with DSHS during these investigations.³⁹ 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.⁴⁰ Corresponding to the right to take samples is the right of inspection and right of entry into non-residential areas.⁴¹

Implementation of Control Measures

DSHS may preempt a local health authority with respect to the administration of control measures at the local level and may modify the control measures implemented by a health authority.⁴² (See p. 21 for discussion of control measures). If necessary, DSHS may also return nonresidents to the custody of the relevant agency in their home state.⁴³

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

35 TEX. HEALTH & SAFETY CODE § 81.041.

36 TEX. HEALTH & SAFETY CODE § 81.042(a)-(d). Detail of reporting requirement is set out in DSHS Rule at 25 TEX. ADMIN. CODE § 97.2.

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

38 TEX. HEALTH & SAFETY CODE § 81.043.

39 TEX. HEALTH & SAFETY CODE § 81.061.

40 TEX. HEALTH & SAFETY CODE § 81.063.

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

42 TEX. HEALTH & SAFETY CODE § 81.082(b).

43 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.⁴⁴ 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.⁴⁵

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: that 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.⁴⁶ 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.⁴⁷

Potentially Infected or Contaminated Property

DSHS may impose control measures on property as well as on people. The property suspected of being infected or contaminated may be quarantined 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 the control measures have been effective. 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.⁴⁸ 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.⁴⁹

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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44 TEX. HEALTH & SAFETY CODE § 81.083(b).

45 TEX. HEALTH & SAFETY CODE § 81.083(c)-(d).

46 TEX. HEALTH & SAFETY CODE § 81.083(k)-(l).

47 TEX. HEALTH & SAFETY CODE § 81.083(m).

48 TEX. HEALTH & SAFETY CODE § 81.084.

49 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.⁵⁰ 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.⁵¹

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. Technically feasible control measures may also be imposed, and the owner may be ordered to pay any related costs.⁵²

Local Authority

Reportable Diseases and Investigations

It is the role of the health authority (HA)⁵³ to maintain records of all reportable disease cases in the area and report this information to DSHS.⁵⁴ Like DSHS investigators, the HA has the right of inspection and right of entry to inspect any non-residential area.⁵⁵ The HA is also the lead on administration of control measures in the HA's jurisdiction, absent preemption by DSHS.⁵⁶

Implementation of Control Measures

The HA has the same authority as DSHS to impose control measures on an individual or group.⁵⁷

Potentially Infected or Contaminated Property

The HA has the same authority as DSHS with regard to control of property.⁵⁸

.....
50 TEX. HEALTH & SAFETY CODE § 81.085.

51 TEX. HEALTH & SAFETY CODE § 81.085(j).

52 TEX. HEALTH & SAFETY CODE § 81.086.

53 See discussion in Chapter 2 on the definition of health authority in Texas law.

54 TEX. HEALTH & SAFETY CODE § 81.043.

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

56 TEX. HEALTH & SAFETY CODE § 81.082.

57 *Id.*

58 TEX. HEALTH & SAFETY CODE § 81.084.

Area Quarantines

The HA may impose an area quarantine within the HA’s jurisdiction but only after consulting with DSHS. The HA must give written notice of the quarantine to the governing body of each affected county or municipality as soon as practicable. If the HA is administering the quarantine, the HA 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 HA may terminate the area quarantine only with the consent of DSHS.⁵⁹

The HA may also designate facilities within the HA’s jurisdiction to provide services during a public health disaster or area quarantine.⁶⁰

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.⁶¹

Carriers or Private Conveyances

The HA has similar authority to DSHS in terms of addressing suspected infections involving carriers or conveyances.⁶²

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 HA.⁶³ Such concealment or attempts to conceal are Class B misdemeanors.⁶⁴ Knowingly concealing, removing, or disposing of an infected or contaminated animal or object that is under investigation is also a Class B misdemeanor.⁶⁵ It is a Class A misdemeanor to knowingly refuse entry or inspection to DSHS, the HA, or a peace officer.⁶⁶

Failure to comply with control measure orders or removal, alteration, or destruction of quarantine devices are Class B misdemeanors.⁶⁷ 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.⁶⁸

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59 TEX. HEALTH & SAFETY CODE § 81.085.
60 TEX. HEALTH & SAFETY CODE § 81.082(c-1).
61 TEX. HEALTH & SAFETY CODE § 81.085(g).
62 TEX. HEALTH & SAFETY CODE § 81.086.
63 TEX. HEALTH & SAFETY CODE § 81.066.
64 *Id.*
65 TEX. HEALTH & SAFETY CODE § 81.067.
66 TEX. HEALTH & SAFETY CODE § 81.068.
67 TEX. HEALTH & SAFETY CODE §§ 81.087-088.
68 TEX. HEALTH & SAFETY CODE § 81.212.

If an individual is subject to a court order,⁶⁹ that person is financially responsible for the needed treatment unless the individual is indigent and uninsured.⁷⁰ The relevant county or hospital district is responsible if the individual is an indigent, uninsured resident of that county or district;⁷¹ otherwise the state may pay for indigent and uninsured patients.⁷²

Failure to abide by area quarantine orders is a felony of the third degree.⁷³ 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.⁷⁴

Municipal Powers

Both Type-A General Law municipalities and Home Rule municipalities⁷⁵ 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.⁷⁶ Those municipalities may adopt rules necessary to suppress disease and enforce those rules within 10 miles of the municipality.⁷⁷ Home Rule municipalities may also adopt rules to protect its residents against communicable disease and provide for the establishment of quarantine stations and emergency hospitals.⁷⁸

.....
69 See Chapter 4 for more information.
70 TEX. HEALTH & SAFETY CODE § 81.083(f).
71 TEX. HEALTH & SAFETY CODE § 81.083(g).
72 TEX. HEALTH & SAFETY CODE § 81.083(h).
73 TEX. HEALTH & SAFETY CODE § 81.085(h).
74 TEX. HEALTH & SAFETY CODE § 81.089.
75 See Texas Local Government Code, Chapter 5.
76 TEX. HEALTH & SAFETY CODE § 122.005(a)(1).
77 TEX. HEALTH & SAFETY CODE § 122.005(b)(2).
78 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 DSHS and the HA 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 liberty rights. DSHS or the HA 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.⁷⁹ Court orders may also be sought with respect to contaminated property from the county or district court where the property is located.⁸⁰ Given the sensitive information at issue in these cases, the presiding judge may issue protective orders or otherwise limit disclosure of any medical or epidemiological information disclosed during the related proceeding.⁸¹

County judges have the authority to order mandatory evacuations of impacted areas, as do mayors. The judge 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.⁸²

It should be noted that the material presented in this chapter represents the procedures as specified in statute. However, the Supreme Court 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 he is unavailable it is delegated to the Court of Criminal Appeals or if the Court of Criminal Appeals is unable to act its presiding judge. During all disaster declarations, courts, agencies, and lawyers involved in court proceedings should review any orders from the Supreme Court and/or the delegated authority in order to determine any changes to court proceedings.⁸³

Orders for Management of Persons with Communicable Diseases

A sworn written application for an order for management of a person with a communicable disease (OMPCD) shall be filed by the municipal, county, or district attorney at the request of the HA 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

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

80 TEX. HEALTH & SAFETY CODE § 81.084.

81 TEX. HEALTH & SAFETY CODE §§ 81.046, .103. ; *see also* 45 C.F.R. §§ 164.512(b), (e).

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

83 TEX. GOV. CODE §22.0035.

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.⁸⁴ In cases where a person is receiving services under a temporary management order in a county other than that 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.⁸⁵

An OMPCD is sought for judicial enforcement of the imposition of control measures. Under Texas law, control measures include: immunization, detention, restriction, disinfection, decontamination, isolation, quarantine, disinfestation, chemoprophylaxis, preventive therapy, prevention, and education.⁸⁶ Given the breadth of this list, widely diverse types of management may be sought through an OMPCD, from compelling testing of the individual and/or requiring immunizations to forced treatment or isolation.

The application for an OMPCD must include a medical evaluation and a copy of the written orders from DSHS or the HA unless the applicant is seeking outpatient treatment for the person suspected of having a communicable disease, in which case the orders are not required.⁸⁷ 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 to or refuses to comply with the written control measure orders of DSHS or the HA.⁸⁸

The medical evaluation included in the application must be dated and signed by the DSHS Commissioner or designee or by the HA 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 doctor's care and a description of the provided treatment. The affidavit must also include the opinion of DSHS or the HA 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.⁸⁹

If DSHS or the HA is seeking management for a group of five or more, a single application may be filed for the group if DSHS or the HA reasonably suspects the group has been exposed to or is infected with a communicable disease and each person individually meets the requirements for an

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84 TEX. HEALTH & SAFETY CODE § 81.151.

85 TEX. HEALTH & SAFETY CODE § 81.157(b).

86 TEX. HEALTH & SAFETY CODE § 81.082.

87 TEX. HEALTH & SAFETY CODE § 81.151(d).

88 TEX. HEALTH & SAFETY CODE § 81.152.

89 TEX. HEALTH & SAFETY CODE § 81.158.

OMPCD.⁹⁰ 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; (3) and 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, and include instructions for people who suspect they may be part of the group to contact DSHS or the HA. 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.⁹¹ 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; (6) and a statement that the members have failed or refuse to comply with orders if inpatient treatment is being sought.⁹²

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.⁹³ 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.⁹⁴

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 3 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.⁹⁵

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. A guardian ad litem shall be appointed by the court if the person is a minor without a guardian or conservator and the child's parents can not be found.⁹⁶

If the person's attorney requests the information at least 48 hours before the hearing time, the attorney representing DSHS or the HA must provide, within a reasonable time before the hearing, citations to the sections of Texas Health & Safety Code, Chapter 81 that will be relied upon at the

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

91 TEX. HEALTH & SAFETY CODE § 81.1511.

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

93 TEX. HEALTH & SAFETY CODE § 81.153.

94 TEX. HEALTH & SAFETY CODE § 81.1531.

95 TEX. HEALTH & SAFETY CODE § 81.154.

96 TEX. HEALTH & SAFETY CODE § 81.155.

hearing, information about each witness who may testify, a brief description of why court-ordered management is believed necessary, and a list of alleged acts the attorney will seek to prove at the hearing. Information not disclosed in this notice may be admitted by the judge if the admission would not deprive the person of a fair opportunity to contest the information.⁹⁷

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 81.⁹⁸

The judge may set the hearing for any suitable location in the county that is not likely to have a harmful effect on the public or the person at issue. If the person or the person's attorney so requests, the hearing must be held at the county courthouse. The HA 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 HA advises the court that the person must remain in isolation or quarantine, 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.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹

If the court orders treatment, a facility must be designated by the petitioner (*i.e.*, DSHS or the HA). The DSHS Commissioner or HA will have designated facilities as potential treatment facilities for these cases,¹⁰² and any one of the designated facilities may be selected in an individual case. The HA 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.¹⁰³

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.¹⁰⁴

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97 TEX. HEALTH & SAFETY CODE § 81.156.

98 TEX. HEALTH & SAFETY CODE § 81.160.

99 TEX. HEALTH & SAFETY CODE § 81.169.

100 TEX. HEALTH & SAFETY CODE § 81.170.

101 TEX. HEALTH & SAFETY CODE § 81.172(c).

102 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 Texas Health & Safety Code, Chapter 242 or an intermediate care facility for the mentally retarded licensed under Chapter 252.

103 TEX. HEALTH & SAFETY CODE § 81.159.

104 TEX. HEALTH & SAFETY CODE § 81.171.

If the standard for a temporary OMPCD is met, the judge must enter an order stating the judge or the jury, as applicable, 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 the person has failed or refused to follow written orders from DSHS or the HA. 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.¹⁰⁵

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 HA. 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.¹⁰⁶

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 HA 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 HA 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.¹⁰⁷

One such inpatient facility is located at the Texas Center for Infectious Disease in San Antonio. The Texas Center for Infectious Disease (TCID) is Texas' designated facility for court-ordered (quarantined) management of tuberculosis for patients whose non-adherence with control orders issued by public health authorities poses a threat to public health or safety.¹⁰⁸ The new 75-bed facility completed in 2010 has specially-designed airborne infection isolation rooms for both court-ordered and voluntary patients. Patients at the Center receive court-ordered antibiotic treatment, which can last from six months to two years depending on their particular strain of tuberculosis. There are also beds at the same site for patients who seek voluntary treatment.¹⁰⁹

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105 TEX. HEALTH & SAFETY CODE § 81.172.

106 TEX. HEALTH & SAFETY CODE § 81.173.

107 TEX. HEALTH & SAFETY CODE § 81.174.

108 House Comm. on Public Health, Bill Analysis, Tex. S.B. 807, 83rd Leg., R.S. (2013); Senate Comm. on Health & Human Services, Bill Analysis, Tex. S.B. 807, 83rd Leg., R.S. (2013); Texas Center for Infectious Disease, TCID Brochure (Nov. 2012), <http://www.dshs.state.tx.us/tcid/Documents/tcidbrochure-120512.doc> (last visited May 29, 2014).

109 Texas Dep't of State Health Services, *Texas Center for Infectious Disease- TCID New Hospital* (Mar. 22, 2012), <http://www.dshs.state.tx.us/tcid/newhosp.shtm> (last visited May 29, 2014).

In cases where outpatient services are ordered, the court shall designate an HA to monitor the person's compliance and order the facility head to cooperate with the HA for such monitoring. Within two weeks of the entry of the court's order for outpatient treatment, the HA 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 court order. The HA 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.¹¹⁰

Facilities must comply with an OMPCD to the extent they have the necessary resources, but 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 public health disaster or area quarantine is in place, the facility is within the area impacted, and the judge determines there is no public health care facility within that area with the capacity to treat the person.¹¹¹ 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.¹¹²

The sheriff or constable shall accompany the person to the designated facility; a female attendant must be used to accompany a female patient. The HA or DSHS will instruct the sheriff or constable on any control measures that may be necessary during transportation.¹¹³ 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 commitments to the attendant so that a copy may be left with the facility head.¹¹⁴

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.¹¹⁵

A motion for a regular protective order may be filed by the municipal, county, or district attorney on behalf of the HA or by the attorney general on behalf of DSHS in the court in which an

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110 TEX. HEALTH & SAFETY CODE § 81.175.

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

112 TEX. HEALTH & SAFETY CODE § 81.178.

113 TEX. HEALTH & SAFETY CODE § 81.179.

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

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

application for OMPCD is pending. The motion must state the DSHS's or HA's belief that the person meets the necessary criteria for court-ordered management and the basis for this belief, including a representation from a credible person, the conduct of the person at issue, or the circumstances under which the person at issue was found.¹¹⁶

The application must include a medical evaluation with the same information as that 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.¹¹⁷ The judge may designate a magistrate to issue protective orders in the judge's absence as needed.¹¹⁸

In order to issue a protective order, the judge or magistrate must find that the HA or DSHS has stated its opinion and detailed basis supporting its opinion that the person is infected or reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and that the person has failed or refused to comply with the HA's or DSHS's written orders, if applicable. 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.¹¹⁹

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 HA'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 HA.¹²⁰ 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, 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 public health disaster or area quarantine is in place, the facility is within the area impacted, and the judge determines there is no public health care facility within that area with the capacity to treat the person.¹²¹ 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.¹²² 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.¹²³

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

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116 TEX. HEALTH & SAFETY CODE § 81.161.

117 TEX. HEALTH & SAFETY CODE §§ 81.158, .161.

118 TEX. HEALTH & SAFETY CODE § 81.161(e).

119 TEX. HEALTH & SAFETY CODE § 81.162.

120 TEX. HEALTH & SAFETY CODE § 81.163.

121 TEX. HEALTH & SAFETY CODE §§ 81.163(e), .177.

122 TEX. HEALTH & SAFETY CODE § 81.178.

123 TEX. HEALTH & SAFETY CODE § 81.163(c).

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.¹²⁴

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 HA 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 hearing is conducted by the magistrate or a master designated by the judge 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.¹²⁵ The hearing may be held with the individual at issue appearing by teleconference or other means if the judge or magistrate finds the person’s presence at the hearing is appropriate but the HA has advised that the person should remain in isolation or quarantine as exposure to those at the hearing would jeopardize them and the public health.¹²⁶

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.¹²⁷ This information must also be filed with the district court that entered the original order for protective custody.¹²⁸

The person subject to a protective order must be detained by the head of the designated facility pending an OMPCD or the person’s release or discharge. The facility designated must be an appropriate inpatient facility on the list of those designated by the DSHS Commissioner or the HA. A non-medical facility used to detain persons charged or convicted of a crime may be used only 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.¹²⁹

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

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124 TEX. HEALTH & SAFETY CODE § 81.164.

125 TEX. HEALTH & SAFETY CODE § 81.165.

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

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

128 TEX. HEALTH & SAFETY CODE § 81.166.

129 TEX. HEALTH & SAFETY CODE § 81.167.

notice that a probable cause hearing was held and further detention ordered within the proscribed time; an OMPCD is not entered within the prescribed time; or the HA or DSHS Commissioner determines the person no longer meets the criteria for a protective order.¹³⁰

The sheriff or constable shall accompany the person to the designated facility, and a female attendant must be used to accompany a female patient. The HA or DSHS shall instruct the sheriff or constable about any control measures that may be necessary during transportation.¹³¹ 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.¹³²

Modification of an OMPCD or Protective Custody Order

At the request of the HA 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 7 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. The court must designate the HA to monitor the person’s compliance if the modification request is granted. The modified order may last only as long as the original order would have lasted.¹³³

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 HA 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.¹³⁴ The original outpatient order remains in effect if the modification is not granted.¹³⁵

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 HA 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 and 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

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130 TEX. HEALTH & SAFETY CODE § 81.168.
131 TEX. HEALTH & SAFETY CODE § 81.179.
132 TEX. HEALTH & SAFETY CODE §§ 81.180-181.
133 TEX. HEALTH & SAFETY CODE § 81.182.
134 TEX. HEALTH & SAFETY CODE § 81.183.
135 TEX. HEALTH & SAFETY CODE § 81.185(d).

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.¹³⁶

If a temporary detention order is granted, the 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, to a facility deemed appropriate by the HA. 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.¹³⁷

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 HA or DSHS. In response, the court may order a revision of the outpatient services or provide for inpatient services.¹³⁸

Renewal of an Extended Management Order

At the request of DSHS or the HA, 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 explain why a less restrictive setting is not appropriate for further care. An affidavit of medical evaluation based on an examination conducted within 30 days of filing must be included in the application and be signed by the HA or DSHS. 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 original extended OMPCD.¹³⁹

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.¹⁴⁰

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

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136 TEX. HEALTH & SAFETY CODE § 81.184.

137 TEX. HEALTH & SAFETY CODE § 81.185.

138 TEX. HEALTH & SAFETY CODE § 81.186.

139 TEX. HEALTH & SAFETY CODE § 81.187.

140 TEX. HEALTH & SAFETY CODE § 81.188.

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 HA, DSHS, and head of the facility providing services to the person if a re-examination and/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 6 months of the original order or similar request. If the HA or DSHS determines the person no longer meets the criteria for an OMPCD, the facility must immediately release the person. If the HA or DSHS believes the person continues to meet the criteria for an OMPCD, the HA or DSHS must file an affidavit of medical evaluation within 10 days of the filing of the re-examination and hearing request.¹⁴¹ 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 HA, 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 in nature to a hearing for an OMPCD. If DSHS or the HA 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 another 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.¹⁴²

Appeals are also allowed from an OMPCD or 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.¹⁴³

Treatment at the Facility¹⁴⁴

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 HA or DSHS must concur before a pass may be granted. Specified conditions may be placed on the pass.¹⁴⁵ A person outside a facility under a pass may

.....
141 TEX. HEALTH & SAFETY CODE § 81.189.

142 TEX. HEALTH & SAFETY CODE § 81.190.

143 TEX. HEALTH & SAFETY CODE § 81.191.

144 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 an order for management of a person with a communicable disease.

145 TEX. HEALTH & SAFETY CODE § 81.193.

be detained and returned to the facility based on a signed certificate authorizing the person's return by the facility head, the HA, 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 believes the person is absent from the facility without authority, has violated a condition of a pass, or has experienced a deterioration in his condition.¹⁴⁶

The person may be transferred to a federal facility if: (1) authorized by the HA 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 of the transfer.¹⁴⁷

Prior to discharge, the HA or DSHS must prepare a continuing care plan if continued care is required.¹⁴⁸ 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 HA or DSHS. A discharge certificate, prepared by the HA or DSHS, must be filed with the court that entered the order, and notice must be given to the facility head.¹⁴⁹

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 HA and that DSHS or the HA 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 HA to remove the quarantine and return the property to its owner.¹⁵⁰

Area Quarantines

If the DSHS Commissioner or one or more HAs 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 commissioner's 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.¹⁵¹

.....
146 TEX. HEALTH & SAFETY CODE § 81.194.

147 TEX. HEALTH & SAFETY CODE § 81.199.

148 TEX. HEALTH & SAFETY CODE § 81.192.

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

150 TEX. HEALTH & SAFETY CODE § 81.084.

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

APPENDICES

APPENDIX A

QUICK REFERENCE CONTACT LIST

Federal

- Centers for Disease Control and Prevention **800-CDC-INFO**
- Federal Emergency Management Agency **800-621-FEMA**
- National Institutes of Health **301-496-4000**
- Office of the Surgeon General **240-276-8853**
- Public Health Service Commissioned Corps **240-453-6000**

State

- Commissioner of the Texas Department of State Health Services (DSHS) **888-963-7111**
- Governor's Office **800-843-5789**
- Office of General Counsel, DSHS **512-776-7236**
- Regional and Local Services, DSHS **800-248-4083**
- Community Preparedness Section, DSHS **512-776-7219**

Suggested Local Contacts

- County Commissioner's Court
- County and/or municipal departments of health
- City Council
- City Attorney's Office
- Local office of public health preparedness
- County Attorney
- County Appraisal District

Information Available On The Internet

- Centers for Disease Control and Prevention <http://www.cdc.gov/>
- Federal Emergency Management Agency <http://www.fema.gov/>
- National Institutes of Health <http://www.nih.gov/>
- Governor's Office <http://www.governor.state.tx.us>
- Texas Department of State Health Services <http://www.dshs.state.tx.us>
- Communicable Disease Control Measures in Texas, DSHS Report
<http://www.dshs.state.tx.us/commprep/legal/CDCMManual.aspx>
- Avian Flu Pandemic Litigation Forms, Office of the Attorney General
<http://www.supreme.courts.state.tx.us/emtf/pdf/LitigationForms.pdf>

APPENDIX B

QUICK VENUE/JURISDICTION REVIEW

Court Order for Management of Person with Communicable Disease

- 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 order for management 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/quarantine facilities

APPENDIX C

ACRONYMS

DSHS	Texas Department of State Health Services
HA	Health authority
OMPCD	Order for management of a person with a communicable disease

APPENDIX D

QUARANTINE OF INDIVIDUALS AND GROUPS

FLOWCHARTS AND SAMPLE FORMS

FLOWCHARTS

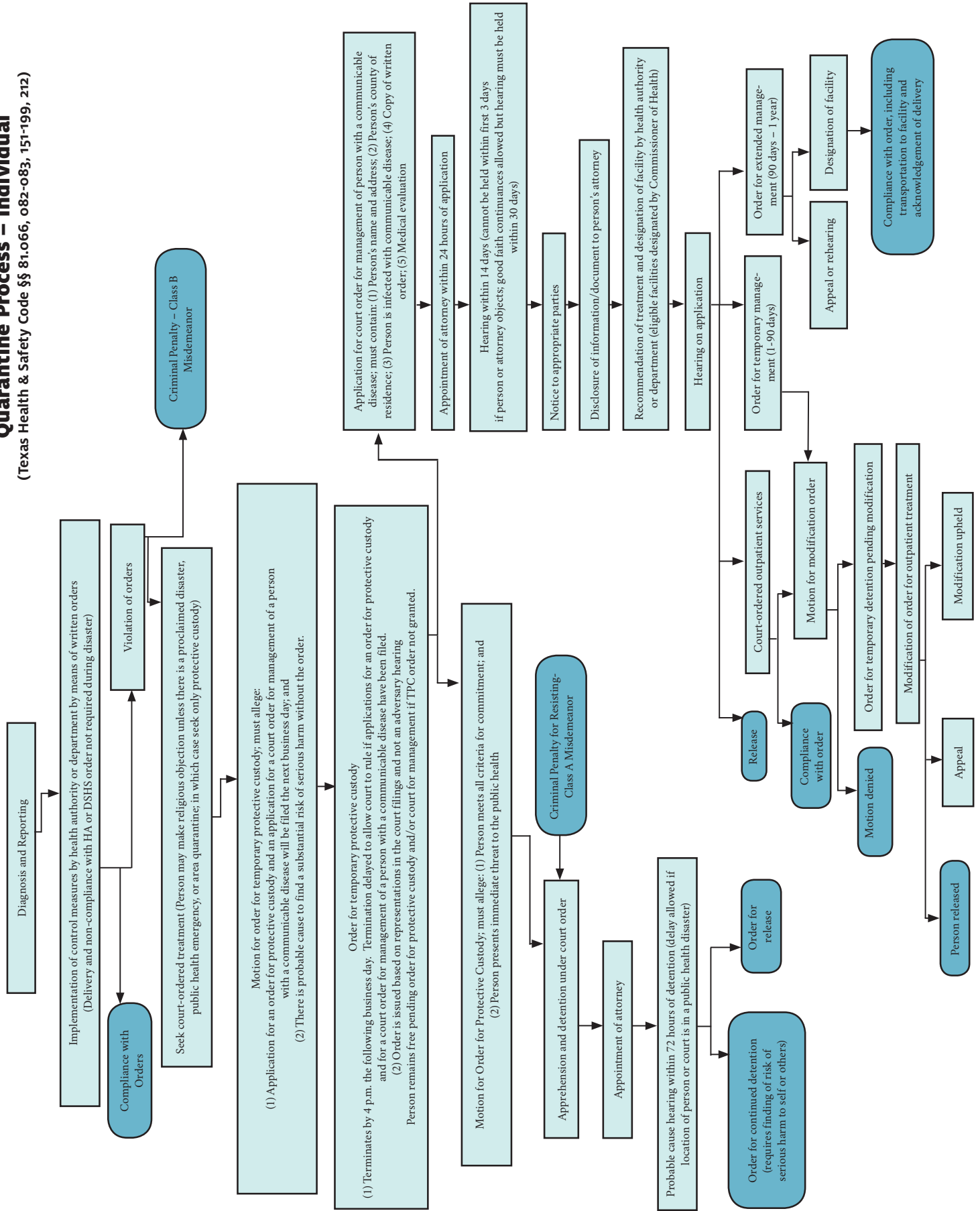
<i>Quarantine Process — Individual</i>	p. 43
<i>Quarantine Process — Group of 5 or more</i>	p. 45

SAMPLE FORMS

<i>Written Order of Control Measures</i>	p. 47
<i>Application for Order for Court Management of a Person with Communicable Disease</i>	p. 49
<i>Medical Evaluation Affidavit</i>	p. 51
<i>Notice to Parties of Hearing on Management Application</i>	p. 53
<i>Order on Application for Court Order for Management of a Person with a Communicable Disease</i>	p. 55
<i>Writ of Commitment</i>	p. 57
<i>Written Statement Acknowledging Acceptance of the Person and Any Personal Property</i>	p. 59
<i>Motion for Temporary Protective Custody</i>	p. 61
<i>Order for Temporary Protective Custody</i>	p. 63
<i>Motion for Protective Custody</i>	p. 65
<i>Notification of Probable Cause Hearing</i>	p. 67
<i>Order for Continued Detention</i>	p. 69
<i>Order for Release</i>	p. 71
<i>Designation of Facility</i>	p. 73

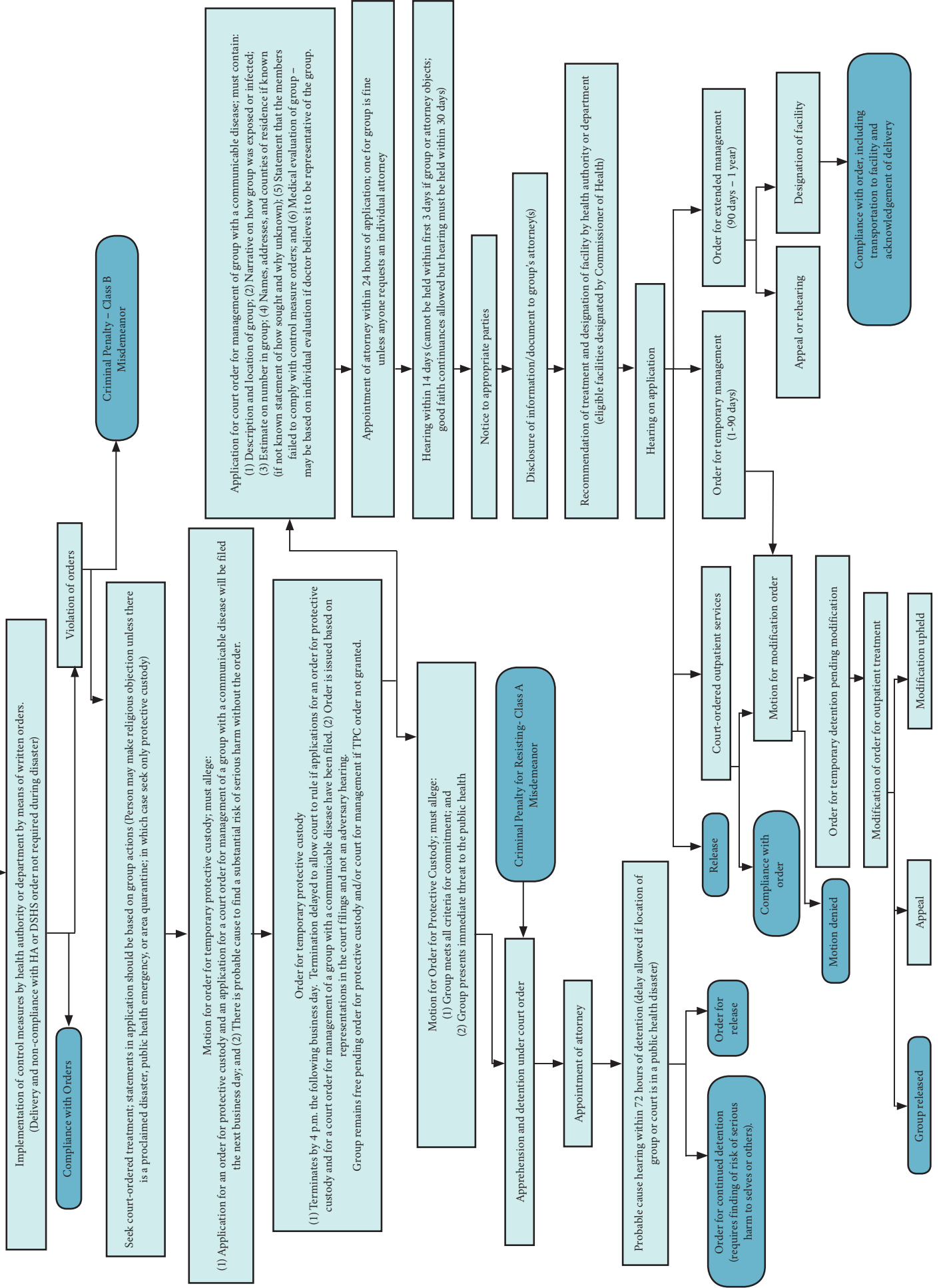
Quarantine Process – Individual

(Texas Health & Safety Code §§ 81.066, 082-083, 151-199, 212)



Quarantine Process – Group of 5 or more

(Texas Health & Safety Code §§ 81.066, 082-083, 151-199, 212)



WRITTEN ORDER OF CONTROL MEASURES^{152, 153}

Pursuant to Texas Health & Safety Code § 81.083, I, the *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* hereby issue this order imposing *(specified control measures or quarantine)* 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 Health or Local Health Authority for insert name of region)* on this the ____ day of _____, 20____.

Print name below; sign on the line

152 Please note that, with the exception of the notification of the probable cause hearing, Texas law does not specify the forms on which these documents must be written. The following are merely examples.

153 To be issued by the Commissioner of Health or local health authority.

**APPLICATION FOR ORDER FOR COURT MANAGEMENT OF
A PERSON WITH COMMUNICABLE DISEASE¹⁵⁴**

No. _____

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

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

The *(insert appropriate title here: the Commissioner of Health or a local health authority in the State of Texas, under Texas Health and Safety Code § 121.021)*, by counsel, hereby respectfully applies to the Court for an Order for Management of a Person with a Communicable Disease.

1. On *(date)*, written orders from *(insert appropriate title here: the Commissioner of Health or a 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.

¹⁵⁴ 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: _____

MEDICAL EVALUATION AFFIDAVIT¹⁵⁵

No. _____

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

Affidavit of Medical Evaluation

I, the undersigned, (*insert appropriate title here: the Commissioner of Health or a local health authority in the State of Texas, under Texas Health and Safety Code §121.021*) do hereby certify the following to the best of my knowledge:

1. The name and address of the physician who examined the proposed patient are:

2. The name and address of the proposed patient are:

3. On the _____ day of _____, 20_____, the proposed patient was examined by the above named physician at the following location: _____.

4. A brief diagnosis of the physical and mental condition of the proposed patient on said date is: the proposed patient has a contagious form of (*name of disease*) and is refusing medical treatment.

5. An accurate description of the health treatment, if any, given by or administered by the examining physician is as follows: *See Exhibit _____, which is attached hereto and incorporated by reference.*

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 presents a substantial risk of serious harm to self and will continue to endanger the public health if not immediately restrained and observed, isolated, and/or treated. The detailed basis for this opinion

.....
¹⁵⁵ To be submitted to the court by the Commissioner of Health or local health authority.

is as follows: *(Detailed information and reasoning.)*

7. *(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 APPLICATION¹⁵⁶

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: _____

.....
156 To be issued by the trial judge.

**ORDER ON APPLICATION FOR COURT ORDER FOR MANAGEMENT OF
A PERSON WITH A COMMUNICABLE DISEASE¹⁵⁷**

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: _____

.....
157 To be entered by trial judge.

WRIT OF COMMITMENT¹⁵⁸

No. _____

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

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 and/or local health authority.

SO ORDERED THIS: ____ day of _____, 20____.

Signed: _____

158 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.

**WRITTEN STATEMENT ACKNOWLEDGING ACCEPTANCE OF THE PERSON
AND ANY PERSONAL PROPERTY¹⁵⁹**

.....

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*) and will ensure treatment commences pursuant to the orders of the Court in this matter and instructions from the Department of State Health Services and/or local health authority.

Signed: _____

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

Notary Public, _____ County, Texas

My commission expires: _____

.....
159 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 CUSTODY¹⁶⁰

No. _____

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

Motion Seeking Temporary Protective Custody

The *(insert appropriate title here: the Commissioner of Health or a local health authority in the State of Texas, under Texas Health and Safety Code §121.021)*, by counsel, hereby respectfully applies to the Court for an Order for Temporary Protective Order of *(initials of individual)*.

1. On *(date)*, written orders from *(insert appropriate title here: the Commissioner of Health or a 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.

¹⁶⁰ To be filed in the court where the motion for protective custody and/or 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/or 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	§	IN THE _____ DISTRICT COURT
FOR THE BEST INTEREST	§	
AND PROTECTION OF	§	IN AND FOR
_____	§	
	§	_____ COUNTY, TEXAS

Motion for Protective Custody

The *(insert appropriate title here: the Commissioner of Health or a local health authority in the State of Texas, 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 here: the Commissioner of Health or a 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^{161, 162}

No. _____

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

Notice of Probable Cause Hearing

On this the ____ day of _____, 20____, I, the undersigned hearing officer, heard evidence concerning 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.

The proposed patient and his/her 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 or to others such that the proposed patient cannot be at liberty pending a final hearing because the proposed patient is infected with or 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 Texas Department of State Health Services delivered on ____ (*date of service*).

Date: ___ day of _____, 20____.

Signed: _____

161 This is the form required by statute; it is not merely a proposed form.

162 To be issued by the trial judge.

ORDER FOR CONTINUED DETENTION¹⁶³

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: _____

¹⁶³ To be issued by the trial judge.

ORDER FOR RELEASE¹⁶⁴

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: _____

.....
164 To be issued by the trial judge

DESIGNATION OF FACILITY¹⁶⁵

No. _____

THE STATE OF TEXAS	§	IN THE _____ DISTRICT COURT
FOR THE BEST INTEREST	§	
AND PROTECTION OF	§	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 here: Commissioner of Health of local health authority of named region*), 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.

(If local health authority: This facility has previously been designated to provide needed treatment of communicable diseases by the Commissioner of Health.)

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

Title

.....
165 To be submitted to the court by the Commissioner of Health of local health authority.

APPENDIX E
QUARANTINE OF PROPERTY
FLOWCHART AND SAMPLE FORMS

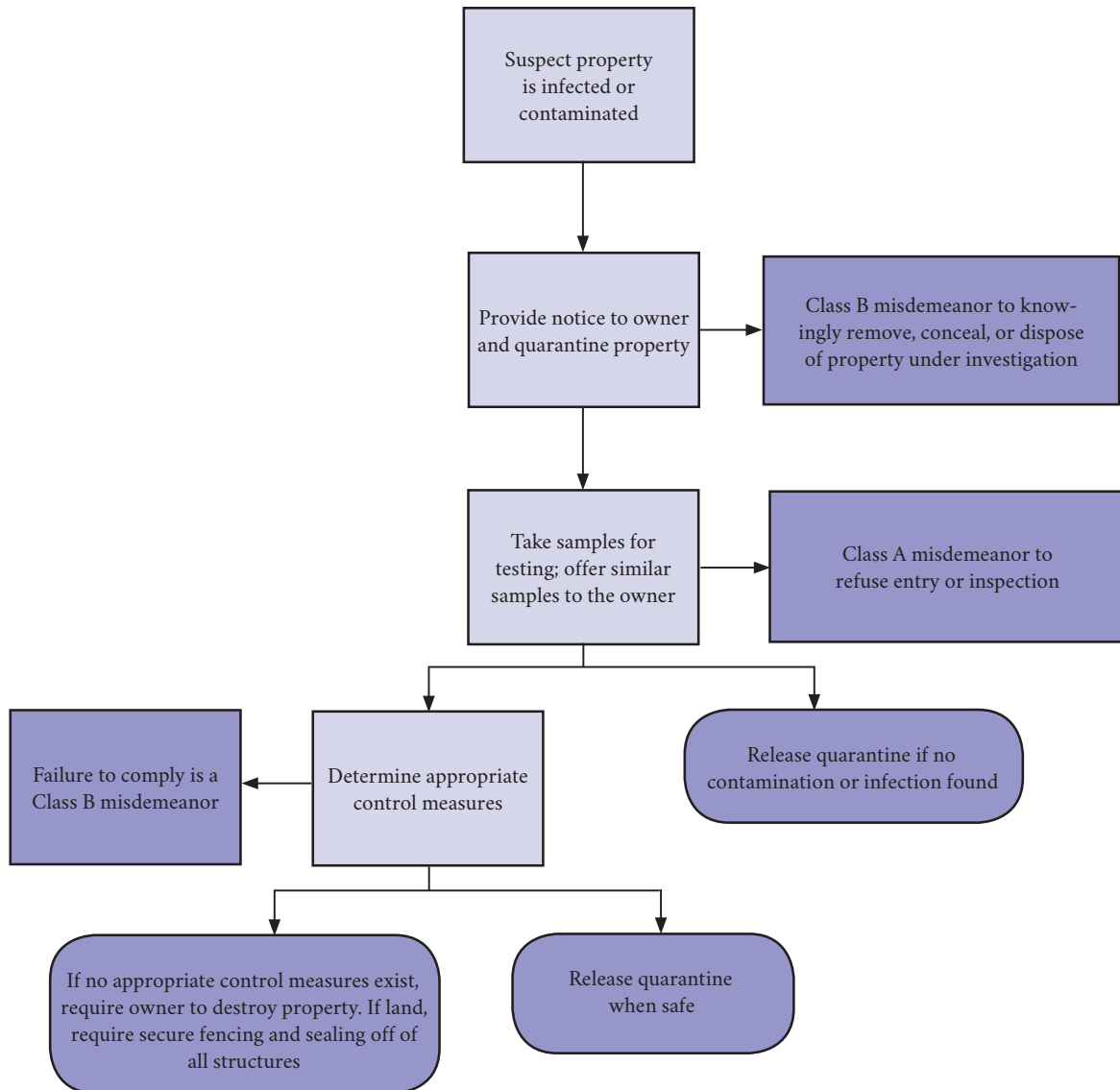
FLOWCHART

Quarantine of Property..... p. 77

SAMPLE FORMS

Notice to Owner of Animal or Property..... p. 79
Destruction Order..... p. 81
Termination of Measures Regarding Animal or Property..... p. 83

Quarantine of Property
 (Texas Health & Safety Code §§ 81.063-065, 067-068, 084, 087-088)



NOTICE TO OWNER OF ANIMAL OR PROPERTY^{166, 167}

Pursuant to Texas Health & Safety Code §81.084, I, the *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* hereby issue this order imposing *(specified control measures or quarantine)* 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 Health or Local Health Authority for insert name of region)* on this the ____ day of _____, 20____.

Print name below; sign on the line

166 Please note that Texas law does not specify the forms on which these documents must be written. The following are merely examples.

167 To be issued by the Commissioner of Health or local health authority.

DESTRUCTION ORDER¹⁶⁸

Pursuant to Texas Health & Safety Code §81.084, I, the *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* 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 Health or Local Health Authority for insert name of region) 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 Health or Local Health Authority for insert name of region)* on this the ____ day of _____, 20____.

Print name below; sign on the line

.....
¹⁶⁸ To be issued by the Commissioner of Health or local health authority.

TERMINATION OF MEASURES REGARDING ANIMAL OR PROPERTY¹⁶⁹

Pursuant to Texas Health & Safety Code §81.084, I, the *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* hereby terminate my previous order imposing *(control measures and/or quarantine)* 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

.....
¹⁶⁹ To be issued by the Commissioner of Health or the local health authority.

APPENDIX F
QUARANTINE INVOLVING CARRIERS
FLOWCHART AND SAMPLE FORMS

FLOWCHART

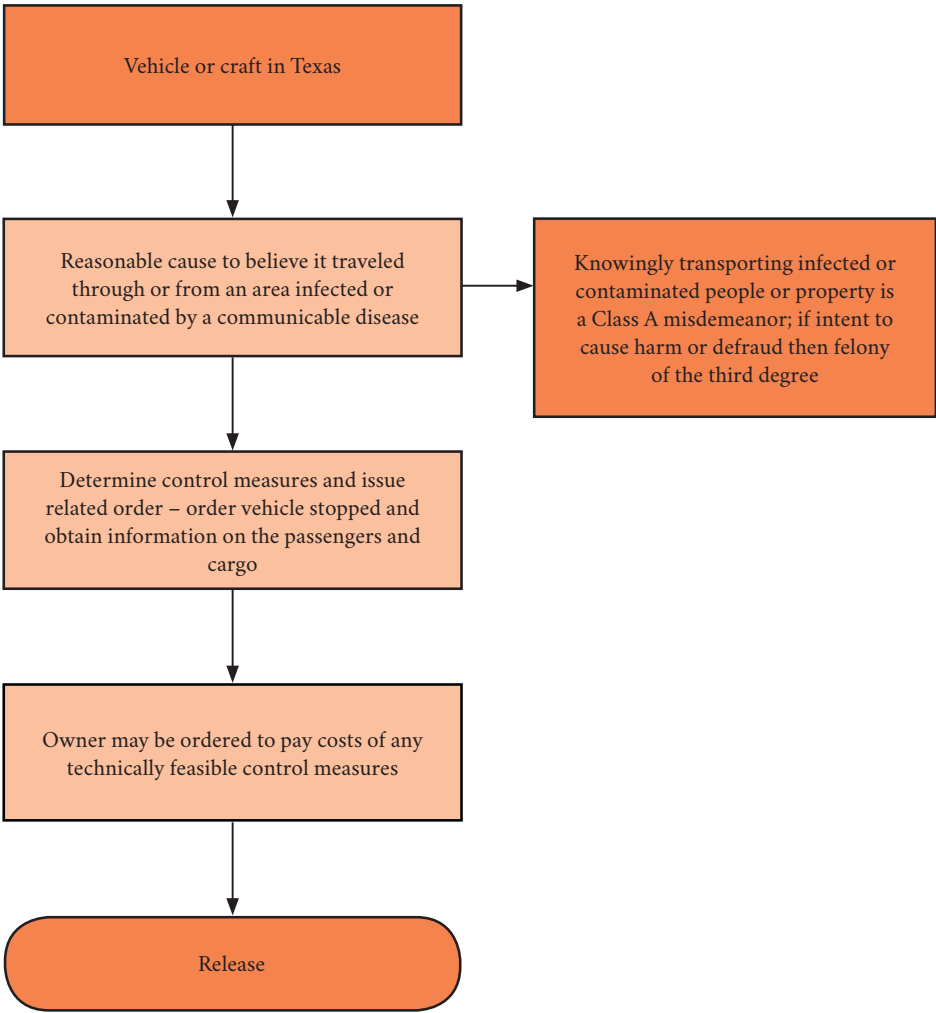
Actions Involving Carrier or Private Conveyances p. 87

SAMPLE FORMS

Control or Quarantine Order p. 89

Termination of Measures Regarding Carriers or Conveyances p. 91

Actions Involving Carrier or Private Conveyances
(Texas Health & Safety Code §§ 81.086, 089)



CONTROL OR QUARANTINE ORDER^{170, 171}

Pursuant to Texas Health & Safety Code §81.086, I, the *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* hereby issue this order imposing *(specified control measures or quarantine)* 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 on the vehicle.
2. All cargo carried by the vehicle.
3. Any illness or suspected illness experienced by any operator, passenger, or crewperson on 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.

¹⁷⁰ Please note that Texas law does not specify the forms on which these documents must be written. The following are merely examples.

¹⁷¹ To be issued by the Commissioner of Health or the local health authority.

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 Health or Local Health Authority for insert name of region)* on this the ___ day of _____, 20___.

Print name below; sign on the line

TERMINATION OF MEASURES REGARDING CARRIERS OR CONVEYANCES¹⁷²

Pursuant to Texas Health & Safety Code §81.086, I, the *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* hereby terminate my previous order imposing *(control measures and/or quarantine)* 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

¹⁷² To be issued by the Commissioner of Health or the local health authority.

APPENDIX G
AREA QUARANTINE
FLOWCHART AND SAMPLE FORMS

FLOWCHART

Area Quarantine p. 95

SAMPLE FORMS

Order Imposing an Area Quarantine p. 97

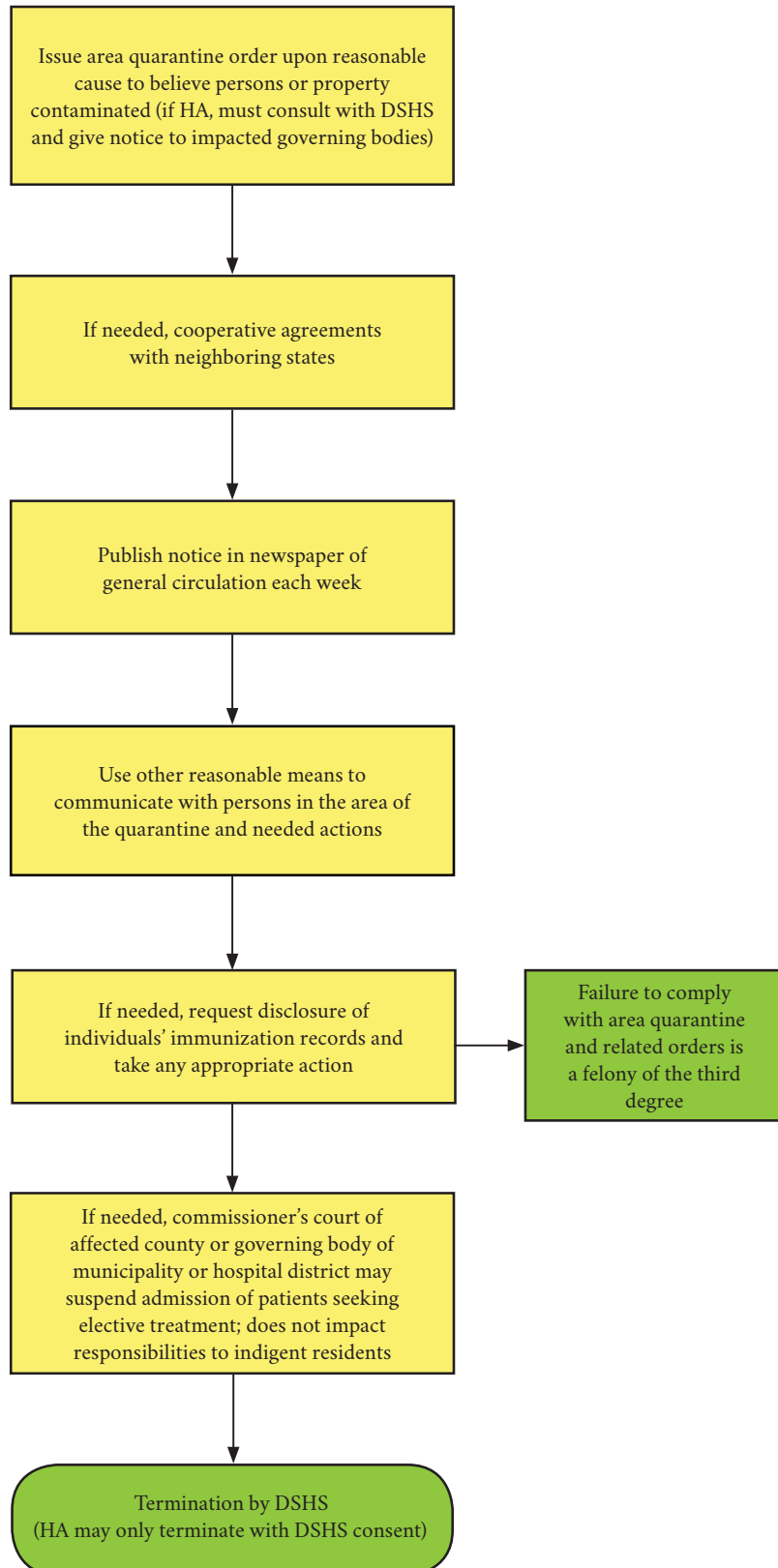
Notice for Publication p. 99

Request for Immunization Information..... p. 101

Order Regarding Admission to Particular Health Facilities..... p. 103

Termination of Area Quarantine..... p. 105

Area Quarantine
(Texas Health & Safety Code § 81.085)



ORDER IMPOSING AN AREA QUARANTINE^{173, 174}

Pursuant to Texas Health & Safety Code §81.085, I, the *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* 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 quarantine 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 local health authorities; 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 Health or Local Health Authority for insert name of region)* on this the ___ day of _____, 20____.

Print name below; sign on the line

173 Please note that Texas law does not specify the forms on which these documents must be written. The following are merely examples. Bolded language in the forms is believed imperative for the average impacted person to read.

174 To be issued by the Commissioner of Health or local health authority of the impacted area.

NOTICE FOR PUBLICATION¹⁷⁵

An area quarantine has been imposed on (area) by *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* 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 local health authorities; 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.

¹⁷⁵ To be provided by the Department of State Health Services or local health authority's office to the newspaper of general circulation in the affected area.

REQUEST FOR IMMUNIZATION INFORMATION¹⁷⁶

Pursuant to the authority invested in me by Texas Health & Safety Code §81.085, I, the *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* 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 *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* on this the ____ day of _____, 20____.

Print name below; sign on the line

.....
176 To be issued by the Commissioner of Health or local health authority of the impacted area.

ORDER REGARDING ADMISSIONS TO PARTICULAR HEALTH FACILITIES¹⁷⁷

WHEREAS this (*insert name of county, municipality or hospital district*) is under an area quarantine issued on the ___ day of _____, 20___ by (*insert the Commissioner of Health or local health authority*);

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 and/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 § 81.084 on this the ___ day of _____, 20___.

Print name below; sign on the line

¹⁷⁷ To be issued by the commissioner's court of the affecting county or governing body of the municipality or hospital district.

TERMINATION OF AREA QUARANTINE¹⁷⁸

Pursuant to Texas Health & Safety Code § 81.085, I, the *(insert appropriate title: Commissioner of Health or Local Health Authority for insert name of region)* 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

.....
178 To be issued by the Commissioner of Health or the local health authority.

**HEALTH LAW & POLICY INSTITUTE
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