
Public Health Emergencies

A Resource for Bench and Bar



South Carolina Department of Health
and Environmental Control

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PREFACE: QUARANTINES AND PUBLIC HEALTH EMERGENCIES

“An infectious disease outbreak may cause public health officials to subject individuals or groups to involuntary civil confinement, such as isolation, quarantine, or other compulsory “social distancing” measures. Under such circumstances in the United States, the judicial system, as guardian of civil liberties and protector of the rule of law, would serve to ensure that those measures do not unduly interfere with the rights of individuals or groups. At a minimum, the courts would strive to guard against such undue interference by providing procedural due process protections”

“The Courts, Public Health, and Legal Preparedness,” Am J Public Health 2007 April; 97 (Supplement 1): S69-S73

In 1698 the South Carolina Provincial Assembly promulgated an act requiring vessels entering the port of Charleston to produce evidence that no persons on board were suffering from a contagious disease. In 1707 a “pest house” was constructed on Sullivan’s Island for isolation of individuals suffering from contagious diseases. Cholera, yellow fever, and smallpox epidemics prompted repeated local quarantines of the ports and towns of South Carolina during the seventeenth, eighteenth, and nineteenth centuries. “Vigorous enforcement” of the Quarantine Act of 1868 was credited with keeping yellow fever out of Charleston and Beaufort in 1871. Quarantine stations were established on James Island, South Island (Georgetown), Buzzard’s Island, and Parris Island. In 1878 the State Board of Health was created and charged with the responsibility for prescribing and enforcing such “preventive measures as may be needed to suppress or prevent the spread of these diseases by proper quarantine or other measures of prevention, as may be necessary to protect the citizens of the State.” Local quarantines were almost routine around the turn of the last century: in 1906 the South Carolina Supreme Court affirmed a circuit court judgment in favor of a railroad passenger put off a train in Savannah for lack of a health certificate, holding that the relevance of whatever he knew of the quarantine in Columbia as to whether he had been properly informed of the quarantine in Savannah was a matter for the jury. In 1918, during the Spanish flu outbreak, city officials ordered that the public schools in Columbia be closed. The Court of Common Pleas and the South Carolina Supreme Court

quickly followed suit. Across the state, Winthrop College, Greenville Women's College, Converse College and Anderson College were all placed under strict quarantine with no one allowed to leave the campus. The Citadel was also closed and students were sent home. In 2002 the South Carolina Emergency Health Powers Act was enacted, codifying specific provisions for emergency orders requiring quarantine or isolation as public health measures and providing for judicial review.

Response to earlier epidemics was hampered by lack of information of the causes and transmission of disease and by a lack of vaccines, antibiotics, and other effective medical intervention. Quarantines were often imposed simply because no other response was available. We now have ways to prevent or treat many of the scourges of the past. To a large

extent promulgation of the Emergency Health Powers Act was a reaction, on one hand, to the realization that the globalized economy and rapidity of travel allow disease outbreaks to move across continents in a matter of hours, and, on the other, emergence of groups intent on using bioterrorism as a weapon raises the possibility that diseases could be introduced in ways deliberately calculated to avoid the public health mechanisms established to detect, prevent and treat disease.

The following materials are compiled as a reference for Bench and Bar. They include: sources of Federal and State authority to act for protection of public health; statutory powers of the S.C. Department of Health and Environmental Control; a summary of jurisdiction, venue, and judicial authority; a discussion of emergency authority generally and in response to a Public Health Emergency; a summary of the powers of the Governor and various State agencies with statutory authority for emergency management; an outline of disease tracking and outbreak investigations; an outline of public health measures requiring some degree of compulsion: mandatory inoculations, isolation, quarantine, and seizure or destruction of property; and statutory provisions relevant to operation of the Courts in times of public health emergencies. The last section of this reference includes sample petitions, motions, and proposed orders which incorporate the due process provisions provided by case law and the Emergency Health Powers Act to balance the public interest in responding to a Public Health Emergency with the individual's rights of life, liberty, travel, association, and the pursuit of happiness.

Acknowledgements

The following attorneys and DHEC law interns have contributed to these materials: Matthew S. Penn, J.D., MLIS; Susan M. Fittipaldi, J.D.; Cheryl Bullard, B.S.N., J.D.; Angela M. Wertz, J.D.; John Harleston, J.D.; Mark Fessler; Ann Marie Thompson; Charles Bondurant; Jacalin Shealy; Ashley Green; and Samuel L. Finklea, Ph.D., J.D.

The following attorneys and law interns reviewed and commented on these materials and their thoughtful suggestions and shared experiences are gratefully acknowledged: Jason Bobertz, J.D.; Rosalyn Frierson, J.D.; Travis Dayhuff, J.D.; Kelly Jolley, J.D.; Eli A. Poliakoff, J.D.; Jane Trinkley, J.D.; Mary Margaret Hyatt; and Ryan Arens.

Disclaimer:

This publication was supported by Cooperative Agreement Number 5U90TP416976-08 from the Public Health Law Program of the Centers for Disease Control and Prevention (CDC). Its contents are solely the responsibility of the authors and do not necessarily represent the official views of CDC or DHEC. These materials are intended as a guide, for information only, and official statutory and regulatory compilations should be referenced in actual emergencies.

Updates

The Department of Health and Environmental Control may update these materials as resources allow. Please direct comments to the Office of General Counsel, ATTN: Chief Counsel for Health Services, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201.

I. PUBLIC HEALTH EMERGENCY LAWS

A. Jurisdiction and Authority: Public Health Law in South Carolina

1. Federal v. State

a. The United States Constitution and Public Health

1) Federal Constitution

The United States Constitution, including the Amendments, provides no explicit role for the federal government in matters of public health.

However, the federal government can exercise authority over public health matters within the ambit of its defense, interstate commerce, and taxing and spending powers. See, e.g., *Carolene Prods. Co. v. Evaporated Milk Assn.*, 93 F.2d 202, 204 (7th Cir. 1937) (“While the police power is ordinarily said to be reserved by the states, it is obvious that it extends fully likewise to the federal government in so far as that government acts within its constitutional jurisdiction.”)

2) Federal Public Health Powers

Pursuant to its enumerated powers, the federal government may play a role in some public health emergencies. Under laws governing the United States Public Health Service and the Stafford Disaster Relief and Emergency Assistance Act, the federal government may declare major disasters, emergencies, and public health emergencies; issue quarantine orders on persons arriving from foreign countries or in interstate travel; assist states in the enforcement of state issued quarantine orders; and maintain a national stockpile of drugs, vaccines, and medical supplies. See 42 U.S.C. §§ 262-271, 300hh to 300hh-16; 42 CFR Part 70, Interstate Quarantine, and Part 71, Foreign Quarantine. The current list of Quarantinable Communicable Diseases as set out in Executive Order 13295, 68 Fed Reg 17255, as amended by Executive Order 13375, 70 Fed Reg 17299, includes: (a) Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; and Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named); Severe Acute Respiratory Syndrome (SARS); and influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic.

b. States and Public Health

The United States Constitution’s silence on public health, in conjunction with the Tenth Amendment’s reservation of undelegated powers to the states, indicates that the framers viewed the States as primarily responsible for the protection of the public’s health. U.S. Const., Amend X.

The states bear the primary responsibility for preventing and responding to threats to the public's health. See, e.g., *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905) (“The safety and health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect. They are matters that do not ordinarily concern the national government.”).

c. Sources of a State's Public Health Authority

The power of a state to protect the public's health is derived from two sources of authority: the police power and the *parens patriae* power.

1) The police power

The “police power” is the power to promote the public safety, health, and morals by restraining and regulating the use of liberty and property. See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (“Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, matters of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of lives, limbs, health, comfort, and quiet of all persons.” (internal citations omitted.)); *Black's Law Dictionary*, 1041 (5th ed. 1979); Ernst Freund, *The Police Power: Public Policy & Constitutional Rights* iii (1976).

In South Carolina, the police power has been defined as “that attribute of sovereignty in a state by which it clothes the legislature with power to regulate persons, natural and artificial, and property in accordance with the provisions of the state constitution, in all matters relating to the public health, the public morals, and the public safety.” *Stehmeyer v. City Council of Charleston*, 53 S.C. 259, 280-1, 31 S.E. 322, 331 (S.C. 1898); see also *Aetna Fire Ins. Co. v. Jones*, 78 S.C. 445, 59 S.E. 148 (1907).

2) The *parens patriae* power

“The ‘*parens patriae*’ doctrine is a recognition of the principle that a state, when a party to a suit involving a matter of sovereign interest or quasi-sovereign interest, must be deemed to represent all its citizens, and therefore has standing.” 72 Am. Jur. 2d States, Territories, and Dependencies § 91 (2001).

To maintain a *parens patriae* action, the State must articulate an interest apart from the interests of particular private parties; the State must express a sovereign or quasi-sovereign interest. A quasi-sovereign interest that can sustain such an action is the health and well being, both physical and economic, of its residents. *Alfred L Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607 (1982).

“South Carolina, as *parens patriae*, protects and safeguards the welfare of its children.” *Harris v. Harris*, 307 S.C. 351, 353, 415 S.E.2d 391, 393 (1992).

“The doctrine of *parens patriae* applies only to sovereigns asserting at least quasi-sovereign interests apart from the interests of particular private citizens. ... Political subdivisions, such as cities and counties, however, lack the element of sovereignty that is a prerequisite to maintaining a suit under the doctrine of *parens patriae*.” *Capital View Fire Dist. v. County of Richland*, 297 S.C. 359, 362-63, 377 S.E.2d 122, 124 (Ct. App. 1989).

3) The South Carolina Constitution

Protection of the public health: The health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern. The General Assembly shall provide appropriate agencies to function in these areas of public concern and determine the activities, powers, and duties of such agencies. S.C. Const. art. XII, § 1.

2. South Carolina Department of Health and Environmental Control (DHEC)

a. Organization of DHEC

1) Supervisory Board

The Board of Health and Environmental Control supervises the activities of DHEC. S.C. Code Ann. § 44-1-20.

The governing authority of a department must oversee, manage, and control the operation, administration, and organization of the department. S.C. Code Ann. § 1-30-10.

The Board of Health consists of seven members appointed by the Governor with the advice and consent of the Senate. Each of the six congressional districts supplies one member while the seventh is chosen from the state at large. S.C. Code Ann. § 44-1-20. **Note:** As of July 1, 2012, this statute has not been amended to reflect creation of the Seventh Congressional District following the 2010 census.

Members occupy their positions for four (4) years. S.C. Code Ann. § 44-1-20.

Members of the Board, except the chairman, may be removed for certain misconduct. The chairman may be removed at the will of the Governor. S.C. Code Ann. § 1-3-240(B), § 1-3-240(C).

The member appointed at large will be the Chairman of the Board. S.C. Code Ann. § 44-1-20.

Each member receives compensation as is established by law. S.C. Code Ann. § 44-1-30.

The Board must meet at least quarterly. S.C. Code Ann. § 44-1-30.

2) Director

The Director of DHEC is appointed by the Board to serve a four (4) year term and may be removed by the Board with the consultation and approval of the Governor. S.C. Code Ann. § 44-1-40.

The Director receives a salary in an amount established by the Board and approved by the State Budget and Control Board. S.C. Code Ann. § 44-1-40.

The Director performs such duties and has such authority as directed by the Board. S.C. Code Ann. § 44-1-40.

3) Local Health Districts

DHEC may divide the state into health districts and establish district advisory boards of health under the advisory and supervisory control of DHEC. S.C. Code Ann. § 44-1-130.

b. Public Health Authority of DHEC

1) General Authority

“The Department of Health and Environmental Control is invested with all the rights and charged with all the duties pertaining to organizations of like character and is the sole advisor of the State in all questions involving the protection of the public health within its limits.” S.C. Code Ann. § 44-1-110.

“The Department of Health and Environmental Control is the agency of state government having jurisdiction over those matters involving real or potential threats to the health of the people of South Carolina, including the handling and disposal of garbage and refuse; septic tanks; and individual or privately-owned systems for the disposal of offal and human or animal wastes.” S.C. Code Ann. § 48-1-100(C).

DHEC is also the primary environmental protection agency with the State. Except when directly related to public health emergencies, this book will not cover the environmental protection authorities delegated to DHEC.

2) Regulatory Authority

DHEC has the authority to make, adopt, promulgate, and enforce reasonable rules and regulations concerning a variety of specific public health issues, including but not limited to, food service, sanitation, sewage disposal, vector control, and disease control. S.C. Code Ann. § 44-1-140.

Regulation Process – DHEC’s promulgation of regulations is subject to the South Carolina Administrative Procedures Act. For more details see S.C. Code Ann. § 1-23-110 to -126.

Emergency Regulations Process - An agency may promulgate an emergency regulation in the event it discovers an imminent peril to public health, safety or welfare. Under certain circumstances, such a regulation may remain in effect for 180 days without approval of the General Assembly. For more details see S.C. Code Ann. § 1-23-130.

3) Emergency Authority

Emergency Orders and Rules

“The Department may make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other danger to the public life and health.” S.C. Code Ann. § 44-1-140.

4) Emergency Health Powers Act

During a Governor-declared Public Health Emergency, DHEC has a number of emergency powers covering enhanced access to medical and non-medical records, control of property, control of medical supplies, management of people, and the disposal of human remains. See sections

below addressing DHEC's authority and responsibility pursuant to S.C. Code Ann. Sections 44-4-10 *et seq.*

B. Courts, Venue, and Extraordinary Writs

1. Courts of Record

- The South Carolina Supreme Court. S.C. Code Ann. § 14-3-410.
 - The South Carolina Court of Appeals. S.C. Code Ann. § 14-8-240.
 - The Circuit Courts. S.C. Code Ann. § 14-5-10.
 - Probate court. S.C. Code Ann. § 14-23-1120.
 - Family courts. S.C. Code Ann. § 63-3-20.
 - County courts. S.C. Code Ann. § 14-9-110. [Note: County courts were abolished in 1979. Although the statute allows a county to reconstitute a county court, no county has done so.]
 - The Administrative Law Court. S.C. Code Ann. § 1-23-500.
-
- Magistrate's court is not a court of record. *State v. Duncan*, 269 S.C. 510, 238 S.E.2d 205 (1977); see also *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 515 S.E.2d 257 (1999).

2. Courts of Jurisdiction

a. Courts of Original Jurisdiction

The South Carolina Supreme Court has original jurisdiction to issue writs or orders of injunction, *mandamus*, *quo warranto*, prohibition, *certiorari*, *habeas corpus*, and other original and remedial writs. S.C. Const. art. V § 5; S.C. Code Ann. § 14-3-310.

The circuit courts are general trial courts with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. S.C. Const. art. V § 11

Resident circuit judge: has at all times jurisdiction to discharge and perform all the duties of his office within the circuit wherein he resides, except the holding of circuit courts therein when some other circuit judge shall be engaged in holding such courts, S.C. Code Ann. § 14-5-390.

Absent resident circuit judge:

- A temporarily absent presiding or resident judge may grant orders and decrees for cases arising from that jurisdiction. S.C. Code Ann. §14-5-360.
- In the absence of a resident or presiding judge, a judge residing or presiding in an adjoining circuit may assume jurisdiction upon affidavit of a moving party. S.C. Code Ann. § 14-5-370.

Special Sessions: When in the public interest. A special session may be approved whenever the solicitor for a county or a majority of the members of the bar submits a petition. S.C. Code Ann. § 14-5-910.

Note: A judge may not write an order for a circuit when he is holding court in another circuit. *See e.g. State ex rel. La Motte v. Smith*, 50 S.C. 558, 27 S.E. 933 (1897), holding that a judge for Fifth Circuit holding court in the Seventh Circuit had no chambers jurisdiction to issue a writ of *mandamus* ordering arrest warrants for actors charged in the Fifth Circuit.

Circuit court judges have authority to issue writs of *habeas corpus*, *mandamus*, and *supersedeas*. S.C. Const. art. V, § 20; S.C. Code Ann. § 17-17-30 (*habeas corpus*); S.C.R.C.P. Rule 65 (*mandamus*); S.C.A.C.R. Rules 205 and 225 (*supersedeas*).

b. Probate Courts of limited jurisdiction

Probate Court’s exclusive and original jurisdiction extends to, inter alia:

Issuing warrants and processes; S.C. Code Ann. § 14-23-290;

Appointing guardians, assignees, and trustees; § 62-1-302;

Administering estates of deceased persons; S.C. Code Ann. § 62-1-302;

Protecting assets of minors and incapacitated persons; S.C. Code Ann. § 62-1-302;

Involuntary commitment of persons suffering mental illness or tuberculosis. S.C. Code Ann. § 62-1-302.

Concurrent jurisdiction. Probate courts share jurisdiction with the circuit courts over settlement in wrongful death suits and settlement of claims less than ten thousand dollars (\$10,000) in favor of minor or incapacitated persons. S.C. Code Ann. § 15-51-41, § 15-72-10.

c. Municipal Courts of limited jurisdiction

Municipal courts have jurisdiction to hear all cases arising under the municipality’s ordinances. S.C. Code. Ann. § 14-25-45.

Municipal courts have the same criminal jurisdiction that magistrates have, but no civil jurisdiction. S.C. Code Ann. § 14-25-45.

d. Magistrate Courts of Limited Jurisdiction

The jurisdiction of the magistrate extends to, *inter alia*:

Criminal acts not punishable by more than one hundred dollars (\$100) or thirty days imprisonment; S.C. Code Ann. § 22-3-540.

Concurrent jurisdiction. Magistrates share jurisdiction with the Circuit Courts over:

- Criminal cases that include an offense beyond the magistrate's jurisdiction. S.C. Code Ann. § 22-3-540.
- Civil cases relating to injury to person or property not exceeding seven thousand five hundred dollars (\$7,500). S.C. Code Ann. § 22-3-10(2).

Exception. A magistrate has no jurisdiction when the State is a party unless the action is for a penalty not exceeding one hundred dollars (\$100). S.C. Code Ann. § 22-3-20.

- Actions for fine or forfeiture of not more than seven thousand five hundred dollars (\$7,500). S.C. Code Ann. § 22-3-10(3).
- Actions concerning possession of land as provided in Chapters 33 through 41 of Title 27. S.C. Code Ann. § 22-3-10(10).
- Actions to recover possession of personal property that does not exceed seven thousand five hundred dollars (\$7,500). S.C. Code Ann. § 22-3-10(11).

e. Jurisdiction of the United States

South Carolina has ceded control and jurisdiction of parcels of land to the United States for military, commerce, quarantine purposes, etc. See generally Chapter 3 of Title 3.

Note: Four tracts are specifically identified as being quarantine stations, S.C. Code Ann. § 3-3-340(14), but their suitability for accommodating large numbers of people is unknown.

Jurisdiction within ceded territory. South Carolina retains concurrent jurisdiction with the federal government within the ceded parcels of land. S.C. Code Ann. §3-3-10.

f. Courts of Appellate Jurisdiction.

1) Circuit Courts

Circuit courts may hear appeals from magistrates and municipal courts. S.C. Code Ann. § 14-5-340.

2) Court of Appeals

The South Carolina Court of Appeals is vested with jurisdiction over all cases in which a final judgment is entered from the circuit courts, family courts, final decision of an agency (provided the Administrative Law Court does not have jurisdiction, S.C. Code Ann. §1-23-600), and final decisions of administrative law judges. S.C. Code Ann. § 14-8-200.

In an action in equity, a reviewing court is not bound by the trial court's legal conclusions. *BB & T of South Carolina v. Kidwell*, 350 S.C. 382, 565 S.E.2d 316 (Ct. App. 2002).

Appellate courts are free to decide novel questions of law with no particular deference to the trial court. *Longshore v. Saber Sec. Services, Inc.* 365 S.C. 554, 619 S.E.2d 5 (Ct. App. 2005).

The Court's jurisdiction is appellate only, and it has the same authority to issue writs of *supersedeas*, grant stays, and grant petitions for bail as the Supreme Court would have in a similar case. S.C. Code Ann. § 14-8-200(a) (Supp. 2006).

3) Supreme Court.

Pursuant to its original jurisdiction, the South Carolina Supreme Court may issue writs or orders of injunction, *mandamus*, *quo warranto*, prohibition, *certiorari*, *habeas corpus*, and other original and remedial writs. S.C. Code Ann. § 14-3-310.

The Supreme Court also has exclusive appellate jurisdiction over certain matters, including any final judgment involving a challenge on state or federal grounds, to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance. See S.C. Code Ann. § 14-8-200(b)(3) (Supp. 2006).

The appellate jurisdiction of the Supreme Court extends to:

- Facts and law in cases of chancery, except where the facts are settled by a jury. S.C. Code Ann. § 14-3-320.
- Errors in law from intermediate or final judgments of inferior courts. S.C. Code Ann. § 14-3-330(1).
- Orders affecting a substantial right when the order would prevent a final judgment from being rendered. S.C. Code Ann. § 14-3-330(2).
- Final orders of a special proceeding. S.C. Code Ann. § 14-3-330(3).
- Interlocutory orders relating to injunctions or the appointment of receivers. S.C. Code Ann. § 14-3-330(4).

g. Emergency succession and Special Judges.

1) Special Session Courts Assignment of Judges

When necessary, the Chief Justice may appoint a disengaged circuit judge to fill a vacancy in any circuit due to death, illness or any other reason. S.C. Code Ann. § 14-5-160.

2) When Chief Justice unavailable

The senior associate justice of the Supreme Court will take over the Chief Justice's duty to appoint special justices when necessary. S.C. Code Ann. § 14-5-190.

2. Venue

a. Proper venue.

1) Preferred venue, generally.

Against resident defendants, the action should be brought where the defendant resides or otherwise where a substantial part of the act occurred. S.C. Code Ann. §15-7-30.

Against non-resident defendants, the action should be brought where a substantial part of the act occurred or where the plaintiff resides. S.C. Code Ann. §15-7-30.

2) Preferred venue, specifically.

Actions to recover real or personal property must be brought in the county wherein the subject matter is situated. S.C. Code Ann. § 15-7-10.

Actions that must be brought where the cause of action arose include actions against public officials or their agents for acts done in virtue of the office. S.C. Code Ann. § 15-7-20.

For actions against boards, commissions, agencies, or officials of the state, the court for the circuit wherein the controversy arose has jurisdiction to hear the case. S.C. Code Ann. § 15-77-50. *See Whetstone v. S.C. Dep't of Highways & Public Transp.*, 272 S.C. 324, 327, 252 S.E.2d 35, 37 (1979) (Plaintiffs were injured or killed when the car in which they were riding collided with a grader operated by the highway department in Orangeburg County. Plaintiffs sued for damages in Barnwell County, and the trial court denied the highway department's motion to dismiss the actions or change the venue of the actions. The court reversed and remanded with directions to change the venue to Orangeburg County. S.C. Code Ann. § 15-77-50 provided that venue for actions against state agencies was to be in the circuit where the cause of action arose. The language of the statute was mandatory, and the trial court had no discretion to ignore the statute and retain the actions in a circuit where the causes of action did not arise.)

Exception: If the parties so consent, a hearing may be held in a county other than the one in which the action may have been brought. S.C. Code Ann. § 15-7-50.

b. Transfer of venue

When any case is brought in the wrong county or court, the court shall transfer the case to any proper county or court. SCRCF Rule 82(b).

c. Change of venue.

An applicant may obtain a change in venue when a court determines that:

- There is reason to believe that a fair and impartial trial cannot be had. S.C. Code Ann. § 15-7-100(2).
- The convenience of the witnesses and the ends of justice would be promoted. S.C. Code Ann. § 15-7-100(3).

d. Venue during a Public Health Emergency

Under the Emergency Health Powers Act, the trial court with venue is “the circuit court for the county in which the isolation or quarantine is to occur or to the circuit court for county in which a Public Health Emergency has been declared.” If the court in which venue would ordinarily lie is itself affected by the emergency, DHEC may petition the Chief Justice of the Supreme Court for a change of venue. S.C. Code Ann. § 44-4-130(W).

3. Administrative Review Process

a. South Carolina Constitution

Article I, Section 22, provides the right to notice and an opportunity to be heard on final administrative decisions affecting private rights and the right to judicial review in all instances.

Section 22 of Article I of the South Carolina Constitution states:

“No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.” S.C. Const. art. I, § 22.

b. Statutory Law

The South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.*, defines those administrative decisions that shall be

reviewable by the agency and establishes the procedures that the agency is required to follow during that administrative review.

Under the South Carolina Administrative Procedures Act, S.C. Code Ann. § 1-23-310, *et seq.*, certain agency decisions are reviewable either by an agency administrative review process or by appeal to the Administrative Law Court. The APA provides such review to “contested cases” defined as “a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.” S.C. Code Ann. § 1-23-310(3). Therefore, if the rights of individual are not required by law to be determined by an agency after an opportunity to a hearing, it, by definition, is not a “contested case,” and the APA does not apply. See, *Stono River Environmental Protection Ass’n v. South Carolina Department of Health and Environmental Control*, 305 S.C. 90, 404 S.E.2d 340 (1991) which states that “the key consideration in determining whether a case is ‘contested’ is whether ‘the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing.’”

Comment: Under the Emergency Health Powers Act, the South Carolina Department of Health and Environmental Control has the ability to issue an emergency order to isolate or quarantine an individual, clearly a decision affecting an individual’s rights. S.C. Code § 44-4-540(B)(1). However, the Act does not require that the individual’s rights be determined by DHEC after an opportunity for a hearing. Moreover, the Act specifies that jurisdiction to review DHEC’s emergency order lies with the trial court. S.C. Code § 44-4-540(D)(1). “Trial Court” is defined as the circuit court for the county in which the isolation or quarantine is to occur or the circuit court for the county in which a Public Health Emergency has been declared. If the court in which venue would ordinarily lie is itself affected by the emergency, DHEC may petition the Chief Justice of the Supreme Court for a change of venue. § 44-4-130(W). Rule 201(a), SCACR, provides that appeals “may be taken, as provided by law, from any final judgment or appealable order.” In the civil arena, “[t]he right of appeal arises from and is controlled by statutory law.” *N.C. Fed. Sav. & Loan Ass’n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986). Thus, the issuance of an emergency order would not be considered a contested case under the APA and neither the Board of Health and Environmental Control (pursuant to S.C. Code Ann. §44-1-60) nor the Administrative Law Court has jurisdiction to review such a decision. Such jurisdiction lies exclusively with the trial court.

4. Extraordinary Writs

a. Writ of Habeas corpus

1) Federal Authority

U.S. Const., art. I, § 9, cl. 2: “The privilege of the writ of *habeas corpus* shall not be suspended, unless in case of rebellion or invasion the public safety may require it.”

Federal *habeas corpus* statutes, 28 U.S.C. §§ 2241-2255

2) State Authority

S.C. Const. art. V, § 5 (Granting power to the Supreme Court to entertain writs in its original jurisdiction)

S.C. Const. art. I, § 18 (Suspension of *habeas corpus*)

S.C. Code Ann. § 14-3-310 (Original jurisdiction of Supreme Court to issue writs); S.C. Code Ann. § 14-8-290 (Court of Appeals jurisdiction to issue writs).

S.C. Code Ann. § 17-17-10, *et seq.* (Supp.1993) (*Habeas corpus* statute)

S.C.R.C.P. 65 (Issuance of original writ of *habeas corpus* by Supreme Court)

Note: In South Carolina, *habeas corpus* is available only when other remedies are inadequate or unavailable. *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426 (1998). Sections 44-4-540(a) through (g) of the Emergency Health Powers Act outline due process procedures for review and continuation of DHEC issued isolation and quarantine orders and appeal rights for individuals subject to such orders. If an isolated or quarantined individual sought *habeas* during a Governor-declared Public Health Emergency, the adequacy of the due process protections outlined in the Act are likely to be challenged.

a) In General

The purpose of *habeas corpus* is to test the legality of a prisoner’s present detention. *McCall v. State*, 247 S.C. 15, 145 S.E.2d 419 (1965). “The great and central office of the writ of *habeas corpus* is to test the legality of a prisoner’s current detention.” *Walker v. Wainwright*, 390 U.S. 335, 88 S.Ct. 962 (1968). *Habeas* relief will be granted only for a constitutional claim rising to the level of “a violation, which in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice.” *Green v. Maynard*, 349 S.C. 535, 564 S.E.2d 83, 84 (2002) *Habeas corpus* is available only when other remedies are inadequate or unavailable. *Gibson v. State*, 329 S.C. 37, 495 S.E.2d 426

(1998). The writ of *habeas corpus* is a statutory and Constitutional remedy which could only be suspended in extremely limited circumstances.

Federal *habeas corpus* review may be available to challenge the legality of a state court order of civil commitment or civil contempt. 28 U.S.C. § 2254. *See, e.g., Francois v. Henderson*, 850 F.2d 231 (5th Cir. 1988).

b) Application of *habeas corpus* in public health context

The United States Supreme Court has recognized that civil commitment, for any purpose, constitutes a significant deprivation of liberty that requires due process protection. *Addington v. Texas*, 441 U.S. 418, 425 (1979). In *Greene v. Edwards*, 164 W.Va 326, 263 S.E.2d 661 (1980), petitioner sought a writ of *habeas corpus* following his involuntary commitment per the West Virginia tuberculosis act. The court granted the writ because the statute did not meet procedural due process requirements. The rights not afforded by the statute included: (1) written notice detailing the grounds and underlying facts on which the commitment was sought, (2) right to counsel, (3) right to be present and cross-examine, (4) clear and convincing evidence and, (5) right to a verbatim transcript of the proceeding for the purpose of appeal. *Id.* at 663.

Illness alone cannot be the basis for confinement. *O'Connor v. Donaldson*, 422 U.S. 563 (1975). To justify commitment it must be shown that the person is likely to pose a danger to self or others. *State v. Krol*, 68 N.J.236, 257, 344 A.2d 289 (1975). *See also, City of Newark v. J.S.*, 279 N.J. Super. 178, 652 A.2d 265 (NJSuperL.1993), *In re Halko*, 246 Cal.App.2d 553 (Cal. App. 1966) (Writ denied to petitioner isolated due to TB).

b. Writ of *Mandamus*

1) State Authority

S.C. Const. Art. V, § 5 (granting power to the Supreme Court to entertain writs in its original jurisdiction)

S.C. Code Ann. § 14-3-310 (original jurisdiction of Supreme Court to issue writs); S.C. Code Ann. § 14-8-200 (Court of Appeals jurisdiction to issue writs)

a) In General

A writ of *mandamus* is a coercive writ that orders a public official to perform a ministerial duty. “The writ of *mandamus* is the highest writ known to law.... The primary purpose or function of a writ is to enforce an established right, and to enforce a corresponding imperative duty created or imposed by law. It is designed to promote justice, subject to certain well-defined qualifications. Its principle function is to command

and execute and not to inquire and adjudicate.” *Willimon v. City of Greenville*, 243 S.C. 82, 86-7, 132 S.E.2d 169, 170-71 (1963).

To obtain a writ of *mandamus* requiring the performance of an act, the applicant must show (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant’s specific legal right for which the discharge of the duty is necessary, and (4) a lack of any other remedy. *Charleston County Sch. Dist. v. Charleston County Election Comm’n*, 336 S.C. 174, 182, 519 S.E.2d 567, 572 (1999).

If the duty to perform the act is doubtful, the responsibility is not imperative and the applicant will be left to other remedies. *Id.*

Where the duty is not clearly and directly prescribed, the writ will not lie. *Id.*

b) *Mandamus v. Injunction*

A complaint seeking an injunction can be construed to be seeking a writ of *mandamus* where the substance of the complaint alleges failure of a governmental agency to perform a required duty. *Cf. Richland County v. Kaiser*, 351 S.C. 89, 567 S.E.2d 260 (S.C. App. 2002) (“Although the petition in this case was styled as a request for a writ of *mandamus*, we find that based on the relief sought, the County’s pleading is more properly characterized as a request for an injunction.”).

c. Writ of Prohibition

S.C. Const. Art. V, § 5 (Granting power to the Supreme Court to entertain writs in its original jurisdiction)

S.C. Code Ann. § 14-3-310 (Original jurisdiction of Supreme Court to issue writs); S.C. Code Ann. § 14-8-200 (Court of Appeals jurisdiction to issue writs)

“[A]n extraordinary writ issued by an appellate court to prevent a lower court from exceeding its jurisdiction or prevent a non-judicial officer or entity from exercising power.” *Black’s Law Dictionary*, 1091 (5th ed. 1979).

The writ of prohibition will only lie to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure; but, if the inferior court or tribunal has jurisdiction of the person and subject matter of the controversy, the writ will not lie to correct error or irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment, or even in cases of encroachment, usurpation, and abuse of judicial power or the improper assumption of jurisdiction, where an adequate and applicable remedy by appeal, writ of error, *certiorari*, or other prescribed methods of

review are available. *New South Life Ins. Co. v. Lindsay*, 258 S.C. 198, 187 S.E.2d 794 (1972).

‘A writ of prohibition may issue in a proper case to restrain a judicial act; and, on the other hand it will, according to the weight of authority, ordinarily issue only to restrain the exercise or performance of judicial functions or acts, or acts which are quasi-judicial in their character.’ 73 C.J.S. Prohibition § 7, at 23.

d. Writ of *Supersedeas*

S.C. Const. Art. V, § 5 (Granting power to the Supreme Court to entertain writs in its original jurisdiction).

S.C. Code Ann. § 14-3-310 (Original jurisdiction of Supreme Court to issue writs); S.C. Code Ann. § 14-8-200 (Court of Appeals jurisdiction to issue writs).

Rule 241, SCACR.

The purpose of a writ of *supersedeas* is to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal, and to preserve the fruits of a successful appeal where they might otherwise be lost. 4A C.J.S. Appeal & Error § 662 at 494-95 (1957) (cited in *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct.App.1990)).

A writ of *supersedeas* does not reverse, annul, or impair the force of the judgment, order, or decision of the trial court, but it does suspend the judgment during the pendency of the appeal. *Id.* at 497; 83 C.J.S. *Supersedeas* § 8 at 896 (1953).

C. Emergencies and Emergency Management

1. States of Emergency

a. Declaration of an Emergency in general

In South Carolina, the governor has the authority to declare a state of emergency. Statutory law establishes two distinct types of emergencies. The first is a traditional “state of emergency” that is declared for natural disasters such as hurricanes and catastrophic accidents such as train derailments. The second is a “Public Health Emergency” that is reserved for health conditions that risk causing widespread illness, death, or serious economic disruption to agriculture. The distinction is important because the declaration of a Public Health Emergency triggers the Emergency Health Powers Act, covered below.

“The Governor . . . shall, by proclamation, declare that . . . a danger exists to the person or property of any citizen and that the peace and tranquility

of the State . . . is threatened, and because thereof an emergency, with reference to such threats and danger, exists.” S.C. Code Ann. § 1-3-420.

“The Governor, when an emergency has been declared, . . . is empowered with the following additional authority to adequately discharge this responsibility: . . . (2) declare a state of emergency for all or part of the State if he finds a disaster . . . has occurred, or that the threat thereof is imminent, and extraordinary measures are considered necessary to cope with the existing or anticipated situation.” S.C. Code Ann. § 25-1-440(a)(2).

For purposes of § 25-1-440, an emergency is defined as “an actual or threatened enemy attack, sabotage, conflagration, flood, storm, epidemic, earthquake, riot or other public calamity.” § 25-1-430(b).

b. Declaration of a “Public Health Emergency”

“The Governor . . . shall, by proclamation, declare that, because of . . . a public health emergency, as defined in Section 44-4-130, a danger exists to the person or property of any citizen and that the peace and tranquility of the State . . . is threatened, and because thereof an emergency, with reference to such threats and danger, exists.” S.C. Code Ann. § 1-3-420.

“The Governor, when an emergency has been declared . . . is empowered with the following additional authority to adequately discharge this responsibility: . . . (2) declare a state of emergency for all or part of the State if he finds . . . a Public Health Emergency, as defined in Section 44-4-130, has occurred, or that the threat thereof is imminent, and extraordinary measures are considered necessary to cope with the existing or anticipated situation.” S.C. Code Ann. § 25-1-440(a)(2).

“Public Health Emergency” means the occurrence or imminent risk of a qualifying health condition. S.C. Code Ann. § 44-4-130(P).

“Qualifying health condition” means an illness or health condition that may be caused by terrorism, epidemic or pandemic disease, or a novel infectious agent or biological or chemical agent and that poses a substantial risk of a significant number of human fatalities, widespread illness, or serious economic impact to the agricultural sector, including food supply. S.C. Code Ann. § 44-4-130(R)(2).

c. Procedures for Declaring an Emergency

“The Governor, upon the issuance of a proclamation as provided for in this section, must immediately file the proclamation in the Office of the Secretary of State, which proclamation is effective upon issuance and

remain in full force and effect until revoked by the Governor.” S.C. Code Ann. § 1-3-420.

“A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly.” S.C. Code Ann. § 25-1-440(a)(2).

Comment: The statute does not address the possibility that a state of emergency might be declared when the General Assembly is not in session. In 1989 and 1990, following Hurricane Hugo, Governor Campbell issued a series of declarations of emergency cumulatively lasting several months, some of which extended provisions of previous declarations and some of which cancelled those provisions which were no longer necessary. Executive Order 2002-32 remained in effect from October 25, 2002, through December 3, 2002, and Executive Order 2005-01 remained in effect from January 6, 2005 through January 24, 2005, apparently without challenge.

d. Content of an Executive Order Declaring a Public Health Emergency

The executive order must indicate:

1. the nature of the Public Health Emergency,
2. the areas that are or may be threatened, and
3. the conditions that have brought about the Public Health Emergency.

S.C. Code Ann. § 25-1-440(e).

Note: South Carolina law does not specify the form or content of the proclamation declaring a state of emergency.

e. Effect of an Executive Order Declaring a Public Health Emergency

In addition to the powers and duties provided in [Article 4, Chapter 1, Title 25] and in Article 7, Chapter 3, Title 1, the declaration of a state of Public Health Emergency authorizes implementation of the provisions of Chapter 4, Title 44, the Emergency Health Powers Act.” *Id.*

“The declaration authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this act.” *Id.*

2. Emergency Management

The Governor is responsible for the development and coordination of a system of Comprehensive Emergency Management which must include provisions for mitigation, preparedness, response, and recovery in anticipated and actual emergency situations. S.C. Code Ann. § 25-1-440(b)(1).

South Carolina's Emergency Management Division is responsible for conducting a statewide preparedness program to assure the capability of state, county, and municipal governments to execute the State Emergency Plan. S.C. Code Ann. § 25-1-420(b).

3. Emergency Planning

South Carolina's Emergency Management Division is responsible for coordinating the efforts of all state, county, and municipal agencies and departments in developing a State Emergency Plan. S.C. Code Ann. § 25-1-420(a).

The State Emergency Operations Plan consists of a State Plan and 46 County Emergency Operations Plan. The plans are reviewed and updated annually. S.C. Code Ann. Regs. 58-101.

The State and County Plans have a Basic Plan and Annexes for each agency that has a role in the emergency response. The annexes are called Emergency Support Function annexes. Currently, the plans have the following Emergency Support Functions:

- Annex 1 (Transportation)
- Annex 2 (Communications)
- Annex 3 (Public Works and Engineering)
- Annex 4 (Firefighting)
- Annex 5 (Emergency Management)
- Annex 6 (Mass Care)
- Annex 7 (Finance and Administration)
- Annex 8 (Health and Medical Services)
- Annex 9 (Search and Rescue)
- Annex 10 (Hazardous Materials)
- Annex 11 (Food Services)
- Annex 12 (Energy)
- Annex 13 (Law Enforcement)
- Annex 14 (Long-Term Community Recovery and Mitigation)

- Annex 15 (Public Information)
- Annex 16 (Emergency Traffic Management)
- Annex 17 (Animal/Agricultural Emergency Response)
- Annex 18 (Donated Goods and Volunteer Services)
- Annex 19 (Military Support)
- Annex 20 (Data Collection and Analysis)
- Annex 24 (Business and Industry)

4. Emergency Operations

a. State Emergency Operations Center

South Carolina's Emergency Management Division is responsible for establishing and maintaining a State Emergency Operations Center and providing support of the state emergency staff and work force. S.C. Code Ann. § 25-1-420(c).

Each state agency with a role in an Emergency Support Function Annex is responsible for sending a representative to the State Emergency Operations Center when the EOC is activated. S.C. Code Ann. Regs. 58-101.

b. County Emergency Operations Center

Each county is responsible for establishing an emergency management agency and an emergency operations center. S.C. Code Ann. Regs. 58-1.

Each county agency with a role in an Emergency Support Function Annex is responsible for sending a representative to the County Emergency Operations Center when the EOC is activated. S.C. Code Ann. Regs. 58-1.

5. Governor's Powers during a Declared Emergency

a. Broad Powers to Maintain Peace and Order and Minimize Danger

The Governor may take measures that he or she deems necessary to prevent violence or threats of violence to the person or property of citizens of the State and to maintain peace, tranquility, and good order in the State. S.C. Code Ann. § 1-3-410.

The Governor may order and direct any person or group of persons to do any act that would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace. S.C. Code Ann. § 1-3-420, -430.

The Governor may order any person or group of persons to refrain from doing any act that would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State. S.C. Code Ann. § 1-3-420, -430.

“The Governor may intervene in any situation where there exists violence or threats of violence to persons or property and take complete control thereof to prevent violence, riotous conduct, public disorder or breaches of the peace.” S.C. Code Ann. § 1-3-450.

b. Authority to Deploy Military Forces

The Governor may “call out the military forces of the State (State militia) or any unit or units thereof and order and direct them to take such action as in his judgment may be necessary to avert any threatened danger and to maintain peace and good order.” S.C. Code Ann. § 1-3-440(1).

c. Authority to Deploy Law Enforcement

The Governor may “order any and all law enforcement officers of the State or any of its subdivisions to do whatever may be deemed necessary to maintain peace and good order.” S.C. Code Ann. § 1-3-440(2).

d. Authority over Property

The Governor may “order the discontinuance of any transportation or other public facilities, or, in the alternative, direct that such facilities be operated by a State agency.” S.C. Code Ann. § 1-3-440(3).

The Governor may “utilize all available resources of state government as reasonably necessary to cope with the emergency.” S.C. Code Ann. § 25-1-440(a)(4).

“The Governor of the State when, in his judgment, the public safety may require it, may take possession of any or all utilities in the State, including communications and transportation facilities, their offices and appurtenances, their rolling stock, shops, buildings and all their appendages and appurtenances, may prescribe rules and regulations for the holding, using and maintaining of the aforesaid utilities in the manner most conducive to the interest and safety of the government and may place under military control all the officers, agents and employees of such utility or communication facility so that they shall be considered a part of the military establishment of the State, subject to all the restrictions imposed by the rules and articles of war.” S.C. Code Ann. § 25-1-1870.

e. Authority over Government Employees

The Governor may “authorize, order or direct any State, county or city official to enforce the provisions of such proclamation in the courts of the State by injunction, *mandamus*, or other appropriate legal action.” S.C. Code Ann. § 1-3-440(4).

The Governor may “transfer the direction, personnel, or functions of state departments, agencies and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable.” S.C. Code Ann. § 25-1-440(a)(5).

The Governor may “compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order.” S.C. Code Ann. § 25-1-440(a)(6).

f. Authority to Evacuate People

The Governor may “direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein.” S.C. Code Ann. § 25-1-440(a)(7).

g. Authority to promulgate or suspend regulations

The Governor may “issue emergency proclamations and regulations and amend or rescind them. These proclamations and regulations have the force and effect of law as long as the emergency exists.” S.C. Code Ann. § 25-1-440(a)(1).

The Governor may “suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency.” S.C. Code Ann. § 25-1-440(a)(3).

D. Contagious Disease Tracking and Investigations

1. Contagious and Infectious Disease Reporting Requirements

a. Duty to Report

“In all cases of known or suspected contagious or infectious diseases occurring within this State the attending physician must report these diseases to the county health department within twenty four hours, stating the name and address of the patient and the nature of the disease.” S.C. Code Ann. § 44-29-10(A).

“The county health department must report to the Department of Health and Environmental Control all such cases of infectious and contagious diseases as have been reported during the preceding month, these reports to be made upon blanks furnished by the Department of Health and Environmental Control.” *Id.*

Comment: At the time this provision was last substantively updated, county health departments and DHEC were separate entities. Currently county health departments are part of the DHEC structure, and the majority of contagious disease reports go to these local offices. When these reports are transmitted to the state-level “central office,” DHEC’s Division of Acute Disease and Epidemiology collects, organizes, and tracks the reports.

b. Reportable Disease List

DHEC “shall each year designate those diseases for which cases are to be reported by any attending physician, including intern, resident, staff physician and practitioner, other health care providers or designated reporting coordinators, health care institutions in South Carolina, and/or laboratories both within and outside South Carolina.” 4 S.C. Code Ann. Regs. 61-20, Section 1.

DHEC may “by order amend the Official List of Reportable Conditions to include specific diseases or diagnostic criteria. DHEC may designate whether such reports are ‘Report Immediately’ or ‘Urgently Reportable’ and may provide telephone hot line numbers, electronic notification (email) addresses or other means of reporting as may be appropriate.” If a public health emergency has not been declared, DHEC must notify the Governor and the Public Health Emergency Plan Committee within twenty-four hours of the basis for the amendment. 25A S.C. Code Ann. Regulation 61-112, §4.A

c. Unusual Diseases

“Diseases that are unusual in their nature or occurrence or that require immediate public health intervention shall be reported within twenty-four

hours or less as specified by the Official List of Reportable Conditions.” 4 S.C. Code Ann. Regs. 61-20, Section 1.

d. Conditions caused by Terrorism, Pandemic or Epidemic Disease, or Novel Infectious Agents

“A health care provider, coroner, medical examiner, or any person or entity that maintains a database containing health care data must report all cases of persons who harbor any illness or health condition that may be caused by chemical terrorism, bioterrorism, radiological terrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents and might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long term disability.” S.C. Code Ann. § 44-29-10(B).

Comment: The first thing to notice about this new requirement is that the scope of responsible actors is expanded from physicians to most professions working within the health care field. The phrase “health care provider, coroner, medical examiner, or any person or entity that maintains a database containing health care data” covers just about everybody that touches patients during their journey through the health care system.

“For purposes of this section, the terms chemical terrorism, bioterrorism, and radiological terrorism have the same meanings as provided in Section 44-4-130.” S.C. Code Ann. § 44-29-10(E).

Comment: The other change from the traditional reporting requirement is an apparent shift of focus from named diseases to the cause of conditions. “For purposes of this section, the terms chemical terrorism, bioterrorism, and radiological terrorism have the same meanings as provided in Section 44-4-130.” S.C. Code Ann. § 44-29-10(E). Severe health effects from radiological, chemical, and bioterrorism may not result in a disease with a name that appears on the annual reporting list. However, these health conditions can have devastating consequences and can potentially spread through the populace without timely interventions. Also note that the reference to Section 44-4-130 links these reporting requirements directly to the Emergency Health Powers Act and the statutorily defined “Public Health Emergency.” See generally S.C. Code Ann. §§ 44-4-100 to -570.

e. Non-medical Information

“If the [Director] determines that individuals who have been in certain facilities, or at specific events, or in contact with certain individuals, objects, animals, or categories of individuals, have been or may have been exposed to contaminants or communicable diseases, he may by order require reports to be submitted to DHEC, which may include but not be limited to: passenger manifests; attendance rosters; lists of patrons of events, activities, or venues; and the like. The order shall include as much

specificity as is reasonably available to limit the scope of the report.” 25A S.C. Code Ann. Regs. 61-112, §4.B

f. Pharmacy Reporting Requirements

“A pharmacist must report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be caused by chemical terrorism, bioterrorism, radiological terrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents and might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long term disability. Prescription related events that require a report include, but are not limited to:

- (1) an unusual increase in the number of prescriptions to treat fever, respiratory, or gastrointestinal complaints;
- (2) an unusual increase in the number of prescriptions for antibiotics;
- (3) an unusual increase in the number of requests for information on over the counter pharmaceuticals to treat fever, respiratory, or gastrointestinal complaints; and
- (4) any prescription that treats a disease that is relatively uncommon and has bioterrorism potential.”

S.C. Code Ann. § 44-29-10(C).

g. Animal Diseases with Human Risks

“Every veterinarian, livestock owner, veterinary diagnostic laboratory director, or other person having the care of animals must report animals having or suspected of having any disease that may be caused by chemical terrorism, bioterrorism, radiological terrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents and might pose a substantial risk of a significant number of human or animal fatalities or incidents of permanent or long term disability.” S.C. Code Ann. § 46-7-100.

Reports must be made within twenty four hours to the State Veterinarian.

Reports must include the geographical location of the animal or the exposure, the name and address of any known owner, and the name and address of the reporting individual.

The State Veterinarian must report to DHEC any incidents which affect public health, or which create a Public Health Emergency, as defined in Section 44-4-130.

For purposes of this section, the terms chemical terrorism, bioterrorism, and radiological terrorism have the same meanings as provided in Section 44-4-130. *Id.*

h. Crop Diseases and Pests with Risks to Public Health

“Every farmer, agriculturalist, county extension agent, agricultural products processor, crop advisor, or other person working in agriculture, or person having responsibility for agricultural production or processing must report agricultural products having or suspected of having any disease or infection from any crop pest whatsoever that may be caused by chemical terrorism, bioterrorism, radiological terrorism, epidemic or pandemic disease, or novel and highly infectious agents and which might cause serious agricultural threat to the State.” S.C. Code Ann. § 46-9-120.

Reports must be made within twenty four hours to the Director, Regulatory and Public Service Programs, Clemson University.

Reports must include the geographic location of the agricultural product and/or its origin; the name and address of any known owner, the name and address of any known shipper; the name and address of the owner of the point of origin; and the name and address of the reporting individual.

The Director must report to DHEC any incidents which affect public health, or which create a Public Health Emergency, as defined in Section 44-4-130.

For purposes of this section, the terms chemical terrorism, bioterrorism, and radiological terrorism have the same meanings as provided in Section 44-4-130. *Id.*

2. Disease Outbreak Investigations

a. Disease Investigation Authority

“The Board of Health and Environmental Control or its designated agents must investigate the reported causes of communicable or epidemic disease . . .” S.C. Code Ann. § 44-1-80(A).

DHEC “shall, through its representatives, investigate the causes, character, and means of preventing the epidemic and endemic diseases as the State is liable to suffer from and the influence of climate, location, and occupations, habits, drainage, scavenging, water supply, heating, and ventilation.” S.C. Code Ann. § 44-1-110.

“Whenever the local or state health authority is informed or has reason to suspect that there is a case of contagious communicable disease within his territory, he shall immediately examine into the facts of the case and shall perform or require such examinations and tests as may be necessary to determine the contagiousness of the disease . . .” 4 S.C. Code Ann. Regs. 61-20, Section 13.

b. Access to Medical and Other Records

DHEC “shall have, upon request, full access to the medical records, tumor registries, and other special disease record systems maintained by physicians, hospitals, and other health facilities as necessary to carry out its investigation of these diseases.” S.C. Code Ann. § 44-1-110.

1) Owner of Record not Liable

“No physician, hospital, or health facility, or person in charge of these records is liable in any action at law for permitting the examination or review.” *Id.*

2) Authority to Access Records

DHEC “must have full access to medical records and nonmedical records when necessary to investigate the causes, character, and means of preventing the spread of a qualifying health event or Public Health Emergency.” S.C. Code Ann. § 44-1-80(B)(3).

“For purposes of this subsection, the terms qualifying health event, Public Health Emergency, and public safety authority have the same meanings as provided in Section 44-4-130.” S.C. Code Ann. § 44-1-80(B)(5).

“For purposes of this item, ‘nonmedical records’ mean records of entities, including businesses, health facilities, and pharmacies, which are needed to adequately identify and locate persons believed to have been potentially exposed or known to have been infected with a contagious disease.” S.C. Code Ann. § 44-1-80(B)(3). *See also* 25A S.C. Code Ann. Regulation 61-112, §4.B.

“An order of the board given to effectuate the purposes of this subsection is enforceable immediately by the public safety authority.” S.C. Code Ann. § 44-1-80(B)(4).

3) Health Insurance Portability and Accountability Act; Protected Health Information

Comment: The Health Insurance Portability and Accountability Act (HIPAA) (P.L. 104-191) places restrictions on release of individually identifiable health information. However, the Act and the implementing regulations provide specific exceptions for disclosure of Protected Health Information (PHI) to public health authorities, particularly during a public health emergency:

Covered entities may disclose protected health information to: (1) public health authorities authorized by law to collect or receive such information for preventing or controlling disease, injury, or disability and to ... individuals who may have contracted or been exposed to a communicable disease when notification is authorized by law; ...

“Summary of the HIPAA Privacy Rule, U.S. Department of Health and Human Services, citing 45 C.F.R. § 164.512(b).

Covered entities may disclose protected health information in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal. Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided. *Id.*, citing 45 C.F.R. § 164.512(e).

4) Student Records of Educational Institutions

Comment: The Family Educational and Privacy Rights Act, 20 USC §1232G, and implementing regulations at 34 CFR Part 99, impose restrictions on release of student records by educational institutions. The sections below specify under what circumstances an institution may release student records; the requirement that there be an “articulable and significant threat” should be satisfied if a public health emergency has been declared or if the public health authorities can state a reason to believe that a student or students has, or has been exposed to, a communicable disease.

“Education records” means any record maintained by an educational institution or person acting for the institution which contains information “directly related to a student.” 20 USC §1232G(a)(4). It does not include records of professional services provided by a physician or other recognized professional to a student 18 years or older or a student at a post-secondary institution. *Id.*

The institution may disclose information about a student without the consent of the student, parent or legal guardian in compliance with a public health emergency, 34 CFR Part 99.30, pursuant to the following provisions:

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

...

(c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of

the information is necessary to protect the health or safety of the student or other individuals.

34 CFR Part 99.36

3. Contact Tracing

“i. In order to investigate the causes and spread of communicable or epidemic disease, to prevent or control the spread of contamination or infectious diseases, and to protect the public health, the Commissioner may by order require collection of contact tracing information from individuals who have or may have been exposed to contaminants, infectious agents, or communicable diseases. To the extent that such information may be Protected Health Information, individuals carrying out such orders and collecting contact tracing information shall be deemed to be acting in accordance with the authority of Code Sections 44-1-80 and 44-4-560 for purposes of having access to such information.

...

“iv. Pursuant to Code Section 44-4-560(B)(3) and (B)(5), DHEC may seek an *ex parte* court order for permission to disclose otherwise protected health information if necessary to locate individuals to limit the spread of contagion or to offer medical treatment. DHEC will include with the John Doe petition for such order a sealed affidavit stating with particularity the basis for believing that location of the specific individuals is necessary to protect the public health or the health of the individual and why disclosure of the identity or the protected health information is necessary.” 25A S.C. Code Ann. Regulation 61-112, §4.C

4. Confidentiality

DHEC must keep confidential any patient identifying information obtained during a disease investigation. Such information is exempt from the provisions of the South Carolina Freedom of Information Act, S.C. Code, Sections 30-4-10 to -165. S.C. Code Ann. § 44-1-110.

Medical records and medical staff reports are not considered open to the public under the provisions of the South Carolina Freedom of Information Act. S.C. Code Ann. § 30-4-20(c).

“ii. Other than in accordance with [R.61-112, §4.C,] subsection (i) above, access to DHEC records containing protected health information of persons who have participated in medical testing, treatment, vaccination, isolation, or quarantine programs or efforts by DHEC during a Public Health Emergency is limited to those persons having a legitimate need to provide treatment to the individual who is the subject

of the health information; or to conduct epidemiological research; or to investigate the causes of transmission.

“iii. Pursuant to Code Section 44-4-560(B)(3), protected health information otherwise exempt from disclosure by Section 44-4-560(A) may be included in petitions and other court documents required pursuant to Section 44-4-540.” 25A S.C. Code Ann. Regulation 61-112, §4.C.

E. Contagious Disease Control Other Than Isolation or Quarantine

1. Pharmaceutical Disease Control

a. General Authority

DHEC is authorized by law to provide and charge for medical care and health services, including services of physicians, dentists, optometrists, nurses, sanitarians, physical therapists, medical social workers, occupational therapists, health aides, speech therapists, X ray technologists, dietitians, nutritionists, laboratory technicians, and other professional and subprofessional health workers. S.C. Code Ann. § 44-1-180.

DHEC is also authorized to direct and supervise vaccination, screening, and immunization in South Carolina. S.C. Code Ann. § 44-29-40.

b. Emergency Authority

During a state of Public Health Emergency, DHEC may perform voluntary physical examinations or tests as necessary for the diagnosis or treatment of individuals. S.C. Code Ann. § 44-4-510(A)(1).

During a state of Public Health Emergency, DHEC may also vaccinate persons as protection against and to prevent the spread of a contagious disease and may treat persons exposed to or infected with such a disease. S.C. Code Ann. § 44-4-520(A)(1) and (2).

Note: S.C. law provides liability protection for employees and volunteer physicians and nurses who participate in state organized mass immunization projects, such as those that might be activated during a state of emergency. See S.C. Code Ann. § 44-29-210.

Note: Although not explicitly stated, Code Sections 44-4-520 and -530 may be read together for the proposition that an individual who refuses offered vaccination may be isolated or quarantined; that is, DHEC cannot compel vaccination (Code Section 44-4-520(B)) but may require an unvaccinated person to be isolated (Code Section 44-4-530(A)).

2. Social Distancing Measures

a. Types of Social Distancing

Social distancing measures, other than isolation and quarantine, may include:

Closing schools and child care centers;.

Closing churches, theaters and other places where crowds gather;

Canceling large gatherings (sports events, concerts, festivals, etc.);

Use of telecommuting and other alternatives to congregation in an office setting.

Social distancing measures may be voluntary (recommended) or compulsory (ordered).

b. Authority

1) DHEC's Authority

“The Department of Health and Environmental Control has responsibility and authority for specifying and directing the methods of control of communicable and other publicly preventable diseases.” 4 S.C. Code Ann. Regs. 61-20, Section 5.

“Whenever the . . . state health authority is informed or has reason to suspect that there is a case of contagious communicable disease within his territory, he . . . shall adopt the methods of control applicable to such disease and necessary for the prevention of spread of the disease.” 4 S.C. Code Ann. Regs. 61-20, Section 13.

“After the declaration of a state of Public Health Emergency, DHEC may . . . close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated, any facility of which there is reasonable cause to believe that it may endanger the public health.” S.C. Code Ann. § 44-4-300(1).

- For purposes of this section, facility means, “any real property, building, structure, or other improvement to real property or any motor vehicle, rolling stock, aircraft, watercraft, or other means of transportation.” S.C. Code Ann. § 44-4-130(J).

“During a state of Public Health Emergency, DHEC must use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment.” S.C. Code Ann. § 44-4-500.

“A. Upon declaration of a Public Health Emergency in which there is a substantial likelihood of person-to-person transmission of disease or spread of contamination, DHEC may recommend to law enforcement authorities orders placing restrictions on public gatherings. Such recommendations shall be reasonably tailored to address the risk and may include limits on the number or age of individuals, restrictions on location, or restrictions on non-essential gatherings.

“B. Upon declaration of a Public Health Emergency, DHEC may order closure of primary or secondary schools.” 25A S.C. Code Ann. Regs. 61-112, §9.

2) Governor’s Authority

The Governor may order and direct any person or group of persons to do any act that would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace. S.C. Code Ann. § 1-3-430.

The Governor may order any person or group of persons to refrain from doing any act that would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State. S.C. Code Ann. § 1-3-430.

The Governor may “order the discontinuance of any transportation or other public facilities, or, in the alternative, direct that such facilities be operated by a State agency.” S.C. Code Ann. § 1-3-440(3).

F. Isolation and Quarantine

1. Definitions

Isolation and quarantine are restrictions on an individual’s freedom of movement that are implemented to interrupt the spread of a communicable disease or condition. In everyday language, isolation and quarantine are often used interchangeably, with most people having some understanding of quarantine. However, in South Carolina, the terms have specific statutory definitions.

Isolation “means the separation and confinement of individuals known or suspected (via signs, symptoms, or laboratory criteria) to be infected with a contagious disease to prevent them from transmitting disease to others.” S.C. Code Ann. § 44-4-130(N).

Quarantine “means compulsory physical separation, including restriction of movement, of populations or groups of healthy people who have been potentially exposed to a contagious disease, or to efforts to segregate these persons within specified geographic areas.” S.C. Code Ann. § 44-4-130(N).

Working Quarantine means a restriction applied to health care workers and other essential personnel who may have been exposed to a contagious disease but who need to keep working with appropriate infection control precautions. The individuals may be quarantined at home or in a designated facility during off-duty hours. When off-duty, contacts between individuals under working quarantine and others should be managed in the same way as persons in home or hospital quarantine.

2. Authority – Communicable Diseases in General

In South Carolina, the authority to isolate or quarantine individuals or groups of individuals is vested in the Department of Health and Environmental Control (DHEC).

“The Board of Health and Environmental Control or its designated agents must investigate the reported causes of communicable or epidemic disease and must enforce or prescribe these preventive measures as may be needed to suppress or prevent the spread of these diseases by proper quarantine or other measures of prevention, as may be necessary to protect the citizens of the State.” S.C. Code Ann. § 44-1-80(A).

DHEC “shall supervise and control the quarantine system of the State. It may establish quarantine both by land and sea.” S.C. Code Ann. § 44-1-110.

“The South Carolina Department of Health and Environmental Control has the authority to investigate and quarantine as necessary to control the contagious disease” [as reported by a hotel proprietor, keeper of a boarding house or inn, keeper or manager of tourist, trailer or other camp, or householder or head of a family.] 4 S.C. Code Ann. Regs. 61-20, Section 2.

“The Department of Health and Environmental Control has responsibility and authority for specifying and directing the methods of control of communicable and other publicly preventable diseases.” 4 S.C. Code Ann. Regs. 61-20, Section 5.

“Whenever the . . . state health authority is informed or has reason to suspect that there is a case of contagious communicable disease within his territory, he . . . shall adopt the methods of control applicable to such disease and necessary for the prevention of spread of the disease.” 4 S.C. Code Ann. Regs. 61-20, Section 13.

3. Authority – Local Health Authorities

“In all cities, towns and counties the local health authorities shall assume control and management of communicable diseases and exposures and shall see that isolation and control measures as herein provided are carried out in their respective jurisdictions. It shall be the duty of the proper health authority to institute proper methods and control and to so placard or otherwise to coordinate guarding the premises in a manner which in his own opinion is necessary to protect the public health.” 4 S.C. Code Ann. Regs. 61-20, Section 7.

“Whenever the local . . . health authority is informed or has reason to suspect that there is a case of contagious communicable disease within his territory, he . . . shall adopt the methods of control applicable to such disease and necessary for the prevention of spread of the disease.” 4 S.C. Code Ann. Regs. 61-20, Section 13.

Note: These provisions of Regulation 61-20 were originally promulgated when S.C. had local health boards. DHEC has assumed the responsibility formerly undertaken by the county boards. Applying usual preemption analysis, presumably a local jurisdiction could impose a local quarantine but could not act contrary to a general quarantine order from DHEC.

4. Authority – Specific to a Public Health Emergency

Comment: DHEC’s statutory authority to isolate and quarantine individuals is not superseded if the Governor declares a Public Health Emergency pursuant to S.C. Code Ann. §§ 1-3-420 and 25-1-440(a)(2).

“DHEC may isolate or quarantine, pursuant to the sections of this act and its existing powers under Section 44-1-140, any person whose refusal of physical examination or testing results in uncertainty regarding whether he or she has been exposed to or is infected with a contagious or possibly contagious disease or otherwise poses a danger to public health.” S.C. Code Ann. § 44-4-510(A)(2).

“During a state of Public Health Emergency, DHEC may exercise the following emergency powers, in addition to its existing powers, over persons as necessary to address the Public Health Emergency: ... (3) to prevent the spread of contagious or possibly contagious disease, DHEC may isolate or quarantine, pursuant to the applicable sections of this act, persons who are unable or unwilling for any reason (including, but not limited to health, religion, or conscience) to undergo vaccination or treatment pursuant to this section.” S.C. Code Ann. § 44-4-520(A)(3).

“During a Public Health Emergency, DHEC may isolate or quarantine an individual or groups of individuals. This includes individuals or groups who have not been vaccinated, treated, tested, or examined pursuant to Sections 44-4-510 and 44-4-520. DHEC may also establish and maintain places of isolation and quarantine, and set rules and make orders.” S.C. Code Ann. § 44-4-530(A).

5. Authority – Interstate Travelers

a. All Communicable Diseases

A person who has a communicable disease in the communicable period shall not travel from one State or possession to another without a permit from the health officer of the State, possession, or locality of destination, if such permit is required under the law applicable to the place of destination. Stop-overs other than those necessary for transportation connections shall be considered as places of destination. 42 CFR Part 70.3.

Communicable diseases are defined as “illnesses due to infectious agents or their toxic products, which may be transmitted from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.” 42 CFR Part 70.1

Note: This allows a health officer in South Carolina to prohibit entry into the State of an individual infected with a “communicable disease” if state law or regulation requires a permit.

b. Federal restrictions on travel of individuals with specified diseases

No person who is in the period after exposure or contracture of cholera, plague, smallpox, typhus, or yellow fever when the etiologic agent can be transmitted directly or indirectly from the body of the infected person to the body of another may travel in interstate commerce without a written permit from the U.S. Surgeon General or an authorized representative. 42 CFR Part 70.5.

6. Procedures, Conditions and Enforcement

a. Isolation and Quarantine Procedures

Code Section 44-4-540(A): “During a Public Health Emergency, the isolation and quarantine of an individual or groups of individuals must be undertaken in accordance with the procedures provided in this section.”

S.C. Code Section §44-4-540(H) “Notwithstanding the provisions of subsection (A), prior to the Governor declaring a Public Health Emergency, as defined in Section 44-4-130, the isolation and quarantine of an individual or groups of individuals pursuant to Sections 44-1-80, 44-1-110, 44-1-140, 44-4-520, 44-4-530, or 44-4-540 must be undertaken in accordance with the procedures provided in this section.”

Note: Promulgation of Section 44-4-540(H) in 2007 added procedures which were not explicitly required under prior law for quarantines imposed pursuant to Sections 44-1-80, 44-1-110, or 44-1-140; judicial review of quarantine orders, if any were sought, would have had to have been brought by petition for one of the extraordinary writs. The Emergency Health Powers Act provides for emergency orders of isolation and quarantine followed by mandatory judicial review. Balancing the possible need for exigent quarantine or isolation against the affected individuals’ due process rights, the EHPA provides different procedures for notice and service of process for orders and petitions for judicial review.

Examples of the various orders, petitions, and affidavits are included in Section II.

“DHEC must adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:

- (1) isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include, but are not limited to, confinement to private homes or other private and public premises;
- (2) individuals isolated because of objective evidence of infection or contagious disease must be confined separately from quarantined asymptomatic individuals;
- (3) the health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation or quarantine;

- (4) if a quarantined individual becomes infected or is reasonably believed to be infected with a contagious or possibly contagious disease, he or she must be promptly removed to isolation;
- (5) isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a contagious or possibly contagious disease to others;
- (6) the needs of persons isolated and quarantined must be addressed in a systematic and competent fashion including, but not limited to, providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care;
- (7) premises used for isolation and quarantine must be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harms to persons isolated or quarantined; and
- (8) to the extent possible, cultural and religious beliefs must be considered in addressing the needs of the individuals and establishing and maintaining isolation and quarantine premises.”

S.C. Code Ann. § 44-4-530(B)(1)-(8).

b. Emergency Orders of Isolation or Quarantine

1) Issuance of an Emergency Order of Isolation or Quarantine

“DHEC may temporarily isolate or quarantine an individual or groups of individuals through an emergency order signed by the commissioner or his designee, if delay in imposing the isolation or quarantine would significantly jeopardize DHEC’s ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.”

S.C. Code Ann. § 44-4-540(B)(1).

2) Contents of an Emergency Order of Isolation or Quarantine

“The emergency order must specify the following:

- (i) the identity of the individual or groups of individuals subject to isolation or quarantine;
- (ii) the premises subject to isolation or quarantine;
- (iii) the date and time at which isolation or quarantine commences;
- (iv) the suspected contagious disease, if known; and
- (v) a copy of Article V of this act and relevant definitions of this act.”

S.C. Code Ann. § 44-4-540(B)(2).

3) Delivery or posting of an Emergency Order of Isolation or Quarantine

“A copy of the emergency order must be given to the individual(s) or groups of individuals to be isolated or quarantined, or if impractical to be given to a group of individuals, it may be posted in a conspicuous place in the isolation or quarantine premises.” S.C. Code Ann. § 44-4-540(B)(3).

4) Judicial Review of an Emergency Order of Isolation or Quarantine

“Within ten days after issuing the emergency order, DHEC must file a petition ... for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.” S.C. Code Ann. § 44-4-540(B)(4). The petition must specify the following:

- (i) the identity of the individual or groups of individuals subject to isolation or quarantine;
- (ii) the premises subject to isolation or quarantine;
- (iii) the date and time at which isolation or quarantine commences;
- (iv) the suspected contagious disease, if known; and
- (v) a statement of compliance with the conditions and principles for isolation or quarantine of Section 44-4-530(B); and
- (vi) a statement of the basis upon which isolation or quarantine is justified in compliance with this article.

The petition must be accompanied by a sworn affidavit of DHEC attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court’s consideration.” S.C. Code Ann. § 44-4-540(C)(2).

c. Petitions Seeking Isolation or Quarantine

1) Petitions Seeking Isolation or Quarantine

“DHEC may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.” S.C. Code Ann. § 44-4-540(C)(1).

For purposes of this section, “trial court” is defined as follows: “Trial court is the circuit court for the county in which the isolation or quarantine is to occur or to the circuit court for the county in which a Public Health Emergency has been declared.” If the court in which venue would ordinarily lie is itself affected by the emergency, DHEC may petition the Chief Justice of the Supreme Court for a change of venue. S.C. Code Ann. § 44-4-130(W).

2) Contents of a Petition Seeking Isolation or Quarantine

“A petition under subsection (C)(1) must specify the following:

- (i) the identity of the individual or groups of individuals subject to isolation or quarantine;
- (ii) the premises subject to isolation or quarantine;
- (iii) the date and time at which isolation or quarantine commences;
- (iv) the suspected contagious disease, if known; and
- (v) a statement of compliance with the conditions and principles for isolation or quarantine of Section 44-4-530(B); and
- (vi) a statement of the basis upon which isolation or quarantine is justified in compliance with this article.

The petition must be accompanied by a sworn affidavit of DHEC attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court’s consideration.” S.C. Code Ann. § 44-4-540(C)(2).

3) Notice to Individuals Identified in a Petition Seeking Isolation or Quarantine

“Notice to individuals or groups of individuals identified in the petition must be accomplished within twenty four hours in accordance with the South Carolina Rules of Civil Procedure. If notice by mail or fax is not possible, notice must be made by personal service.” S.C. Code Ann. § 44-4-540(C)(3).

4) Scheduling a Hearing on a Petition Seeking Isolation or Quarantine

“A hearing must be held on any petition filed pursuant to this subsection within five days of filing of the petition.” S.C. Code Ann. § 44-4-540(C)(4).

5) Continuance of Hearing on Petition

“In extraordinary circumstances and for good cause shown, DHEC may apply to continue the hearing date on a petition filed pursuant to this section for up to ten days, which continuance the court may grant in its discretion giving due regard to the rights of the affected individuals, the protection of the public’s health, the severity of the emergency, and the availability of necessary witnesses and evidence.” *Id.*

6) Court Action on a DHEC Petition Seeking Isolation or Quarantine

a) Court Ruling on a Petition Seeking Isolation or Quarantine

“The court must grant the petition if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease.” S.C. Code Ann. § 44-4-540(C)(5)(a).

b) Contents of a Court Order Authorizing Isolation or Quarantine

“The order must

- (i) identify the isolated or quarantined individuals or groups of individuals by name or shared or similar characteristics or circumstances;
- (ii) specify factual findings warranting isolation or quarantine pursuant to this act;
- (iii) include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this act.”

S.C. Code Ann. § 44-4-540(C)(5)(c)(i)-(iii).

c) Time Limit on a Court Order Authorizing Isolation or Quarantine

“An order authorizing isolation or quarantine may do so for a period not to exceed [30] thirty days.” S.C. Code Ann. § 44-4-540(C)(5)(b).

d) Continuation of Court Order Authorizing Isolation or Quarantine beyond Thirty Days

“Prior to the expiration of an order issued pursuant to this item, DHEC may move to continue the isolation or quarantine for additional periods not to exceed thirty days each. The court must consider the motion in accordance with standards set forth in this item.” S.C. Code Ann. § 44-4-540(C)(5)(d).

7) Service of a Court Order Authorizing Isolation or Quarantine

The order must . . . [be] served on affected individuals or groups of individuals in accordance with the South Carolina Rules of Civil Procedure. If notice by mail or fax is not possible, notice must be made by personal service.” S.C. Code Ann. § 44-4-540(C)(5)(c)(iv).

d. Application to be Released from Isolation or Quarantine

1) Petition for Rule To Show Cause

“An individual or group of individuals isolated or quarantined pursuant to this act may apply to the trial court for an order to show cause why the individual or group of individuals should not be released.” S.C. Code Ann. § 44-4-540(D)(1).

2) Time Limit for Requests to be Released from Isolation or Quarantine

“The court must rule on the application to show cause within [48] forty eight hours of its filing. If the court grants the application, the court must schedule a hearing on the order to show cause within [24] twenty four hours from issuance of the order to show cause.” *Id.*

3) DHEC Request for Continuance

“In any proceedings brought for relief under this subsection, in extraordinary circumstances and for good cause shown, DHEC may move the court to extend the time for a hearing, which extension the court in its discretion may grant giving due regard to the rights of the affected individuals, the protection of the public’s health, the severity of the emergency, and the availability of the necessary witnesses and evidence.” S.C. Code Ann. § 44-4-540(D)(3).

4) Effect of the Order to Show Cause

“The issuance of the order to show cause does not stay or enjoin the isolation or quarantine order.” S.C. Code Ann. § 44-4-540(D)(1).

e. Request for Remedies Regarding Breaches of the Conditions of Isolation or Quarantine

1) Petition for Relief

“An individual or group of individuals isolated or quarantined pursuant to this act may request a hearing in the trial court for remedies regarding breaches to the conditions of isolation or quarantine.” S.C. Code Ann. § 44-4-540(D)(2)(a). For the required conditions of isolation and quarantine, see Section X, covering S.C. Code Ann. § 44-4-530.

2) Time Limits for Remedies Regarding Breaches of the Conditions

a) Extraordinary Circumstances

“Upon receipt of a request under this subsection alleging extraordinary circumstances justifying the immediate granting of relief, the court must fix a date for hearing on the matters alleged not more than twenty four hours from receipt of the request.” S.C. Code Ann. § 44-4-540(D)(2)(b).

b) Non-Extraordinary Circumstances

“Otherwise, upon receipt of a request under this subsection, the court must fix a date for hearing on the matters alleged within five days from receipt of the request.” S.C. Code Ann. § 44-4-540(D)(2)(c).

c) DHEC Request for Continuance

“In any proceedings brought for relief under this subsection, in extraordinary circumstances and for good cause shown, DHEC may move the court to extend the time for a hearing, which extension the court in its discretion may grant giving due regard to the rights of the affected individuals, the protection of the public’s health, the severity of the emergency, and the availability of the necessary witnesses and evidence.” S.C. Code Ann. § 44-4-540(D)(3).

3) Effect of a Request for Remedies Regarding Breaches of the Conditions

“A request for a hearing does not stay or enjoin the isolation or quarantine order.” S.C. Code Ann. § 44-4-540(D)(2)(a).

f. Court Rules Applicable to Isolation and Quarantine Proceedings under Section 44-4-540

1) Making and Retaining a Record of Isolation and Quarantine Court Proceedings

“A record of the proceedings pursuant to this section must be made and retained.” S.C. Code Ann. § 44-4-540(E).

2) Appointment of Counsel for Isolation and Quarantine Court Proceedings

“The court must appoint counsel to represent individuals or groups of individuals who are or who are about to be isolated or quarantined pursuant to the provisions of this act and who are not otherwise represented by counsel.” S.C. Code Ann. § 44-4-540(F).

3) Payment of Appointed Counsel

“Payment for these appointments must be made in accordance with other appointments for legal representation in actions arising outside of matters in this act, and is not the responsibility of any one state agency.” *Id.*

4) Duration of Appointments of Counsel

“Appointments last throughout the duration of the isolation or quarantine of the individual or groups of individuals.” *Id.*

6) Communication between Appointed Counsel and Clients

“DHEC must provide adequate means of communication between such individuals or groups of individuals and their counsel.” *Id.*

7) Appointment of Counsel for DHEC

Where necessary, additional counsel for DHEC from other state agencies or from private attorneys appointed to represent state agencies, must be appointed to provide adequate representation for the agency and to allow timely hearings of the petitions and motions specified in this section. *Id.*

8) Right to Appeal

Comment: Although the EHPA does not state whether an order of quarantine or isolation is immediately appealable, such an order does affect the rights of travel, privacy and association of the individual(s) subject to it. As a matter of due process and public policy, it would seem that such orders should be immediately appealable. By way of analogy, the Supreme Court found in *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005), that an interlocutory order disqualifying counsel was immediately appealable pursuant to S.C. Code §14-3-330(2) because it affected a substantial right of a party and could have the effect of determining the action. Similarly, in *Widdicombe v Tucker-Cales*, 366 S.C. 75, 620 S.E.2d 333, 338 (S.C. App., 2005), the court held that “the custody of one’s child certainly constitute a ‘substantial right’ as contemplated in [Code Section 14-3-330]. See *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982) (holding that parenting is a fundamental constitutional right and due process is mandatory when such a right is jeopardized).” Pursuant to a statute enacted in 2011, after passage of the EHPA, emergency detention and commitment of a person determined to have tuberculosis may be appealed, S.C. Code §44-31-130; it should be noted that pursuant to this section, any appeal does not stay the order of commitment.

g. Enforcement of Isolation & Quarantine

1) Authority to Enforce – Law Enforcement

“All sheriffs and constables in the several counties of this State and police officers and health officers of cities and towns must aid and assist the Director of the Department of Health and Environmental Control and must carry out and obey his orders, or those of the Department of Health and Environmental Control, to enforce and carry out any and all restrictive measures and quarantine regulations that may be prescribed.” S.C. Code Ann. § 44-1-100.

“The public safety authority and other law enforcement officers may arrest an individual who is acting in violation of an isolation or quarantine order after the order is given to the individual pursuant to Section 44-4-540(B)(3) or after the individual is provided notice of the order. In a case where an individual is not the subject of an isolation or quarantine order under Section 44-4-540, law enforcement officers may provide written or verbal notice of the order. Law enforcement officers may arrest an individual who is acting in violation of isolation or quarantine rules after the rules are established and the individual is given notice of the rules. An arrest warrant or additional isolation or quarantine order is not required for arrest under Section 44-4-530(D)(4).” S.C. Code Ann. §44-4-530(D)(4).

2) Criminal Enforcement of Isolation and Quarantine

“Persons subject to isolation or quarantine must comply with DHEC’s rules and orders, and must not go beyond the isolation or quarantine premises. Failure to comply with these rules and orders constitutes a felony.” S.C. Code Ann. § 44-4-530(C).

“No person, other than a person authorized by DHEC, shall enter isolation or quarantine premises. Failure to comply with this provision constitutes a felony.” S.C. Code Ann. § 44-4-530(D)(2).

“Failure to comply with these rules and orders constitutes a felony, and upon conviction, a person must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both.” S.C. Code Ann. § 44-4-530(D)(2).

3) Civil Enforcement of Isolation and Quarantine

“Any person entering an isolation or quarantine premises with or without authorization of DHEC may be isolated or quarantined as provided for in this chapter.” S.C. Code Ann. § 44-4-530(D)(3).

h. Minors and Persons Under Disability

1) Minors

The mother and father are the joint natural guardians of their minor children and are equally charged with the welfare and education of their minor children ...; and the mother and father have equal power, rights, and duties, and neither parent has any right paramount to the right of the other concerning the custody of the minor ... or any other matter affecting the minor. Each parent, whether the custodial or noncustodial parent of the child, has equal access and the same right to obtain all educational records and medical records of their minor children ... unless prohibited by order of the court.

SC Code Ann. §62-5-30

Any minor who has reached the age of sixteen years may consent to any health services from a person authorized by law to render the particular health service for himself and the consent of no other person shall be necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available. S.C. Code Ann. §63-5-340.

Health services of any kind may be rendered to minors of any age without the consent of a parent or legal guardian when, in the judgment of a person authorized by law to render a particular health service, such services are deemed necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available. S.C. Code Ann. §63-5-350.

The consent of a married minor or, if a married minor be unable to give consent by reason of physical disability, then the consent of the spouse of the married minor to the performance by any licensed medical, surgical or dental practitioners, or any hospital, or their agents or employees, of any lawful diagnostic, therapeutic surgical or postmortem procedure upon or in respect to such minor or any minor child of such minor, shall, notwithstanding the minority of such minor, be valid and legally effective for all purposes and shall be binding upon such minor, his parents, spouse, heirs, executors and administrators as effectively as if such minor or the spouse of such minor were eighteen years of age. S.C. Code Ann. §63-5-330.

Any minor who has been married or has borne a child may consent to health services for the child. S.C. Code Ann. §63-5-360.

Note: Minors of any age are liable for their torts. *Standard v. Shine*, 278 S.C. 337, 295 S.E.2d 786 (1982). Children under 14 are “judged by the standard of behavior to be expected of a child of like age, intelligence, and experience under like circumstances.” 278 S.C. at 339, 295 S.E.2d at 787. Children 14 or older are held to the adult standard of care for purposes of tort liability. *McCormick v. Campbell*, 285 S.C. 272, 329 S.E.2d 752 (1985).

Criminal offenses of minors are generally dealt with in Family Court through the Juvenile Justice Code. S.C. Code Ann. §§63-19-10 through 63-19-2460. “Child” in the Juvenile Justice Code means a person less than seventeen years of age; excluding persons sixteen or older who are charged with certain felonies.

Using tort law and criminal law as an analogy, an isolation or quarantine order may be directed at a minor, enforceable by contempt. The practicality of enforcement of an order directly against a minor will depend on the minor’s age and maturity and other factors.

Minors (children under 18) may enter into contracts; however, their contracts are voidable unless ratified after reaching majority, except contracts for “necessaries” (such as food, clothing, lodging, medicine, and education, see 21 S.C. Jur. Children and Families §80). S.C. Code Ann. §63-5-310.

“The capacity of a party to sue or be sued shall be determined by the law of this State.” SCRCP 17(b). Minors do not have the capacity to sue or be sued in their own names, but may sue or defend through a representative or by a “next friend” or guardian ad litem. SCRCP 17(c); see 42 Am. Jur. 2d Infants §160.

2) Persons Under Disability

(a) A guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this State.

(2) If entitled to custody of his ward he shall make provision for the care, comfort, and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable

care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

SC Code Ann. §62-5-312

3) Service on Minors and Persons Under Disability

Comment: All petitions, orders, requests for information, and the like affecting minors or persons under disability should be addressed to and served on the parent(s) or guardian(s). Any of the form Petitions and Orders, including consent orders, in this manual should be modified to be addressed to and served on the parents or guardians, referencing the minor or person under disability by name in the caption as “In Re: xxx;” the individuals affected by the petition or order should also be named in the body of the document.

i. Disposition of Human Remains

Disposition of the bodies of individuals who die during a Public Health Emergency may require additional precautions to protect emergency workers, coroners, medical examiners, funeral Directors, and the public health. DHEC will notify coroners, medical examiners, and funeral Directors of specific procedures to be followed if the nature of the Public Health Emergency is such that decedents’ bodies are likely to be sources of contagion. 25A S.C. Code Ann. Regs. 61-112, §10.A. Procedures for identifying bodies, recording personal identifying information, and siting mass graves, if required, are found in 25A S.C. Code Ann. Regs. 61-112, §10.B.

Human remains intended for interment or subsequent cremation after entry into the United States must be accompanied by a death certificate stating the cause of death. If the death certificate is in a language other than English, then it should be accompanied by an English language translation. 22 CFR Part 72.12.

If the cause of death was a quarantinable communicable disease (i.e., cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers, SARS, or pandemic influenza), the remains may be cleared, released, and authorized for entry into the United States only under the following conditions:

The remains are cremated; OR

The remains are properly embalmed and placed in a hermetically sealed casket; OR

The remains are accompanied by a permit issued by the Centers for Disease Control (CDC) Director. 42 CFR Part 71.55

The CDC permit (if applicable) must accompany the human remains at all times during shipment.

G. Management of Property and Resources

1. Public Property and Resources

a. Governor's Authority during a State of Emergency

1) Authority to Discontinue Public Facilities

The Governor may “order the discontinuance of any transportation or other public facilities, or, in the alternative, direct that such facilities be operated by a State agency.” S.C. Code Ann. § 1-3-440(3).

2) Authority to Utilize All State Resources

The Governor may “utilize all available resources of state government as reasonably necessary to cope with the emergency.” S.C. Code Ann. § 25-1-440(a)(4).

3) Authority to Evacuate

The Governor may “direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein.” S.C. Code Ann. § 25-1-440(a)(7).

4) Authority to Deploy Military Forces

The Governor may “call out the military forces of the State (State militia) or any unit or units thereof and order and direct them to take such action as in his judgment may be necessary to avert any threatened danger and to maintain peace and good order.” S.C. Code Ann. § 1-3-440(1).

5) Authority to Deploy Law Enforcement

The Governor may “order any and all law enforcement officers of the State or any of its subdivisions to do whatever may be deemed necessary to maintain peace and good order.” S.C. Code Ann. § 1-3-440(2).

6) Authority over Government Employees

The Governor may “authorize, order or direct any State, county or city official to enforce the provisions of such proclamation in the courts of the State by injunction, *mandamus*, or other appropriate legal action.” S.C. Code Ann. § 1-3-440(4).

The Governor may “transfer the direction, personnel, or functions of state departments, agencies and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable.” S.C. Code Ann. § 25-1-440(a)(5).

The Governor may “compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order.” S.C. Code Ann. § 25-1-440(a)(6).

b. DHEC’s Authority during a Public Health Emergency

“After the declaration of a state of Public Health Emergency, DHEC may ... close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated, any facility of which there is reasonable cause to believe that it may endanger the public health.” S.C. Code Ann. § 44-4-300.

- For purposes of this section, facility means, “any real property, building, structure, or other improvement to real property or any motor vehicle, rolling stock, aircraft, watercraft, or other means of transportation.” S.C. Code Ann. § 44-4-130(J).

“After the declaration of a state of Public Health Emergency, DHEC may ... decontaminate or cause to be decontaminated, any material of which there is reasonable cause to believe that it may endanger the public health.” S.C. Code Ann. § 44-4-300.

- Although the EHPA does not define material, when this subsection is examined next to the authority applicable to “facilities,” a reasonable inference is that this authority would apply to personal property.

2. Private Property and Resources

a. Governor's Authority during a State of Emergency

The Governor does not have explicit authority to seize or control private property during a declared emergency. However, the Governor has several broad authorities to protect life and property that could be used against private property under some circumstances:

- Take measures that he or she deems necessary to prevent violence or threats of violence to the person or property of citizens of the State and to maintain peace, tranquility, and good order in the State. S.C. Code Ann. § 1-3-410.
- Order and direct any person or group of persons to do any act or refrain from doing any act that would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace. S.C. Code Ann. § 1-3-430.
- Intervene in any situation where there exists violence or threats of violence to persons or property and take complete control thereof to prevent violence, riotous conduct, public disorder or breaches of the peace. S.C. Code Ann. § 1-3-450.

Comment: The Governor's emergency authorities over private property are clear in some areas and vague in others. The Governor can take possession of utilities in the State, including communications and transportation facilities and prescribe rules and regulations for the holding, using, and maintaining of the utilities consistent with the interest and safety of the government. S.C. Code Ann. § 25-1-1870. He or she can also order the discontinuance of transportation and other public facilities or direct that they be operated by the State. *Id.* at 440(3). This provision is somewhat vague because the term "public facilities" is not defined in the statute. If "public" is given a narrow definition, the provision would apply to facilities owned by the public through state and local governments; if the word is given a broader scope, it would apply to facilities that are publicly accessible. The legislative history and the rest of the provision might provide some light on what the General Assembly intended. Section 1-3-440 was first passed in 1957 along with other additional emergency powers for the Governor. 1957 S.C. Acts 349.

The preamble to Act 349 explicitly connects these extraordinary powers to the police powers of the State. "[T]he State of South Carolina through its constitutional officers, the statutory law and police power of the State, may control violence or threatened violence against persons or property." *Id.* The police powers have traditionally applied to the regulation of private property, subject to the due process requirements. See *Stehmeyer v. City Council of Charleston*, 53 S.C. 259, 280-1, 31 S.E. 322, 330 (1898)

(“The police power operates upon persons and property within the state. Hence care must always be taken to provide in such police regulations that there shall be no invasion of life, liberty, or property without due process of law.”). When analyzing statutes, it is presumed that the Legislature is familiar with the current state of the law. Consistent with the police powers of the State, and with the other emergency authorities over private interests such as mandatory evacuation, it would be reasonable to extend the power to discontinue “public facilities” to private operations that are accessible to the public.

Further, the phrase “or direct that they be operated by the State” would make more sense if public is construed as covering private property accessible by the public. If the narrow definition is followed, this phrase would appear to cover only public facilities normally operated by local government authorities.

b. DHEC’s Authority during a Public Health Emergency

1) Authority to Close, Evacuate and Decontaminate Private Property

“After the declaration of a state of Public Health Emergency, DHEC may ... (2) close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated, any facility of which there is reasonable cause to believe that it may endanger the public health.” S.C. Code Ann. § 44-4-300.

For purposes of this section, facility means, “any real property, building, structure, or other improvement to real property or any motor vehicle, rolling stock, aircraft, watercraft, or other means of transportation.” S.C. Code Ann. § 44-4-130(J).

“After the declaration of a state of Public Health Emergency, DHEC may ... decontaminate or cause to be decontaminated, any material of which there is reasonable cause to believe that it may endanger the public health.” S.C. Code Ann. § 44-4-300.

Although the EHPA does not define material, when this subsection is examined next to the authority applicable to “facilities,” a reasonable inference is that this authority would apply to personal property.

2) Authority to Destroy Private Property

“To the extent practicable and consistent with the protection of public health, prior to the destruction of any property under this article, DHEC in coordination with the applicable law enforcement agency must institute appropriate civil proceedings against the property to be destroyed in accordance with the existing laws and rules of the courts of this State or

any such rules that may be developed by the courts for use during a state of Public Health Emergency. Any property acquired by DHEC through such proceedings must, after entry of the decree, be disposed of by destruction as the court may direct.” S.C. Code Ann. § 44-4-340; *see also* 25A S.C. Code Ann. Regs. 61-112, §6.B.

In exigent circumstances, DHEC may order the immediate destruction of contaminated objects. 25A S.C. Code Ann. Regs. 61-112, §6.B.ii.

As an alternative to destruction, DHEC may petition for an order requiring the property to be sealed, embargoed, or otherwise isolated from the public. 25A S.C. Code Ann. Regs. 61-112, §6.C.

Note: The EHPA does not address compensation for the state-sponsored destruction of private property.

3) Authority to Require the Use of Health Care Facilities

During a Public Health Emergency, DHEC may require a health care facility to provide services or the use of its facility if the services are reasonable and necessary to respond to the Public Health Emergency. S.C. Code Ann. § 44-4-310; 25A S.C. Code Ann. Regs. 61-112, §5.A.

- This requirement can last as long as the state of Public Health Emergency exists.
- This can be required as a condition of licensure, authorization, or the ability to continue doing business in the State as a health care facility.
- When DHEC needs the use or services of the facility to isolate or quarantine individuals during a Public Health Emergency, the management and supervision of the health care facility must be coordinated with DHEC to ensure protection of existing patients and compliance with the terms of this act.
- DHEC may require facilities to provide information regarding potential expansion capacity, including vacant beds, rooms constructed but not placed into operation in accordance with a Certificate of Need, and rooms which could be adapted for multiple occupancy. 25A S.C. Code Ann. Regs. 61-112, §5.A.i.
- “Operation of such facilities by the owners and operators is preferred. However, upon refusal by the owners or operators, or upon refusal to respond to DHEC's notification within a reasonable time not to exceed forty-eight hours, DHEC may apply for an *ex parte* court order authorizing DHEC, or its designee, to enter into said facility and take control for purposes of responding to the Public Health Emergency. Upon presentation, any public safety agency may execute such order. DHEC may apply for any such order to provide that designees operating facilities pursuant to court order shall be held harmless as to the owners or operators. After notice and opportunity for a hearing, DHEC may apply for an order continuing the *ex parte* order and setting the compensation, if

any, due the owners and operators for such period of displacement.” 25A S.C. Code Ann. Regs. 61-112, §5.B.ii.

- This section does not discuss whether compensation would be owed the health care facility for use of its facility.

6) Authority to Purchase and Distribute Medicines and Medical Supplies

“After the declaration of a Public Health Emergency, DHEC may purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that it considers advisable in the interest of preparing for or controlling a Public Health Emergency, without any additional legislative authorization.” S.C. Code Ann. § 44-4-330(A).

“DHEC may distribute, administer or dispense Medical Supplies either through its own employees, by instructions to wholesalers, or by allocation to health care providers for redistribution in accordance with directives issued by DHEC. In allocating Medical Supplies, DHEC will consider the amount on hand, the amount reasonably anticipated from other sources, and the population at risk. DHEC may allocate or deny Medical Supplies based on age, proximity to an initiating event or route of transmission, whether the individual is a First Responder, whether alternative personal protective measures are readily available, or other criteria of epidemiological significance.” 25A S.C. Code Ann. Regs. 61-112, §7.A.iii.

7) Authority to Control Shortages of Medicines and Medical Supplies

“If a state of Public Health Emergency results in a statewide or regional shortage or threatened shortage of any product covered by subsection (a), whether or not such product has been purchased by DHEC, DHEC may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the health, safety, and welfare of the people of the State.” S.C. Code Ann. § 44-4-330(B)(1).

“After declaration of a Public Health Emergency, DHEC may order manufacturers and distributors doing business in South Carolina to provide information on the amount, location and availability of Medical Supplies in South Carolina or in distribution chains serving South Carolina.” 25A S.C. Code Ann. Regs. 61-112, §7.B.i.

“In consultation with public health officials in neighboring states and with Federal officials, DHEC may direct distribution of Medical Supplies to designated health care providers. DHEC may direct designated health care providers to distribute or dispense Medical Supplies in accordance

with criteria established by DHEC, which may include age, proximity to an initiating event or route of transmission, or other criteria of epidemiological significance.” 25A S.C. Code Ann. Regs. 61-112, §7.B.ii.

“DHEC may issue guidelines defining diagnostic criteria, risk factors and contraindications for the guidance of health care providers. The Commissioner may by order identify categories of individuals to whom Medical Supplies shall not be given.” 25A S.C. Code Ann. Regs. 61-112, §7.C.

8) Authority to Take Immediate Possession of Medicines and Medical Supplies

DHEC has the right to take immediate possession of antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies located within the State as may be reasonable and necessary for emergency response. S.C. Code Ann. § 44-4-330(B)(2).

9) Control and Disposition of Animals

“ In consultation with the State Veterinarian, DHEC may issue orders requiring isolation, quarantine, or destruction of animals. Unless there is a clear medical or public health necessity, no animal shall be destroyed except by court order.” S.C. Code Ann. §44-29-30; 25A S.C. Code Ann. Regs. 61-112, §6.E.i.

“ Domestic pets: DHEC may by order allow persons to be accompanied by their pets in communal isolation or quarantine facilities, depending on the nature of the threat and the capacity of the facility. Alternatively DHEC may order establishment of pet holding areas or forbid pets in isolation or quarantine facilities.” 25A S.C. Code Ann. Regs. 61-112, §6.E.ii.

“ Non-domestic animals; farm animals; large animals: DHEC may by order allow owners or their representatives access to isolated animals for feeding or other necessary care; such access shall be upon such conditions as DHEC shall order.” 25A S.C. Code Ann. Regs. 61-112, §6.E.iii.

c. Licensing Authorities, DHEC, and LLR during a Public Health Emergency

1) Authority to Require In-State Health Care Providers to Assist

The appropriate licensing authority, in coordination with DHEC and the Department of Labor, Licensing and Regulation, may exercise, for such period as the state of Public Health Emergency exists, in addition to existing emergency powers, the following emergency powers regarding licensing of health personnel:

to require in state health care providers to assist in the performance of vaccination, treatment, examination, or testing of any individual as a condition of licensure, authorization, or the ability to continue to function as a health care provider in this State. S.C. Code Ann. § 44-4-570(A)(1).

“If, during a Public Health Emergency, an individual health care provider unreasonably fails or refuses to perform vaccinations, treatment, examination, or testing of individuals, DHEC may submit evidence of such refusal to the appropriate licensing board for consideration in subsequent licensing decisions. ... DHEC may consider evidence of failure or refusal to allow vaccinations, treatment, examination or testing of individuals as a basis for revoking or denying renewal of facility licenses issued by DHEC. Revocation or denial of a license based in whole or in part on such grounds may be challenged as a contested case.” 25A S.C. Code Ann. Regs. 61-112, §8.B.

2) Authority to Appoint Out-of-State Health Care Volunteers

The appropriate licensing authority, in coordination with DHEC and the Department of Labor, Licensing and Regulation, may exercise, for such period as the state of Public Health Emergency exists, in addition to existing emergency powers, the following emergency powers regarding licensing of health personnel:

to appoint and prescribe the duties of such out of state emergency health care providers as may be reasonable and necessary for emergency response. S.C. Code Ann. § 44-4-570(A)(2).

3) Conditions on the Appointment of Out-of-State Volunteers

a) Duration of Volunteer Appointments

The appointment of out of state emergency health care providers pursuant to this section may be for a limited or unlimited time, but must not exceed the termination of the state of Public Health Emergency. S.C. Code Ann. § 44-4-570(B)(1).

b) Termination of Volunteer Appointments

The appropriate licensing authority may terminate the out of state appointments at any time or for any reason provided that any termination will not jeopardize the health, safety, and welfare of the people of this State. S.C. Code Ann. § 44-4-570(B)(1).

c) Waiver of Licensing Requirements

The appropriate licensing authority may waive any or all licensing requirements, permits, or fees required by law and applicable orders, rules, or regulations for health care providers from other jurisdictions to practice in this State. S.C. Code Ann. § 44-4-570(B)(2).

“Upon declaration of a state of Public Health Emergency, DHEC may by order suspend for the duration of the PHE so much of Regulations 61-15 and 61-16 as (1) restricts use of unlicensed beds or space; (2) restricts the conversion of single and double occupancy patient rooms to higher capacity (consistent with medically appropriate criteria); or (3) restricts establishment of wards, dormitories, or other spaces not designated as patient rooms.” 25A S.C. Code Ann. Regs. 61-112, §5.A.ii.

d) Liability Protections for Out-of-State Volunteers

Any out of state emergency health care provider appointed pursuant to this section shall not be held liable for any civil damages as a result of medical care or treatment related to the emergency response unless the damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of the patient. S.C. Code Ann. § 44-4-570(C)(1).

[Any Medical Examiners or coroners] appointed pursuant to this section who in good faith performs the assigned duties is not liable for any civil damages for any personal injury as the result of any act or omission, except acts or omissions amounting to gross negligence or willful or wanton misconduct. S.C. Code Ann. § 44-4-570(D).

4) Appointment of Emergency Assistant Medical Examiners or Coroners

a) Authority to Appoint

The appropriate licensing authority, in coordination with DHEC and the Department of Labor, Licensing and Regulation, may exercise, for such period as the state of Public Health Emergency exists, in addition to existing emergency powers, the following emergency powers regarding licensing of health personnel:

to authorize the medical examiner or coroner to appoint and prescribe the duties of such emergency assistant medical examiners or coroners as may be required for the proper performance of the duties of the office. S.C. Code Ann. § 44-4-570(A)(3).

b) Duration of Emergency Appointments

The appointment of emergency assistant medical examiners or coroners pursuant to this section may be for a limited or unlimited time, but must

not exceed the termination of the state of Public Health Emergency. S.C. Code Ann. § 44-4-570(D)(1).

c) Termination of Emergency Appointments

The medical examiner or coroner may terminate the emergency appointments at any time or for any reason, provided that any such termination will not impede the performance of the duties of the office. S.C. Code Ann. § 44-4-570(D)(1).

d) Waiver of Licensing Requirements

The medical examiner or coroner may waive any or all licensing requirements, permits, or fees required by law and applicable orders, rules, or regulations for the performance of these duties. S.C. Code Ann. § 44-4-570(D)(2).

e) Liability Protections for Emergency Assistant Medical Examiners or Coroners

Any person appointed pursuant to this section who in good faith performs the assigned duties is not liable for any civil damages for any personal injury as the result of any act or omission, except acts or omissions amounting to gross negligence or willful or wanton misconduct. S.C. Code Ann. § 44-4-570(D)(3).

3. Compensation for the taking of private property

a. Eminent Domain

- The state may seize private property following the procedures set forth in the South Carolina Eminent Domain Procedures Act. S.C. Code §§ 28-2-10 to -510.
- The Act established a uniform procedure for condemnation proceedings enacted in 1987 and is the exclusive procedure for condemnation by a governmental entity. S.C. Code § 28-2-20.
- “A condemnor may commence an action under this chapter for the acquisition of an interest in any real property necessary for any public purpose.” S.C. Code § 28-2-60.
- Pursuant to the Act, prior to commencing a condemnation action, the condemnor must elect to proceed one of two ways, either by way of trial or by way of an appraisal panel. S.C. Code § 28-2-220.

- The Act contains specific requirements for the form and content of the condemnation notice with variations depending upon whether the condemnor has chosen to proceed with a trial or an appraisal panel. S.C. Code § 28-2-280.

b. Emergency Health Powers Act

- Section 44-4-340 of the Emergency Health Powers Act addresses the destruction of property for public health purposes, but it does not cover compensation.
- Although not specifically referenced, this section seems to refer to the condemnation procedures established in the Eminent Domain Procedures Act when it states that DHEC must institute “appropriate civil proceedings against the property to be destroyed.”

H. Operation of the Courts Amid Public Health Threats

1. Overview

The judicial system faces a number of issues when dealing with a public health threat, including the maintenance of court during a widespread outbreak of disease, protecting its staff and the public from potentially contagious litigants, and emergency court closure, all the while ensuring the administration of justice.

2. Appearance in Court of Individuals Posing a Potential Threat

No person shall be deprived of life, liberty or property without due process. U.S. Constitution, amend. V and South Carolina Constitution, Article I, § 3.

If a party cannot personally appear in court, proceedings may be conducted by an authorized representative and be held via any means that allows parties to fully participate. S.C. Code. Ann. §44-4-540(E).

Note: An individual who has been infected or is suspected of being infected with a contagious disease, may not physically be able to appear in court due to the disease. Additionally, the court may find that the individual poses a potential threat to others in the court room because of the disease, and therefore, the court may want to utilize an alternative

means of obtaining the individual's testimony. The Emergency Health Powers Act addresses this issue, albeit briefly: "In the event that, given a state of Public Health Emergency, parties cannot personally appear before the court, proceedings may be conducted by their authorized representatives and be held via any means that allow all parties to fully participate." S.C. Code Ann. Section 44-4-540(E). This could include using remote video testimony or depositions in lieu of live testimony.

There is no state statute governing the use of videotaped testimony or video conferencing in court proceedings in South Carolina. However, the South Carolina Supreme Court has established a procedure that would allow trial courts, attempting to protect child witnesses, to use videotaped testimony in child sexual abuse cases. In order to use videotaped testimony, three conditions must be met: (1) the judge must make a case-specific determination of the need for videotaped testimony; (2) the court should place the child in as close to a court room setting as possible; and (3) the defendant should be able to see and hear the child, should have counsel present both in the courtroom and with him and communication should be available between counsel and the defendant. *State v. Murrell*, 302 S.C. 77, 80-81, 393 S.E.2d 919, 921 (1990). It is important to note that this procedure was established in order to protect a criminal defendant's 6th Amendment right to confront witnesses against him, applicable to the state through the 14th Amendment of the U.S. Constitution. A similar procedure could be used if an individual posed a threat to public health by his live appearance in a courtroom.

Additionally, the South Carolina Supreme Court has issued administrative orders allowing the use of videoconferencing in certain cases in Family Court (2007-01-10-01), Magistrate and Municipal Court (2006-05-02-01) and General Sessions for the Fifth Judicial Circuit (2005-11-29-01). The administrative orders set forth detailed conditions that must be met prior to using this technology, including obtaining the written consent of the defendant, the use of specific equipment and facilities.

Rule 32 of the South Carolina Rules of Civil Procedure governs the use of depositions in court proceedings. Section (a)(3) allows the deposition of a witness, whether or not a party, to be used for any purpose by any party if the court finds that the witness is unable to attend or testify because of age, illness, infirmity or imprisonment, or, upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

3. Proceedings Involving Numerous Persons

a. Consolidation of Class Claims in Isolation and Quarantine Proceedings

In any Isolation or Quarantine proceedings brought under Section 44-4-540, the court can consolidate individual claims to promote the fair and efficient operation of justice. S.C. Code Ann. § 44-4-540(G).

Factors to Consider when Consolidating Claims

The court must consider the following factors:

- the rights of the affected individuals,
- the protection of the public's health,
- the severity of the emergency,
- and the availability of necessary witnesses and evidence. S.C. Code Ann. § 44-4-540(G).

b. Class Characteristics for Isolation and Quarantine Proceedings

“The court may order the consolidation of individual claims into groups of claims where:

- the number of individuals involved or to be affected is so large as to render individual participation impractical;
- there are questions of law or fact common to the individual claims or rights to be determined;
- the group claims or rights to be determined are typical of the affected individuals' claims or rights; and
- the entire group will be adequately represented in the consolidation.” S.C. Code Ann. § 44-4-540(G).

4. Succession of Judges and other Court Personnel Matters

a. Judges

If a judge is unavailable to exercise the powers and duties of the office, and if no other judge is available in the absence, then:

- The Governor may appoint successors for absent members of the Supreme Court. S.C. Code Ann. § 1-9-70(a).

Chief Justice unavailable: The senior associate justice of the Supreme Court will take over the Chief Justice's duty to appoint special justices when necessary. S.C. Code Ann. § 14-5-190.

- The Chief Justice, in consultation with the other members of the Court, shall designate for every other court of record* emergency judges. S.C. Code Ann. § 1-9-70(b).

When necessary, the Chief Justice may appoint a disengaged circuit judge to fill a vacancy in any circuit due to death, illness or any other reason. S.C. Code Ann. § 14-5-160.

- The Circuit judges shall designate emergency judges for courts not of record* within their circuits. S.C. Code Ann. § 1-9-70(c).

The interim emergency judges shall have the same powers of the office until such time as the regular judge becomes available. S.C. Code Ann. § 1-9-70.

The Emergency Interim Executive and Judicial Succession Act, which includes Section 1-9-70, shall control in the event that any other laws are construed to be contrary or in conflict with it. S.C. Code §1-9-230.

*Note: See Section I.B.1 *supra* for identification of courts of record.

b. Clerks of Court

1) Circuit Court

The Governor may appoint “some suitable person” if there is a vacancy in the office of the clerk of court. S.C. Code § 4-11-20.

2) Probate Court

Until the vacancy is filled, the probate judge of the county has the authority to fulfill the responsibilities of the clerk’s office. S.C. Code § 14-17-30.

5. Emergency Court Closure

a. Authority

The chief justice of the South Carolina Supreme Court, as the administrative head of the judicial system, has the authority to promulgate rules governing the administration of all courts, including rules for the emergency closure of courts. S.C. Constitution, Article V, §4; S.C. Code § 14-1-90.

b. Rules for Emergency Court Closure

At this time, no rules have been promulgated for the emergency closure of South Carolina courts. However, the chief justice could issue an Administrative Order as needed at the time of a Public Health Emergency.

Note: If the court in which venue would ordinarily lie is itself affected by the emergency, DHEC may petition the chief justice of the Supreme Court for a change of venue. S.C. Code Section 44-4-130(W), Although this provision does not directly address emergency court closure, it provides a mechanism to transfer authority if a court is closed by an isolation or quarantine order.

I. The Emergency Detention And Commitment Of Tuberculosis Patients

1. Overview

Isolation of individuals with active tuberculosis has been part of the public health arsenal at least since the first sanatorium was established in Aiken in 1840. With the discovery of effective medicines, it was believed that tuberculosis no longer presented a significant public health threat. However, more recently strains of drug-resistant pulmonary tuberculosis have emerged and the population of individuals with active tuberculosis is approaching epidemic proportions.

In 2011 the General Assembly enacted S.C. Code Ann. §§44-31-10 through -610. The Legislature found that:

“(1) Pulmonary tuberculosis is a life-threatening airborne disease. Tuberculosis has reemerged as an epidemic disease nationally. The number and types of cases in South Carolina each year, including drug-resistant tuberculosis, demonstrate that timely, effective public health intervention is necessary to prevent an epidemic and to protect the residents of this State.

“(2) In order to limit the spread of tuberculosis, it is essential that persons with the disease are diagnosed and treated before they infect others. Diagnosis requires a variety of methodologies, including skin tests, x-rays, blood tests, and laboratory analysis of sputum samples.

“(3) A person with tuberculosis who does not voluntarily submit to appropriate testing, treatment, or infection control methods poses an unreasonable risk of spreading the disease to those who come into contact with the person.

“(4) Although the recommended course of treatment for tuberculosis varies somewhat from one individual to another, at a minimum, effective treatment requires a long-term regimen of multiple drug therapy. The development of the appropriate course of treatment for any one individual may require trying different combinations of drugs and repeated drug susceptibility testing. The course of treatment may require as long as several years to complete.

“(5) A noninfectious person who begins a course of treatment for tuberculosis and fails to follow the recommended course through to completion is highly likely to become infectious. The person can infect others and possibly develop drug-resistant tuberculosis, which is more difficult to treat, and more likely to result in death. A person who is infectious with multi-drug resistant tuberculosis poses a significant risk of transmitting drug-resistant tuberculosis to other persons, unless appropriate treatment and infection control methods are followed. It is therefore critical that individuals with tuberculosis, whether infectious or not, complete a course of treatment to avoid relapse, infectiousness, and drug resistance.” S.C. Code Ann. § 44-31-100.A.

This Act provides procedures for identifying individuals who, because of their unwillingness or inability to cooperate in their treatment, present an unreasonable risk to themselves and others requiring judicial intervention to impose commitment and treatment. The provisions of the laws and regulations referenced herein were not intended to interfere “with the ordinary admission of tuberculosis patients to a facility through channels that have customarily been followed in the past,” but were intended to apply “only to cases that have proved to be beyond ordinary, reasonable methods of control.” S.C. Code Ann. § 44-31-190. In the sections that follow, statutory provisions which have been referred to in the preceding materials will not be repeated, although they are also applicable to these cases.

2. Authority – DHEC

a. Regulations

“The department may promulgate regulations to carry out the purposes and provisions of this chapter.” S.C. Code Ann. § 44-31-200.

b. Access to records

“Authorized personnel of the Department of Health and Environmental Control may inspect all medical records of all public and private

institutions and clinics where tuberculosis patients are treated.” S.C. Code Ann. § 44-31-30.

c. Public Health Orders

“If the Department of Health and Environmental Control determines that the public health or the health of any individual is endangered by a case of tuberculosis, or a suspected case of tuberculosis, the commissioner, or his or her designee, may issue an emergency order he or she considers necessary to protect the public health or the health of any person.” S.C. Code Ann. § 44-31-105(A).

d. Isolation and Quarantine

The act authorizes DHEC to seek an order from the probate court authorizing emergency removal, detention, isolation, and treatment of individuals known or suspected of having active tuberculosis who are unwilling or unable to voluntarily comply.

3. Requirements of a Public Health Order

“An emergency order issued pursuant to this section must include:

- (1) an individualized assessment of the person's circumstances or behavior, or both, constituting the basis for the issuance of the order;
- (2) the purposes of the isolation or detention;
- (3) notice that the respondent has the right to request release from isolation and detention by contacting a person designated in the order; and
- (4) in the absence of a court order, that the detention must not continue for more than thirty days.”

S.C. Code Ann. § 44-31-105(C).

4. Emergency Detention

a. Examination

An emergency order may be issued to authorize “the emergency removal to and detention in a hospital or other treatment facility for examination of a person who is unable or unwilling to voluntarily submit to an examination by a physician or by the department for the purpose of determining whether the person is infected with active tuberculosis and presents a danger to himself or others.” S.C. Code Ann. § 44-31-105(B)(1).

b. Treatment

1) Directly Observed Therapy

An emergency order may be issued “requiring compliance with an appropriate, prescribed course of medication for tuberculosis and contagion precautions,” or “requiring compliance with a course of directly observed therapy in which the prescribed antituberculosis medication is administered under direct observation as specified by the department.” S.C. Code Ann. § 44-31-105(B).

2) Compulsory Treatment

“A person must not be required to take compulsory treatment under the provisions of this article until two physicians licensed to practice in this State certify that the person sought to be confined for treatment has tuberculosis in a contagious state and constitutes a danger to the health of others unless the person is hospitalized and given treatment.” S.C. Code Ann. § 44-31-170.

Note: The statute specifies that “an examination conducted pursuant to Section 44-31-105 of a person with suspected tuberculosis is not compulsory treatment.” S.C. Code Ann. § 44-31-170.

c. Detention - Non-Compliance with Treatment

An emergency order may be issued “authorizing the emergency removal to and isolation in a hospital or other treatment facility of a person who fails to comply with an emergency order issued by the department, fails to comply with a medically ordered treatment regimen, and presents a substantial risk and likelihood of exposure of active tuberculosis to other persons.” S.C. Code Ann. § 44-31-105(B)(4).

1) Hospital

An order may be issued to require “the emergency detention and isolation by a hospital of a hospital patient with active tuberculosis disease who is threatening or attempting to leave the hospital against medical advice.” S.C. Code Ann. § 44-31-105(B)(5).

2) Detention Facility

“A person committed under the provisions of this article who is detained solely for treatment or isolation in a facility designated by the department may not be committed to a local detention facility.” S.C. Code Ann. § 44-31-150.

d. Hearing on release from detention

“If a person being isolated or detained pursuant to an emergency order requests release from isolation or detention, the department, within three working days of the request for release, shall file a petition in the probate court of the county in which the person is being held seeking continued isolation or detention. The probate court must schedule a hearing to

review the request for continued isolation or detention within ten days of the filing of the petition.” S.C. Code Ann. § 44-31-105(D).

e. Civil Penalty

A person who, after actual or constructive notice, “violates a rule, regulation, permit, permit condition, final determination, or order of the department ... is subject to a civil penalty not to exceed one thousand dollars a day for each violation.” S.C. Code Ann. § 44-1-150(B).

5. Involuntary Commitment

“When it is brought to the attention of a Department of Health and Environmental Control health officer that a person with active tuberculosis is unable or unwilling to conduct himself so as not to expose others to danger, the department shall issue an emergency order pursuant to Section 44-31-105 or file a petition in the probate court of the county in which the person resides or is situated seeking commitment of the person to a facility for isolation and treatment. In case of the absence of the health officer or the department's failure to act, any other interested person may petition the probate court for commitment of the person for isolation and treatment. A petition seeking commitment must be based on proper records and affidavits.” S.C. Code Ann. § 44-31-110(A).

a. Detention for Commitment

“If a person committed to a facility pursuant to this article leaves without permission or, in the opinion of the department, endangers the public, staff, or other patients, the department is empowered to isolate and forcibly detain the person if necessary until such time as the person no longer poses a risk to others.” S.C. Code Ann. § 44-31-140.

b. Waiver of Notice

“The probate court may waive the requirement of notice to the person who is the subject of the emergency order or petition seeking commitment if the health officer demonstrates that the person is:

- (1) hiding from the health department staff;
- (2) evading attempts by health department staff or law enforcement to serve notice of the proceedings; or
- (3) refusing to accept service of pleadings or motions.”

S.C. Code Ann. § 44-31-110(B).

c. Duration

“If the judge of probate, after notice and hearing, is satisfied that the petition is well founded, the judge may commit the person to a facility

designated by the department, and the commitment continues until the department notifies the probate judge that the person is no longer a threat to the public's health." S.C. Code Ann. § 44-31-120.

d. Appeal

"A person committed to a facility under the terms of this article has the right to appeal to a court having jurisdiction for review of the evidence under which the person was committed. The order of commitment must not be stayed pending appeal." S.C. Code Ann. § 44-31-130.

6. Enforcement

"The probate court shall enforce the provisions of an emergency order issued pursuant to this section." S.C. Code Ann. § 44-31-105(D).

"Law enforcement shall aid and assist the department in accordance with Section 44-1-100." S.C. Code Ann. § 44-31-105(A).

"All sheriffs and constables in the several counties of this State and police officers and health officers of cities and towns must aid and assist the Director of the Department of Health and Environmental Control and must carry out and obey his orders, or those of the Department of Health and Environmental Control, to enforce and carry out any and all restrictive measures and quarantine regulations that may be prescribed." S.C. Code Ann. § 44-1-100.

"If a person lawfully detained or committed pursuant to this article to a facility leaves the facility without permission of the attending physician, the department shall report this information to the judge of probate of the county from which the patient was committed, and the judge of probate shall call upon the sheriff of the county to return the patient to the facility or to a secure prison facility if necessary." S.C. Code Ann. § 44-31-160.

7. Prisoners and Inmates

a. Separate from General Population

"The county supervisors and governing bodies of the respective counties shall provide in the jails or places of confinement where prisoners are committed for keeping or sentenced to a term of imprisonment separate cells, rooms or places in which shall be confined all prisoners who may be committed for keeping or sentenced to a term of imprisonment who are affected with tuberculosis." S.C. Code Ann. § 44-31-310.

"Superintendents and boards of Directors of all State penal and charitable institutions shall provide separate places of confinement for all prisoners

and inmates who have been pronounced by the physician in charge as tuberculous persons.” S.C. Code Ann. § 44-31-340.

“Nothing in this article shall be so construed as to interfere with or prevent the county authorities from working or housing together all prisoners on public works as provided by law.” S.C. Code Ann. § 44-31-350.

b. Examination

“The county supervisor or sheriff of any county, when a prisoner or inmate is placed in his custody who the official has reason to suspect is suffering with tuberculosis, shall have such prisoner or inmate examined by a physician and if such prisoner or inmate shall be pronounced by the examining physician as a tuberculous person, then the prisoner or inmate shall be placed in the separate cell, room or place provided for by Section 44-31-310.” S.C. Code Ann. § 44-31-320.

“The jailer, keeper or warden of every place of confinement designated in this article shall have all prisoners and inmates who are suspected to be suffering with tuberculosis examined within five days after they have been committed.” S.C. Code Ann. § 44-31-330.

c. Penalty

“A person who violates the provisions of this article is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years.” S.C. Code Ann. § 44-31-360.

II: Templates and Form Orders, Petitions and Affidavits

Page	Template	Summary
		*NOTE: In the event any of these documents are directed to a minor or person under disability, any of the form or template Petitions and Orders, including Consent Orders, found in this manual should be modified to be addressed to and served on the parent(s) or legal guardian(s), referencing the minor or person under disability by name in the caption as “In Re:” as well as including the name in the body of the relevant document.
84	Consent Order for Home Quarantine	Respondent is suspected of being exposed to a contagious disease and has agreed to Home Quarantine.
87	Consent Order for Hospital Quarantine	Respondent is suspected of being exposed to a contagious disease and has agreed to Hospital Quarantine.
89	Consent Order for Working Quarantine	Respondent provides essential service but needs to be quarantined otherwise
91	Emergency Temporary Order for Hospital Isolation	A patient is suspected of being infected with a highly contagious disease and must be put in temporary isolation while at the hospital.
94	Emergency Term Order for Hospital Isolation	A patient is suspected of being infected with a highly contagious disease and must be put in isolation at the hospital for a certain amount of time.
97	Emergency Temporary Order for Hospital Quarantine	Respondent is suspected of being infected with a contagious disease and must be put under Hospital Quarantine.
100	Emergency Term Order for Hospital Quarantine	Respondent is suspected of being infected with a contagious disease and must be put under Hospital Quarantine.
103	Emergency Temporary Order for Home Quarantine	Respondent is suspected of being infected with a contagious disease and must be put under Home Quarantine.
106	Emergency Term Order for Home Quarantine	Respondent is suspected of being infected with a contagious disease and must be put under Home Quarantine for a certain amount of time.

109	Emergency Temporary Order for Home Isolation	Respondent is suspected of being infected with a contagious disease and must be put in Temporary Home Isolation.
112	Emergency Term Order for Home Isolation	Respondent is suspected of being infected with a contagious disease and must be put in Home Isolation for a certain amount of time.
115	Procedure: Continuation of Isolation or Quarantine Order	Steps required for court order continuing isolation or quarantine orders
118	DHEC Petition for Continuation of Isolation or Quarantine Order	DHEC petitions court for a continuation of respondent's isolation or quarantine order issued during a Public Health Emergency.
123	Affidavit of Bureau of Disease Control (DHEC)	Affidavit of employee confirming Respondent's isolation and justification for such orders.
127	Affidavit of Bureau of Disease Control (DHEC)	Affidavit of employee confirming Respondent's quarantine and justification for such orders.
131	DHEC Notice of Motion and Motion for Expedited Hearing	DHEC moves to conduct an expedited hearing for the Respondent due to the urgency of the Public Health Emergency.
133	Procedure: Application for Release from Isolation or Quarantine	Steps required to apply for Rule to Show Cause why petitioner should not be released from isolation or quarantine
134	Verified Petition for Order to Show Cause	Respondent 's Application for Order to Show Cause to be released from Isolation or Quarantine
136	Order to Show Cause	DHEC must show cause why petitioner should not be released from isolation or quarantine.
137	Procedure: Application for review of conditions of isolation or quarantine	Petitioner alleges statutory requirements for conditions of isolation or quarantine have not been complied with
138	Petitioner's Request for Hearing Pursuant to S.C. Code Ann. §44-4-540(D)(2)(a)	Respondent requests hearing for isolation or quarantine conditions.
140	Commitment of Individual with Tuberculosis	Summons and Rule to Show Cause why individual should not be committed and treated involuntarily for tuberculosis
142	Verification: Commitment of Individual with Tuberculosis	Accompanies Summons and Rule To Show Cause above

143	Petition for Order of Commitment of Individual with Tuberculosis	
147	Order of Commitment of Individual with Tuberculosis	
149	Motion for Order of Destruction	Petition for court order authorizing destruction of property to eliminate source of infection
151	Affidavit to Accompany Motion for Order of Destruction	
153	Motion for Change of Venue	Required if court where venue properly lies is unavailable
154	Procedure: Condemnation of Property	
156	Condemnation Notice, Tender of Payment (DHEC)	Sample condemnation notice per Code §28-2-240.
159	Affidavit of DHEC	Affidavit to serve on respondent and file with court per Code §28-2-240.
161	Procedure: Condemnation by Appraisal Panel	
164	Condemnation Notice, Tender of Payment, Notice to Appoint Appraiser	Sample condemnation notice of property per Code §28-2-250.
164	Notice of Determination of Appraisal Panel (Notice of Appeal or Notice to Elect)	Sample notice of appraisal panel report per Code §28-2-290 determining just compensation of subject property.

Consent Order for Home Quarantine

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
)
)
)
)
IN RE: JOHN DOE, Respondent)
_____)

**BEFORE THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL**

**CONSENT ORDER FOR
HOME QUARANTINE**

- 1) The Department of Health and Environmental Control (DHEC) has reason to believe that you have been potentially exposed to a contagious disease. Specifically, you are suspected of
- having been exposed to _____ as a result of _____

If you have been exposed to this contagious disease, you could spread the disease to other people and put their health at risk.

- 2) In order to prevent the spread of this contagious disease and to protect the health of others in the community, you have agreed to place yourself in a Voluntary Home Quarantine.
- 3) By signing this order below, you have agreed to a Consent Order for Home Quarantine under
- the conditions specified in this order, commencing on _____, and lasting until _____, unless you develop symptoms.
- 4) If you develop symptoms of _____, it is recommended that you immediately receive appropriate health care, notify DHEC, and be placed under isolation to prevent the spread of the disease.
- 5) You have agreed to a Home Quarantine at the following location: _____
-
- 6) During the period of Home Quarantine:
A. You must not leave your home at any time.

- B. You or your authorized representative must remain reachable by telephone at all times and answer and respond fully and truthfully to telephone calls and questions from DHEC staff and other persons acting on behalf of DHEC.
- C. You must avoid contact with anyone except the following persons:
- (i) Family members and other persons who reside in your home;
 - (ii) healthcare providers;
 - (iii) authorized DHEC staff or other persons acting on behalf of DHEC;
and
 - (iv) such other persons as authorized by DHEC.
- D. You should arrange by telephone for relatives, neighbors, or friends to assist with any needs you may have during the period of confinement. These persons should not have direct contact with you. If you need assistance in providing for your daily needs, you should call _____, DHEC, [phone number].
- E. You must monitor your health status and follow the directions contained in the attached Guidelines for Home Care for Pandemic Flu which are also applicable to your circumstances.
- F. You will have access to medical care during the period of Home Quarantine. If you develop symptoms listed in Attachment A, you should immediately call _____, DHEC, [phone number], for additional medical information and instruction. You must inform the operator and the hospital that you are under Home Quarantine Order.
- G. If emergency medical treatment is required for conditions other than those listed in this paragraph (e.g. chest pain or severe accidental injury at home), you should call 911 for an ambulance. When seeking such assistance, you must inform the operator of the 911 line and the ambulance crew that you are under a Voluntary Home Quarantine Order.
- H. If other persons reside in your home, you must maintain good personal hygiene at all times, including complying with the directions contained in Attachment A, to prevent disease transmission.
- J. You or your authorized representative should inform your employer that you are under a Voluntary Home Quarantine Order and are not authorized to go to work.

- 7) During this period, doctors and nurses might come to your home, and you might be asked to have a medical exam, and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens may determine whether or not you have been exposed.
- 8) You may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative
 _____ Telephone
 _____ Email

- 9) Although you are agreeing to comply with this Consent Order for Home Quarantine, it is a binding order, and DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing this order. Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony. If during the quarantine, you object to any of the terms of the quarantine, you or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).
- 10) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

 DHEC Regional Health Director

 Date and Time

 Respondent or Parent if respondent is a minor

 Date and Time

Consent Order for Hospital Quarantine

STATE OF SOUTH CAROLINA)

)

COUNTY OF _____)

**BEFORE THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL**

**CONSENT ORDER FOR
HOSPITAL QUARANTINE**

IN RE: JOHN DOE, Respondent

- 1) The Department of Health and Environmental Control (DHEC) has reason to believe that you have been potentially exposed to a contagious disease. Specifically, you are suspected of having been exposed to _____ as a result of _____
_____. If you have been exposed to this contagious disease, you could spread the disease to other people and put their health at risk.
- 2) In order to prevent the spread of this contagious disease and to protect the health of others in the community, you have agreed to place yourself in a Voluntary Hospital Quarantine.
- 3) By signing this order below, you have agreed to a Consent Order for Hospital Quarantine under the conditions specified in this order, commencing on _____, (date and time)

lasting until _____, (date and time) unless you develop symptoms.
- 4) If you develop symptoms of _____, it is recommended that you immediately receive appropriate health care, notify DHEC, and be placed under isolation to prevent the spread of the disease.
- 5) You have agreed to a Hospital Quarantine at the following location:
_____.
- 6) During the period of Hospital Quarantine:
 - A. You must not leave the hospital at any time.
 - B. You must avoid contact with anyone except the following persons:

- (i) Family members or authorized visitors who are under a similar quarantine order or who have been provided with appropriate personal protective equipment;
- (ii) authorized healthcare providers;
- (iii) authorized DHEC staff or other persons acting on behalf of DHEC; and
- (iii) such other persons as authorized by DHEC.

C. During your Hospital Quarantine period, doctors and nurses may ask you to undergo medical exams and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens might determine whether or not you can spread the disease to other people.

D. You or your authorized representative should inform your employer that you are under a Voluntary Hospital Quarantine Order and are not authorized to go to work.

7) You may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative
 _____ Telephone
 _____ Email

8) Although you are agreeing to comply with this Consent Order for Hospital Quarantine, it is a binding order, and DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing this order. Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony. If during the quarantine, you object to any of the terms of the quarantine, you or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).

9) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

_____ DHEC Regional Health Director

_____ Date and Time

_____ Respondent or Parent if respondent is a minor

_____ Date and Time

Consent Order for Working Quarantine

STATE OF SOUTH CAROLINA)

)

COUNTY OF _____)

**BEFORE THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL**

**CONSENT ORDER FOR
WORKING QUARANTINE**

IN RE: JOHN DOE, Respondent

- 1) The Department of Health and Environmental Control (DHEC) has reason to believe that you have been potentially exposed to a contagious disease. Specifically, you are suspected of having been exposed to _____ as a result of _____
_____. If you have been exposed to this contagious disease, you could spread the disease to other people and put their health at risk.
- 2) You are employed by _____ at _____. By virtue of this employment, your skills are essential. In order to continue working while preventing the spread of this contagious disease and protecting the health of others in the community, you have agreed to place yourself in a Voluntary Working Quarantine.
- 3) By signing this order below, you have agreed to a Consent Order for Working Quarantine under the conditions specified in this order, commencing on _____, (date and time) lasting until _____, (date and time) unless you develop symptoms.
- 4) If you develop symptoms of _____, notify _____ immediately. You will receive appropriate health care and be placed under isolation to prevent the spread of the disease.
- 5) You have agreed to a Working Quarantine at the following location:
_____.
- 6) During the period of Working Quarantine:
 - A. You may work at _____; during off-duty hours you must remain at _____. You (may provide your own transportation) (will be provided transportation between _____ and _____.) You must not leave the venues of the Working Quarantine at any time.

B. You must avoid contact with anyone except the following persons:

- (i) Family members or authorized visitors who are under a similar quarantine order or who have been provided with appropriate personal protective equipment;
- (ii) authorized healthcare providers;
- (iii) authorized co-workers also under Working Quarantine, DHEC staff or other persons acting on behalf of DHEC;
- (iv) individuals to whom you are providing (public health)(public safety)(other specified services) and
- (v) such other persons as authorized by DHEC.

C. During your Working Quarantine period, doctors and nurses may ask you to undergo medical exams and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens might determine whether or not you can spread the disease to other people.

- 7) You may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative

_____ Telephone

_____ Email

- 8) Although you are agreeing to comply with this Consent Order for Working Quarantine, it is a binding order, and DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing this order. Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony. If during the quarantine, you object to any of the terms of the quarantine, you or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).

- 9) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

DHEC Regional Health Director

Date and Time

Emergency Temporary Order for Hospital Isolation

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

**BEFORE THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL**

**EMERGENCY TEMPORARY ORDER
FOR HOSPITAL ISOLATION**

IN RE: _____, Patient.
_____)
_____)

- 1) The Department of Health and Environmental Control (DHEC) knows or suspects (via signs, symptoms, or laboratory criteria) that you have been infected with _____. Unfortunately, this is a highly contagious disease. If you have direct contact with other people, you could spread the disease and put their health at risk.

- 2) In order to prevent the spread of this contagious disease and to protect the health of others in the community, DHEC has determined that you must be placed in Temporary Hospital Isolation in accordance with S.C. Code of Laws, Sections 44-1-80, 44-1-110, 44-1-140, and 44-4-510 to -540 and S.C. Regulations 61-20 and 61-112, §

- 3) You will be Hospital Isolated under the conditions specified in this order for six hours, commencing on _____ (date and time), and lasting until _____ (date and time), unless you are released from this Order. If additional time is needed to obtain laboratory test results or assess the situation, this order may be extended for one additional six hour period.

- 4) You will be in Temporary Hospital Isolation at the following location:

(Facility Name, Address, and Room Number)

- 5) During the period of Hospital Isolation:
 - A. You must not leave the hospital at any time unless you have received prior written authorization from DHEC to do so.

B. Family members or other representatives will not be permitted to remove you from the hospital unless you have received prior written authorization from DHEC.

C. You must not come into contact with anyone except the following persons:

- (i) Family members or authorized visitors who are under a similar isolation order or who have been provided with appropriate personal protective equipment;
- (ii) authorized healthcare providers;
- (iii) authorized DHEC staff or other persons acting on behalf of DHEC; and
- (iii) such other persons as authorized by DHEC.

D. You should inform your employer that you are under Hospital Isolation and are not authorized to go to work.

- 6) During your Hospital Isolation period, doctors and nurses will ask you to undergo medical exams and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens might determine whether or not you can spread the disease to other people.
- 7) A copy of the placard attached to this order will be posted at the entrance to your room for the period of your Hospital Isolation.
- 8) You or your authorized representative may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative

_____ Telephone

_____ Email

- 9) You or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).
- 10) Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony.

11) DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing and carrying out isolation and quarantine orders.

12) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

IT IS SO ORDERED.

Regional Health Director

Date of Issuance of Order

This order delivered in person:

By _____

Date and Time Delivered

This order was received by:

By _____
Patient or Representative

Date and Time Received

- (i) Family members or authorized visitors who are under a similar isolation order or who have been provided with appropriate personal protective equipment;
- (ii) authorized healthcare providers;
- (iii) authorized DHEC staff or other persons acting on behalf of DHEC; and
- (iii) such other persons as authorized by DHEC.

D. You should inform your employer that you are under Hospital Isolation and are not authorized to go to work.

- 6) During your Hospital Isolation period, doctors and nurses will ask you to undergo medical exams and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens might determine whether or not you can spread the disease to other people.
- 7) A copy of the placard attached to this order will be posted at the entrance to your room for the period of your Hospital Isolation.
- 8) You or your authorized representative may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative

_____ Telephone

_____ Email

- 9) You or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).
- 10) Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony.
- 11) DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing and carrying out isolation and quarantine orders.
- 12) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

IT IS SO ORDERED.

Director or Designee

Date and Time

This order delivered in person:

By _____

Date and Time Delivered

This order was received by:

By _____

Patient or Representative

Date and Time Received

Emergency Temporary Order for Hospital Quarantine

STATE OF SOUTH CAROLINA)

**BEFORE THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL**

COUNTY OF _____)

**EMERGENCY TEMPORARY ORDER
FOR HOSPITAL QUARANTINE**

IN RE: JOHN DOE, Respondent.

1) The Department of Health and Environmental Control (DHEC) has reason to believe that you have been potentially exposed to a contagious disease. Specifically, you are suspected of having been exposed to _____ as a result of

_____. If you have been exposed to this contagious disease, you could spread the disease to other people and put their health at risk.

2) In order to prevent the spread of this contagious disease and to protect the health of others in the community, DHEC has determined that you must be placed in Hospital Quarantine in accordance with S.C. Code of Laws, Sections 44-1-80, 44-1-110, 44-1-140, and 44-4-510 to -540 and S.C. Regulations 61-20 and 61-112, §

3) You will be in Hospital Quarantine under the conditions specified in this order for six hours,

commencing on _____ (date and time), and lasting until _____ (date and time) unless you develop symptoms or are released from this order. If additional time is needed to obtain laboratory test results or assess the situation, this order may be extended for one additional six hour period.

4) If you develop symptoms of _____, you will be placed in Isolation to prevent the spread of the disease.

5) You will be in Hospital Quarantine at the following location:

_____.

6) During the period of Hospital Quarantine:

A. You must not leave the hospital at any time unless you have received prior written authorization from DHEC to do so.

B. Family members or other representatives will not be permitted to remove you from the hospital unless you have received prior written authorization from DHEC.

C. You must not come into contact with anyone except the following persons:

- (i) Family members or authorized visitors who are under a similar quarantine order or who have been provided with appropriate personal protective equipment;
- (ii) authorized healthcare providers;
- (iii) authorized DHEC staff or other persons acting on behalf of DHEC; and
- (iii) such other persons as authorized by DHEC.

D. You should inform your employer that you are under Hospital Quarantine and are not authorized to go to work.

- 7) During this period, doctors and nurses might come to your home, and you might be asked to have a medical exam, and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens may determine whether or not you have been exposed.
- 8) A copy of the placard attached to this order will be posted at the entrance to your room for the period of your Hospital Quarantine.
- 9) You may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative

_____ Telephone

_____ Email

- 10) You or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).
- 11) Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony.
- 12) DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing and carrying out isolation and quarantine orders.

13) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

IT IS SO ORDERED.

_____	_____
Regional Health Director	Date of Issuance of Order
This order delivered in person:	
By _____	_____
	Date and Time Delivered
This order was received by:	
By _____	_____
Respondent or Representative	Date and Time Received

Emergency Term Order for Hospital Quarantine

STATE OF SOUTH CAROLINA)

**BEFORE THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL**

COUNTY OF _____)

**EMERGENCY TERM ORDER
FOR HOSPITAL QUARANTINE**

IN RE: JOHN DOE, Respondent.

- 1) The Department of Health and Environmental Control (DHEC) has reason to believe that you have been potentially exposed to a contagious disease. Specifically, you are suspected of having been exposed to **[disease]** as a result of **[cause of exposure]**. If you have been exposed to this contagious disease, you could spread the disease to other people and put their health at risk.
- 2) In order to prevent the spread of this contagious disease and to protect the health of others in the community, DHEC has determined that you must be placed in Hospital Quarantine in accordance with S.C. Code of Laws, Sections 44-1-80, 44-1-110, 44-1-140, and 44-4-510 to -540 and S.C. Regulations 61-20 and 61-112, §
- 3) You will be in Hospital Quarantine under the conditions specified in this order, commencing on **[month day time]**, and lasting until **[month day time of end of incubation period]**, unless you develop symptoms or are released from this order.
- 4) If you develop symptoms of **[disease]**, you will be placed in Isolation to prevent the spread of the disease.
- 5) You will be in Hospital Quarantine at the following location:

_____.

- 6) During the period of Hospital Quarantine:
 - A. You must not leave the hospital at any time unless you have received prior written authorization from DHEC to do so.

B. Family members or other representatives will not be permitted to remove you from the hospital unless you have received prior written authorization from DHEC.

C. You must not come into contact with anyone except the following persons:

- (i) Family members or authorized visitors who are under a similar quarantine order or who have been provided with appropriate personal protective equipment;
- (ii) authorized healthcare providers;
- (iii) authorized DHEC staff or other persons acting on behalf of DHEC; and
- (iii) such other persons as authorized by DHEC.

D. You should inform your employer that you are under Hospital Quarantine and are not authorized to go to work.

- 7) During this period, doctors and nurses might come to your home, and you might be asked to have a medical exam, and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens may determine whether or not you have been exposed.
- 8) A copy of the placard attached to this order will be posted at the entrance to your room for the period of your Hospital Quarantine.
- 9) You may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative

_____ Telephone

_____ Email

10) You or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).

11) Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony.

12) DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing and carrying out isolation and quarantine orders.

13) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

IT IS SO ORDERED.

Regional Health Director

Date of Issuance of Order

This order delivered in person:

By _____

Date and Time Delivered

This order was received by:

By _____
Respondent or Representative

Date and Time Received

Emergency Temporary Order for Home Quarantine

STATE OF SOUTH CAROLINA)

**BEFORE THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL**

COUNTY OF _____)

**EMERGENCY TEMPORARY ORDER
FOR HOME QUARANTINE**

IN RE: JOHN DOE, Respondent.

1) The Department of Health and Environmental Control (DHEC) has reason to believe that you have been potentially exposed to a contagious disease. Specifically, you are suspected of having been exposed to _____ as a result of _____.

If you have been exposed to this contagious disease, you could spread the disease to other people and put their health at risk.

2) In order to prevent the spread of this contagious disease and to protect the health of others in the community, DHEC has determined that you must be placed in Home Quarantine in accordance with S.C. Code of Laws, Sections 44-1-80, 44-1-110, 44-1-140, and 44-4-510 to -540 and S.C. Regulations 61-20 and 61-112, §

3) You will be Home Quarantined under the conditions specified in this order for six hours, commencing on _____ (date and time), and lasting until _____ (date and time), unless you develop symptoms or are released from this order. If additional time is needed to obtain laboratory test results or assess the situation, this order may be extended for one additional six hour period.

4) If you develop symptoms of _____, you will be placed in Isolation to prevent the spread of the disease.

5) You will be Home Quarantined at the following location:

(Respondent's Home Address.)

6) During the period of Home Quarantine:

A. You must not leave your home at any time unless you have received prior authorization from DHEC to do so.

- B. You or your authorized representative must remain reachable by telephone at all times and answer and respond fully and truthfully to telephone calls and questions from DHEC staff and other persons acting on behalf of DHEC.
- C. You must not come into contact with anyone except the following persons:
- (i) Family members and other persons who reside in your home, or authorized visitors;
 - (ii) authorized healthcare providers;
 - (iii) authorized DHEC staff or other persons acting on behalf of DHEC; and
 - (iv) such other persons as authorized by DHEC.
- D. You should arrange by telephone for relatives, neighbors, or friends to assist with any needs you may have during the period of confinement. These persons should not have direct contact with you. If you need assistance in providing for your daily needs, you should call _____.
- E. You must monitor your health status and follow the directions contained in the attached Guidelines for Home Care for Pandemic Flu which are also applicable to your circumstances.
- F. You will have access to medical care during the period of Home Quarantine. If you develop symptoms listed in Attachment A, you should immediately call _____ for additional medical information and instruction. You must inform the operator and the hospital that you are under Home Quarantine Order.
- G. If emergency medical treatment is required for conditions other than those listed in this paragraph (e.g. chest pain or severe accidental injury at home), you should call 911 for an ambulance. When seeking such assistance, you must inform the operator of the 911 line and the ambulance crew that you are under Home Quarantine Order.
- H. If other persons also reside in your home, you must maintain good personal hygiene at all times, including complying with the directions contained in Attachment A, to prevent disease transmission.
- J. You or your authorized representative should inform your employer that you are under Home Quarantine and are not authorized to go to work.

- 7) During this period, doctors and nurses might come to your home, and you might be asked to have a medical exam, and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens may determine whether or not you have been exposed.
- 8) A copy of the placard attached to this order will be posted at the entrance to your house for the period of your Home Quarantine.
- 9) You may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative
 _____ Telephone
 _____ Email

- 10) You or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).
- 11) Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony.
- 12) DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing and carrying out isolation and quarantine orders.
- 13) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

IT IS SO ORDERED.

_____ Date of Issuance of Order
 Regional Health Director

This order delivered in person:
 By _____
 Date and Time Delivered

This order was received by:
 By _____
 Respondent or Representative Date and Time Received

- C. You must not come into contact with anyone except the following persons:
- (i) Family members and other persons who reside in your home, or authorized visitors;
 - (ii) authorized healthcare providers;
 - (iii) authorized DHEC staff or other persons acting on behalf of DHEC; and
 - (iv) such other persons as authorized by DHEC.
- D. You should arrange by telephone for relatives, neighbors, or friends to assist with any needs you may have during the period of confinement. These persons should not have direct contact with you. If you need assistance in providing for your daily needs, you should call [**phone number**].
- E. You must monitor your health status and follow the directions contained in the attached Guidelines for Home Care for Pandemic Flu which are also applicable to your circumstances.
- F. You will have access to medical care during the period of Home Quarantine. If you develop symptoms listed in Attachment A, you should immediately call _____ for additional medical information and instruction. You must inform the operator and the hospital that you are under Home Quarantine Order.
- G. If emergency medical treatment is required for conditions other than those listed in this paragraph (e.g. chest pain or severe accidental injury at home), you should call 911 for an ambulance. When seeking such assistance, you must inform the operator of the 911 line and the ambulance crew that you are under Home Quarantine Order.
- H. If other persons also reside in your home, you must maintain good personal hygiene at all times, including complying with the directions contained in Attachment A, to prevent disease transmission.
- J. You or your authorized representative should inform your employer that you are under Home Quarantine and are not authorized to go to work.
- 7) During this period, doctors and nurses might come to your home, and you might be asked to have a medical exam, and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens may determine whether or not you have been exposed.

- 8) A copy of the placard attached to this order will be posted at the entrance to your house for the period of your Home Quarantine.
- 9) You may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative

_____ Telephone

_____ Email

- 10) You or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).
- 11) Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony.
- 12) DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing and carrying out isolation and quarantine orders.
- 13) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

DHEC Director or Designee

Date and Time

This order delivered in person:

By _____

Date and Time Delivered

This order was received by:

By _____
Respondent or Representative

Date and Time Received

Emergency Temporary Order for Home Isolation

STATE OF SOUTH CAROLINA)

)

COUNTY OF _____)

**BEFORE THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL**

)

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**EMERGENCY TEMPORARY ORDER
FOR HOME ISOLATION**

IN RE: _____, Respondent.)

1) The Department of Health and Environmental Control (DHEC) knows or suspects (via signs, symptoms, or laboratory criteria) that you have been infected with _____. Unfortunately, this is a highly contagious disease. If you have direct contact with other people, you could spread the disease and put their health at risk.

2) In order to prevent the spread of this contagious disease and to protect the health of others in the community, DHEC has determined that you must be placed in Temporary Home Isolation in accordance with S.C. Code of Laws, Sections 44-1-80, 44-1-110, 44-1-140, and 44-4-510 to -540 and S.C. Regulations 61-20 and 61-112, §

3) You will be Home Isolated under the conditions specified in this order for six hours, commencing on _____(date and time), and lasting until _____(date and time), unless you are released from this order. If additional time is needed to obtain laboratory test results or assess the situation, this order may be extended for one additional six hour period.

4) You will be in Temporary Home Isolation at the following location:

(Respondent’s Home Address.)

5) During the period of Home Isolation:

A. You must not leave the place of Home Isolation at any time unless you have received prior written authorization from DHEC to do so.

B. Family members or other representatives will not be permitted to remove you from the place of Home Isolation unless you have received prior written authorization from DHEC.

C. You or your authorized representative must remain reachable by telephone at all times and answer and respond fully and truthfully to telephone calls and questions from DHEC staff and other persons acting on behalf of DHEC.

D. You must not come into contact with anyone except the following persons:

- (i) Family members or authorized visitors who are under a similar isolation order or who have appropriate personal protective equipment;
- (ii) authorized healthcare providers;
- (iii) authorized DHEC staff or other persons acting on behalf of DHEC; and
- (iii) such other persons as authorized by DHEC.

E. You should inform your employer that you are under Home Isolation and are not authorized to go to work.

F. You should arrange by telephone for relatives, neighbors, or friends to assist with any needs you may have during the period of confinement. These persons should not have direct contact with you. If you need assistance in providing for your daily needs, you should call _____.

G. You must monitor your health status and follow the directions contained in the attached Guidelines for Home Care for Pandemic Flu which are also applicable to your circumstances.

H. You will have access to medical care during the period of Home Isolation. If you develop symptoms listed in Attachment A, you should immediately call _____ for additional medical information and instruction. You must inform the operator and the hospital that you are under a Home Isolation Order.

I. If emergency medical treatment is required for conditions other than those listed in this paragraph (e.g. chest pain or severe accidental injury at home), you should call 911 for an ambulance. When seeking such assistance, you must inform the operator of the 911 line and the ambulance crew that you are under Home Quarantine Order.

J. If other persons also reside in your home, you must maintain good personal hygiene at all times, including complying with the directions contained in Attachment A, to prevent disease transmission.

- 6) During this period, doctors and nurses might come to your home, and you might be asked to have a medical exam, and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens may determine whether or not you have been infected or are still contagious.
- 7) A copy of the placard attached to this order will be posted at the entrance to your house for the period of your Home Isolation.
- 8) You may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative
 _____ Telephone
 _____ Email

- 9) You or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).
- 10) Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony.
- 11) DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing and carrying out isolation and quarantine orders.
- 12) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

IT IS SO ORDERED.

_____ Date of Issuance of Order
 Regional Health Director

This order delivered in person:
 By _____ Date and Time Delivered

This order was received by:
 By _____ Date and Time Received
 Patient or Representative

Emergency Term Order for Home Isolation

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

**BEFORE THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL**

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**EMERGENCY TERM ORDER
FOR HOME ISOLATION**

IN RE: _____, **Respondent.**)

- 1) The Department of Health and Environmental Control (DHEC) knows or suspects (via signs, symptoms, or laboratory criteria) that you have been infected with **[disease]**. Unfortunately, this is a highly contagious disease. If you have direct contact with other people, you could spread the disease and put their health at risk.
- 2) In order to prevent the spread of this contagious disease and to protect the health of others in the community, DHEC has determined that you must be placed in Term Home Isolation in accordance with S.C. Code of Laws, Sections 44-1-80, 44-1-110, 44-1-140, and 44-4-510 to -540 and S.C. Regulations 61-20 and 61-112, §
- 3) You will be Home Isolated under the conditions specified in this order, commencing on **[month day time]**, and lasting until **[month day time of end of communicability period]**, unless you are released from this order.
- 4) You will be in Home Isolation at the following location:

(Respondent's Home Address.)
- 5) During the period of Home Isolation:
 - A. You must not leave the place of Home Isolation at any time unless you have received prior written authorization from DHEC to do so.
 - B. Family members or other representatives will not be permitted to remove you from the place of Home Isolation unless you have received prior written authorization from DHEC.

- C. You or your authorized representative must remain reachable by telephone at all times and answer and respond fully and truthfully to telephone calls and questions from DHEC staff and other persons acting on behalf of DHEC.
- D. You must not come into contact with anyone except the following persons:
- (i) Family members or authorized visitors who are under a similar isolation order or who have appropriate personal protective equipment;
 - (ii) authorized healthcare providers;
 - (iii) authorized DHEC staff or other persons acting on behalf of DHEC;
and
 - (iii) such other persons as authorized by DHEC.
- E. You should inform your employer that you are under Home Isolation and are not authorized to go to work.
- F. You should arrange by telephone for relatives, neighbors, or friends to assist with any needs you may have during the period of confinement. These persons should not have direct contact with you. If you need assistance in providing for your daily needs, you should call [**phone number**].
- G. You must monitor your health status and follow the directions contained in the attached Guidelines for Home Care for Pandemic Flu which are also applicable to your circumstances.
- H. You will have access to medical care during the period of Home Isolation. If you develop symptoms listed in Attachment A, you should immediately call _____ for additional medical information and instruction. You must inform the operator and the hospital that you are under a Home Isolation Order.
- I. If emergency medical treatment is required for conditions other than those listed in this paragraph (e.g. chest pain or severe accidental injury at home), you should call 911 for an ambulance. When seeking such assistance, you must inform the operator of the 911 line and the ambulance crew that you are under Home Quarantine Order.
- J. If other persons also reside in your home, you must maintain good personal hygiene at all times, including complying with the directions contained in Attachment A, to prevent disease transmission.

- 6) During this period, doctors and nurses might come to your home, and you might be asked to have a medical exam, and to provide bodily specimens, such as blood or sputum for analysis. The medical exam and specimens may determine whether or not you have been infected or are still contagious.
- 7) A copy of the placard attached to this order will be posted at the entrance to your house for the period of your Home Isolation.
- 8) You may contact the following representative of the Department of Health and Environmental Control to seek clarification of any part of this order.

_____ DHEC Representative
 _____ Telephone
 _____ Email

- 9) You or your authorized representative may seek judicial relief from this order pursuant to S.C. Code Ann. § 44-4-540(D)(1) or (2).
- 10) Pursuant to S.C. Code of Laws, Section 44-4-530(C), violation of this order is a criminal felony.
- 11) DHEC is authorized under S.C. Code of Laws, Section 44-1-100, to request the assistance of sheriffs and police officers to assist the Department in enforcing and carrying out isolation and quarantine orders.
- 12) A copy of Article V of the Emergency Health Powers Act and relevant definitions is attached to this order as required by S.C. Code Ann. § 44-4-540(B)(2)(v).

IT IS SO ORDERED.

_____ Date and Time
 Director or Designee

This order delivered in person:
 By _____ Date and Time Delivered

This order was received by:
 By _____ Date and Time Received
 Patient or Representative

Procedure: DHEC Petition for Continuation of an Isolation or Quarantine Order

	<u>Procedural Step</u>	<u>S.C. Code Section</u>
1.	DHEC issues an emergency order of isolation or quarantine.	Section 44-4-540(B)(1).
2.	<p>The emergency order of isolation or quarantine must specify the following:</p> <ul style="list-style-type: none"> 1) the identity of the individual or groups of individuals subject to isolation or quarantine; 2) the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; 3) the suspected contagious disease, if known; and 4) a copy of Article V of this act and relevant definitions of this act. 	Section 44-4-540(B)(2).
3.	<p>A copy of the emergency order is given to the individual or groups of individuals to be isolated or quarantined.</p> <p>If impractical to be given to a group of individuals, it may be posted in a conspicuous place in the isolation or quarantine premises.</p>	Section 44-4-540(B)(3).
4.	<p>Within ten days after issuing the emergency order, DHEC must file a petition in the trial court for an order authorizing the continued isolation or quarantine.</p> <p>The trial court is the circuit court for the county in which the isolation or quarantine is to occur or to the circuit court for county in which a Public Health Emergency has been declared.</p>	Sections 44-4-540(B)(4) 44-4-130(W).

5.	<p>A petition for continuation of isolation or quarantine must contain the following:</p> <ol style="list-style-type: none"> 1) the identity of the individual or groups of individuals subject to isolation or quarantine; 2) the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; 3) the suspected contagious disease, if known; a statement of compliance with the conditions and principles for isolation or quarantine of Section 44-4-530(B); 4) a statement of the basis upon which isolation or quarantine is justified in compliance with this article; and 5) a sworn affidavit of DHEC attesting to the facts asserted in the petition. 	Section 44-4-540(C)(2).
6.	<p>DHEC must provide notice to individuals identified in the petition within twenty-four hours in accordance with the South Carolina Rules of Civil Procedure.</p> <p>If notice by mail or fax is not possible, notice must be made by personal service.</p>	Section 44-4-540(C)(3).
7.	<p>A hearing must be held on the petition within five days of filing of the petition.</p> <p>In extraordinary circumstances and for good cause shown, DHEC may apply to continue the hearing date for up to ten days.</p> <p>The court may grant a continuance in its discretion giving due regard to the following:</p> <ul style="list-style-type: none"> the rights of the affected individuals, the protection of the public's health, the severity of the emergency, and the availability of necessary witnesses and 	Section 44-4-540(C)(4).

	evidence.	
8.	The court must grant the petition if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease.	Section 44-4-540(C)(5)(a).
9.	A court order granting a petition to continue isolation or quarantine must include the following: 1) identify the isolated or quarantined individuals or groups of individuals by name or shared or similar characteristics or circumstances; 2) specify factual findings warranting isolation or quarantine pursuant to this act; and 3) any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this act.	Sections 44-4-540(C)(5)(c)(i)-(iii).
10.	A court order authorizing isolation or quarantine may not exceed 30 days.	Section 44-4-540(C)(5)(b).
11.	A court order authorizing isolation or quarantine must be served on affected individuals in accordance with the South Carolina Rules of Civil Procedure. If notice by mail or fax is not possible, notice must be made by personal service.	Section 44-4-540(C)(5)(c)(iv).
12.	Prior to the expiration of the 30 days, DHEC may move to continue the isolation or quarantine for additional periods of no more than 30 days each.	Section 44-4-540(C)(5)(d).

DHEC Petition for Continuation of Isolation or Quarantine Order

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

COUNTY OF _____)

Civil Case No.:

South Carolina Department of Health and)
Environmental Control,)

Petitioner,)

vs.)

PERSON,)

Respondent.)

**DHEC Petition for Continuation of
Isolation or Quarantine Order
(Injunction – Non-Jury)**

The South Carolina Department of Health and Environmental Control, petitions this honorable Court for continuation of Isolation or Quarantine Order issued during a Statewide Public Health Emergency. In support of this petition, DHEC would show this Honorable Court that:

LEGAL BACKGROUND

- 1) The Department of Health and Environmental Control (DHEC or the Department) is an agency of the State charged with, among other things, the protection of the public health within South Carolina. S.C. Code Ann. §§ 44-1-20 and 44-1-110.
- 2) DHEC is also charged with significant public health responsibilities under the Emergency Health Powers Act during a Governor declared “Public Health Emergency.” S.C. Code Ann. §§ 44-4-100 to -570.
- 3) DHEC must investigate the reported causes of communicable or epidemic disease and must enforce or prescribe these preventive measures as may be needed to suppress or

- prevent the spread of these diseases by proper quarantine or other measures of prevention, as may be necessary to protect the citizens of the State. S.C. Code Ann. §§ 44-1-80.
- 4) DHEC can declare any place infected with a communicable disease and must place restrictions upon ingress and egress of persons as may be necessary to prevent the spread of disease from the infected locality. S.C. Code Ann. § 44-1-80.
 - 5) DHEC shall supervise and control the quarantine system of the State, and it may establish quarantine both by land and sea. S.C. Code Ann. § 44-1-110.
 - 6) “The Governor . . . shall, by proclamation, declare that, because of . . . a Public Health Emergency, as defined in Section 44-4-130, a danger exists to the person or property of any citizen and that the peace and tranquility of the State . . . is threatened, and because thereof an emergency, with reference to such threats and danger, exists.” S.C. Code Ann. § 1-3-420.
 - 7) “The Governor, when an emergency has been declared . . . is responsible for the safety, security, and welfare of the State and is empowered with the following additional authority to adequately discharge this responsibility: (2) declare a state of emergency for all or part of the State if he finds . . . a Public Health Emergency, as defined in Section 44-4-130, has occurred, or that the threat thereof is imminent, and extraordinary measures are considered necessary to cope with the existing or anticipated situation.” S.C. Code Ann. § 25-1-440(a)(2).
 - 8) Public Health Emergency means the occurrence or imminent risk of a qualifying health condition. S.C. Code Ann. § 44-4-130(P).
 - 9) Qualifying health condition means an illness or health condition that may be caused

by terrorism, epidemic or pandemic disease, or a novel infectious agent or biological or chemical agent and that poses a substantial risk of a significant number of human fatalities, widespread illness, or serious economic impact to the agricultural sector, including food supply. S.C. Code Ann. § 44-4-130(R).

10) During a state of Public Health Emergency, DHEC must use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment. S.C. Code Ann. § 44-4-500.

11) During a Public Health Emergency, DHEC may isolate or quarantine an individual or groups of individuals and establish and maintain places of isolation and quarantine, and set rules and make orders. S.C. Code Ann. § 44-4-530(A).

12) DHEC may temporarily isolate or quarantine an individual or groups of individuals through an emergency order signed by the commissioner or his designee, if delay in imposing the isolation or quarantine would significantly jeopardize DHEC's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others. S.C. Code Ann. § 44-4-540(B)(1).

13) Within ten days after issuing the emergency order, DHEC must file a petition pursuant to Subsection 540(C) of this section for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals. S.C. Code Ann. § 44-4-540(B)(4).

BASIS OF PETITION FOR CONTINUATION

14) On MONTH, DAY, YEAR, the Governor declared that a [state of emergency AND/OR a Public Health Emergency] exists in [the State of South Carolina] OR [_____ County].

15) On MONTH, DAY, YEAR, DHEC issued a [Home Isolation/Quarantine Order] OR [Hospital Isolation Order] OR [Working Quarantine Order] OR [Wide Area Quarantine Order] to [PERSON OR GROUP].

16) DHEC issued the [ORDER] because (1) FOR ISOLATION: DHEC knows or suspects (via signs, symptoms, or laboratory criteria) that [PERSON OR GROUP] **have/has** been infected with [**disease**] or (2) FOR QUARANTINE: DHEC believes [PERSON OR GROUP] **have/has** have been potentially exposed to [**disease**].

17) [PERSON OR GROUP] will be [isolated OR quarantined] at the following location:

18) The [isolation OR quarantine] began at TIME on MONTH, DAY, YEAR, and (1) FOR ISOLATION: will last until [**month, day, time of end of communicability period**], unless [PERSON OR GROUP] **are/is** released from this order OR (2) FOR QUARANTINE will last until [**month, day, time of end of incubation period**], unless [PERSON OR GROUP] **develop/develops** symptoms or **are/is** released from this order.

19) DHEC, in cooperation and coordination with other agencies, has complied, and will continue to comply, with the conditions and principles for isolation and quarantine in Section 44-4-530(B).

20) DHEC contends that issuance of the [ORDER] was justified and that continuation of the [ORDER] is justified for the following reasons:

- a) On DAY, MONTH, YEAR, the first case of [**disease**] was diagnosed [and confirmed by laboratory test] in South Carolina.
- b) [**Disease**] is highly contagious and will spread rapidly through South Carolina's

population unless proper disease control measures are implemented.

- c) Isolation and quarantine are disease control measures that will help slow the spread of **[disease]** through South Carolina and the nation.
- d) As of the date of this Petition for Continuation, a vaccine is not available for **[disease]**. [OTHER MEDICINAL REMEDIES] can be used to treat individuals infected with **[disease]**, but **they/it have/has** not proven effective to control the spread of **[disease]** among the population. As a result, isolation and quarantine are the best and least restrictive disease control measures available to South Carolina to help slow the spread of **[disease]**.
- e) Because [(1) FOR ISOLATION:] [PERSON OR GROUP] **have/has** been infected with **[disease]** or [(2) FOR QUARANTINE:] [PERSON OR GROUP] **have/has** have been potentially exposed to **[disease]**, PERSON poses a serious risk to the health of individuals with whom PERSON has close bodily contact, and the continuation of the ISOLATION or QUARANTINE will minimize the risk that **[disease]** will continue to spread amongst the population of South Carolina.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth its Petition for Continuation of Isolation or Quarantine Order, the Department prays as follows:

1. For a court order authorizing the continued isolation or quarantine of [PERSON OR GROUP]; and
2. For such other and further relief as this Court deem just and reasonable.

[signature block]

CIRCUMSTANCES:]

- a. On MONTH, DAY, YEAR, the Governor declared that a [state of emergency AND/OR a Public Health Emergency] exists in [the State of South Carolina] OR [_____ County].
 - b. On MONTH, DAY, YEAR, the DHEC Director declared that a Public Health Emergency exists in [the State of South Carolina] OR [_____ County].
 - c. [IF NOBODY has declared an emergency, this paragraph should be left out.]
4. On MONTH, DAY, YEAR, DHEC issued a [Term Home Isolation OR Term Hospital Isolation Order] to [PERSON OR GROUP].
 5. DHEC issued the Isolation Order because DHEC knows or suspects (via signs, symptoms, or laboratory criteria) that [PERSON OR GROUP] **have/has** been infected with [**disease**].
 6. [PERSON OR GROUP] have been isolated at the following location:

 7. The isolation began at TIME on MONTH, DAY, YEAR, with the issuance of a temporary isolation order. Following the receipt of test results, DHEC continued the isolation at TIME on MONTH, DAY, YEAR, with the issuance of a term isolation order. The isolation will last until [**month, day, time of end of communicability period**], unless [PERSON OR GROUP] **are/is** released from this order.
 8. DHEC, in cooperation and coordination with other agencies, has complied, and will continue to comply, with the conditions and principles for isolation and quarantine in Section 44-4-530(B).
 9. DHEC contends that issuance of the two isolation orders was justified and that continuation of the term isolation order is justified for the following reasons:
 - ❖ [DIVISION OF ACUTE DISEASE EPIDEMIOLOGY and DHEC OFFICE OF GENERAL COUNSEL to complete as many of the following items as the situation allows.]
 - a. On DAY, MONTH, YEAR, the [World Organization for Animal Health] issued an alert concerning [causative agent] infections in animals. The alert stated that [causative agent] have been detected in [species of animals] in [specific area of country].
 - b. On DAY, MONTH, YEAR, [the World Health Organization] OR [the

Centers for Disease Control] issued an alert concerning [causative agent] infections in humans. The alert stated that [causative agent] have been detected in humans in [specific area of country]. The [World Health Organization] OR [Centers for Disease Control] reports that humans have been infected with [causative agent] through close contact with infected [species of animals].

- c. On DAY, MONTH, YEAR, [patient] traveled to [area of country] and was exposed to dead or alive [species].
- d. On DAY, MONTH, YEAR, [patient] traveled to [area of country] and was exposed to a confirmed or probable human case of [disease].
- e. On DAY, MONTH, YEAR, [patient] reported to [hospital], presenting with [symptoms].
- f. On DAY, MONTH, YEAR, based on the available information, DHEC suspected (via signs and symptoms) that [patient] was infected with [disease], which is a contagious disease. Based on this suspicion, DHEC issued a Temporary Hospital Isolation Order. See Attachment #1. The Temporary Hospital Isolation Order provided DHEC time to obtain specimens from [PATIENT] and transport them to the DHEC Bureau of Laboratories in Columbia, South Carolina.
- g. On DAY, MONTH, YEAR, the DHEC Bureau of Laboratories tested a specimen collected from [patient] using the [TESTING PROTOCOL TITLE] and confirmed that [patient is infected with [disease]]. See Attachment #2, Affidavit of [NAME OF LABORATORY WORKER, TITLE].
- h. Based on the laboratory confirmation, DHEC asserts that [PERSON] is infected with [disease], which is a contagious disease. Based on this suspicion, DHEC issued a Term Hospital Isolation Order on DAY, MONTH, YEAR. See Attachment #3.

10. As of the date of this Petition for Continuation, a vaccine is not available to rapidly protect contacts from [disease]. [OTHER MEDICINAL REMEDIES] can be used to treat individuals infected with [**disease**], but **they/it have/has** not proven effective to control the spread of [**disease**] amongst the population. As a result, isolation and quarantine are the best and least restrictive disease control measures available to South Carolina to help slow the spread of [**disease**] and protect the public health.

11. [**Disease**] is highly contagious and will likely spread rapidly through South

Carolina's population unless proper disease control measures such as isolation and quarantine are implemented. [DESCRIPTION OF DISEASE AND DISEASE TRANSMISSION CHARACTERISTICS].

12. Isolation is a disease control measure that will help slow the spread of [disease] through South Carolina and the nation and protect the public health.

13. Because [PERSON OR GROUP] **have/has** been infected with [disease], PERSON poses a serious risk to the health of individuals with whom PERSON has contact, and the continuation of the isolation will minimize the risk that [disease] will continue to spread amongst the population of South Carolina.

FURTHER AFFIANT SAYETH NOT.

BY: _____

[NAME]

[TITLE]

Columbia, South Carolina

_____ [Date]

Sworn to and Subscribed before me on

_____ [Date]

Print Name

Sign Name

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: _____

emergency AND/OR a Public Health Emergency] exists in [the State of South Carolina] OR [_____ County].

- b. On MONTH, DAY, YEAR, the DHEC Director declared that a Public Health Emergency exists in [the State of South Carolina] OR [_____ County].
- c. [IF NOBODY has declared an emergency, this paragraph should be left out.]

4. On MONTH, DAY, YEAR, DHEC issued a [Term Home Quarantine Order or Term Hospital Quarantine Order] to [PERSON OR GROUP].

5. DHEC issued the [ORDER] because DHEC believes [PERSON OR GROUP] **have/has** have been potentially exposed to [**disease**].

6. [PERSON OR GROUP] have been quarantined at the following location:

The quarantine began at TIME on MONTH, DAY, YEAR, with the issuance of a temporary quarantine order. Following the receipt of test results from an isolation patient, DHEC continued the quarantine at TIME on MONTH, DAY, YEAR, with the issuance of a term quarantine order. The quarantine will last until [**month, day, time of end of incubation period**] unless [PERSON OR GROUP] **develop/develops** symptoms or **are/is** released from this order.

7. DHEC, in cooperation and coordination with other agencies, has complied, and will continue to comply, with the conditions and principles for isolation and quarantine in Section 44-4-530(B).

8. DHEC contends that issuance of the two quarantine orders was justified and that continuation of the term quarantine order is justified for the following reasons:

- ❖ [DIVISION OF ACUTE DISEASE EPIDEMIOLOGY and DHEC OFFICE OF GENERAL COUNSEL to complete as many of the following items as the situation allows.]
 - a. On DAY, MONTH, YEAR, the [World Organization for Animal Health] issued an alert concerning [causative agent] infections in animals. The alert stated that [causative agent] have been detected in [species of animals] in [specific area of country].
 - b. On DAY, MONTH, YEAR, [the World Health Organization] OR [the Centers for Disease Control] issued an alert concerning [causative agent] infections in humans. The alert stated that [causative agent] have been detected in humans in [specific area of country]. The [World Health Organization] OR [Centers for Disease Control] reports that humans have been infected with [causative agent] through close contact with infected

[species of animals].

- c. On DAY, MONTH, YEAR, [ISOLATED PERSON] traveled to [area of country] and was exposed to dead or alive [species].
 - d. On DAY, MONTH, YEAR, [ISOLATED PERSON] traveled to [area of country] and was exposed to a confirmed or probable human case of [disease].
 - e. On DAY, MONTH, YEAR, based on the available information, DHEC suspected (via signs and symptoms) that [ISOLATED PERSON] was infected with [the H5N1 influenza virus OR other], which is a contagious disease. Based on this suspicion, DHEC issued a Temporary Hospital Isolation Order. See Attachment #1. The Temporary Hospital Isolation Order provided DHEC time to obtain specimens from [PATIENT] and transport them to the DHEC Bureau of Laboratories in Columbia, South Carolina.
 - f. On DAY, MONTH, YEAR, based on the epidemiological investigation, DHEC determined that [PERSON] was exposed to [disease] because [PERSON] had contact with [ISOLATED PERSON]. This contact was close and took place during the period when [ISOLATED PERSON] was shedding virus and contagious to other people. Based on this exposure, DHEC issued a Temporary Home Quarantine Order. See Attachment 2.
 - g. On DAY, MONTH, YEAR, the DHEC Bureau of Laboratories tested a specimen collected from [ISOLATED PERSON] using the [TESTING PROTOCOL TITLE] and confirmed that [patient is infected with [the H5 virus or other]]. See Attachment #3, Affidavit of [NAME OF LABORATORY WORKER, TITLE].
 - h. Based on the laboratory confirmation, DHEC asserts that [ISOLATED PERSON] is infected with [the H5 influenza virus OR other], which is a contagious disease. Based on this suspicion, DHEC issued a Term Hospital Isolation Order on DAY, MONTH, YEAR. See Attachment #4.
 - i. Based on the laboratory confirmation and the epidemiological investigation, DHEC asserts that [PERSON] has been exposed to [the H5 influenza virus OR other], which is a contagious disease. Based on this suspicion, DHEC issued a Term Home Quarantine Order on DAY, MONTH, YEAR. See Attachment #5.
9. As of the date of this Petition for Continuation, a vaccine is not available to rapidly protect contacts from [disease]. [OTHER MEDICINAL REMEDIES] can

be used to treat individuals infected with [disease], but **they/it have/has** not proven effective to control the spread of [disease] amongst the population. As a result, isolation and quarantine are the best and least restrictive disease control measures available to South Carolina to help slow the spread of [disease] and protect the public health.

10. [Disease] is highly contagious and will likely spread rapidly through South Carolina's population unless proper disease control measures such as isolation and quarantine are implemented. [DESCRIPTION OF DISEASE AND DISEASE TRANSMISSION CHARACTERISTICS].
11. Quarantine is a disease control measure that will help slow the spread of [disease] through South Carolina and the nation and protect the public health.
12. Because [PERSON OR GROUP] **have/has** been exposed to [disease], PERSON poses a serious risk to the health of individuals with whom PERSON has contact, and the continuation of the quarantine will minimize the risk that [disease] will continue to spread amongst the population of South Carolina.

FURTHER AFFIANT SAYETH NOT.

BY: _____

[NAME]

[TITLE]

Columbia, South Carolina

_____, 200__

Sworn to and Subscribed before me on

_____ [Date]

Print Name

Sign Name

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: _____

DHEC Notice of Motion and Motion for Expedited Hearing

STATE OF SOUTH CAROLINA)

**IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT**

COUNTY OF _____)

Civil Case No.:

**South Carolina Department of Health and
Environmental Control,**

**DHEC Notice of Motion and Motion for an
Expedited Hearing**

Petitioner,

vs.

PERSON,

Respondent.

TO: Respondent or Attorney for Respondent.

Please take notice that the Petitioner Department of Health and Environmental Control, through its undersigned attorney, moves before the JUDGE, the Presiding Judge of the Court of Common Pleas in the APPLICABLE Judicial Circuit, to conduct an expedited hearing in the above captioned matter due the urgency of the [disease] situation in South Carolina and the serious impact that [disease] is having on Respondent.

The South Carolina Department of Health and Environmental Control moves this honorable court, pursuant to S.C. Code Section 44-4-540(C)(4), for an expedited hearing.

On MONTH, DAY, YEAR the Governor declared a Public Health Emergency as defined in S.C. Code Ann. § 44-4-130. On MONTH, DAY YEAR an [TITLE OF

EMERGENCY ORDER] was issued by [NAME], [POSITION TITLE]. On MONTH, DAY, YEAR, DHEC petitioned the court for Continuation of Isolation or Quarantine Order. Petitioner DHEC filed a Petition for Continuation of Isolation or Quarantine Order on [MONTH, DAY, YEAR].

THEREFORE, based upon the above and pursuant to S.C. Code Ann. § 44-4-540 (C)(4), DHEC respectfully requests an expedited hearing be scheduled within five (5) days of the filing of the Petition, filed on [MONTH, DAY, YEAR]. .

Respectfully Submitted,

ATTORNEY NAME, Esq.
Staff Attorney
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, S.C. 29201
(803) 898-3350 (voice)
(803) 898-3367 (fax)

DATE
Columbia, South Carolina

Procedure: Respondent Application for an Order to Show Cause to be Released from Isolation or Quarantine

	<u>Procedural Step</u>	<u>S.C. Code Section</u>
1.	An individual isolated or quarantined applies to the trial court for an order to show cause why the individual or group of individuals should not be released.	S.C. Code Ann. § 44-4-540(D)(1).
2.	The issuance of the order to show cause does not stay or enjoin the isolation or quarantine order.	<u>Id</u>
3.	The court must rule on the application to show cause within 48 hours of its filing.	<u>Id.</u>
4.	<p>If the court grants the application, the court must schedule a hearing on the order to show cause within [24] twenty-four hours from issuance of the order to show cause.</p> <p>In extraordinary circumstances and for good cause shown, DHEC may apply to continue the hearing date for up to ten days.</p> <p>The court may grant a continuance in its discretion giving due regard to the following:</p> <ul style="list-style-type: none"> the rights of the affected individuals, the protection of the public’s health, the severity of the emergency, and the availability of necessary witnesses and evidence. 	S.C. Code Ann. §§ 44-4-540(D)(1) and (3).

Motion For An Order To Show Cause Why Respondent Should Not Be Released From Isolation Or Quarantine

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)

IN THE COURT OF COMMON PLEAS
_____ JUDICIAL CIRCUIT
Civil Case No.:

South Carolina Department of Health and Environmental Control,

Petitioner,

vs.

PERSON,

Respondent.

Notice of Motion and Motion for An Order To Show Cause Why Respondent Should Not Be Released From Isolation Or Quarantine

To SC Department of Health and Environmental Control:

Pursuant to S.C. Code Ann. § 44-4-540(D)(1), Petitioner _____ hereby petitions this Honorable Court for an Order requiring the South Carolina Department of Health and Environmental Control (DHEC) to Show Cause, if any, why petitioner should not be released from Isolation/Quarantine, and states that the following is true and correct.

1. On _____ (date), DHEC issued an administrative Emergency Order of Isolation/Quarantine requiring that petitioner _____. See attached Order.

[Alternatively: On _____ date, upon petition from DHEC seeking to Isolate or Quarantine petitioner, this Court issued an Order authorizing the Isolation/Quarantine.]

2. Petitioner should be released from Isolation/Quarantine based upon the following:

WHEREFORE, Petitioner seeks the following relief:

1. That this Honorable Court issue an Order requiring the South Carolina Department of Health and Environmental Control to appear and show cause, if any, why petitioner should not be released from Isolation/Quarantine.

2. For such other and further relief as this Court deems just and reasonable.

ATTORNEY NAME, Esq.
Address
Phone Number

_____, South Carolina
_____, 20__

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE COURT OF COMMON PLEAS
_____ JUDICIAL CIRCUIT
Civil Case No.:

)
)
)
South Carolina Department of Health and)
Environmental Control,)
)
Petitioner,)
)
vs.)
)
PERSON,)
)
Respondent.)
_____)

Order To Show Cause

Upon consideration of the Petition of _____ herein, filed the _____ day of _____,

IT IS ORDERED, that the South Carolina Department of Health and Environmental Control appear in the Court at _____ A.M. in Courtroom no._____, on the _____ day of _____, and show cause why petitioner should not be released from Isolation/Quarantine.

_____, South Carolina
_____, 20__

The Honorable

Procedure: Respondent Request for Hearing on Isolation or Quarantine Conditions

	<u>Procedural Step</u>	<u>S.C. Code Section</u>
1.	An individual isolated or quarantined requests a hearing in the trial court for remedies regarding breaches to the conditions of isolation or quarantine.	S.C. Code Ann. § 44-4-540(D)(2)(a).
2.	A request for a hearing does not stay or enjoin the isolation or quarantine order.	S.C. Code Ann. § 44-4-540(D)(2)(a).
3.	<p>Time Limits:</p> <ul style="list-style-type: none"> • If the request alleges extraordinary circumstances justifying the immediate granting of relief, the court must fix a date for hearing on the matters alleged not more than 24 hours from receipt of the request. • Otherwise, upon receipt of a request under this subsection, the court must fix a date for hearing on the matters alleged within 5 days from receipt of the request. 	S.C. Code Ann. § 44-4-540(D)(2)(b) and (c)
4.	<p>If the court grants the application, the court must schedule a hearing on the order to show cause within [24] twenty-four hours from issuance of the order to show cause.</p> <p>In extraordinary circumstances and for good cause shown, DHEC may apply to continue the hearing date for up to ten days.</p> <p>The court may grant a continuance in its discretion giving due regard to the following:</p> <ul style="list-style-type: none"> the rights of the affected individuals, the protection of the public’s health, the severity of the emergency, and the availability of necessary witnesses and evidence. 	S.C. Code Ann. § 44-4-540(D)(3).

Request For Hearing On Breach of Isolation Or Quarantine Conditions

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT
Civil Case No.:

**South Carolina Department of Health and
 Environmental Control,**

Petitioner,

vs.

PERSON,

Respondent.

**Motion for Hearing and Petition For
 Remedies For Breach of
 Conditions of Isolation or Quarantine**

Pursuant to S.C. Code § 44-4-540(D)(2)(a), Petitioner _____ hereby requests a hearing for remedies regarding breaches to the conditions of isolation/quarantine. Such isolation/quarantine was imposed through _____ [Emergency or Court] order issued on _____. Specifically, S.C. Code § 44-4-530(B) requires that the South Carolina Department of Health and Environmental Control (DHEC) adhere to a number of conditions when isolating/quarantining an individual. DHEC has failed to adhere to the condition that _____ [insert appropriate subsection].

Pursuant to S.C. Code § 44-4-540(D)(2)(b), this failure amounts to extraordinary circumstances justifying the immediate granting of relief, requiring that the court fix a date for hearing the matters alleged herein not more than twenty-four hours from receipt of this request.

OR [for non-extraordinary circumstances:]

Pursuant to S.C. Code § 44-4-540(D)(2)(c), the court must fix a date for a hearing on the matters alleged herein within five days from receipt of the request.

WHEREFORE, Petitioner seeks the following relief:

1. That this Honorable Court set a date for a hearing on the merits on matters alleged herein within _____ [time frame].

2. For such other and further relief as this Court deems just and reasonable.

ATTORNEY NAME, Esq.
Address
Phone Number

_____, South Carolina
_____, 20____

other appropriate health official, shall notify this Court that you, the said _____, are no longer a threat to the health of others.

Probate Court Judge, [] County

[date]

[], South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE PROBATE COURT
[] COUNTY _____
Civil Case No.:

[Name])
Regional Health Director, Region [])
South Carolina Department of Health and)
Environmental Control,)
)
)
Petitioner,)
)
)
vs.)
)
)
PERSON,)
)
)
Respondent.)
_____)

VERIFICATION

Personally appeared before me, [] duly sworn, deposes and says, that (s)he is the Regional Health Director for DHEC Region [] and that (s)he has read paragraphs one (1) through seventeen (17) of the foregoing Petition and that the allegations contained therein are true of (his/her) own knowledge except those matters alleged on information and belief, and as to those (s)he believes them to be true.

[]

SWORN to and subscribed before me

this _____ day of _____, 2012

_____ (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE PROBATE COURT
[] COUNTY _____
Civil Case No.:

[Name])
Regional Health Director, Region [])
South Carolina Department of Health and)
Environmental Control,)
)
)
Petitioner,)
)
)
vs.)
)
)
PERSON,)
)
)
Respondent.)
_____)

PETITION

Petitioner, complaining of the Respondent above-named, alleges:

1. That Petitioner is the Regional Health Director for DHEC Region [], which includes [] County.
2. That Respondent is an [] male, born [DATE]. Respondent originally immigrated to this country from [Country]. Upon information and belief, Respondent's last known address was [].
3. That Respondent was first diagnosed with latent tuberculosis in []. Latent tuberculosis is not contagious. Respondent began treatment at that time but refused to complete the out-patient prescribed treatment regimen to eradicate his latent tuberculosis disease. Respondent's history of noncompliance with treatment is documented in records maintained by the [] County Health Department.
4. That in [], Respondent presented for treatment at the [] County Health Department after an abnormal chest x-ray and lymph node biopsy indicated the presence of an extra pulmonary mass. This mass tested positive for tuberculosis. Respondent began treatment for active extra

pulmonary tuberculosis disease but again failed to complete the prescribed treatment regimen.

5. That Respondent was admitted to the [] County Regional Medical Center (Medical Center) in December 2010 with symptoms consistent with active pulmonary tuberculosis. Following a chest x-ray showing pulmonary cavities, MEDICAL CENTER physicians performed a bronchoscopy on Respondent. The bronchoscopy results were positive for acid-fast bacilli, which is an indicator of the possible presence of the tuberculosis bacteria.
6. That after speaking with Respondent, a physician from Medical Center contacted the health department to determine if Respondent had completed treatment for tuberculosis disease in the past.
7. That subsequent diagnostic lab cultures and sputum tests in [] confirmed that Respondent had active, infectious, pulmonary tuberculosis. A health department physician prescribed a four-drug treatment regimen starting on [].
8. That Respondent began treatment for active pulmonary tuberculosis disease on []. However, despite the health department's attempts to educate Respondent about tuberculosis and obtain Respondent's compliance with an out-patient tuberculosis treatment regimen, Respondent only took the medication until []. Staff has not been able to locate Respondent since []. Respondent did not take medication long enough to be cured, or to become non-infectious.
9. That Respondent requires long-term, uninterrupted treatment to ensure he is no longer contagious and does not become contagious again in the future. In order to be completely cured of active tuberculosis disease, it is necessary to take medication regularly for nine to twelve months. Missing doses or failing to complete treatment increases the length of the contagious period and the risk of developing drug resistant tuberculosis.
10. That due to Respondent's history of non-compliance with out-patient treatment and Respondent's current infectious state, Respondent poses a threat to the health of members of the public who come in contact with him.
11. That when a patient misses doses of anti-tuberculosis medication, the patient is at greater risk for developing drug-resistant tuberculosis, thereby making effective future treatment and/or the possibility of a complete cure, less likely.

12. That in order to prevent the spread of tuberculosis to the public, the Spartanburg County Health Department staff has determined that it is necessary to locate and commit Respondent to an in-patient treatment facility so he can be successfully treated for infectious tuberculosis disease.
13. That out-patient attempts to treat Respondent's active tuberculosis disease have failed and the Department has no less-restrictive option to successfully treat Respondent. Respondent's refusal to take medication on an out-patient basis and to follow infection control precautions render him a threat to others and a threat to the public's health.
14. That pursuant to S.C. Code (1976) Sections 44-31-110 through 44-31-190, Respondent may be committed to a treatment facility under contract with the Department of Health and Environmental Control (which is being used instead of State Park Health Center which is closed), by the Judge of Probate after due notice and hearing. Such commitment shall continue until South Carolina Department of Health and Environmental Control, Tuberculosis Control Division, notifies the Probate Judge that Respondent is no longer a threat to others.

WHEREFORE, the Petitioner respectfully prays that the relief sought be granted and requests that this Court issue its Order as follows:

1. That a bench warrant be issued for the Respondent, _____, so that he can be located and served with notice of a hearing in Probate Court to determine if he should be committed to a facility under contract with DHEC (public hospitals are now being used for the treatment of tuberculosis patients as State Park Health Center is no longer operational) for treatment of his contagious condition and as long as he is a threat to the public's health.
2. That pending a hearing, Respondent shall be held in a secure in-patient facility for treatment of his tuberculosis disease.
3. That the South Carolina Department of Health and Environmental Control's Tuberculosis Control Division, Spartanburg County Health Department, shall agree to the appointment of a court-ordered attorney to represent the Respondent and shall assume responsibility of the attorney's fee in accordance with State fee guidance.

[]

Staff Attorney

South Carolina Department of
Health and Environmental Control
Office of General Counsel

2600 Bull Street

Columbia, South Carolina 29201

(803) 898-3350

[date]

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE PROBATE COURT
[] COUNTY _____
Civil Case No.:

[Name])
Regional Health Director, Region [])
South Carolina Department of Health and)
Environmental Control,)
)
)
Petitioner,)
)
)
vs.)
)
)
PERSON,)
)
)
Respondent.)
_____)

ORDER

Upon consideration of this matter, it appears to my satisfaction that the facts stated in the Petition are true, and that the Complaint against the said _____ is well founded. This Court finds that the Respondent is afflicted with active pulmonary tuberculosis and has failed to conduct himself in a manner so as not to endanger the public health. In as much as the Respondent's condition requires uninterrupted, long term treatment in order that he not subject others to the dangers of contracting tuberculosis, it is necessary that the Court issue its Order as follows:

1. That the Respondent is a flight-risk with a history of non-compliance with out-patient treatment and shall be committed to a facility under contract with DHEC (that is currently being used for the treatment of tuberculosis patients as State Park Health

Center is no longer operational) for treatment of his contagious condition and as long as he is a menace to others.

2. That the Respondent shall undergo treatment for tuberculosis until he is no longer contagious and a threat to the public health.

3. That the Respondent's commitment shall continue until the Director of the Department of Health and Environmental Control Tuberculosis Control Division shall notify this Court that Respondent's disease is controlled to the extent that his condition no longer poses a menace to the public health.

4. The Tuberculosis Control Division, SC Department of Health and Environmental Control, [] County Health Department, shall agree to the appointment of a court-ordered attorney to represent the Respondent and shall assume responsibility of the attorney's fee in accordance with State fee guidance.

IT IS FURTHER ORDERED that the Sheriff of [] County, South Carolina, is hereby authorized and directed to enforce this order as provided by law.

The [] County Probate Court shall retain jurisdiction over this matter and the Respondent until further order of the Court. The Respondent shall have the right to petition the Court for a dismissal of the action upon good cause shown by him.

Given under my hand and seal at _____ South Carolina, this _____ day of _____, 20[].

Probate Court Judge, [] County

[DATE].

_____, South Carolina

Notice of Motion And Motion for an Order of Destruction

STATE OF SOUTH CAROLINA)

**IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT**

COUNTY OF _____)

Civil Case No.:

**South Carolina Department of Health and
Environmental Control,**

**Notice of Motion And Motion for an Order
of Destruction**

Petitioner,

vs.

PERSON,

Respondent.

TO _____, RESPONDENT:

YOU WILL PLEASE TAKE NOTICE that the SC Department of Health and Environmental Control (DHEC) hereby requests a hearing as soon as counsel may be heard, at which time DHEC will move for an Order of Destruction affecting property of Respondent.

FACTS AND ARGUMENTS SUPPORTING MOTION

1. On MONTH, DAY, YEAR, the Governor declared that a [state of emergency AND/OR a Public Health Emergency] exists in [the State of South Carolina] OR [_____ County].
2. This proceeding concerns the property located at [Address], consisting of [Property Description], owned by [Owner's Name].
3. DHEC makes this motion because DHEC knows or suspects via [signs, tests, or laboratory criteria] that [THE PROPERTY] is contaminated and the destruction of [THE PROPERTY] is necessary because [decontamination is not practical OR exigent action is needed to control the spread of contamination OR disease].
4. The risk to the public health is [Type of Risk] if [The Property] is not destroyed.

5. Alternatives such as isolation or decontamination have been considered but they were not adequately protective of the public health for the following reason(s):_____.

6. DHEC, in cooperation and coordination with other agencies, has complied, and will continue to comply with the conditions and principles for the destruction of personal property per R.61-112, §6 (B).

7. DHEC contends that an order of destruction is justified for the following reason(s):_____.

MOTION

NOW THEREFORE having fully set forth its arguments supported by Affidavit of [insert name], DHEC moves this honorable Court for an order authorizing the destruction of [Property].

 ATTORNEY NAME, Esq.
 Address
 Phone Number

_____, South Carolina
 _____, 20____

Affidavit supporting a motion for an order of destruction

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT
Civil Case No.:

**South Carolina Department of Health and
 Environmental Control,**

Petitioner,

vs.

PERSON,

Respondent.

**Affidavit supporting a motion for an order
 of destruction**

Personally appeared before me, [Name] and [Title], who being duly sworn, states:

1. I am currently employed as a [Title], with the South Carolina Department of Health and Environmental control (DHEC or the Department).
2. I have practiced [Profession] for [Length] years. [Description of Education and Experience].
3. On MONTH, DAY, YEAR, the Governor declared that a [state of emergency AND/OR a Public Health Emergency] exists in [the State of South Carolina] OR [_____ County].
4. On MONTH, DAY, YEAR, DHEC made a petition for an order of destruction of the property located at [Address], consisting of [Property Description], owned by Owner's Name].
5. DHEC made this motion because DHEC knows or suspects via [signs, tests, or laboratory criteria] that [THE PROPERTY] is contaminated and the destruction of [THE PROPERTY] is necessary because [decontamination is not practical OR exigent action is needed to control the spread of contamination OR disease].
6. The risk to the public health is [Type of Risk] if [The Property] is not destroyed.
7. Alternatives such as isolation or decontamination have been considered but they were not adequately protective of the public health for the following reason(s):_____.

8. DHEC, in cooperation and coordination with other agencies, has complied, and will continue to comply with the conditions and principles for the destruction of personal property per R.61-112, §6 (B).

9. DHEC contends that an order of destruction is justified for the following reason(s):_____.

FURTHER AFFIANT SAYETH NOT.

BY:_____

[NAME]

[TITLE]

Columbia, South Carolina

[Date] _____

Motion for Change of Venue – Proper Court Unavailable

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT
Civil Case No.:

South Carolina Department of Health and
Environmental Control,

Petitioner,

vs.

PERSON,

Respondent.

Motion for Change of Venue
Proper Court Unavailable

TO: Respondent or Attorney for Respondent.

Please take notice that the Petitioner Department of Health and Environmental Control, through its undersigned attorney, moves before the JUDGE, the Presiding Judge in the APPLICABLE Judicial Circuit of the Court of Common Pleas, for a change in venue.

The South Carolina Department of Health and Environmental Control moves this honorable court, pursuant to S.C. Code Section 44-4-130(W), for a change of venue.

On MONTH, DAY, YEAR the Governor declared a Public Health Emergency as defined in S.C. Code Section 44-4-130. In this action for _____ the action must be tried where _____. The appropriate venue should lie in the Circuit Court of _____ county pursuant to S.C. Code Sections 15-7-10—15-7-40. Due to the urgency of the [DISEASE] situation in South Carolina and the Circuit Court of _____ county’s inability to function because of the [ISOLATION, QUARANTINE, OR PUBLIC HEALTH EMERGENCY] the venue should be changed to the trial court of _____ county.

THEREFORE, based upon the above and pursuant to Section 44-4-130(W), DHEC respectfully requests a change of venue to the trial court of _____ county.

[Signature block]

Condemnation and Compensation Proceedings for Taking of Private Property
Condemnation Actions in General

	<u>Procedural Step</u>	<u>S.C. Code Section</u>
1.	Before initiating condemnation action, condemnor must have the property appraised to determine just compensation and make the appraisal available to landowner.	Section 28-2-70(A)
2.	The parties must make reasonable efforts to negotiate the amount of compensation to be paid.	Section 28-2-70(B)
3.	The condemnor may take possession of the property: (a) at any time upon receipt of written consent; (b) upon payment to the owner of the agreed just compensation; (c) upon deposit with the clerk of court, the amount stated in the Condemnation Notice as just compensation for the property by the Appraisal undertaken per 28-2-70(A); (d) upon payment to the owner, or deposit with the clerk of court, of the amount determined by the appraisal panel or awarded by the judgment in the condemnation action.	Section 28-2-90
4.	After payment or deposit, condemnor shall pay or reimburse owner for any penalty costs for prepayment of any debt secured by a pre-existing lien encumbering the property.	Section 28-2-110

Condemnation by way of Trial

	<u>Procedural Step</u>	<u>S.C. Code Section</u>
1.	Prior to filing the condemnation action, condemnor must serve Condemnation Notice by Way of Trial on landowner.	Section 28-2-220(A)
2.	The landowner has thirty (30) days after service of Notice to give condemnor written notice either that he rejects or accepts the amount tendered. A failure to respond constitutes a rejection.	Section 28-2-220(C)
3.	If amount tendered is rejected, the condemnor may file the Condemnation Notice and Affidavit with the clerk of court in the county in which the property to be condemned is situated AND deposit with the clerk the amount of just compensation stated in the Notice.	Section 28-2-230(A) (filing of Notice) and Section 28-2-240(A) (filing of affidavit)
4.	The condemnor then shall serve written notice of the action and the required affidavit upon the condemnee(s) and <u>may</u> proceed to take possession of the property.	Section 28-2-230(B)
5.	The action proceeds to trial. Either party may demand a nonjury trial.	Section 28-2-310

disability, and persons who may be in military service, must be made parties by the collective name of “unknown claimants.”).

2. [Insert appropriate legal description of property to be taken]. See attached Appendix A. [Attach map, diagram, sketch, or reference to project plans showing, as far as practical, the property to be taken and, if less than all of the a whole parcel, the location of the interest taken upon or within the whole parcel.]
3. The condemnor has the right to condemn this property by eminent domain and maintain this action based upon the Department’s obligation to prevent and contain an emergency health threat per the Emergency Health Powers Act, specifically S.C. Code Section 44-4-340 which states that the Department of Health and Environmental Control, consistent with the protection of public health, prior to the destruction of any property, must institute appropriate civil proceedings against the property to be destroyed.
4. The Department seeks to condemn the property based upon the following public health threat: _____
5. This action is being taken pursuant to S.C. Code Section 28-2-240.
6. The condemnor has complied with Section 28-2-70(A). [Condemnor has caused an appraisal to be taken and has made it available to the landowner.] Condemnor hereby certifies that a negotiated resolution of the conflict was attempted prior to the institution of this action, however, the parties were unable to reach a resolution.

THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM

OF (insert the amount determined under Section 28-2-70(A) in words and numbers)
AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

Payment of this amount will be made to the landowner if within thirty days of service of this Condemnation Notice, the landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the condemnor the property interests and rights described hereinabove. The request and agreement must be sent first class certified mail with return receipt requested or delivered in person to the condemnor at [insert the address at which the request should be delivered]. If no request and agreement is received by the condemnor within the thirty-day period, the tender is considered rejected.

If the tender is rejected, the condemnor has the right to file this Condemnation Notice with the clerk of court of the county where the property is situated and deposit the tender amount with the clerk. The condemnor shall give the landowner and other condemnees notice that it has done so and may then proceed to take possession of the property interests and exercise rights described in this Condemnation Notice.

AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the condemnor shall notify the clerk of court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the landowner. That notice shall state whether the condemnor demands a trial by jury or by the court without a jury. The landowner has the right to demand a trial by jury. The case may not be called for trial before sixty days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The clerk of court shall give the landowner written notice by mail of the call of the case for trial.

THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

[Signature block]

6. That the clerk should notify the following landowners of the call of the case for trial: [insert all names and addresses of landowners].

FURTHER AFFIANT SAYETH NOT.

BY: _____
[Name]
[Title]
Columbia, South Carolina
[date]

Sworn to and subscribed before me on

Print name

Sign Name

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: _____

Condemnation by Way of Appraisal Panel

	<u>Procedural Step</u>	<u>S.C. Code Section</u>
1.	Prior to filing the condemnation action, condemnor must serve Condemnation Notice by Way of Appraisal Panel on landowner.	Section 28-2-220(A)
2.	The landowner has thirty (30) days after service of Notice to give condemnor written notice either that he rejects or accepts the amount tendered. A failure to respond constitutes a rejection.	Section 28-2-220(C)
3.	If the amount tendered is rejected, an appraisal panel must be established. The landowner(s) shall have until the thirtieth (30 th) day following service of the Condemnation Notice to appoint one member of the panel by written notice served upon condemnor. (The condemnor has already named its member in the Condemnation Notice).	Section 28-2-250(C)
4.	Within five days of the appointment of the landowner's member, the two so appointed shall appoint a disinterested third member to serve as the chairman of the panel.	Section 28-2-250(C)
5.	Within twenty (20) days of the appointment of the third member, the appraisal panel shall determine an amount of just compensation and shall report the amount in writing to the condemnor. In making this determination, the panel shall conduct an informal proceeding and consider all relevant evidence as may be offered by the parties.	Section 28-2-260(A)

6.	<p>Within ten (10) days of receipt of the appraisal panel's report:</p> <p>(1)(a) if the Condemnation Notice has <u>not</u> already been filed with the clerk of court, then the condemnor shall file the Condemnation Notice, a copy of the appraisal panel's report and deposit the amount of determined by the appraisal panel with the clerk;</p> <p>OR</p> <p>(b) if the Condemnation Notice has already been filed and the amount tendered therein deposited with the clerk, the condemnor shall file a copy of the appraisal panel's report with the clerk and, if the amount determined by the panel exceeds the amount already deposited, shall deposit the amount of excess with the clerk;</p> <p>AND</p> <p>(2) the condemnor must serve upon the landowner written notice of the amount determined by the appraisal panel and of the filing of the Condemnation Notice and deposit of the amount determined.</p>	Section 28-2-260(B)
7.	<p>If the condemnor accepts the determination of the appraisal panel, then within thirty (30) days of receipt of the notice, the landowner must elect in writing served upon the condemnor either to accept the amount determined by the panel or to appeal from the determination. A failure to elect constitutes acceptance.</p>	Section 28-2-260(C)
8.		Sections 28-2-270(A), (B),

	<p>If either party appeals from the determination of the appraisal panel, that party shall file and serve a notice of appeal.</p> <p>If both parties accept the determination of the panel, the condemnor shall file with the clerk of court an affidavit that the time for appeal has expired and no notice of appeal has been given by either party. Thereupon, the clerk of court shall note upon a copy of the Condemnation Notice the amount of the determination and the payment thereof by the condemnor and shall cause the copy so annotated to be recorded and indexed. If the amount determined by the panel is less than the amount already deposited, the clerk of court shall remit to the condemnor the amount of excess deposited funds together with a pro rata portion of the interest earned.</p>	<p>and (C)</p>
<p>9.</p>	<p>The action proceeds to trial. Either party may demand a nonjury trial.</p>	<p>Section 28-2-310</p>

Sample Condemnation Notice Per Section 28-2-250 (Appraisal Panel)

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT
Civil Case No.:

**South Carolina Department of Health and
 Environmental Control,**

Petitioner,

vs.

PERSON,

Respondent.

**Condemnation Notice
 Tender Of Payment And
 Notice To Appoint Appraiser**

The South Carolina Department of Health and Environmental Control (the “condemnor”) hereby serves Notice of Condemnation and Tender of Payment to condemn certain property specified herein. As such, the condemnor sets forth as follows:

1. (Condemnee’s name) is the landowner, owning in fee simple in property in question. (NOTE: may need to include “other condemnees,” defined as all persons who have or claim any record interest in the property to be taken; condemnee’s whose names are not known, including heirs, infants, persons under disability, and persons who may be in military service, must be made parties by the collective name of “unknown claimants.”).
2. [Insert appropriate legal description of property to be taken]. See attached Appendix A. [Attach map, diagram, sketch, or reference to project plans showing,

as far as practical, the property to be taken and, if less than all of the a whole parcel, the location of the interest taken upon or within the whole parcel.]

3. The condemnor has the right to condemn this property by eminent domain and maintain this action based upon the Department's obligation to prevent and contain an emergency health threat per the Emergency Health Powers Act, specifically S.C. Code Section 44-4-340 which states that the Department of Health and Environmental Control, consistent with the protection of public health, prior to the destruction of any property, must institute appropriate civil proceedings against the property to be destroyed.
4. The Department seeks to condemn the property based upon the following public health threat: _____
5. This action is being taken under S.C. Code Section 28-2-250.
6. The condemnor has complied with Section 28-2-70(A). [Condemnor has caused an appraisal to be taken and has made it available to the landowner.] Condemnor hereby certifies that a negotiated resolution of the conflict was attempted prior to the institution of this action, however, the parties were unable to reach a resolution.

THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF (insert the amount determined under Section 28-2-70(A) in words and numbers) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

Payment of this amount will be made to the landowner if within thirty days of service of this Condemnation Notice, the landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the condemnor the property interests and rights described hereinabove. The request and agreement must be sent first class certified mail with return receipt requested or delivered in person to the condemnor at [insert the address at which the request should be

delivered]. If no request and agreement is received by the condemnor within the thirty-day period, the tender is considered rejected.

If the tender is rejected, the condemnor has the right to file this Condemnation Notice with the clerk of court of the county where the property is situated and deposit the tender amount with the clerk. The condemnor shall give the landowner and other condemnees notice that it has done so and may then proceed to take possession of the property interests and exercise rights described in this Condemnation Notice.

AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY DAYS OF THE SERVICE OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

If the tender is rejected, the landowner has until the thirtieth day after service of the Condemnation Notice within which to appoint a person who is not a party named in this action to serve as a member of an appraisal panel. Notice of appointment giving the name, address, and telephone number of the person appointed must be delivered to the condemnor at (insert the condemnor's address to which the notice of appointment should be delivered) within this period. If the landowner fails to appoint a member within the time allowed, one will be appointed for the landowner by the clerk of court upon the condemnor's request. The condemnor hereby appoints (insert the name of the member appointed by condemnor), whose address is (insert the member's address) and whose telephone number is (insert the member's telephone number) as a member.

The two members so appointed must appoint a disinterested third member who holds at least a South Carolina real estate broker's license. If the two fail to appoint a third, the clerk of court shall appoint the third.

The appraisal panel shall determine an amount to be paid as just compensation for the property interest and rights described hereinabove, within twenty days after appointment of the third member. The appraisal panel shall report its determination to the condemnor which shall notify the landowner of the amount thereof. The landowner has thirty days from receipt of that notice in which to either accept the determination of the appraisal panel or to appeal therefrom.

[Signature block]

Sample Notice of Appraisal Panel Report per Section 28-2-290

STATE OF SOUTH CAROLINA)

**IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT**

COUNTY OF _____)

Civil Case No.:

**South Carolina Department of Health and
Environmental Control,**

**Notice Of Determination
Of Appraisal Panel
And [One: Notice Of Appeal
Or Notice To Elect]**

Petitioner,

vs.

PERSON,

Respondent.

1. The South Carolina Department of Health and Environmental Control has received the appraisal panel’s report, and the appraisal panel has determined that just compensation for the subject property is _____ (state in words and numbers the amount).

(Either)

2. THE CONDEMNOR REJECTS AND APPEALS FROM THE DETERMINATION OF THE APPRAISAL PANEL AND DEMANDS A TRIAL DE NOVO;

(or)

2. THE CONDEMNOR ACCEPTS THE DETERMINATION OF THE APPRAISAL PANEL. WITHIN THIRTY DAYS OF RECEIPT OF THIS NOTICE, THE LANDOWNER MUST NOTIFY THE CONDEMNOR IN WRITING, DELIVERED IN PERSON OR BY CERTIFIED MAIL, WITH RETURN RECEIPT REQUESTED, TO CONDEMNOR AT (insert the condemnor's address) THAT THE LANDOWNER ELECTS EITHER TO ACCEPT THE DETERMINATION OF THE APPRAISAL PANEL OR TO APPEAL THEREFROM AND DEMAND A TRIAL DE NOVO. A NOTICE OF

APPEAL MUST ALSO BE FILED WITH THE CLERK OF COURT WITH THE DATE OF SERVICE NOTED THEREON.

A FAILURE TO GIVE NOTICE OF ELECTION WITHIN THE THIRTY-DAY PERIOD WILL CONSTITUTE AN ACCEPTANCE OF THE APPRAISAL PANEL'S DETERMINATION AND A WAIVER OF THE RIGHT TO APPEAL.

3. A trial to determine just compensation will be by jury unless both parties request trial by the court without a jury. The case may not be called for trial before sixty days after the service of the Notice of Appeal but it may thereafter be given priority for trial over other civil cases. The clerk of court shall give the landowner notice by mail of the call of the case for trial.

THEREFORE, IF THE DETERMINATION OF THE APPRAISAL PANEL IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

[NOTE: if notice of depositing funds with the clerk has not already been given or possession has not already been taken, include the following statement:]

4. The amount of the determination has been deposited with the clerk of court. The condemnor now has the right to take possession of the property interests and exercise the rights described in the Condemnation Notice.
5. If the landowner accepts the determination of the appraisal panel, payment of that amount will be made by the clerk of court.

Attorney Name, Esq.
South Carolina Department of Health
and Environmental Control
2600 Bull Street
Columbia, South Carolina 29201
(803) 898-3350
(803) 898-3367

Columbia, South Carolina
(Date)

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South Carolina Department of Health
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CR-010455 7/2012