

Writing Defensible Health Orders

VLCT Town Health Officers Workshop

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**** Please Note:** Information provided in this presentation is for educational purposes only and should not be considered legal advice.

Key Resources

- Vermont Town Health Officer Manual, chapter 3: Enforcement
- 18 V.S.A. sections 2 (definitions), 124 (voluntary compliance), 125 (assurance of discontinuance), 126 (health orders), 127 (emergency health orders), 128 (appeal), 602a (officer duties)

Regular v. Emergency Orders

- Emergency orders written & issued by officer, final order issued by selectboard
- Regular orders issued by selectboard
 - Officers issue Notices of Intent & Statement of Procedural Rights w/evidence
 - Notice can be titled “Notice of Intent to Seek the Following Health Order” & written as a health order

Contents of all Orders

- Rules of law
- Findings of fact
- Conclusions of law
- Order(s)

Contents

- *Rules*—LHO health statutes (18 VSA sec.s 126 or 127, 602a) and 613 (if local BOH rule is at issue), other health stats or regs (i.e. smoking, lead, rental housing, local rule) or ordinances
- *Findings*—statements of evidence relevant to showing order should be issued
- *Conclusions*—tying findings to prevention of public health hazards, mitigation of significant risks, correction of violations of health stats, rules, or permit restrictions/requirements
- *Orders*—actions required to be done (see 18 VSA sec. 126)

Supporting Evidence



- Encourage report written in affidavit form
- Encourage date stamping photos
- Encourage notes preserved electronically & made asap to when info gathered
- Encourage asking witnesses to appear at hearing & provide sworn statements before the hearing
- Evidence needs to support essential elements of order



Order's Essential Elements: Health hazards or substantial risks

- Condition or agent (biological, chemical or physical) present
- Harm or potential harm posed by condition or agent (hazard)
- “Public” nature of the hazard
- Order: Existence of hazard or risk and specifics of how person responsible is to prevent, remove or destroy hazard, mitigate the risk

Public?

- Order must consider:
 - # & characteristics of persons at risk
 - Characteristics of condition or agent
 - Location & its characteristics of condition/agent & “receptors”
 - Availability of effective private remedies



Essential Elements: mitigate significant public health risk

- Add to hazard elements:
 - Probability of experiencing public health hazard
 - Magnitude of the risk
 - Characteristics of the hazard
 - Degree and circumstances of exposure to the hazard
 - Reasons why it must be mitigated

Essential Elements: Violations

- Statute, rule, permit condition/restriction being violated
- Action that violates
- Corrective measure person responsible must take to end the violation

Compliance with local codes

- Statutes authorize local health related ordinances
- Ordinances, rules & regs can set enforcement provisions & penalties tailored to local needs
- Broad authority to define public nuisances & provide procedures to abate “as public health, safety & welfare may require” (24 VSA s. 2291(14))
- 18 VSA s. 613(a) authorizes LBOH to adopt rules & regs to prevent, remove or destroy public health hazards or mitigate public health risks if the Commissioner of Health approves
- Examples:
 - garbage (24 VSA s. 2291(12))
 - animal welfare (24 VSA s. 2291(21))
 - vacant buildings (24 VSA s. 3101)
 - lead paint (24 VSA s. 5003)
 - smoking (18 VSA s. 1746)

Issues raised on listserve

- Issuing orders to landlord or tenant
- Farm animals kept in basements
- Garbage bags left outside
- Septic systems

Summary

- Hazard & Risk orders must demonstrate the public nature of the problem & State Condition/Agent & Harm clearly
- For Violations cases, state the law & how it was violated in straightforward manner
- Base finding on the evidence, avoid conclusory statements in the findings, base conclusions solely on the findings, make inferences in the conclusion section, actually state that a public health hazard, significant PH risk, or law/permit condition violation exists in the conclusion and order sections.
- Have remedy logically relate to & solve the problem