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Defending Isolation and Quarantine Orders

Prior to defending the order, the local health department should take care to make sure that the order has been properly documented and established, and that supporting information is in place to support the order. Poor documentation will almost certainly lead to a negative outcome before a judge. If you do not have the documentation, or cannot support the order with findings, there is a significant legal question as to the factual strength behind the order.

Pursuant to K.S.A. 65-129c(b), isolation and quarantine orders shall specify:

(1) The identity of the individual or group of individuals subject to isolation or quarantine;

(2) the premises subject to isolation or quarantine;

(3) the date and time at which isolation or quarantine commences;

(4) the suspected infectious or contagious disease causing the outbreak or disease, if known;

(5) the basis upon which isolation or quarantine is justified; and

(6) the availability of a hearing to contest the order.

Isolation and quarantine orders must be provided in writing unless the local health officer (or secretary of Kansas Department of Health and Environment) determines that a written order is impractical because of the number of individuals or geographical areas affected. (K.S.A. 65-129c(c) et seq.)

The process for defending an isolation or quarantine order begins with a petition from a petitioner (citizen). The petitioner (the citizen) would file a writ of habeas corpus because their liberty is being infringed due to the detainment during the quarantine. That writ would start the process to defend the order.

At that point, the burden of proof would be on the county to demonstrate that the order is “necessary and reasonable to prevent or reduce the spread of the disease or outbreak…” (K.S.A. 65-129c(d)(4)(C)(i)

The court should base its determination on three factors:

1. Means of transmission
2. Degree of Contagion
3. Degree of Public Exposure

The county would need to provide evidence on each of those factors to support the quarantine order.

Means of Transmission

This would likely mean providing testimony from a doctor or county health official regarding the means of transmission, as well as introducing supporting evidence from the CDC, WHO, KDHE or other source regarding how COVID-19 is transmitted.

COVID-19 is caused by the virus (SARS-CoV-2) and is transmitted principally through exposure to respiratory droplets of an infected person. Respiratory droplets range in size and are generated when a person breathes, speaks, sings, coughs, sneezes, or other exhalations. Larger droplets rapidly fall to the ground or surfaces that are close to the source person, typically within 6 feet. Smaller droplets can travel further, remain suspended in the air, and accumulate under certain circumstances, e.g., poorly ventilated indoor spaces.

According to the Centers for Disease Control and Prevention, infection with SARS-CoV-2 most commonly occurs through direct contact with an infected person or a contaminated item or surface, or through exposure to respiratory droplets when someone is in close proximity (i.e., within 6 feet) of an infected person. [1] However, evidence is growing that airborne transmission, i.e., transmission that occurs over longer distances or times, of COVID-19 can occur, particularly in circumstances involving enclosed spaces, prolonged exposure times and inadequate ventilation or air handling.[1, 2]

Degree of Contagion

The county would also need to provide information on the degree of contagion. This would also likely lean on testimony from a county health official, as well as supporting information (could be documentary) from CDC, WHO, KDHE, etc., specifically about how contagious COVID-19 is and how quickly it is likely to spread absent a quarantine.

Research has demonstrated that persons infected with SARS-CoV-2 are most likely to infect others approximately 2 days before symptoms develop and during the early course of their illness.[3] Based on epidemiologic studies, a high percentage of secondary cases are acquired from persons who are presymptomatic.[4] Research also has shown that infected persons who never go on to develop symptoms, i.e., those who remain asymptomatic, may also infect others; however, the degree to which such transmission occurs is not well understood.[5] As noted above, transmission appears to occur primarily via respiratory droplets and close contact. According to the Centers for Disease Control and Prevention, COVID-19 spreads more efficiently than influenza.[6]

Degree of Public Exposure

Finally, there is the degree of public exposure. The information would likely be leaning on testimony from a county health official, with support from documents and other resources published by CDC, WHO, KDHE, etc.

Given the means of transmission and the degree of contagion, exposure risks are highest in settings in which there is close personal contact or prolonged interaction in enclosed, indoor, spaces. Transmission risks increase under some environmental conditions, such as poor indoor ventilation. Although the risk of transmission in outdoor settings may be lower, any situation that involves close interaction and personal contact between individuals, such as sporting events, parties or other gatherings, carries some risk.

While estimates vary, generally the range of the average number of secondary cases generated from an index case is estimated at 2 to 3. However, although most transmission occurs through close contact, evidence is growing that a small minority of cases may lead to many secondary cases in clusters, often referred to as “superspreaders”. Published reports of such superspreading events have demonstrated a single index case leading to between 35 and 1,000 secondary cases, with attack rates, i.e., the percentage of exposed persons who are infected, ranging from 21.7% to 6-70%.[4]

Before the judge, the local health officer should be prepared to answer questions about each of these three elements, as well as be prepared to provide proof of a positive test from the individual under an isolation order, or evidence that the quarantined individual needs to be quarantined due to exposure (e.g., details about the exposure setting or event, and contact tracing information to demonstrate the exposure), as well as documentation of the order supporting the isolation or quarantine.

References

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3. World Health Organization. (2020). Criteria for releasing COVID-19 patients from isolation. Retrieved from https://www.who.int/publications/i/item/criteria-for-releasing-covid-19-patients-from-isolation.

4. Meyerowitz, E.A., et al. (2020). Transmission of SARS-CoV-2: A Review of viral, host, and environmental factors. *Annals of Internal Medicine* [Epub ahead of print 17 September 2020]. https://doi.org/10.7326/M20-5008.

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