

MINNESOTA ISOLATION & QUARANTINE DEFENSE PANEL TRAINING

November 6, 2008

THE CASE OF THE MOORHEAD HOCKEY TEAM

The Moorhead High School Hockey team attends a tournament in Colorado. During the tournament, they share locker and shower areas with other teams from around the country. The day after returning home, the team is in the middle of a regular practice session at the high school. The Moorhead Superintendent is notified that one of the other teams in the tournament has several members who have contracted a novel and potentially life-threatening form of influenza. The Superintendent contacts the Clay County Public Health Administrator, who contacts the Minnesota Department of Health.

The flu as described by the Colorado health officials falls under the definition of “**communicable disease**” in the Minnesota Isolation and Quarantine (I/Q) Law. At this point, none of the Moorhead hockey players are symptomatic. However, after discussing the locker and shower arrangements at the tournament with the hockey team’s coach and with Colorado school officials, and after consultation with the State Epidemiologist and other Health Department staff, the Health Commissioner determines that the players were likely exposed to the disease. The Health Commissioner further determines that any delay in confining the hockey players would **significantly jeopardize her ability to prevent or limit transmission** of the potentially life-threatening disease. The Health Commissioner issues a **Temporary Hold Directive**, instructing that the hockey players be **quarantined** within the athletic area at the high school.

A **notice** is posted in a conspicuous place within the athletic area, informing the hockey players that they have the right to a hearing to challenge their confinement, as well as the right to a court-appointed attorney to represent them at the hearing. Similar notices are delivered to the parents and guardians of the players who are minors (under age 18). One of the players and his family have limited proficiency with English, having recently immigrated from Russia; the notice of the Temporary Hold Directive is **translated** into Russian and provided separately to them.

County public health officials are authorized to enter the quarantine area to supervise the hockey players and to make sure that the players’ basic needs are met, including food, medicine and clean clothing. The players’ health is carefully monitored, and hygiene is maintained in the athletic area to minimize the likelihood of further infection. No one else is allowed within the quarantine area. The hockey players have cell phones to maintain contact with the outside world, including their families and health officials.

Immediately after issuance of the Temporary Hold Directive, the Attorney General’s office, on behalf of the Health Department, prepares an application for an **Ex Parte Order**. (Without such an order, the Temporary Hold Directive would expire automatically after **36 hours**.) The application is completed after regular business hours, at which time the Ramsey County District Court is closed. The Assistant Attorney General contacts the Civil Court Administrator by telephone. The Court Administrator then contacts the judge who is assigned to be on call that evening. After the situation has been explained to the on-call judge, the Assistant Attorney General faxes the application for the

Ex Parte Order directly to the judge, including an affidavit from the Health Commissioner, a Memorandum of Law, a proposed order, and a copy of the Temporary Hold Directive.

Based on the period of communicability and other clinical characteristics of the disease, the Commissioner anticipates that the quarantine will last up to 10 days. However, in the interest of caution, the Commissioner asks that the quarantine remain in effect for up to 21 days, the maximum legal duration for an *Ex Parte* Order.

Upon receipt of the application and supporting documents, the judge has **24 hours** to rule. A telephone conference is promptly arranged between the Assistant Attorney General, the Health Commissioner, the State Epidemiologist, and the judge. After considering the documents submitted by fax along with the application, along with the additional information provided during the telephone conference, the judge determines that there is **probable cause** to believe that quarantine of the hockey players is **warranted to protect the public health**. The judge issues an *Ex Parte* Order stating the specific facts justifying the quarantine, as well as the players' **right to a hearing** and to representation by **court-appointed counsel**. The order states that the quarantine will remain in effect for up to 21 days.

The *Ex Parte* Order is immediately faxed to the Clay County public health agency, which posts the order in a conspicuous place within the high school athletic area. Copies of the order are also delivered to the minor players' parents and guardians. The order is translated into Russian and provided separately to the Russian player and his parents. The hockey players and their families are also notified that the quarantine is anticipated to last up to 10 days.

The day after the issuance of the *Ex Parte* Order, two of the hockey players begin to run a fever and display other flu-like symptoms. The Health Commissioner determines that there is a **reasonable likelihood** that these players have been infected by the same disease as the other players from the Colorado tournament. The Commissioner issues a **new Temporary Hold Directive** reclassifying these two individuals from quarantine to **isolation**. The County arranges to transport these two players to a medical facility, where they are placed in an isolation area. The Commissioner then immediately requests and obtains a **new Ex Parte Order** from another Ramsey County judge, allowing the isolation to be maintained for up to 21 days.

The two hockey players under isolation include one adult and one minor. The aunt and uncle of the minor, who are his legal guardians, exercise their **right to refuse medical treatment** on behalf of their nephew. The player remains in isolation, but is not given medical treatment. His aunt and uncle also exercise their **right as family members to enter the isolation area**. They sign a **consent form** stating that they have been informed of the consequences, including that they themselves may be subject to quarantine or isolation.

On Day 5 of the quarantine at the high school (Day 3 since the issuance of the *Ex Parte* Order), the parents of two of the remaining minor hockey players send separate **petitions** to the court via email, requesting a **hearing to contest the Ex Parte Order**. The parents also request a court-appointed attorney to represent them at the hearing. The matter is assigned to yet another Ramsey County judge. The court instructs the County public health agency to determine if any of the other hockey players (and the parents and guardians of other minor players) wish to be parties to the hearing. All of the players respond that yes, they want to be parties. The court determines that the players are **similarly situated** and appoints a single attorney from the **I/Q Defense Panel** to represent the group.

As required by law, the court schedules the quarantine hearing to be held within **72 hours** after the receipt of the petitions. The court-appointed attorney is not permitted to enter the quarantine area to meet with the hockey players in preparation for the hearing, but communicates with them extensively by telephone.

Present at the hearing at the Ramsey County Courthouse are the judge, the Assistant Attorney General, the State Epidemiologist and other public health officials, the court-appointed Defense Panel attorney, and various family members. The hockey players at the high school appear by telephone. An interpreter is provided for the benefit of the Russian student and his family. There is also a medical communicable-disease expert present, whom the parents of one of the quarantined players have agreed to pay for.

The state health officials testify about the nature of the disease and the need to maintain the quarantine long enough to determine whether the remaining hockey players have indeed been infected, in order to prevent transmission of the disease to the general public. Some of the players testify via telephone that they feel perfectly healthy. The medical expert rebuts the state officials' testimony regarding the communicability of the disease and the necessity of the quarantine as a means of preventing transmission. Nonetheless, the judge determines that there is **clear and convincing evidence** that the quarantine is **warranted to protect the public health**. The judge rules in favor of the state and denies the petition. The quarantine remains in effect.

On Day 9 of the quarantine (Day 7 since the issuance of *Ex Parte* Order), the Defense Panel attorney representing the hockey players files another **petition challenging the conditions of the quarantine**. Specifically, the attorney contends that the high school is not the **least restrictive location** available for the quarantine, and that the players should be allowed to return home for the remainder of the quarantine. As required by law, the hearing is scheduled within **seven days** of the petition. Again, the judge and the attorneys are present in the courtroom, along with public health officials, family members and a Russian interpreter. The hockey players appear by telephone.

This time, the judge rules in the hockey players' favor, determining that there is **clear and convincing evidence** that the high school is not the least restrictive location for the quarantine, *i.e.*, that confinement to a less restrictive setting would be sufficient to prevent transmission of the communicable disease. The judge further determines that the hockey players' homes all meet the relevant guidelines for home quarantine, including functioning utilities, potable water and bathroom facilities. The judge orders that the hockey players be transported home and stay there for the remaining duration of the quarantine.

County public health officials coordinate the home quarantines and are authorized to enter the quarantine areas. This includes taking steps to ensure that minors have their primary caregivers present, that other unauthorized people (especially children, the elderly and others at risk for complications) are kept out of the quarantine areas, that the individuals under quarantine have their health monitored regularly, and that they are provided adequate food, clothing, shelter and hygiene.

The day after being placed in home quarantine, one of the hockey players is seen leaving his house. The County public health agency contacts the Moorhead Police Department and asks them to intervene. At the police department's request, the public health agency provides **recommended protective measures** to guard against transmission of a communicable disease when interacting with a quarantined individual. The police department sends an officer, who uses **reasonable force** in apprehending the hockey player and returning him to the quarantine site at his home. The

Ramsey County Attorney is informed of this incident, but decides not to initiate contempt proceedings against the player.

Four days after the hockey players are transported home, the Health Commissioner determines that the quarantine is **no longer necessary to protect the public health**. The players and their families are notified that the quarantine is over, and that they are no longer confined to their homes. This is Day 20 since the beginning of the quarantine at the high school, Day 18 since the issuance of the *Ex Parte* Order, and three days before the order would have expired automatically.

Meanwhile, the separate *Ex Parte* Order which placed two of the hockey players in isolation at the hospital is also set to expire. Seven days before the expiration of that order, the Health Commissioner petitions the Ramsey County District Court for a **hearing to extend the isolation for 30 days**. The court schedules the hearing and prepares a **notice** stating the time, date and place of the hearing, the reasons why the extension of the isolation is being sought, and the players' right to be present at the hearing and to be represented by a court-appointed attorney. Three days before the scheduled date of the hearing, the notice is **served** on the adult player in isolation and on the guardians of the minor player.

Upon a request by the two players in isolation, an **attorney from the I/Q Defense Panel** is designated to represent them (not the same attorney representing the other players). The attorney contacts the Health Department to request information about **recommended protective measures** to follow in dealing with her clients, and the Health Department provides that information.

Prior to the date of the hearing, the court-appointed attorney moves to have the venue of the proceeding changed to Clay County, for the convenience of her clients, and because the change in venue would expedite the proceeding without prejudicing any party. The motion is granted, but instead of reassigning the matter to a Clay County judge, the Ramsey County judge travels to Moorhead to conduct the hearing there.

Based on testimony at the hearing, the judge determines that there is **clear and convincing evidence** that lifting the isolation would pose an **imminent health threat to others**. The Health Commissioner's petition is granted, and the isolation is permitted to remain in effect for up to 30 days from the issuance of the order. The two players remain under isolation at the hospital. During this 30-day period, the minor player, whose guardians had declined medical treatment on his behalf, dies.

The Health Commissioner petitions the court for a hearing to extend the adult player's isolation for up to an **additional 30 days**, following the same procedure as for the first hearing. Prior to the hearing, the court-appointed attorney moves for **permission to withdraw** from the case, on the grounds that the proceeding is taking up far more of her time than she had expected and is negatively impacting her private practice. The court denies this motion.

Following the hearing, the court grants the second 30-day extension of the isolation. Midway through this second 30-day extension, the Health Commissioner determines that the isolation is **no longer necessary to protect the public health**, and the isolation is **lifted**.