

Guidance on Infectious Disease Management under the Health Act 1956

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MANATŪ HAUORA



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1 Introduction

The Ministry of Health has developed this guidance to assist public health practitioners to use the infectious disease notification, contact tracing and disease management measures incorporated in the Health Act 1956. These measures became law on 4 January 2017.¹

Medical practitioners, nurse practitioners, laboratory workers and sexual health clinics may also find parts of the guidance useful – for example, those parts that address notification and contact tracing. The guidance is not a substitute for looking at the legislation, and is intended to help understanding of it.

The main drivers behind the 2017 changes include to:

- improve the management of individuals who have or may have been exposed to infectious diseases, particularly when their behaviour puts other people at risk of contracting a disease
- improve the quality and quantity of infectious disease notifications for surveillance and monitoring purposes, and for effective public health action
- make notification and management of tuberculosis consistent with other notifiable infectious diseases listed in Schedule 1 of the Health Act
- protect the identity of people who have or may have certain specified infectious diseases with a perceived stigma associated, and as a result encourage notification, diagnosis and treatment and our understanding of risk factors to inform prevention activities
- update disease management measures for sexually transmitted infections (STIs), which the legislation previously categorised as “venereal diseases” – by including them with infectious diseases under the Health Act, to which the measures in Part 3A of the Act can apply
- provide a stronger foundation for contact tracing by public health units, district health boards (DHBs) and their nominees.

Structure of this guidance

This document’s structure largely mirrors the order of provisions in the legislation, and the order in which decision points arise. This is with notification early on, followed by overarching principles of disease management, contact tracing and then the measures themselves.

This guidance includes templates for each direction or order that public health practitioners may need to use (see chapter 11). These are to ensure practitioners stick to the preconditions and process requirements applying to the measures. They are also to assist their compliance with the prescribed information requirements relating to cases and contacts.² Information for cases and contacts accompanies the template forms. Efforts have been made to make them plain English, although there are a number of things specified in the legislation which need to be accurately covered in them – such as the contents of the directions and orders.

¹ The Health (Protection) Amendment Bill was enacted on 30 June 2016. It received Royal Assent on 4 July 2016. See sections 74 and 74AA and Part 3A of the Health Act, available on www.legislation.govt.nz

² Although the legislation refers to medical officers of health imposing measures, in reality health protection officers and public health nurses will often be supporting this, and may be the public health practitioners conveying much of the information.

The guidance also incorporates appendices in chapter 12 containing:

- a glossary of commonly used terms and abbreviations
- the notification provisions from the Health Act
- the notification provisions and forms from the Health (Infectious and Notifiable Diseases) Regulations 2016 (the HIND Regulations 2016)
- the Ministry of Health's Prosecution Policy.

Parts of this guidance set out procedural aspects of the legislation that are comparatively complex, describing legislative and court powers and requirements. To assist practitioners in making a range of choices under Part 3A of the Health Act, the guidance includes hypothetical scenarios. These are designed to ensure that practitioners can manage infectious diseases in a proportionate, lawful and effective way.

Some of the scenarios show medical officers of health taking control at an early stage. However, the reality is sometimes more complex: a consultative and conservative approach, involving the individual's health practitioners, is the norm.

The Ministry does not intend this document to be a clinical guide to contact tracing or public health action. For reference to such guides, please see chapter 6 and the Ministry of Health's *Communicable Disease Control Manual 2012* (the CD Manual):
www.health.govt.nz/publication/communicable-disease-control-manual-2012

This guidance was written by Janet Lewin, Principal Advisor in the Public Health Capability Team of the Ministry of Health's Public Health Group. This was with input from members of the Communicable Diseases Team in the Public Health Group, incorporating feedback gratefully received from a test group of public health practitioners.

2 Notification

Purpose of notification

In this guidance ‘notification’ refers to the process by which health practitioners and laboratories officially report the incidence of diseases that are listed in Schedules 1 and 2 of the Health Act.

Disease notification supports two purposes – surveillance, particularly at a national level, and local and national public health action.

Surveillance helps our understanding of trends in disease rates over time and the areas and population groups at greater risk of infection (which informs the design and delivery of services).

Public health action refers to action by public health units to investigate cases and outbreaks and where necessary take steps to control the spread of disease. The majority of notifications require a minimal public health response, although all notifications contribute to public health surveillance and epidemiological analysis.

The notification database – EpiSurv

Public health units receive notification data and enter it via a secure web-based portal into ESR’s national surveillance database (EpiSurv). A case report form is then opened in EpiSurv for completion by the public health unit for Section A and B diseases, or generates a link that is sent back to the notifier by ESR for completion for Section C diseases.³

ESR collates and analyses near real-time data on notifications on behalf of the Ministry of Health. The AIDS Epidemiology Group analyses HIV data. The data collected varies by disease, but usually includes demography, outcome, basis of diagnosis, risk factors and some clinical management information. The system is complemented by outbreak surveillance (using EpiSurv).

Responsibilities of health practitioners and laboratories

Since 4 January 2017, nurse practitioners, and other suitably qualified health practitioners practising within a relevant scope of practice, share the responsibility to notify with medical practitioners and medical laboratories.⁴ The aim of the change is to benefit the public by facilitating disease notifications. This feature also better reflects current workplace practices.⁵

³ These disease categories are in Part 1 of Schedule 1 of the Health Act and are described in the Glossary in chapter 12 of this guidance.

⁴ There are four domains of competence for the nurse practitioner scope of practice: professional responsibility and leadership; management of nursing care; inter-personal and inter-professional care and quality improvement; and prescribing practice.

⁵ Section 199 of the Health and Safety at Work Act 2015 requires medical officers of health to notify WorkSafe New Zealand of work related notifiable diseases or hazardous substances injuries.

A health practitioner's responsibility to notify arises when he or she develops a reasonable suspicion that a patient's symptoms are due to a notifiable infectious disease, or when by post-mortem, they become aware that an individual who has died was infected with such as disease.⁶

In this situation, health practitioners must notify the medical officer of health. If the disease is a Section A disease, they must also notify local authorities.

Laboratories have a responsibility to notify results indicating that an individual is, has been, may be or have been, infected with an infectious disease.⁷ Laboratories must report results showing notifiable infectious disease immediately. They report results to the medical officer of health as well as reporting them to the individual's health practitioner.

Funeral directors, and other people in charge of a person who has died of an infectious disease, must notify the medical officer of health.⁸

A version of the notification provisions in the Health Act can be accessed from: www.legislation.govt.nz, by typing 'Health Act' into the search box, and referring to sections 74, 74AA, 74B and 85. These provisions are also reproduced for ease of reference in Appendix 2.

When health practitioners or laboratories fail to notify in accordance with section 74 and section 74AA's requirements, they may be prosecuted, and on conviction must pay a fine.⁹

The HIND Regulations 2016 contain prescribed notification forms for health practitioners and funeral directors. These can also be accessed via: www.legislation.govt.nz, and have been reproduced in Appendix 3.

The notification forms in the Regulations elicit basic information, which practitioners can supplement in the case report form provided in EpiSurv by ESR. The forms seek patient details, details of the disease and details of the notifying health practitioner and include a more general category prompt.

While no form is prescribed for laboratory notifications, there are minimum information requirements.¹⁰ In practice, case report forms provided in EpiSurv by ESR will be fuller than the prescribed forms and minimum requirements.

Sexually transmitted infections

Until 2017, with the exception of AIDS, the late downstream effects of HIV and hepatitis B, STIs were not formally notifiable in New Zealand, except in a narrow range of circumstances.¹¹

⁶ Section 74(3).

⁷ Sections 74 and 74AA. Non-communicable diseases listed in Schedule 2 of the Act are notifiable, but are outside the scope of this guidance.

⁸ Section 85(1). This provision does not appear to be much used in practice. In most relevant cases the deceased's condition will have already been notified by a health practitioner or laboratory, although the requirement may still be useful when the circumstances suggest otherwise. It would be useful in a pandemic.

⁹ Laboratory heads, rather than their staff, can be prosecuted for an offence under section 74AA(3). To our knowledge, a prosecution has never been brought.

¹⁰ Set out in Schedule 3 of the HIND Regulations 2016.

¹¹ The Venereal Diseases Regulations 1982 confined notification responsibilities to chancroid, gonorrhoea, syphilis and venereal granuloma when the person had not turned up for treatment within a specified time.

Surveillance for STIs of public importance¹² relied on family planning or sexual health clinics and laboratories voluntarily providing non-identifiable data. The AIDS Epidemiology Group contracted to collect information about HIV (and continues to do so currently). Coding ensures that the identity of the patient is known only to the reporting health practitioner, although is sufficiently specific to allow detection of duplicate reports.

Since January 2017, HIV, gonorrhoea and syphilis are formally notifiable, in addition to AIDS. They are in a category of infectious diseases notifiable on a non-identified basis – and referred to in the Health Act as ‘Section C diseases’. The new category’s identity protection requirements has the aim of preventing individuals from avoiding diagnosis and treatment due to perceptions of stigma attached to having certain diseases.¹³ While the four STIs are all to be notified protecting the case’s identity, the considerations leading to notification are not the same for all four diseases. For example, AIDS is a clinical diagnoses, while HIV, syphilis and gonorrhoea usually can be directly laboratory notified, thereby avoiding a number of people handling the information.

It is vital that when health practitioners and laboratories notify HIV, AIDS, gonorrhoea, or syphilis, they comply with the protection-of-identity requirements.¹⁴ This means they must not notify the name, address, place of work or education, or contact information of the individual concerned.¹⁵

Notifications will include the National Health Index (NHI) number, but public health practitioners must not use this to trace ‘identifying information’ about an individual due to protections in the Health Act, general privacy law (the Privacy Act 1992) and the Health Information Privacy Code 1994 (which places restrictions on the sharing of personal health information).

When a medical officer of health receiving a notification believes that disclosure of identifying information is necessary to respond effectively to a public health risk, he or she may request that information from the notifier.¹⁶ However, this is very much on an exceptions basis, for example, when there is a cluster of infections or anti-microbial resistance requiring a public health response. The default position is that identity must be protected for Section C diseases – gonorrhoea, syphilis, AIDS and HIV.

The prescribed form for health practitioners notifying Section C diseases contains a specific question to the notifier about contact tracing. In this context, ‘contact tracing’ refers to either informal contact tracing that primary health, NGOs, and others currently undertake, and to formal contact tracing under Part 3A of the Health Act. This question is not intended to elicit a flood of contact tracing referrals from primary practitioners and NGOs to public health units and DHBs. However, in unusual circumstances when voluntary, informal contact tracing is unlikely to be effective, or where there is a major public health risk, referral to a public health unit may be a sensible course of action.

¹² Chlamydia, gonorrhoea, genital herpes, genital warts, syphilis and non-specific urethritis.

¹³ Section C is in Part 1 of Schedule 1 of the Health Act.

¹⁴ This will apply to any other infectious diseases added to Section C over time.

¹⁵ Sections 74(3A) and (3C) and 74AA(2A) and Regulation 6 of the HIND Regulations 2016.

¹⁶ Sections 74(3B) and 74AA(2B); and overrides the Privacy Act and Health Information Privacy Code in this context.

Section C disease with another notifiable disease

When an individual could be infected with another notifiable disease, along with a Section C disease that is notifiable on a non-identified basis, practitioners or laboratories should notify the diseases separately. They must use two different forms from Schedule 2 of the HIND Regulations 2016 – form 1 for notifiable diseases in general (which does not require identity protection), or form 2 for Section C notifiable diseases (which does require identity protection).

Both forms contain a prompt for: “Any other information relevant to the risk of the patient having or transmitting the disease (for example, vaccine history, sexual behaviour or activity, or sex of partner or partners, if known).”

However, notifiers should not disclose Section C diseases in response to this prompt. For example, a case may have tuberculosis in conjunction with HIV, and if this is considered relevant to the tuberculosis notification, the notifier must not record the case’s HIV status on the tuberculosis notification form. By contrast, the notifier may record tuberculosis, or any other Section C disease, in response to either a specific question or an ‘other information’ prompt on the Section C disease notification form.

Notification and rapid test results

Rapid tests are sometimes carried out for diseases such as HIV, syphilis and hepatitis C and the results need to be confirmed by diagnostic testing. Therefore, rapid test results normally do not need to be notified. Agencies performing rapid tests provide advice and support for individuals with positive results. That invariably includes a recommendation that they should undergo formal confirmatory diagnostic testing. When this is sought, or alternatively the preconditions for notification are met (by health practitioners on reasonable suspicion and by laboratories with results that a person has been, may be or may have been, infected with an infectious disease), the notification requirements are then triggered.

Existing guidance on notification

Guidance on notification, developed prior to the 2017 changes includes:

- *Direct Laboratory Notification of Communicable Diseases: National Guidelines*, accessible from ESR’s website at:
www.surv.esr.cri.nz/LabSurv/Documents/dln-national-guidelines-deco7.pdf
- The Public Health Surveillance information accessible on ESR’s website at:
<https://surv.esr.cri.nz/>
- The Ministry of Health’s *Communicable Disease Control Manual 2012*, accessible from the Ministry’s website at:
www.health.govt.nz/publication/communicable-disease-control-manual-2012 (subject to ongoing revision).

Chlamydia and other infectious diseases

Chlamydia is a prevalent disease and, while chlamydia is not formally notifiable in New Zealand, it is since January 2017 categorised as an 'other infectious disease'.¹⁷ This means that the public health measures discussed in this guidance can apply to it. Medical officers of health may consider using these measures in the event of non-cooperation when severe and uncommon presentations of chlamydia surface, such as where lymphogranuloma venereum is also a factor, or when there is an outbreak.

Notification and non-infectious diseases

While most of the HIND Regulations 2016 deal with notification and management of infectious diseases, the Regulations also provide a form for notification of non-communicable diseases.¹⁸

Clusters and new or re-emerging diseases

Informal reporting by laboratories and health practitioners or by other sources occurs for high-risk diseases in certain circumstances (eg, an outbreak of influenza in a rest home, or chicken pox in a boarding school), enabling public health action.

New and emerging or re-emerging infectious diseases can become categorised as formally notifiable infectious diseases at any time, by adding to the list of scheduled diseases by Order in Council. An example of this is Middle East respiratory syndrome coronavirus (MERS-CoV), which was added in September 2013.

¹⁷ Part 2 of Schedule 1 of the Health Act. Part 2 contains diseases such as herpes, venereal warts, impetigo contagiosa and influenza.

¹⁸ Notification is under section 74(1)(b) of the Health Act. These diseases include, for example, decompression sickness and lead absorption. Form 1 of Schedule 2 of the HIND Regulations 2016 can be used for both notifiable infectious and non-infectious diseases, other than Section C diseases.

3 Public health measures

The legislative context

New Part 3A of the Health Act replaces venereal diseases legislation¹⁹ and the HIND Regulations 1966, which were both out of date. The outdated legislation was also inconsistent with Part 3A's incremental approach and the emphasis on attempting voluntary measures first, specifying time limits, and on applying overarching principles and other safeguards.²⁰

The Food Act 2014 and Food Regulations 2015 regulate food businesses' obligations relating to safe food handling practices and safe premises. The amended Health Act gives public health practitioners powers to manage the public health risk presented by potentially infectious people. Both the food legislation and new Part 3A of the Health Act largely impose more general obligations in place of the disease specific measures, than previously applied.²¹

The Tuberculosis Act 1948 and Tuberculosis Regulations 1951 have been repealed and revoked, respectively, in favour of incorporating tuberculosis with other Section B diseases which are notifiable to the medical officer of health and requesting health practitioner.

A continuum of public health measures

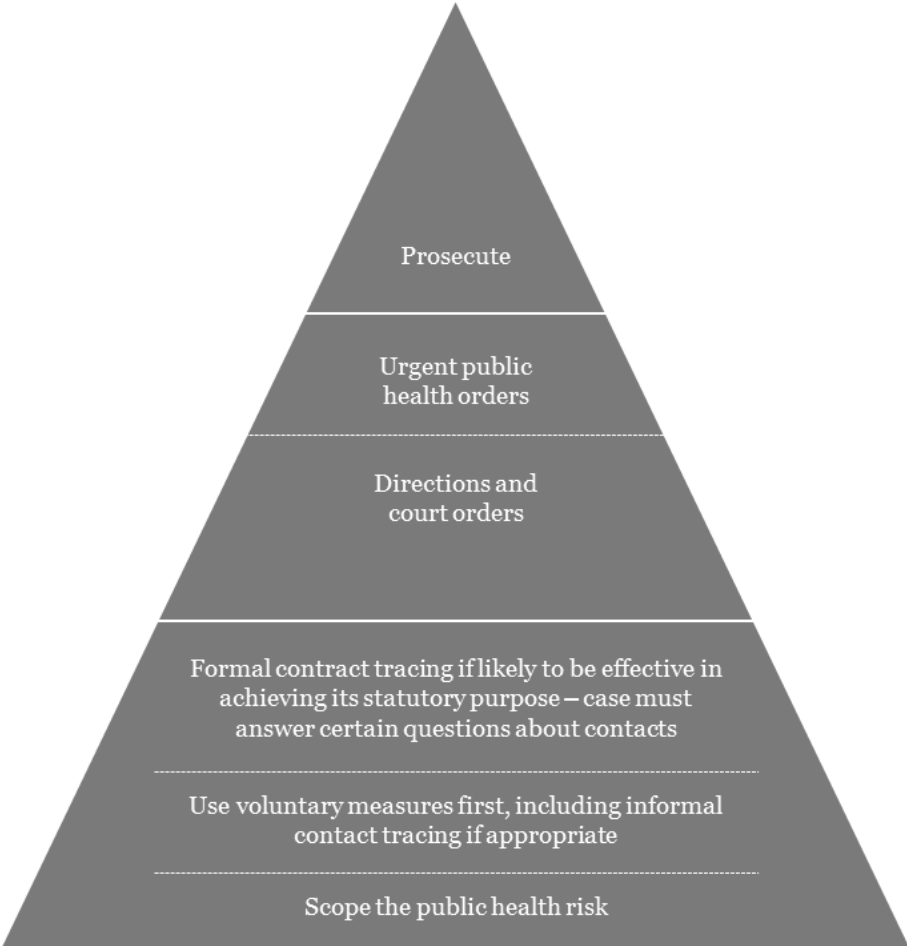
The measures under Part 3A of the Health Act are on a continuum or pyramid of least to most severe – namely, voluntary cooperation at one end of the spectrum to detention under an urgent public health order, and prosecution for offences of non-compliance or obstruction, at the other. This is illustrated in Figure 1.

¹⁹ In sections 88–92 of the Health Act and the Venereal Diseases Regulations 1982.

²⁰ For example, in regulation 10 of the HIND Regulations 1966 contacts and carriers were obliged to submit to compulsory examination and treatment when a medical officer of health required this.

²¹ Specifically in section 92I(4)(b), (6) and (7) for cases; section 92J(4)(b), (6) and (7) for contacts; section 92K for directions for medical examination; and section 92L for directions involving people attending educational institutions.

Figure 1: Infectious disease management measures under Part 3A (with rarest measures at the top of the pyramid)



The first step is scoping the public health risk

Notification is one avenue through which medical officers of health detect potential risks and initiate appropriate public health action. However, they need not wait for notification that a person has an infectious disease. Conversely, notification of a confirmed diagnosis of an infectious disease does not necessarily warrant immediate public health action in every instance, or even in the majority of instances.

The legislation defines and requires the existence of a ‘public health risk’ in relation to infectious diseases before the statutory measures can be taken.²² This is in addition to prerequisites specific to individual powers (eg, an urgent public health order should not be imposed unless a direction is unlikely to work).

Paragraph (a) of the definition mentions risk factors which should be taken into account in defining such a risk. These include the mode or ease of transmission (eg, highly infectious respiratory), number of people affected, case morbidity and mortality rates, the ease of and ways in which the risk can be prevented or minimised, and whether the disease is rare or re-emerging.

²² In section 2(1) of the Health Act, and reproduced in the Glossary in Appendix 1.

Paragraph (b) of the definition refers to the ‘relevant circumstances of the particular case’. The case’s occupation is one of these ‘relevant circumstances’. Depending on the disease, occupations like health care workers, sex workers, educators – particularly preschool educators, and food handlers, and those who travel for work purposes, can all carry a heightened risk of infecting others.

Relevant circumstances can also include inherent or temporary characteristics of the case which heighten their personal level of risk, such as pregnancy and immune status. Invariably, the case’s mind set and behaviour will be relevant. When an individual shows reckless disregard for personal safety or that of other people and continues with high-risk activities, there will be a heightened public health risk.

In addition, relevant circumstances may involve the living conditions of the case – such as in crowded, substandard housing, or residential or other institutional care, where the risk of a disease spreading can be greater.

Relevance of the public health risk to the District Court’s decisions

When a medical officer of health applies to the District Court for a public health order, there are additional matters the court can take into account in assessing the public health risk. They include:

- what infectious disease the individual has or may have
- if there was any opportunity to minimise the transmission risk, whether and to what extent the case has done so
- the extent to which the case has complied with any directions or requests from specified health practitioners to prevent or minimise the risk.²³

Once a medical officer of health becomes aware that an individual poses a public health risk, he or she should encourage the individual to take voluntary measures to manage the risk. The medical officer of health should inform and educate the individual about the risk and ways of preventing or minimising it, and encourage their voluntary participation in doing so. When these have not worked, are unlikely to work, or the urgency of the public health risk means formal action should be taken, there are three main options:²⁴

- (i) impose a direction
- (ii) impose an urgent public health order
- (iii) apply for a court order: when other means have been tried and failed, or are unlikely to work, or where an urgent public health order is about to expire and the individual must be detained for a longer period.

These options apply on top of existing disease management powers, such as powers of entry, inspection of premises (and disinfection of premises and items), exercised mainly by medical officers of health and HPOs.²⁵ (‘Premises’ has been re-defined to include: ‘any commercial premises, private premises, vehicle, ship or aircraft.’)

²³ Section 92ZB.

²⁴ Apart from contact tracing which is dealt with in a separate chapter.

²⁵ In Parts 3 and 7.

Roles of medical officers of health, health protection officers

There may be some confusion about when a medical officer of health, an HPO or another office holder can exercise the various powers in Part 3A of the Health Act. As a general rule, if a provision only refers to the 'medical officer of health', he or she is the individual who is able to exercise the power. However, other people can assist in the lead up to and implementation of these measures. The effectiveness of the medical officer of health's response will often be enhanced by getting help from an HPO, environmental health officer (EHO), or public health nurse, as well as collaborating with Ministry for Primary Industries' staff on foodborne illnesses. In some situations the legislation expressly gives powers to HPOs as well as to medical officers of health (eg, serving written notices and directions).²⁶

When EHOs, employed by local authorities, carry out their infectious disease management functions under the Health Act, they must keep medical officers of health informed of matters affecting the risk to public health from infectious diseases. They must also act in accordance with directions from the medical officers of health relating to preventing the outbreak or spread of infectious disease.²⁷

The Director-General has powers to direct a medical officer of health or HPO on any matter when one of them has to form a reasonable belief in a particular state of affairs before they can exercise their legislative powers.²⁸ This is with the proviso that the Director-General (or designate) holds this belief at the time of the direction.

Protection from liability

Medical officers of health and others carrying out functions under Part 3A and the notification provisions will not face civil or criminal liability for any conduct unless there is bad faith or lack of reasonable care.²⁹

Who pays for diagnosing and treating people?

A person who has or is suspected of having any infectious disease (ie, a notifiable infectious disease or other infectious disease)³⁰ is eligible to receive those publicly funded services specified in clause B23 of the Health and Disability Services Eligibility Direction 2011. This does not depend on their residency status in New Zealand.

For an individual to be eligible for public funding the infectious disease need not be formally notifiable. However, it must be a disease listed in Schedule 1 of the Act, and the person concerned must not be otherwise eligible under the Direction to receive the publicly funded services.

²⁶ Under section 92N(2).

²⁷ Regulation 11 of the HIND Regulations 2016 sets out the EHOs' infectious disease management role in more detail.

²⁸ Section 7A(7) of the Health Act.

²⁹ Section 129 of the Health Act.

³⁰ Parts 1 and 2 of Schedule 1 of the Health Act.

Clause B23 of the Direction lists funded services as surveillance, diagnosis, treatment, follow-up services and contact tracing services, to the extent that is appropriate in the circumstances to address risks to other people.

HIV is now legislatively recognised as an infectious and notifiable disease, and therefore comes within the Eligibility Direction. This does not alter a person's eligibility under the Pharmaceutical Schedule for public funding of medications, such as for treatment of HIV, which is determined by PHARMAC.³¹

Who pays for costs arising from public health measures?

In some situations, compliance with measures to protect public health will carry direct or indirect costs for the case or contact. For example, a medical officer of health may direct a case to stay away from work for some time, or to seek diagnosis (not covered by public funding under the Eligibility Direction), or to undertake courses or counselling.

As the Health Act does not expressly provide for compensation for these expenses, DHBs have no legal obligation to compensate people on a discretionary basis or otherwise. However, if DHBs choose to voluntarily compensate the case or contact, there is nothing legally preventing this.³²

In considering compensation, DHBs should take specific individual circumstances and vulnerabilities into account, including personal responsibility.

If a DHB chooses to fund an individual on a discretionary basis it can either make the payment itself or pay through its agent, the relevant public health unit (if the DHB is part administrator of the public health unit). It is important to note that any payment could create an expectation and a precedent for future cases. District health boards should avoid this where possible.

The funding situation does not differ by provider (of examinations, treatments or other services). Simply put, there is no requirement for any agency to fund unless specified in the legislation (or under the Eligibility Direction). However, any DHB, general practitioner (GP), STI clinic not attached to a DHB (etc), can fund individuals at their discretion.

³¹ Currently, people with HIV are only eligible for PHARMAC funded anti-retrovirals once their CD4 counts reduce below 400 – when they have been infectious for several years and are on a declining clinical path.

³² This discussion refers to DHBs because public health units are not separate legal entities, and public health units are funded differently from DHBs via a separate contract with the Ministry of Health.

4 Overarching principles

There are six overarching principles

Six overarching principles apply to the application of the disease management measures, which are imposed by public health practitioners or the courts exercising responsibilities under Part 3A.³³ The paramount consideration in their application is the protection of public health.³⁴

In no particular order of importance, the principles are as follows:

- **Respect for individuals:** Treating individuals with respect for their dignity and taking into account any known special circumstances or vulnerabilities, to the extent that the protection of public health allows this. As well as the obvious – youth or age – special circumstances or vulnerabilities might include concerns about sexual infidelity, domestic violence, needle sharing as part of drug use, or any number of other factors which can affect a person’s willingness to cooperate.
- **Voluntary compliance:** Giving individuals the opportunity to voluntarily comply with disease management measures when the public health risk they pose can be prevented or minimised by their voluntary compliance. Before imposing disease management measures under Part 3A, an officer or court must consider the individual’s opportunities to minimise the transmission risk, whether the individual has taken up such opportunities, and to what extent. This is particularly in response to directions, and requests or instructions from health practitioners.
As part of the voluntary compliance principle, individuals and communities should be encouraged to take responsibility and participate in decisions about their health.
- **Individual to be informed:** Promptly informing individuals, in a way they are likely to understand, about the nature and implications of the disease management measures being imposed on them, future steps, and of any rights of the individual to appeal or judicial review.
- **Principle of proportionality:** Applying the disease management measures in a way that is proportionate to the public health risk posed by the individual, and not applying them in an arbitrary manner.
- **Least restrictive alternative:** Applying the least restrictive available measure that in the individual’s or court’s judgment will achieve the objective of minimising the public health risk posed by the person.
- **Measures to apply no longer than necessary:** Applying measures no longer than is necessary to prevent or minimise the public health risk posed by the individual.

³³ Note that, in carrying out their own contact tracing, individuals are not specifically responsible for applying the overarching principles. Also, the principles do not apply to other parts of the Health Act, such as the notification provisions in sections 74 and 74AA.

³⁴ Section 92B of the Health Act.

Checklist of the overarching principles

X = Case or contact

1 Behaviour showing respect

- 1.1 Does X have any special circumstances and vulnerabilities, if so what are they?
- 1.2 What should I do differently because of X's special circumstances or vulnerabilities?
- 1.3 Has my conduct been reasonable and fair in the circumstances?
- 1.4 Have I acted in good faith and within the scope of my powers?
- 1.5 Have I shown respect for X's bodily integrity, privacy and inherent dignity as person?

What does protecting public health require?

2 Measures imposed with cooperation where possible

- 2.1 What are the voluntary measures I can try here?
- 2.2 Will voluntary measures work?
- 2.3 What has X previously done to lessen or increase the risk of disease transmission?
- 2.4 What steps have been taken so far, and if some have not worked, why not?
- 2.5 What instructions or directions have previously been given to X? What happened and why?
- 2.6 Have I given X enough opportunities to comply with measures?
- 2.7 How can I encourage X to take responsibility for his/her own health?
- 2.8 Should I consult X or someone else at this point in the process?
- 2.9 What health-related decisions would it be appropriate for X to participate in making?

What does protecting public health require?

3 Measures backed up by timely and relevant information

- 3.1 How can I tell X in a way he or she will understand about the nature of the disease risk and what is happening as a consequence?
- 3.2 What should I be telling X at this point about the steps I am considering taking?
- 3.3 What are the implications for X of doing this? Have I told X?
- 3.4 Does X have a right of appeal to the court against this measure? Have I told X?
- 3.5 Is what I am doing able to be challenged in court? Have I told X?
- 3.6 Does X understand what I am telling him or her and if not, should I get the help of an interpreter, X's caregiver, or legal representative?

What does protecting public health require?

4 Measures that are proportionate and avoid undue restriction

- 4.1 Is my choice of measure likely to protect public health?
- 4.2 Are the measures I have chosen proportionate to the public health risk that X poses?
- 4.3 What is the least restrictive measure I could choose right now that would probably work?
- 4.4 On balance, is this the most effective thing I could do right now?

What does protecting public health require?

5 Measures that are time limited and are only for the time that is necessary

- 5.1 How long does this measure need to last to address the public health risk?
- 5.2 Have I specified an appropriate time limit on my chosen measure?
- 5.3 At what point will I review the measures and X's circumstances?
- 5.4 Have X's circumstances changed, meaning the initial time given is now too long or not sufficient to address the risk?
- 5.5 Is this measure likely to work if it lasts for this duration?
- 5.6 What are the implications (for example, psycho-social, financial, educational) for X of the measure lasting for this duration?

What does protecting public health require?

5 Duty of care

Children under 16 and people lacking legal capacity (such as those who are mentally incapacitated) are particularly vulnerable and may not be able to make informed decisions on their own behalf. Therefore, a duty of care applies to their parents, guardians, and other caregivers making those decisions.³⁵

When a vulnerable person has an infectious disease, the person responsible for them must take reasonable steps and care to:

- (a) ensure the vulnerable person is professionally attended by a medical practitioner, and to facilitate diagnosis and treatment³⁶
- (b) prevent or minimise the vulnerable person's risk of disease transmission.³⁷

The person responsible will be committing an offence if he or she intentionally obstructs compliance with directions or court orders.³⁸

Other statutory duties of care, and professional standards, continue to apply to health practitioners in the normal way.

³⁵ This is where people are given power of attorney for people lacking legal capacity under the Protection of Personal Property Rights Act 1988. The duty, in section 92X of the Health Act, replaces section 90 of that Act, and extends it beyond children to people lacking legal capacity.

³⁶ The term 'medical practitioner' is used advisedly, as it is used in section 92X(2)(a) rather than 'health practitioner'.

³⁷ The diseases to which these duties apply are in Schedule 1 of the Health Act.

³⁸ Sections 92W and 92ZX. For example, those behaviours could include lying about test results or about whether the person has been tested or has taken medication.

6 Contact tracing

Introduction

Contact tracing is an internationally recognised public health strategy to help reduce the spread of infectious disease in the community. It is the process of identifying relevant contacts of an individual who has or may have an infectious disease and ensuring that those contacts are aware of their risk of exposure. It is used to interrupt disease transmission, by identifying people with infection who may require treatment, isolation or quarantine, and to take the necessary steps to prevent further infection.

Contact tracing applies to a wide range of infectious diseases and can be done by the person considered an infection risk (ie, ‘the case’), DHBs, primary care practitioners such as GPs, sexual health clinics and non-government organisations. Up until 4 January 2017, the process has been informal, involving informed consent and taking account of the information privacy principles in the Privacy Act 1993 and the Health Information Privacy Code 1994.

Since 4 January 2017, Part 3A of the Health Act provides a clear basis for the practice and scope of formal, mandatory contact tracing, although does not change informal contact tracing which can continue as before.

Formal contact tracing includes a number of mandatory process steps and statutory powers to require specific information from the case about their contacts. Formal contact tracing may be considered necessary when voluntary inquiries are unlikely to work or are inappropriate, or in situations of urgency, taking account of the presenting public health risk.³⁹

The difference between informal and formal contact tracing does not rest on whether the case does their own contact tracing, but instead on whether the DHB, medical officer of health, health protection officer (HPO) or their nominees relies on or invokes their statutory power.⁴⁰

When a DHB or medical officer of health considers contact tracing is necessary and the pre-requisites in the Health Act are met, they can nominate “a person suitably qualified in health or community work” to undertake contact tracing, if they or an HPO are not going to contact trace. The nominee may include GPs, sexual health clinic staff, public health unit communicable disease nurses and public health nurses, or community workers experienced in dealing with infectious disease. When a person is nominated in this way, they must comply with the contact tracing steps set out in Part 3A, even though they may normally informally contact trace outside the scope of the legislation.

Formal contact tracers, including those nominated by a DHB or medical officer of health, have a duty to keep patient and contact information private whenever possible while still being able to effectively manage the risk of further transmission.

³⁹ 92ZZC.

⁴⁰ Section 92ZZA.

Purpose of formal contact tracing

The statutorily prescribed purpose of formal contact tracing is to obtain information about the contacts of people with, or who may have, scheduled infectious diseases.⁴¹ This is in order to:

- identify the disease's source
- make contacts aware they may be infected, inform them of symptoms, ascertain if they have symptoms
- encourage contacts to seek diagnosis and treatment if necessary
- limit transmission of the disease.⁴²

The statutory purpose is an important reference point in applying the legislation, as several provisions refer back to it (eg, section 92ZZB(1) which deals with the appropriateness of formal contact tracing).

When to contact trace

Clinical considerations

Although the legislation authorises formal contact tracing for all infectious diseases in Schedule 1⁴³ (which includes notifiable and non-notifiable infectious diseases), formal contact tracing will not be appropriate for all diseases. In practice, medical officers of health, HPOs and DHBs will need to prioritise, bearing in mind resource constraints. The potential seriousness of the disease, the potential benefits of contact tracing and the likelihood of transmission or the disease's transmissibility are all relevant considerations.

If a contact tracer cannot locate a contact immediately, it is worth persisting with tracing for:

- diseases when the consequences of infection are comparatively severe – such as meningococcal disease, tuberculosis and HIV
- contacts with a higher risk of complications, such as young children, pregnant women, and those with decreased immunity or comorbidities.⁴⁴

There may be circumstances in which formal contact tracing is appropriate for 'other infectious diseases' that are not notifiable (eg, a serious chlamydia outbreak). In this regard, further information is available in this chapter, and in the CD Manual – including on 'windows' of opportunity for tracing particular diseases.⁴⁵

There may be more than one contact to trace. Prioritising the list of contacts, taking account of the likelihood that the contact is infected and the potential chance of them acquiring the infection, is advisable and inherent in usual contact tracing practice.

⁴¹ Section 92ZY of the Health Act.

⁴² Section 92ZY. In contrast, informal contact tracing is not necessarily confined to scheduled infectious diseases.

⁴³ Schedule 1 of the Health Act.

⁴⁴ Decreased immunity may arise from repeated or untreated infections, or the presence of long-term conditions, among other things.

⁴⁵ www.health.govt.nz/publication/communicable-disease-control-manual-2012

Legislative considerations

Before *requiring* information about contacts from an individual as part of formal contact tracing the contact tracer must consider whether the information is necessary, taking into account:

- (a) the seriousness of the public health risk posed by the case
- (b) the ability and willingness of the case to do their own contact tracing.

The contact tracer must also give reasons for why information is required.⁴⁶

Formal contact tracing powers to require information from individuals about their contacts are relatively intrusive ones, and contact tracers should use these with care.

The overarching principles apply to formal contact tracing. Therefore, the case's known special circumstances or vulnerabilities need to be taken into account. The contact tracer could sensibly focus on the 'most need to know' information if the case is very highly strung or exhaustive questioning about multiple contacts is likely to increase the chances of non-compliance with public health measures.

When a medical officer of health is considering contact tracing, he or she may take account of any recommendation by the individual's medical practitioner.⁴⁷

Who can be a formal contact tracer?

The following people can be formal contact tracers:

- a medical officer of health
- an HPO
- a person suitably qualified in health or community work who is nominated to undertake contact tracing by a DHB or a medical officer of health.⁴⁸

In this guidance, the term 'contact tracer' usually refers to any of these people doing formal contact tracing rather than to the case doing his or her own contact tracing or to informal contact tracing not reliant on the Health Act.

The term 'suitably qualified in health or community work' suggests that the contact tracer should make some effort to match the skill set and experience of the nominee with the disease risk the case poses. In other words, it may be inappropriate to nominate a sexual health clinic employee to contact trace the contacts of an individual who has meningitis).

Given resourcing and accountability implications, most nominees could be DHB employees. However, other situations are possible: for example, in a sexual health clinic where staff members are not employed by the DHB, or in a rural environment, a DHB manager of medical officer of health may nominate a GP, nurse or social worker to carry out contact tracing. This would have to be done in consultation and agreement with the nominee, given the resource implications.

⁴⁶ Section 92ZZC(2) of the Health Act.

⁴⁷ Section 92ZZB(2) of the Health Act.

⁴⁸ Section 92ZZA(1) of the Health Act.

Nominators must ensure that nominees are trained to comply with the processes and obligations set out in the Act.

The process of nominating need not be time consuming for medical officers of health and DHBs. The authority to nominate is broad enough to enable nominating either a body corporate or agency or an individual.

The legislation is silent on specific nomination processes, leaving it up to the medical officer of health or DHB nominating a contact tracer. There is an underlying expectation that the nominator will retain overall management of the contact tracing, identifying any follow up action. This includes medical officer of health directions to cases and contacts, applications for court orders, and urgent public health orders. Such oversight aims to avoid lack of coordination, incomplete processes and duplication.

Individuals undertaking their own contact tracing

A formal contact tracer must allow a case the opportunity to undertake contact tracing for themselves if the contact tracer considers that this is appropriate and that the case is willing and able. This might be appropriate for partner tracing for STIs, within a family environment in relation to other infectious diseases, or within a religious or ethnic community that feels challenged or intimidated by officials not of their culture or language.

When the disease is very serious or has rapid onset (eg, measles, meningococcal disease, hepatitis A), it will not be feasible for cases to do their own contact tracing.

When cases do their own contact tracing, they are not subject to the overarching principles which apply to formal contact tracers. For example, they are not obliged to provide contacts with information on their rights.⁴⁹ In addition, they do not have the information – requiring powers and duties of a formal contact tracer. Despite this, they can and should:

- communicate with contacts
- find out more about the circumstances in which the disease may have been transmitted to or by contacts
- provide information to contacts (eg, a pamphlet) about the risks to themselves and others, and ways of preventing or reducing those risks)
- ask for (but cannot require) identifying information about the contacts of a contact (eg, name, address, sex and contact details)
- (when partner tracing for STIs) at a minimum, notify contacts that they may have been exposed to an infectious disease, and that they should seek diagnosis and treatment if infected.

When a case undertakes their own contact tracing, the formal contact tracer must ask them to report back by a specified time.⁵⁰ If this does not happen, the formal contact tracer must follow up with the case to complete the contact tracing process. A failure to follow up with people undertaking their own contact tracing could result in further infection, wasted resources and wasted opportunities to prevent the transmission of infectious diseases.

⁴⁹ Section 92A(3) of the Health Act says: “To avoid doubt, an individual undertaking contact tracing in response to a request under section 92ZZD(2) is not performing a function under this Part”.

⁵⁰ Section 92ZZD(2).

Informal contact tracers

The provisions in the Act on contact tracing are not a contact tracing code. They will have a neutral effect on informal contact or partner tracing, which some GPs, sexual health clinics not attached to DHBs, and other organisations will continue to do on a voluntary and informed consent basis. There is one exception to this, mentioned above. It is when a medical officer of health or a DHB nominates a person who is suitably qualified in health or community work to undertake contact tracing.

Contact tracing across public health districts

Medical officers of health normally exercise powers, functions and duties only in the health districts for which they are designated. However, formal contact tracing powers are not limited by health districts. The across-district-powers allowed by the legislation can be useful in communities where contact tracing expertise is limited and in situations where the case or contacts travel between districts.

What does formal contact tracing involve?

Formal contact tracing involves:

- ascertaining the identity of each of the case's contacts
- as far as practicable and appropriate, communicating with each contact
- ascertaining the circumstances in which the disease may have been transmitted to the contact (eg, the nature, degree, frequency or duration of the contact relevant to the public health risk)
- advising each contact about their risk of exposure to the disease (including any known, relevant protection or risk factors likely to lessen or contribute to the public health risk)
- where appropriate, advising each contact about medical examinations, the risk of them spreading the disease, and appropriate treatment, exclusion and prophylaxis
- obtaining information about the contacts of contacts.⁵¹

Cooperation in the process of seeking information about contacts is always preferable, and formal contact tracers should, where practicable,⁵² attempt voluntary contact tracing first.

The legislative information-requiring powers are there to reinforce the contact tracer's need to obtain the information, particularly when the case is reluctant to provide the information or there is an element of wilfulness or reckless disregard.

Depending on the circumstances, when a contact tracer has only a suspicion that an individual may be suffering from an infectious disease, the information requirements may be fewer than when a diagnosis has been confirmed.

Ethics and law both require contact tracers to show respect for individuals with, or suspected of having, infectious diseases, including respect for their privacy and autonomy. However, these considerations do not exist in a vacuum. Protection of public health is the paramount consideration. Contact tracers must give due weight to the interests of those who may have been or could in future be exposed to the disease.

⁵¹ Section 92ZZ(e) of the Health Act expressly recognises that contact tracing contacts of the contact is part of formal contact tracing.

⁵² The voluntary compliance principle in section 92D applies.

Information required from the individual

When a formal contact tracer asks them to do so, an individual with, or suspected of having, an infectious disease must provide certain information about contacts. This includes information about:

- those people with whom they have been in contact
- the circumstances in which the individual believes they have contracted, or may have transmitted, the infectious disease.

In relation to the first of these requirements, for each of the contacts, the following information may be necessary:

- name
- age
- sex
- address and other contact details⁵³
- whether the contact has been diagnosed with the disease or confirmed as not having it (and when that diagnosis or confirmation was given)
- the timing, nature and place of the contact's association with the individual
- medical information about the contact that increases or decreases the risk of his or having or transmitting the disease
- behaviour or activities of the contact that increase or decrease the risk of his or her having or transmitting the disease.⁵⁴

The contact tracer can seek this information at their discretion as not all of these factors will be applicable in every case.

Information provided to contacts

The information principle ('Individual to be informed': one of the six overarching principles discussed in chapter 4) applies when a contact tracer interacts with a case and with contacts.⁵⁵ A contact tracer should provide sufficient information on the contact tracing process. Depending on the particular circumstances, it may also be appropriate to inform either the case or the contacts of the following:

- information about the disease they are suspected of having or may have come into contact with and its symptoms, diagnosis and treatment
- information on testing for susceptibility to the disease (eg, immune status)
- counselling or welfare options
- ways of minimising disease onset or transmission (eg, staying at home, hygiene practices, treatment options, education, prophylaxis, seclusion, or vaccination)
- advice on potential next steps to contain the disease risk.

⁵³ Section 92ZZC(4) of the Health Act and regulation 6 of the HIND Regulations 2016.

⁵⁴ Regulation 14(2) of the HIND Regulations 2016.

⁵⁵ Section 92E of the Health Act.

Confidentiality requirements

A formal contact tracer has a duty of confidentiality. He or she must not use or disclose information obtained in the course of contact tracing except for the purpose of effective management of infectious diseases.

The legislation specifies that people carrying out responsibilities under the Act must not use or disclose any information about a person obtained under Part 3A of the Health Act, including information obtained in contact tracing, except as provided under the Health Act or another Act.⁵⁶ This includes the Health Information Privacy Code 1994.⁵⁷ The case may access or disclose information about themselves under the Privacy Act 1993 or another Act.⁵⁸

One example of information which may be used or disclosed relying on the Health Act or another Act is information obtained by the medical officer of health from someone detained in quarantine. This is when the medical officer of health believes on reasonable grounds that the information is necessary to manage the risk to public health, under section 97A of the Health Act.

Contact tracers must carry out the contact tracing process in such a way as to avoid unreasonable interference with cases' and contacts' privacy. They must try to avoid adverse or unintended consequences, such as deterring people from seeking testing or treatment for infectious diseases.

The duty of confidentiality includes a requirement that the contact tracer does not, as far as practicable, disclose the case's identity. However, the Health Act allows disclosure of the case's identity to contacts and other people in some limited circumstances, including when it is not possible to obtain useful information from a contact or other individuals without disclosing the case's identity.⁵⁹ For example, when the suspected disease is an STI or the case works in a small organisation, it may not be possible to provide meaningful information about the disease and how it may have been transmitted without revealing the case's identity.

The default position, of protecting the case's identity, applies when a contact tracer requires information from people connected with the case (ie, the names and addresses of contacts known to the person). These people are:

- the case's employer
- an educational institution the case attends

⁵⁶ Section 22C(4).

⁵⁷ Relevant principles of the Health Information Privacy Code (summarised here) include the following:

- 1 Only collect health information if you really need it.
- 2 Get it straight from the people concerned.
- 3 Tell them what you are going to do with it.
- 4 Be considerate when you are getting it.
- 5 Take care of it once you've got it.
- 6 Let people see their health information if they want to.
- 7 Let people correct it if it is wrong.
- 8 Make sure health information is correct before you use it.
- 9 Get rid of it when you are done with it.
- 10 Use it for the purpose you got it.
- 11 Only disclose it if you have a good reason (eg, where it is necessary to prevent or lessen a serious and imminent threat to the life or health of an individual).
- 12 Only assign unique identifier where permitted.

⁵⁸ Section 92ZZG.

⁵⁹ The people are specified in section 92ZZF(1).

- any business or other organisation that the case has dealt with
- an event co-ordinator or other person likely to have a list of those attending an event (eg, a cultural festival, sports event or scout camp).⁶⁰

Whether the contact tracer seeks information from these people will depend on, among other factors, the nature of the disease and the likelihood of the contacts being able to supply the information.

If necessary, these people must provide the information the contact tracer seeks, even if this would otherwise breach protection of personal privacy rights under the Privacy Act. In requiring information from the case or the people mentioned above, the contact tracer has a duty to advise them that the information must be provided for the effective management of infectious diseases.

If a case is under 16 or lacks legal capacity, a contact tracer may ask his or her legal representative or person responsible for them to provide the information. However, in the situation where the contact tracer must urgently address the public health risk (eg, because of a suspected case of meningococcal, which is life threatening) and the representative or caregiver is not immediately present or available, common sense should prevail.⁶¹

In tandem with obtaining information about contacts from the case or people occupying positions of responsibility, medical officers of health may need to take action to prevent the case or contact from spreading the disease. This includes requesting or directing them to seek confirmation of diagnosis, requesting them to get treated within a specified time, or in unusual circumstances applying for an order for treatment.

Prosecution for an offence

If other measures fail or are likely to be ineffective, and the public health risk justifies it, medical officers of health may consider the option of referring the matter to the Ministry of Health's Enforcement Unit for prosecution. The offence is one of failing to provide information about contacts without reasonable excuse, or intentionally omitting, or giving false, information.⁶² It carries a maximum penalty on conviction of a fine of \$2,000.

The Ministry of Health's Prosecution Policy (see Appendix 4) assumes that potential prosecutions come through the Ministry's Enforcement Unit, located in Health Legal. This is in order to ensure that any prosecution action taken is cost-effective, consistent, and fairly managed, while giving due consideration to each case on its own merits.

⁶⁰ Section 92ZZF(2) of the Health Act.

⁶¹ This is taking into account that the paramount consideration is protection of public health.

⁶² Section 92ZZH of the Health Act.

Contact tracing scenarios

Scenario 1 – informal contact tracing

Reggie is 65 years old and a fairly new inhabitant of the Twilight Retirement Home. Staff members become concerned about his nocturnal activities. Reggie has been complaining of nasty sores on his genitals and on medical examination is found to have syphilis.

However, Reggie does not always take his medication, and although he has reduced his nocturnal wandering, has not completely stopped the behaviour causing a disease transmission risk. The home is reluctant to lock Reggie in his room, due to the fire risk, and the concerns of the other residents and family.

The doctor follows up on the earlier notification, discussing the case with the local medical officer of health, and seeking advice, while not disclosing Reggie's identity. The medical officer of health forms the view that Reggie should be asked for information about his contacts as a matter of priority. The medical officer of health suggests that the doctor attempt informal contact tracing, bearing in mind that Reggie knows the doctor.

The doctor talks to the manager of the retirement home, as the person in charge of Reggie (with welfare power of attorney), and finds out sufficient information to identify Reggie's contacts. The doctor sets about approaching them, and provides them with information about syphilis. He impresses on them the importance of being diagnosed and treated if necessary, and of the particular risks of continuing sexual activity without using condoms.

The doctor provides information about syphilis, its treatment and containment, in a way which Reggie finally understands.

Scenario 2 – formal contact tracing

Mark has been very sexually active since joining a social media site matching people with potential sexual partners. He has a long-term partner, is bisexual and does not always use a condom. Laboratory results have confirmed his doctor's diagnosis of HIV, and despite this Mark is reluctant to tell his partner and others he has had sex with that they may have been infected.

His doctor is also his partner's doctor, and after considerable persuasion, Mark agrees to inform her about his HIV status. However, the doctor doubts whether this has actually happened. The local public health unit finds out about Mark's infection risk through a phone call from an infected contact concerned that nothing is being done about the public health risk Mark poses. The medical officer of health nominates the local sexual health clinic (not attached to the DHB) which agrees to contact trace Mark's sexual contacts, including his partner. The medical officer of health checks on progress with the clinic and ascertains that one of the contacts lives outside the health district. Using his powers to contact trace across health districts, the medical officer of health informs this contact of the disease risk, and the need to be diagnosed and if necessary, treated.

Contact tracing checklist

- 1 Ensure that the entire process complies with the overarching principles.
- 2 Form a view that contact tracing should be undertaken, after considering its purpose and whether there is a public health risk warranting it.
- 3 Consider whether, or the extent to which, the case is able and willing to undertake their own contact tracing (mainly applicable for partners who may have been exposed to an STI).
- 4 When the case does their own contact tracing, follow up within an agreed specified time on progress.
- 5 If a medical officer of health or other DHB employee takes responsibility for contact tracing, decide whether to nominate a suitably qualified person or organisation to undertake the contact tracing and seek their agreement.
- 6 If a nomination is made, follow up on the contact tracer's progress.
- 7 When a case does not carry out contact tracing on request, or does so inadequately:
 - (a) ascertain the identity of each contact
 - (b) communicate with each contact as far as practicable and appropriate
 - (c) ascertain the circumstances in which the disease may have been transmitted to or by the contact
 - (d) provide information and advice to contacts on the disease; risks of transmission; medical examinations; and appropriate exclusion, treatment and prophylaxis
 - (e) obtain information about the contacts of each contact (eg, names, ages, sex, addresses and any other information required by regulations).⁶³
- 8 When the case is under 16 or lacks legal capacity, approach the legal representative, parent, guardian or person responsible for information about contacts.
- 9 Where relevant and necessary, obtain information from any of:
 - (a) the case's employer
 - (b) an educational institution the case attends
 - (c) any business or other organisation that the case has dealt with
 - (d) an event co-ordinator or other person likely to have a list of people attending an event.
- 10 Comply with the duty of confidentiality applying to the information obtained: do not use or disclose the information unless it is necessary for effective management of disease, and do not disclose the case's identity as far as practicable.

⁶³ Please refer to regulation 14 of the HIND Regulations 2016, or the discussion under the heading 'Information from the individual' in this chapter.

For medical officers of health only (also see chapters 8 and 9 on directions and court orders)⁶⁴

- 11 After considering and/or applying voluntary instructions, decide whether to impose directions on the contact (eg, as part of a medical examination direction, a condition to use prophylaxis, or to attend counselling or educational courses).
- 12 Consult with the Director of Public Health where appropriate, and always consult when the disease is an ‘other infectious disease’ listed in Part 2 of Schedule 1 of the Health Act, before proceeding.
- 13 Impose the directions by serving them on the contact, and provide relevant information.
- 14 If voluntary means have failed, and directions have failed or are inappropriate in the particular situation, decide whether it is necessary to apply for an order for contacts (eg, to impose requirements on the contacts – these are listed in section 92ZA(1)(b),(c),(d),(h),(i), and (j)).
- 15 Consult with the Director of Public Health where appropriate, and always when the disease is an ‘other infectious disease’ listed in Part 2 of Schedule 1 of the Act before proceeding.
- 16 If a case has been asked for information about contacts and has failed to provide it, consider proceeding with prosecution for obstruction or for providing misleading information.
- 17 Consult with the Director of Public Health where appropriate.
- 18 If the medical officer of health decides to proceed with prosecution, refer the matter to the Ministry of Health’s Enforcement Unit for further consideration.

Contact tracing resources: sexually transmitted infections

Publisher and/or author	Year	Title and general website address
New Zealand Sexual Health Society	2012	<i>Partner Notification Management – Summary</i> www.nzshs.org
Australian Society for HIV Medicine	2010	Australasian Contact Tracing Manual, 4 th edition www.ashm.org.au
Ontario Ministry of Health and Long – Term Care	2009	<i>Sexually Transmitted Infections Case Management and Contact Tracing Best Practice Recommendations</i> www.publichealthontario.ca/en/eRepository/STIs
Public Health Agency of Canada	2015	<i>Canadian Guidelines on Sexually Transmitted Infections</i> www.phac-aspc.gc.ca
Department of Health, Health Protection Agency, Chartered Institute of Environmental Health, National Health Service	2010	<i>Health Protection Legislation (England) Guidance 2010</i> www.webarchive.nationalarchives.gov.uk
NSW Sexually Transmissible Infections Programs Unit	2013	<i>STI Contact Tracing Tool for General Practice</i> www.stipu.nsw.gov.au

⁶⁴ Some of this material has not been traversed in this chapter on contact tracing, but is covered in general terms by succeeding chapters on directions and court orders, and will be relevant in some situations when formal contact tracing takes place.

Publisher and/or author	Year	Title and general website address
Australian Sexual Health Alliance	2015	“Taking a Sexual History and Contact Tracing” in <i>Australian STI Management Guidelines for Use in Primary Care</i> www.sti.guidelines.org.au
Centres for Disease Control and Prevention, Health Resources and Services Administration, National Institutes of Health	2014	<i>Recommendations for HIV Prevention with Adults and Adolescents with HIV in the United States, 2014, Summary for Clinical Providers</i> www.stacks.cdc.gov/view/cdc/26063
Burnet Institute	2012	<i>STI/HIV Contact Tracing within Aboriginal Communities in NSW: A Supplementary Report</i> www.stipu.nsw.gov.au/wp-content/uploads
Burnet Institute	2010	<i>Partner Notification of Sexually Transmitted Infections in New South Wales: An Informed Literature Review</i> www.stipu.nsw.gov.au/wp-content/uploads
McClellan H, Radcliffe K, Sullivan A, et al. <i>International Journal of STD & AIDS</i>	2013	<i>2012 BASHH statement on partner notification for sexually transmissible infections</i> www.bashh.org/documents/2012
Azariah S. <i>New Zealand Medical Journal</i>	25 May 2012, Vol 125 No 1355, pp 62–70.	Partner notification for sexually transmitted infections. Why can't we talk about it? www.nzma.org.nz/journal ⁶⁵

⁶⁵ This is an excerpt from a table presented by Geoffrey Roche, a member of the Communicable Diseases Team in the Ministry of Health's Public Health Group.

7 Voluntary measures

Wherever the public health risk can be prevented or minimised by voluntary measures, those exercising powers under Part 3A of the Health Act must give the case or contact an opportunity to cooperate. This opportunity may arise at several different points in dealings with the person, not merely on initial contact with them.

Voluntary measures undertaken by public health practitioners might include informing the person about their options and the implications of these and creating positive incentives to comply with disease management measures. Depending on the circumstances, these could involve:

- building rapport and understanding of special circumstances and vulnerabilities
- holding out the prospect of feeling better with treatment or once uncertainty is removed following a diagnosis
- explaining the adverse consequences for the individual or their family/whānau or other associates if he or she does not take action or provide information to help manage the disease risk
- emphasising the decisions over which the case or contact has control or a degree of self-autonomy, and encouraging their participation in decision-making
- finding an alternative that is acceptable to them (eg, suggesting immunisation to avoid more intrusive public health action)
- creating incentives to comply (eg, emphasising that protracted monitoring and increasingly intrusive treatment will be more likely to have adverse financial implications)
- with the individual's consent, bringing in family/whānau or community leaders to exert a positive influence
- in the event of non-compliance, mentioning the possibility of more intrusive powers (eg, noting that if the case voluntarily remains at home, there will be no need to detain him or her in a residence under an urgent public health order).

In considering when voluntary measures should be attempted or persisted with, health professionals and courts may take into account any previous opportunities to minimise the disease transmission risk (eg, of their own volition, or following a request by a medical practitioner), and whether and to what extent the person took them up.⁶⁶

⁶⁶ See section 92ZB of the Health Act in relation to matters the District Court may take into account in assessing the public health risk.

8 Directions

Introduction

A medical officer of health can impose four distinct types of directions:

- public health directions
- directions to contacts
- medical examination directions
- directions to heads of educational institutions.

This chapter describes each in turn, looking at the nature of the direction, and when and how it can be imposed, and giving a practical example of its use. The chapter also considers processes and safeguards that apply to each direction.

The medical officer of health makes the decision that a direction should be given, although an HPO or public health nurse may assist in the lead up to the decision. Health protection officers can serve the direction on the medical officer of health's behalf and monitor compliance, with the medical officer of health's oversight. All those involved with directions must comply with the overarching principles (see chapter 4 of this guidance). This guidance includes templates for imposing directions (see chapter 11). Accompanying each template is information that, consistent with the information principle, those giving the directions must convey to the person who is the subject of the direction.⁶⁷

Those giving a direction must promptly inform the person receiving it of:

- the nature of the functions, duties, or powers being exercised or performed and their implications
- any further planned steps
- the right of appeal,⁶⁸ and the right to apply for judicial review.

He or she may additionally inform the person of any of the following matters that the medical officer of health thinks relevant in the circumstances:

- symptoms, diagnosis and treatment of the infectious disease
- how the risk of onset or transmission of the infectious disease may be minimised
- how to seek further information or the assistance of an interpreter or a patient support advocate
- how to seek information on accessing legal aid.⁶⁹

⁶⁷ These requirements arise from the information principle in section 92E and the list in regulation 12 of the HIND Regulations 2016.

⁶⁸ In any of sections 92T, 92ZT and 92ZU of the Health Act.

⁶⁹ This list appears in regulation 12 of the HIND Regulations 2016. The information accompanying the templates refers to the Ministry of Justice's information on legal help for going to court www.justice.govt.nz/Courts/going-to-court/legal-aid/legal-help and to agencies that provide 'advocacy' support.

Giving a direction is not a substitute for explaining its terms and checking that the person receiving it understands the information and implications. The Health Literacy Framework and Health and Disability Services Consumers' Rights Code⁷⁰ apply, in addition to the overarching principles.

A person giving a direction may take other actions alongside it – such as continuing to provide information about clinical symptoms and preventive measures to counteract the disease's spread, and contact tracing.

A direction ceases to have effect when a court imposes a public health order, with the exception of medical examination directions.⁷¹ Medical officers of health cannot lawfully give directions while a public health order is in force.

A prior direction is not necessary before a court imposes a public health order.

Directions may generate a lot of anxiety for those subject to them: their practical implications can include loss of income, job insecurity and possible eviction for rent arrears – to name just a few. For this reason, those considering giving directions should approach the task carefully, and aim to lessen rather than increase anxiety.

Public health directions

Nature of the power

A medical officer of health may give directions to:

- (a) participate in any of the following that are conducted by a health provider⁷²
 - (i) counselling
 - (ii) education
 - (iii) other activities related to the infectious disease
- (b) refrain from carrying out specified activities (for example, undertaking employment, using public transport, or travelling within and outside New Zealand) either absolutely or unless stated conditions are observed
- (c) refrain from going to specified places either absolutely or unless stated conditions are observed⁷³
- (d) refrain from associating with specified persons or specified classes of persons⁷⁴

⁷⁰ The Health and Disability Commissioner's Code of Consumers' Rights Regulations 1996 sets out consumers' rights and the duties of providers (eg, the right to make informed choices and give informed consent). The Health Literacy Framework (Ministry of Health, 2015: *A Framework for Health Literacy*, Wellington: Ministry of Health. URL: www.health.govt.nz/publication/framework-health-literacy reflects how each part of the health system can contribute to building health literacy so that all New Zealanders can make informed decisions about managing their health, or the health of those they care for).

⁷¹ Section 92ZZF of the Health Act.

⁷² 'Health provider' is defined in section 2(1) of the Health Act as "a person or an organisation that provides, or arranges the provision of, personal health services or public health services".

⁷³ For example, this could comprise a direction to stay away from the local pool, or a concert, or any number of public settings.

⁷⁴ For example, depending on the nature of the risk, a class of persons may include sex workers, drug users, those most susceptible to infection, children who have not been immunised in a school or classmates.

- (e) take specified actions to prevent or minimise the public health risk posed by the individual
- (f) stay, at all times or at specified times, at a specified place of residence, subject to specified conditions
- (g) accept supervision by a named person or a person for the time being holding a named office, including, without limitation:
 - (i) attending meetings arranged by that person, and
 - (ii) providing that person with information on any action, occurrence, or plan that is relevant to the public health risk posed by the individual
- (h) comply with instructions to prevent the spread of the infectious disease.

When the direction can be imposed

A medical officer of health can give this direction if he or she believes on reasonable grounds that a person poses a public health risk (see ‘The first step is scoping the public health risk’ in chapter 3 of this guidance).

In the case of directions under (b) above – to refrain from specified activities, a medical officer of health may inform a person occupying a position of responsibility in relation to the activity that a direction will be made.⁷⁵ This is where the medical officer of health believes on reasonable grounds that this would help to prevent or minimise the public health risk. In making this communication, the medical officer of health may inform the person about:

- the direction
- the public health risk posed by the individual’s engagement in the activity
- ways of minimising that public health risk.

A person who occupies a position of responsibility in relation to the activity could be a natural person (such as a rest home manager, an employer or an event coordinator) or a legal person (such as an airline company).

The power to contact a person in a position of responsibility in relation to the activity is unique to directions under section 92I(4)(b).

This feature of directions restricting activities (contacting a person in a position of responsibility) applies to directions to contacts under section 92J(4)(b) and (7), as well as to public health directions to cases. However, it does not apply to medical examination directions or directions to the person in charge of an educational institution.

⁷⁵ The power to contact a person in a position of responsibility in relation to the activity is only provided in respect of directions imposed under section 92I(4)(b) of the Health Act – to refrain from carrying out specified activities, and does not apply to directions under others of the paragraphs.

Scenario

Marina, diagnosed overseas some years ago with untreated, latent tuberculosis, has been carpooling to work each day for about a year. She has been unwell in recent weeks, coughing and spluttering throughout the car rides.

One of the people in the carpool, a nurse, calls the medical officer of health, conveying her suspicions that Marina has tuberculosis and that the others in the car are at risk of becoming, or may have become, infected. She makes alternative arrangements to get to work. Marina is waiting for test results but plans to continue carpooling and working in the interim. She lives alone, so does not pose an obvious public health risk to anyone at home, and enjoys the company travelling to and from work.

The medical officer of health approaches Marina and tells her of the risk to herself and to others in the car and at work if she has active tuberculosis. She instructs her to stay at home until she has test results that are clear. Marina is uncooperative. She has several bills to pay and fears loss of earnings and employment if she stays at home, as well as the attitudes of her colleagues and friends – she perceives that there is a stigma attached to having tuberculosis.

After further discussion which does not achieve Marina's ready compliance, the medical officer of health issues a direction under section 92I(4)(f) for Marina to stay at home until she has clear test results, and specifies a maximum time limit of six months, which will be reviewed regularly during that period. The medical officer of health explains to Marina what she can expect in terms of symptoms and treatment if she has active tuberculosis, the implications of the direction, the next steps if she has the acute form of the disease, the implications of non-compliance with the direction, her right of appeal to the District Court, and the medical officer of health's obligation to review the direction.

Directions to contacts

Nature of the power

A medical officer of health may give a contact of a case posing a public health risk any one or more of the directions referred to above in paras (a) to (h) under Public health directions: Nature of the power, and authorised by section 92J(4) of the Health Act.

When the direction can be imposed

A medical officer of health can give the direction if he or she believes on reasonable grounds both that:

- (a) the person has been in contact with an individual who has, or may have, an infectious disease (the case)
- (b) if the disease has been transmitted to the contact, he or she is likely to pose a public health risk.

Scenario

A measles outbreak occurs in a Blenheim primary school, and the school has asked several students with measles to remain at home until they are no longer infectious. All the parents have cooperated, and the children stay home without the need for formal directions. However, there are five pupils at the school who have not been immunised against measles. Meanwhile, the medical officer of health follows up on the multiple measles notifications. He ascertains that none of the five unimmunised children have apparent symptoms. Three of the five are in the same class as the infectious children and are contacts of the infected children, and the other two have had no or very minimal contact with any of the infectious children. The medical officer of health decides to direct the three unimmunised children (the contacts), via their caregivers, to stay at home under adult supervision until tests show the contacts are already immune or for 18 days, and advises them to have their first MMR vaccinations immediately, followed by a second dose four weeks later. He does this in reliance on section 92J(4)(f).

Alternatively, the medical officer of health could have consulted the school principal, then directed her to direct the students to stay away from school – under section 92L(2)(a), which specifically deals with educational institutions. He considers that a direction under section 92J, relating to contacts, would be quicker to administer: speed is a crucial factor in dealing with measles. A direction under this section enables him to direct that the children stay at home (with the further conditions of adult supervision, as distinct from merely away from school).

The school principal may decide to direct the three children to stay away from school, independently from the medical officer of health, under section 19(1)(b) of the Education Act 1989, on the basis that they may have a communicable disease.

Part 3A provides no power to direct closure of premises or places where people congregate, other than educational institutions. If a medical officer of health needs to manage a public health risk by excluding infectious people from certain occupations, public pools, campsites, concerts and other public environments, he or she can use directions to the individuals concerned – to stay away from a certain place, or not to associate with certain people.⁷⁶

As mentioned earlier, the Ministry for Primary Industries (MPI) has powers to close commercial food premises. In contrast, Part 3A's medical officer of health powers focus on the risk the person poses.

⁷⁶ The rarely used special powers in section 70(1)(la) or (m) of the Health Act do allow a medical officer of health to close premises or other places where people congregate, by written order or public broadcast.

Medical examination directions

Nature of the power

A medical officer of health may give a direction to a case to undergo specified medical examinations with specified health providers within a particular time or frequency, at specified places.

A medical examination direction cannot include treatment (for a definition of what it does include, see the Glossary in chapter 12 of this guidance).

Any medical examination must be consistent with best practice in diagnosing the presence of, or immunity to, the infectious disease. It must be the least invasive type of examination necessary to establish whether a person has, or is immune to, the infectious disease.

Under the Code of Health and Disability Services Consumers' Rights 1994, medical practitioners must seek and obtain informed consent prior to undertaking a medical examination.⁷⁷ This requirement continues to apply even in the context of a direction to undergo a medical examination. If a person subject to the direction refuses to be medically examined, different processes apply: see 'Prosecution for non-compliance' in this chapter, below.

Until the medical examination/s have been completed, the person can also be directed to comply with any one or more of the directions referred to in (a)–(h) under 'Public health directions', above. These directions end once the medical examination/s have been completed.

Medical examination directions themselves end once the medical examinations/s specified in the direction have been completed in accordance with any specified place and health provider.⁷⁸

When the direction can be imposed

A medical officer of health can impose a direction if he or she holds a belief on reasonable grounds that an individual:

- (a) may have an infectious disease (eg, because he or she has been in contact with a person who has an infectious disease)
- (b) has received a request from his or her medical practitioner or a medical officer of health to undergo a medical examination within a specified period, to confirm whether or not he or she has an infectious disease
- (c) has not complied with the request for a medical examination within the period specified
- (d) if he or she has the infectious disease, poses a public health risk.⁷⁹

All of these grounds must be met.

Medical officers of health must forward a copy of every medical examination direction to the Director of Public Health.⁸⁰

⁷⁷ Right 7: Right to make an informed choice and give informed consent.

⁷⁸ That is the implication from section 92K(3)'s referenced to "until those examinations are completed ..." referring back to subsection (2).

⁷⁹ Section 92K of the Health Act.

⁸⁰ Section 92K(8).

Scenario 1

In a small community three people develop typhoid, a relatively uncommon disease in New Zealand. On investigating, the local medical officer of health has reasonable grounds for believing the source of the infection is one of the food handlers employed by Eat and Go Inc. Eat and Go regularly caters church functions, and has an ice cream truck it brings to the functions. On making some inquiries of the three typhoid sufferers, the medical officer of health discovers that all three cases remember getting an ice cream from this truck. One said she hesitated before doing so, because the food handler had just wiped his nose with his hand before placing the ice cream on the cone with a scoop and handing it to her. The medical officer of health is uncertain which food handler did this, and in any case typhoid is spread by the oral/faecal route and not through nasal fluid.

A further church function is planned for the coming weekend. Eat and Go will cater the function and bring its ice cream truck.

Because the public health unit's representative is responsible for managing the public health risk posed by individuals who may have an infectious disease, the medical officer of health contacts the company's representative to ensure all staff have been tested and given the all clear.

The medical officer of health asks Eat and Go for a list of all staff – five in total – and asks to test each of them immediately. A couple of staff members, (Bob and Jerry) balk at this. Given the severity of the disease (which can be fatal if not treated), the medical officer of health backs up his request with a direction to Bob and Jerry under section 92K(1) to be tested.

The medical officer of health approaches a person occupying a position of responsibility at the church and asks for a list of attendees at the last church function, so that they can be contact traced. He tells her about the directions, and of the public health risk posed by and to Eat and Go personnel if they are involved with food handling at the next function. The medical officer of health does this in the belief that the communication is necessary to prevent or minimise the public health risk posed by one or both of them.⁸¹

Because MPI is responsible for commercial food safety and food safety premises, the medical officer of health informs MPI of the food safety risk, and MPI arranges for samples of the ice cream and cones to be tested for the bacteria *Salmonella typhi*. MPI also reviews the food safety procedures Eat and Go Inc has in place.

The test results show Bob has typhoid. Bob accepts treatment voluntarily and opts to comply with the medical officer of health's request to stay away from customer service and food handling until he no longer presents a public health risk, and within a specified timeframe.

⁸¹ Section 92K(5) and (6) of the Health Act.

Scenario 2

Wayne is a sous chef in a restaurant and is a close contact of a case who has been diagnosed with salmonellosis. The medical officer of health determines that a medical examination is necessary to ascertain whether Wayne is a carrier and could spread the infection by contaminating the food he is handling.

The medical officer of health contacts Wayne to confirm the circumstances in which the disease may be transmitted to or by a food handler, providing information about the disease and ways to prevent its spread, and to obtain information about contacts. While Wayne cooperates in providing information, he is reluctant to arrange a medical examination to confirm whether he has the disease. He vigorously refuses the medical officer of health's request that he do so.

The medical officer of health imposes a direction under section 92K that Wayne be medically examined within three days to establish whether he has the disease. In tandem with this, the medical officer of health directs Wayne to immediately stay away from work, and to remain at home for several weeks unless or until he has obtained an 'all clear' on examination. The fact that Wayne is a close contact of a confirmed case working in a high – risk occupation justifies the direction.

The medical officer of health approaches Wayne's employer for information on other contacts who may be at risk, using the powers in section 92ZZF of the Health Act. The employer is legally obliged to provide that information, and the medical officer of health informs him of this and that the information is necessary for the effective management of infectious diseases.

Educational institution directions

Nature of the power

When there is a public health risk from an infectious disease spreading within an educational institution, a medical officer of health must consult with the person in charge of the institution before giving them a direction. These directions may require the person in charge to:

- (a) direct one or more people attending the educational institution to stay away from its property until further notice
- (b) close part of the institution
- (c) close the entire institution.

The legislative term 'educational institution' is defined more broadly than just schools or early childhood education and care centres. It includes 'any place where people gather for the purpose of education or training. This could include a marae that holds an educational course, for example.⁸²

When the direction can be imposed

To give an educational institution direction, a medical officer of health must have reasonable grounds to believe that:

- (a) one or more persons attending an educational institution has, or may have, an infectious disease

⁸² Section 2(1) of the Health Act.

- (b) there is a substantial risk that the disease will be transmitted to other people attending the institution, having regard to its nature and the relevant circumstances of the particular case
- (c) the risk of the disease being transmitted to other people cannot be adequately managed solely by giving directions to the individual with the disease.⁸³

All of these grounds must be met.

The CD Manual lists indicative incubation and isolation periods for notifiable infectious diseases, which is particularly relevant to infectious students staying away from educational institutions.⁸⁴

Scenario

Mandy is the head of an early childhood education and care centre in Miramar, and for a month norovirus has been circulating around the centre's staff and children. A couple of the children's medical practitioners have notified the outbreak – acute gastroenteritis – to both the medical officer of health and the local authority, and authorities have taken ongoing measures to address the public health risk. At various times, these measures have included water testing, stool sampling and surface swabs at the centre and among attendees. The centre has counselled parents and children on hand hygiene, and the importance of keeping children home until 48 hours after their last episode of vomiting or diarrhoea. The centre has removed its carpet, disinfected its door handles and installed hand sanitisers at the gates and inside the building.

Despite these measures, cases keep on irrupting. Mandy and the other staff become exhausted, particularly because of the need to backfill for staff asked to stay away for at least 48 hours after they are symptom-free.

Given this situation, the medical officer of health, Erica, decides to direct temporary closure of the centre. There is some resistance to this among the parents, and a couple of the paid staff. Mandy, however, is relieved, and agrees to the direction. She is pleased to receive a formal direction putting the course of action beyond dispute. Erica gives her direction under section 92L(2)(c) on the basis that there is a continuing and substantial risk that the infectious disease will be transmitted to other people attending the centre if it does not close; that risk cannot be adequately managed by directing particular staff, children or parents to stay away from the centre. Erica works with the local EHO to make sure the premises are completely disinfected while they are closed.

Eric sends a copy of the direction to the Director of Public Health on behalf of the Director-General of Health under section 92L(4). The Director-General has decided that all copies of any direction to close or partially close an educational institution should be forwarded to the Director.

⁸³ Section 92L of the Health Act.

⁸⁴ Formerly, specified periods applied to a small number of diseases which were listed on Schedule 2 of the HIND Regulations 1966. For some diseases, the Schedule specified periods of time for which students should be kept away from school. That Schedule has now been revoked, in favour of more comprehensive and up to date coverage in the CD Manual. www.health.govt.nz/publication/communicable-disease-control-manual-2012

How directions can be imposed

Service of directions and notices

The principle ‘Individual to be informed’, one of the overarching principles (see chapter 4), alongside the HIND Regulations 2016, imposes a number of information requirements on public health practitioners serving directions. These include the requirement to inform the individual of clinical matters to do with the disease, of the nature of the direction and its implications, of potential next steps, and of safeguards such as review and appeal.

A direction must be in writing and must be served on the individual it concerns.⁸⁵ Preferably, this will be in person, although when this is not reasonably practicable, those serving a direction can take alternative steps to bring it to the person’s attention as soon as possible.⁸⁶

Alternative steps include using electronic methods and leaving the direction at the individual’s place of employment or last known address. If a direction is served by such means, the person serving it must confirm it has been received. The same service requirements apply to notices that a direction has been varied, extended or cancelled.

If the person suspected of having an infectious disease is under 16 or lacks legal capacity, the medical officer of health or HPO must serve the direction on the parent, guardian or other responsible person.⁸⁷

Duration

A direction must specify the duration for which it is in force. Except for medical examination directions, this can be no longer than six months (unless extended by a subsequent notice). In the vast majority of cases, the duration is likely be no more than a few days or weeks, although for some serious enteric diseases (eg, VTEC or typhoid), where proof of clearance is required, a direction may last into months.

Force and compulsory treatment

Medical officers of health exercising powers under Part 3A of the Health Act cannot use force to make people comply with directions, and directions cannot require people to submit to compulsory treatment.⁸⁸ Instead, a medical officer of health must apply to the District Court for a public health order with a compulsory treatment component. Even then, the individual who is the subject of the order may withhold consent, incurring the risk of prosecution for the offence of either failing to comply with a court order or obstruction.⁸⁹

⁸⁵ Under sections 92I to 92L of the Health Act.

⁸⁶ Section 92N of the Health Act.

⁸⁷ Section 92N(2) of the Health Act.

⁸⁸ Sections 92Y, 92I(5), 92J(5) and 92K(4).

⁸⁹ Section 92V contains the offence of failing to comply with directions and section 92W the offence to obstruct compliance with directions.

Requirements to report to the Director-General

The Director of Public Health, as the Director-General's delegate, can require copies of any directions imposed by a medical officer of health.

From time to time, the Director may require a medical officer of health to provide a report on any directions given under Part 3A.⁹⁰

In order to impose a public health direction on a case, or on a contact, that relates to an infectious but non-notifiable disease (such as chlamydia, herpes, or influenza), the medical officer of health must first get the Director's approval.⁹¹

Reviews

Medical officers of health must regularly review directions imposed in the public health districts in which they operate.⁹² If they consider a person subject to a direction no longer poses a public health risk, they must cancel the direction by serving a notice on him or her.

The Director of Public Health may ask a medical officer of health to provide advice on why a direction needs to continue in effect.

Medical officers of health should keep written documentation on the reviews of directions and conclusions reached, in the event that the Director of Public Health wishes to follow up, or the case or contact files an appeal.

If a medical officer of health considers that the conditions for a direction continuing in force are satisfied but that the direction should be varied or extended, he or she must serve notice of this decision within a reasonable time before the direction expires.⁹³ The timing should enable the person concerned to receive the extension notice and become aware of its implications before expiry of the original direction.⁹⁴

Templates for notices of cancellation, extension and variation of directions appear in chapter 11 of this guidance.

Medical officers of health may give repeated directions to one person, provided the directions meet the relevant criteria for imposing them each time.⁹⁵

⁹⁰ Section 92M.

⁹¹ Sections 92I(3) and 92J(3).

⁹² Section 92P.

⁹³ Section 92Q(1) of the Health Act.

⁹⁴ Along with other information requirements in section 92E of the Health Act and regulation 12 of the HIND Regulations 2016.

⁹⁵ Section 92R of the Health Act.

Appeals

A person subject to a direction can appeal to the District Court against it or any part of it.⁹⁶ There is also a right of appeal against extensions and variations.

In this case, the appellant will serve a notice of appeal on the medical officer of health under Part 18 of the District Court Rules 2014, normally within 20 working days of receipt of the direction or notice of extension or variation being appealed against.⁹⁷ Medical officers of health should seek legal advice on preparing any case for opposing the appeal, and as a matter of best practice should consult with the Director of Public Health.

The notice of appeal will be filed in the District Court nearest to where the direction, variation or extension being appealed against was made or served, unless the parties agree on another court location or the court orders otherwise.⁹⁸

Filing an appeal does not change the binding nature of the direction, variation or extension being appealed against, unless the court orders otherwise. In most cases, a successful appeal means the court has decided the direction should cease. However, if the successful appeal was only against variation of a particular condition or extension of the original duration of the direction, then the remainder of the direction will continue in force, until its original end date.

Throughout the period between receipt of a notice of appeal and determination of the appeal by the court, the person concerned may become less cooperative. Medical officers of health and other public health practitioners should be particularly careful within this period to document instances of non-compliance or changes in circumstances, in case they are relevant on appeal. Documenting these instances will assist the court's consideration of what further or different measures it might impose in place of the direction, variation or extension being contended.

While an appeal is under way, it may seem hopeless to try to reach agreement or to seek the person's cooperation at this stage. However, medical officers of health should continue to attempt some of the voluntary measures mentioned earlier, taking care not to prejudice the forthcoming decision on appeal. This could prevent the cost and delay of further court proceedings.

Further rights of appeal, to the High Court, apply if the individual concerned or the medical officer of health is dissatisfied with the District Court's decision. Again, medical officers of health should seek legal advice and consult with the Director of Public Health in this instance. They must forward a copy of any notice of appeal filed in the High Court to the Director.⁹⁹

Prosecution for non-compliance

As force cannot be used to enforce a direction, one consequence of non-compliance may be for the medical officer of health to consider applying for a court order to achieve the desired public

⁹⁶ Section 92T of the Health Act.

⁹⁷ Rule 18.4 of the District Court Rules refers to timing and rule 18.6 to service obligations.

⁹⁸ Rule 18.8 of the District Court Rules.

⁹⁹ Section 92ZT(7) of the Health Act.

health outcome. A further consequence may be prosecution for the offence of failing to comply with a direction given by the medical officer of health under Part 3A.¹⁰⁰

Prosecution should normally be a last resort.

In considering prosecution, medical officers of health should be aware that a person may be non-compliant with a direction or order out of fear, language difficulties or ignorance, rather than because they are wilful or reckless. In those circumstances, better or fuller communication would usually be a more constructive response than prosecution.

The overarching principles (see chapter 4) require medical officers of health and others to choose the least restrictive and proportionate measures likely to address the public health risk a particular person poses. Sometimes the mere mention of prosecution may be sufficient to get cooperation.

An individual who without reasonable excuse fails to comply with directions commits an offence that on conviction carries a fine not exceeding \$2,000. Whether a person has ‘reasonable excuse’ depends on what a reasonable person would do in the same circumstances. For example, an officer should not consider prosecution when an accident prevents a person attending a medical examination on a particular day.

There is no offence of obstruction of compliance with directions in Part 3A, such as when an adult of full age and capacity refuses to answer the medical officer of health’s questions. There is a general offence of obstructing an officer, however.¹⁰¹

When the direction applies to a person under 16 or lacking legal capacity, the person responsible for them will be committing an offence if he or she intentionally obstructs compliance.¹⁰² For example, prosecution may be warranted when a parent is dishonest with a medical officer of health about whether their child has been tested, or about the results of the test.

This offence carries a maximum penalty on conviction of \$2,000. The burden of proving the individual has acted intentionally will rest with the prosecution, and the standard of proof is ‘beyond reasonable doubt’. A medical officer of health who decides to proceed with prosecution in this circumstance should seek legal advice.

The Ministry of Health’s Prosecution Policy (see Appendix 3) envisages that potential prosecutions come through the Ministry’s Enforcement Unit, to ensure that any prosecution action is cost-effective, consistent, and fairly managed, and gives due consideration to each case on its own merits.

In some circumstances, such as when a potentially infected person or their caregiver becomes violent or deliberately engages in high-risk activities likely to spread the disease, prosecution under the Crimes Act 1961 is an option. In such cases, medical officers of health should obtain legal advice and, where appropriate, refer the matter to the Police.

Confidentiality requirements

A medical officer of health or anyone else may not use or disclose personal information provided or obtained under a direction except for the effective management of infectious diseases. This

¹⁰⁰ Section 92V of the Health Act.

¹⁰¹ Section 133 of the Health Act states: “Every person commits an offence against this Act who wilfully obstructs, hinders, or resists any person in the execution of any powers conferred on him or her pursuant to this Act”.

¹⁰² Section 92W of the Health Act.

does not prevent the person concerned from using or disclosing that information. Nor does it prevent other uses or disclosures of it when this is authorised under another Act.¹⁰³

When an individual is reluctant to provide the information, or a medical officer of health must give a direction in order to elicit it, the officer should tell the individual that the information is necessary for the effective management of infectious diseases, and that they will not use or disclose the information other than for that purpose (or another purpose authorised under an Act).¹⁰⁴ Additionally, the medical officer of health must tell the individual that they retain any existing rights to access information about themselves or to disclose it to others.

These requirements also apply when the medical officer of health seeks or obtains information from a person occupying a position of responsibility, or a contact.¹⁰⁵

If a person still refuses to supply the information sought, the medical officer of health can inform them they may be prosecuted for obstruction.

¹⁰³ Sections 22C(4) and 92U of the Health Act.

¹⁰⁴ Section 22C(3) of the Health Act says that: “Information provided or obtained under Part 3A may not be used or disclosed by anyone except as authorised or required under a provision of this Act or another Act”.

¹⁰⁵ Sections 92I(9), 92J(9) and 92K(9) of the Health Act.

9 Court orders

When a person does not comply with a direction, or their compliance seems unlikely, a medical officer of health should consider applying to the District Court for an order if this is likely to be the least restrictive and proportionate alternative to address the ‘public health risk’ the person poses.¹⁰⁶

Types of court order

Part 3A of the Health Act authorises the following types of court order:

- public health orders (including orders contingent on medical examinations establishing infectious disease)
- medical examination orders
- orders for contacts.

Differences of scope between orders and directions

Some key differences between a public health order and a public health direction are as follows:

- Orders can require people to obtain treatment from specified health providers. This is on the condition that the court is satisfied that, short of detaining the person indefinitely, treatment is the only effective means of managing the public health risk.
- There is a specific statutory obligation to consult with the individual and, at the medical officer of health’s discretion, their family or whānau when the officer is considering applying for a court order.¹⁰⁷
- The legislation expressly provides that a person’s compliance with an order can be subject to public health surveillance by a named person, office holder or organisation, once the person’s views have been taken into account. Surveillance can be carried out with or without the aid of electronic communication devices (eg, Skype, cell phone contact, email). This can provide more focused surveillance to ensure the person complies with the order.
- Under an order, a person can be detained at a hospital or other suitable place or in specified parts of the hospital or place, and the DHB must permit them to be detained there.¹⁰⁸ Under a direction, a person can be directed to stay at a specified place of residence, which does not involve the same level of oversight as detention at a hospital under an order.
- Except for an instruction to undergo medical treatment, where necessary, reasonable force can be used to enforce an order, but not to enforce a direction.

Mention of the possibility of an order may be enough to encourage an individual to comply.

¹⁰⁶ Defined in section 2(1) of the Health Act, and referred to in the Glossary in Appendix 1.

¹⁰⁷ Section 92ZO of the Health Act.

¹⁰⁸ Section 92ZA(3) of the Health Act.

A court order may be appropriate when it seems clear to a medical officer of health that a particular person lacks respect for administrative directions compared to orders imposed by a judge in court.

Additionally, an application for a court order may be appropriate when a direction would not address the particular intervention needed (eg, an order for treatment by a specified health provider).

Consulting with the person and family/whānau

Before applying for a court order, a medical officer of health must, wherever practicable, consult the person, and at the officer's discretion, their family or whānau,¹⁰⁹ to:

- ensure the person is fully aware of the public health risk and clinical implications of his or her situation
- find out whether the person might comply voluntarily with the assistance of family/whānau members
- gauge the person's needs and preferences, without prejudicing the protection of public health – which is the paramount consideration.¹¹⁰

A medical officer of health may organise a case conference, which can be conducted by telephone or video link to consult with the individual and family/whānau.¹¹¹

In consulting, medical officers of health must balance the tension between protecting the privacy of the person, and particularly his or her health information (on the one hand) and taking steps to safeguard public health (on the other). Always at the forefront of the medical officer of health's intervention should be what is necessary to effectively manage the disease risk the person presents in the particular circumstances.

Medical officers of health and others handling information should only disclose information to people other than the person concerned when necessary to effectively manage the disease risk, and preferably with their consent.

For examples of when a case conference may be useful, refer to the scenarios below about Marvin and HIV (on page 48) and Amelika and rubella (on page 50).

When consulting with whānau or convening a case conference would put effective disease management at risk, jeopardise the safety of the person concerned, or be counterproductive, then the medical officer of health should not persist. There is no express legislative requirement for an officer to seek a person's consent to convene a case conference, although (depending on the circumstances) conferences may be of limited use without consent.

¹⁰⁹ Section 92ZO of the Health Act.

¹¹⁰ Section 92B of the Health Act.

¹¹¹ Section 92ZP of the Health Act.

As medical officers of health conduct case conferences and proceed to apply to the court for orders, they should keep the lines of communication open with the person concerned, informing them of next steps. In practice, this means that medical officers of health should tell people about the possibility of an application for a court order, the nature of the order and its implications for the person.¹¹² The templates in chapter 11 provide information it may be timely to convey, such as when a medical officer is considering applying for a court order.

When a medical officer of health files an application for an order in the District Court, he or she must serve the application on the individual concerned under Part 6 of the District Court Rules 2014.

Each type of order is described below, looking at the nature of the order, when and how it can be imposed, and a practical example showing how it can be used. The remainder of the chapter considers the processes, safeguards and confidentiality requirements applying to the three orders.

Time limits

Like directions, court orders must state their duration, and have a maximum duration of six months. In most cases the duration will be considerably less than six months. The legislation imposes this outer limit to take account of the various infectious diseases and behaviours shown by cases and contact. For example, a six-month public health order will not be appropriate for measles, although it could be if a person has active tuberculosis, and has not been taking their medication.

Informing the individual

As with directions and urgent public health orders, when a court order commences, the medical officer of health has obligations to promptly inform the person concerned of several matters,¹¹³ including:

- the nature of the order and its implications for the person
- any steps planned to be taken in respect of the person
- the right to appeal¹¹⁴
- the following general information that the medical officer of health thinks relevant:
 - symptoms, diagnosis, and treatment of the relevant infectious disease
 - how the risk of onset or transmission of the relevant infectious disease may be minimised
- how to seek further information or the assistance of an interpreter or a patient support advocate, if relevant
- how to seek information on accessing legal aid.¹¹⁵

Chapter 11 of this guidance includes an information sheet that medical officers of health can adapt for use regarding the three kinds of court orders.

¹¹² Section 92E sets out the range of information requirements which must be covered. These are supplemented by the HIND Regulations 2016 – regulation 12.

¹¹³ Section 92E of the Health Act and regulation 12 of the HIND Regulations 2016.

¹¹⁴ In section 92ZT or 92ZU of the Health Act.

¹¹⁵ The templates for directions and urgent public health orders in chapter 11 of this guidance refer to the Ministry of Justice's information on legal help for going to court (www.justice.govt.nz/Courts/going-to-court/legal-aid/legal-help).

Public health orders

Nature of the order

Before issuing a public health order with one or more of the following requirements, the court must be satisfied the requirements are necessary to prevent or minimise the public health risk posed by the person who is the subject of the order:

- (a) to be detained, at all times or at specified times, in a hospital or other suitable place or in specified parts of the hospital or place
- (b) to stay, at all times or at specified times, at a specified place of residence
- (c) to refrain from carrying out specified activities (for example, undertaking employment, using public transport, or travelling within or outside New Zealand) either absolutely or unless stated conditions are observed
- (d) to be supervised by a named person or by a person for the time being holding a named office, including, without limitation:
 - (i) attending meetings arranged by that person, and
 - (ii) providing that person with information on any action, occurrence, or plan that is relevant to the public health risk posed by the individual
- (e) after the views of the individual have been taken into account, to be subject to public health surveillance, with or without aid of electronic communication devices, by a named person or by a person for the time being holding a named office or by a named organisation
- (f) to be treated for the infectious disease by a specified health provider
- (g) to participate in any of the following that are conducted by a health provider:
 - (i) counselling
 - (ii) education
 - (iii) other activities related to that infectious disease
- (h) to refrain from going to specified places either absolutely or unless stated conditions are observed
- (i) to refrain from associating with specified persons or specified classes of persons
- (j) to take specified actions to prevent or minimise the public health risk posed by the individual.

When the order can be imposed

Applications for court orders generally, as distinct from directions or urgent public health orders, will usually be more appropriate when the incubation period for the disease is not of very short duration. This is because orders involve an application to the court and a court hearing and will normally involve a more lengthy process than imposing an administrative direction or an urgent public health order. A Family Court Judge in the District Court will likely preside, with both parties to the matter present or represented by counsel. This takes more time than imposing an administrative direction or urgent public health order.

Waiting for a court fixture to be set down is not the only potential delay, although it is of real concern. There is a considerable amount of case preparation involved to ensure that the evidence presented meets court standards. Therefore, the scenarios below should not be read as necessarily recommending applying for orders in the situations described. Instead, they are there to illustrate the powers and processes involved.

On receiving and considering the medical officer of health's application and representations by or on behalf of the parties, the District Court may make a public health order if satisfied the person who is the subject of the application poses a public health risk.

As mentioned earlier, the District Court may take into account any matter it considers relevant in assessing whether there is a public health risk, including:¹¹⁶

- the infectious disease the person has or may have
- whether there was any opportunity to minimise the transmission risk, and whether and to what extent the person has done so
- the extent to which the person has complied with any directions or requests from specified health practitioners to prevent or minimise the risk.

Directions need not have been given before the court imposes an order.

Scenario

Marvin, a gym trainer who has not been in New Zealand long, has been confirmed as having HIV, with a detectable viral load and significant infection risk. He travels between Auckland and Wellington for work. A concerned ex-partner has made several phone calls to health authorities to inform them that Marvin has been engaging sporadically in unprotected sex with multiple, casual partners while in Wellington. Marvin's doctor has been slow to pick up on Marvin's high-risk sexual behaviour, and has not contact traced his partners, some of whom do not know of his disease status. Following up on the earlier notification of Marvin's HIV status, the medical officer of health in Auckland, asks the doctor for identifying information about Marvin necessary to manage the public health risk Marvin poses, under the exception in section 74(3B) of the Health Act. She also elicits information about Marvin's viral load, CD4 count, treatment compliance and behaviour.

The medical officer of health then consults with Marvin who is showing some signs of being in denial about the high-risk nature of his behaviour, and is concerned about his partner finding out. After further discussion about the clinical risks and the easy preventive measures he could take, he vacillates between remorse at putting others at serious risk on the one hand, and disregarding the infection risk on the other. Marvin does not speak English well, and struggles particularly on the more technical points of disease risk and prevention that the medical officer of health tries to explain.

With an interpreter's help, the medical officer of health impresses on Marvin the risks that his partner, who is aware of his HIV status although not his infidelity, faces if either of them has unprotected sex.

Having achieved some but not sufficient traction with Marvin through voluntary means, such as giving him educational pamphlets about HIV and suggesting partner counselling for people living with HIV, the medical officer of health forms the view that an administrative direction is unlikely to be effective in preventing the public health risk Marvin poses.

Still concerned about the risk to Marvin's partner, the medical officer of health exercises her responsibility under section 92ZO to consult wherever practicable before applying to the District Court. She checks with Marvin and obtains his reluctant agreement to a conference, setting out the broad parameters of the information she plans to disclose about Marvin's condition at the conference. Despite this, the conference is tense. Marvin

¹¹⁶ In section 92ZB of the Health Act.

storms out of it, leaving his partner bewildered and angry, although better informed of the risks Marvin's behaviour poses to him.

After consulting again with Marvin with an interpreter's help, the medical officer of health seeks legal advice from the local DHB's legal section and reluctantly applies to the District Court for a public health order. The court considers the application and representations on behalf of the parties, and grants the order. It has the following components:

- a requirement that Marvin has only protected sex under section 92ZA(1)(j) using condoms
- a requirement that Marvin attend an HIV education course under section 92ZA(1)(g)(ii).

After seeking Marvin's views, the medical officer of health monitors his compliance with the conditions of the order with public health surveillance, using text messages, phone calls, and Skype to follow up with Marvin as authorised under section 92ZA(1)(e).

The medical officer of health tells Marvin that, should he breach any of the terms of the court order, he may be prosecuted under the Health Act for the offence of intentionally failing to comply with the court order, which carries a maximum penalty of imprisonment.

The medical officer of health sends a copy of the application (and a brief report on its outcome) to the Director of Public Health, and notifies the medical officer of health in Wellington for assistance with contact tracing Wellington partners.

Medical examination orders

Nature of the order

The court can direct a person who is the subject of a medical examination order to undergo one or more medical examinations if it considers this necessary to prevent or minimise the public health risk that person poses.¹¹⁷ Examinations can be diagnostic tests or other types of examination conducted by a specified health provider at specified times and places. The examination ordered must be consistent with current best practice in diagnosing the presence of, or immunity to, a suspected infectious disease. It must also be the least invasive type of examination necessary to establish whether the person has, or is immune to, the infectious disease. An order lapses once examinations have been completed and diagnoses made.¹¹⁸

When the order can be imposed

Before imposing a medical examination order, the court must be satisfied that:

- (a) the person concerned may have an infectious disease
- (b) a medical practitioner or a medical officer of health has asked him or her to undergo a medical examination or examination to establish whether the disease is present within a specified period, and
- (c) the person has not complied.¹¹⁹

¹¹⁷ Section 92ZH of the Health Act.

¹¹⁸ Section 92ZH (6).

¹¹⁹ Section 92ZH(1).

A medical officer of health should not apply for a medical examination order if there is a less restrictive alternative available that is likely to be effective in minimising or preventing the public health risk the person poses.

Scenario

There is a high probability that Amelika, who is in the first trimester of pregnancy, has rubella. She has not been vaccinated, and presents with a rash and swollen lymph glands. Her doctor has asked her to undergo laboratory tests but she has not complied, and in the meantime has been attending yoga classes with other pregnant women. Amelika's doctor impresses on her the need for testing, and tells her very firmly not to attend any more classes or to mix with other pregnant women. He is vigilant in quickly monitoring the situation, and in notifying, and following up with, the medical officer of health.

On receiving notification from the doctor of his view that there is a high probability that Amelika has rubella, the medical officer of health discusses next steps with him and decides, given the risk of transmission, to direct Amelika to get tested and refrain from attending any more pregnancy yoga classes.

The medical officer of health seeks information from Amelika about her contacts. Enlisting the aid of local Tongan community leaders, he arranges vaccinations for unvaccinated babies and women of child bearing age, in Amelika's community.

Although Amelika is reluctant to stay away from family members who are also pregnant, and keen to continue the pregnancy yoga class leading up to birth, Amelika complies with the direction to stay away. However, she refuses to get tested. The medical officer of health moves swiftly. She considers applying for a court order for diagnosis and treatment at the local hospital, in isolation, under sections 92ZH(2) and 92ZA(1)(a) and (f). At the same time, she convenes a case conference with Amelika and her family under section 92ZP, with her consent.

With the doctor's assistance, the medical officer of health uses the opportunity of the conference to discuss special arrangements for Amelika giving birth, because of the chance that she may give birth to a baby with congenital rubella syndrome – that is, to a potentially infectious baby. Amelika initially says she wants to have a home birth, which potentially would put the baby and at least one other pregnant, unvaccinated, close family member at risk.

The case conference is sufficient to impress the potential seriousness of the situation on Amelika and her family, and she agrees to be tested and hospitalised if need be. The results confirm she has rubella. The medical officer of health proceeds with the application for court orders in case Amelika changes her mind about treatment.

The medical officer of health monitors the situation from time to time, including the baby's birth and after birth care.

Orders for contacts

Nature of the order

The contents of an order for contacts are the same as parts of a public health order. The court may impose the order subject to any conditions or restrictions that it considers appropriate. An order for contacts may order a contact:

- (a) to stay, at all times or at specified times, at a specified place of residence
- (b) to refrain from carrying out specified activities (eg, undertaking employment, using public transport, or travelling within and outside New Zealand) either absolutely or unless stated conditions are observed
- (c) to be supervised by a named person or by a person for the time being holding a named office, including, without limitation:
 - (i) attending meetings arranged by that person, and
 - (ii) providing that person with information on any action, occurrence or plan that is relevant to the public health risk posed by the individual
- (d) to refrain from going to specified places either absolutely or unless stated conditions are observed
- (e) to refrain from associating with a specified persons or specified classes of persons
- (f) to take specified actions to prevent or minimise the public health risk posed by the individual.¹²⁰

When the order can be imposed

The court may impose an order for contacts if satisfied the subject of the order has been in contact with a case who has, or may have an infectious disease, and that, if the disease has been transmitted to the contact, they are likely to pose a public health risk.

Scenario

Aisha's and Dinesh's child, Sunita, has respiratory diphtheria. This is rare in New Zealand. It can cause cardiac failure, respiratory difficulties, delayed nerve complications and other symptoms.

Sunita is treated by her doctor as an emergency case, and is soon hospitalised due to some signs of respiratory symptoms. The doctor quickly notifies the medical officer of health of the disease.

Diphtheria can be spread by respiratory droplets or direct contact. The medical officer of health enquires into the situation at home. The household includes Dinesh's mother and two other children under 10. None of the household members has been immunised. Aisha works at the local early childhood centre. The doctor has informed the medical officer of health that she has insisted that everyone in the household gets tested for diphtheria, and that they stay away from work and school until tests confirm they do not have the disease. The parents are reluctant to comply, believing that Sunita contracted the disease overseas and that due to a lack of symptoms they are not at serious risk. Dinesh is particularly resistant to staying away from work. The medical officer of health convenes an urgent case conference (under section 92ZJ) with the adult family members and their doctor to work out what is feasible to address the risk.

¹²⁰ Section 92ZJ(2).

The medical officer of health imposes an urgent public health order that the family remain at home for 72 hours – an administrative order under section 92ZF. In the interim he applies to the District Court for an order for contacts, requiring the family to remain at home until they have been tested by their doctor or by him and found not to have the disease. At the same time, the medical officer of health applies for an examination order for family members to be swabbed under section 92ZH(1), and to be treated under section 92ZA(1)(f) – in which case they will be managed as cases rather than as contacts. (Treatment is given to all the contacts of diphtheria cases, and includes antibiotics and vaccine.)

Because of the possibility of court delays, the medical officer of health knows that there is a chance no order will have been granted within the 72-hour period. However, he counts on the fact that the family has a healthy respect for the judicial system, and he considers that the fact of the application may well have the desired result.

The medical officer of health backs up these actions by impressing on Aisha and Dinesh their duty of care under section 92X to ensure the children are tested and treated (eg, with preventive vaccination). He tells them that as caregivers they can be prosecuted under section 92ZX for failing to comply with the order he has imposed.

The medical officer of health also contacts the principal of the children's school and the head of the early childhood centre, notifying them of the situation and of the risks for close contacts, and asks them watch for any other children who may have contracted the disease. The principal and the head willingly agree to instruct Aisha and the children to stay away from their respective premises until the risk has passed, without the need for a formal direction from the medical officer of health to them under section 92L.

How to apply for orders

What follows is a short description of how to apply for a court order. Applicants for orders – medical officers of health – should consult with a lawyer early on in the process.

Applicants apply by originating application under Part 20, Subpart 2 of the District Court Rules 2014.¹²¹ Originating applications tell the court and the person who is the subject of it about the order being sought.

The originating application should be accompanied by an affidavit in support, which sets out the factual grounds relied on in support of the application. The affidavit must be affirmed or sworn before a Justice of the Peace, court registrar or solicitor of the High Court of New Zealand.

In some cases (eg, where the parties can agree a statement of facts, or the court agrees to hear the evidence orally), the District Court may dispose of the need for the affidavit.

This guidance provides templates for the originating application and accompanying affidavit (see chapter 11). A Family Court Judge may in practice be hearing the application in the District Court.¹²² In addition, applicants should contact the District Court registrar to discuss forms and

¹²¹ Rule 20.13(1)(O) of the District Court Rules 2014 provides for orders sought under Part 3A of the Health Act to be commenced by way of originating application.

¹²² Section 92ZK(1) of the Health Act says that the District Court has jurisdiction. Subsection (2) provides that every proceeding for appeals and applications for orders under Part 3A must, if practicable, having regard to the time required and to the availability of Judges and court staff and resources, be heard and determined by a Family Court Judge.

process requirements prior to filing and service of the application. There are also websites which provide useful court-related information to help with familiarisation in this regard.¹²³

Applicants may apply for further orders to vary, extend or cancel an existing order. Several templates have been included in the case of cancellation, because there is a wider choice of processes available for cancellation under Part 3A of the Act (see chapter 11 of this guidance).

Applicants for court orders must send a copy of all applications to the Director-General's delegate, the Director of Public Health.¹²⁴

When the infectious disease is not a notifiable one, the medical officer of health should get the prior approval of the Director of Public Health before proceeding with an application for an order.¹²⁵

Effect of orders on directions

A public health order has the effect of immediately cancelling an existing direction, excluding a medical examination direction, whether or not the direction and order relate to the same specific requirements.¹²⁶

Medical officers of health cannot give directions of any kind under Part 3A while a person is subject to a public health order.¹²⁷ This does not distinguish between measures for different infectious diseases (eg, a direction regarding tuberculosis infection risk, and a court order regarding HIV infection-risk).

Medical officers of health wishing to apply for a court order should endeavour to ensure that all necessary aspects of any earlier direction are included in the application for the order.

Court orders are subject to the same time limits as directions – six months at most, and they must state the period for which the requirements must be complied with.

Technically, medical officers of health can impose public health directions on a person after the court has imposed an order for contacts or examination order, as distinct from a public health order.¹²⁸ However, they should not do so lightly: There is some overlap between the contents of a public health order and the other orders, and the court has already considered the public health risk.¹²⁹

Reviews

Medical officers of health must regularly review all court orders in place within their districts, considering whether they are still necessary, and must apply to the court to cancel orders if they

¹²³ Two such are the Ministry of Justice's website (www.justice.govt.nz) and the Courts of New Zealand website (www.Courtsofnz.govt.nz).

¹²⁴ Section 92ZN(3) of the Health Act.

¹²⁵ Section 92ZN(2).

¹²⁶ Section 92ZE(2) of the Health Act.

¹²⁷ Section 92ZE(4).

¹²⁸ On orders for contact, see section 92ZJ of the Health Act. On examination orders see section 92ZH of the Act.

¹²⁹ See sections 92ZH(3) and 92ZJ(2) of the Health Act which apply several of the conditions in a public health order under section 92ZA to medical examination orders and orders for contacts, respectively.

are not.¹³⁰ If the Director of Public Health directs them to do so, they must provide advice on why a particular order is still necessary.¹³¹ In practice, medical officers of health will be assisted by other public health unit staff in conducting reviews.

The obligation to regularly review court orders does not specify a particular timeframe between reviews. However, given that orders have a maximum duration of six months, and that many will be shorter in duration, reviews should be relatively frequent within the life of the order. The principle that measures should apply no longer than necessary to prevent or minimise the public health risk is particularly relevant. The situation giving rise to the order may have changed in a way which impacts on the continued relevance of the order or parts of it.

The decision about whether an order is still fit for purpose should be informed by the definition of ‘public health risk’, the circumstances of the person who is the subject of it, the overarching principles (see chapter 4), and the wider context of other public health risks in the district.

Public health practitioners should carefully document reviews and their outcome, bearing in mind the possibility of an appeal against an order or an application for judicial review.

Variation, extension and cancellation of orders

A court can extend, vary or cancel a public health order prior to its expiry.¹³²

It cannot extend medical examination orders and orders for contacts, although can vary or cancel them.¹³³

A medical officer of health applying to a court to vary, extend or cancel an order must do so a reasonable time before the order’s expiry date, taking account of court processes and scheduling.

If an officer makes an application to vary or extend an order too close to the order’s expiry date, the risk is that the order lapses by the time the court decides the application. Conversely, if the officer applies to extend an order too early in its life, the chances of success are doubtful: the court will take account of the fact that much of the order is yet to run.

The same process of using an originating application and affidavit in support or agreed statement of facts applies for applications to vary or extend orders. Medical officers of health can adapt the template originating applications and affidavits in chapter 11 of this guidance.

Medical officers of health must ensure a copy of every application to vary an order is sent to the Director of Public Health. As a matter of good practice, they should undertake prior consultation with the DHB’s legal section and then the Director, particularly for comparatively long or multiple extensions.¹³⁴

¹³⁰ Section 92ZQ of the Health Act.

¹³¹ Section 92ZN of the Health Act.

¹³² Section 92ZD of the Health Act refers to extensions and only refers to public health orders; section 92ZR of the Act refers to cancelling or varying and applies to orders generally.

¹³³ Section 92ZR(1) and (2) provide for variation and cancellation but not extension. Although section 92ZQ(3), relating to extensions, is not on its face limited to public health orders, its cross-reference to section 92ZD, which only refers to public health orders, suggests that medical examination orders and orders for contacts cannot be extended.

¹³⁴ Section 92ZR(4) (variations).

Medical officers of health should specify the duration of a proposed extension to an order in the application; extensions should be no longer than is necessary to remove or minimise the public health risk. The maximum duration of an extension is six months.

More about cancellation

When an original court order expressly allows for cancellation by certificate, and the medical officer of health wishes to bring the order to an end, he or she can do so by certifying that it is no longer necessary to manage the public health risk posed by the person concerned. Chapter 11 contains a template for the certificates. A medical officer of health could use this when, for example, circumstances have changed since the order was imposed, making the public health risk negligible or the order overly onerous.

The medical officer of health arranges filing of the certificate of cancellation with the District Court registrar – normally nearest to the public health district, and should also arrange service on the person concerned.¹³⁵

If the registrar is satisfied that the medical officer of health has given an appropriate certification, the registrar must cancel the order and it ceases to have effect on cancellation.

When an order does not expressly authorise cancellation by certificate, the medical officer of health can request that the court deal with an application ‘on the papers’ if both parties agree. This means that parties make their submissions and give evidence in writing rather than at a hearing.¹³⁶ There is a template for filing with the registrar for this purpose: see chapter 11.

Once the court, and the individual concerned, receive an application for cancellation, the order is suspended until the court decides the matter.¹³⁷

In the case of examination orders, once the person has been examined, the best course in terms of cancellation may simply be to let the order lapse.¹³⁸

Medical officers of health must send the Director of Public Health a copy of any application to cancel.¹³⁹

Appeals against court orders

Rights to appeal

Both parties (the medical officer of health and the individual subject to an order) have a right of appeal to the High Court against the District Court’s decisions. This includes a right to appeal against decisions on applications to cancel, vary or extend orders.¹⁴⁰

¹³⁵ See section 92ZC(3)(d) on public health orders and section 92ZJ(4) on orders for contacts. An application to cancel a medical examination order is not necessary because, according to section 92ZH(6), the order will lapse once the individual has been examined and the disease’s presence or absence has been established.

¹³⁶ Section 92ZR(5).

¹³⁷ This is the effect of section 92ZR(3).

¹³⁸ Section 92ZH(3) contemplates that conditions will only apply until examinations are completed and diagnosis confirmed.

¹³⁹ Section 92ZR.

¹⁴⁰ Section 92ZT(3).

The parties also have a right of appeal to the Court of Appeal on questions of law, with the leave of the court.

Both these appeal rights are subject to the rules of the appropriate court. Courts must hear appeals as soon as practicable.

Appeals do not automatically suspend the decision appealed against. However, in some instances the court may decide to ‘stay the proceedings’ – suspending an order or part of an order.¹⁴¹

Before lodging an appeal, medical officers of health should seek legal advice and, as a matter of best practice, consult with the Director of Public Health. In addition, they must send a copy of the notice of appeal to the Director of Public Health – as the Director-General’s delegate.¹⁴²

The circumstances in which a medical officer of health may wish to appeal against the District Court decision granting an application for an order include:

- when the officer considers its duration is too short
- when the order omits certain requirements that the officer considers should be included to effectively manage the public health risk
- when the decision sets a legal precedent that may be concerning in terms of effective public health surveillance or public health action.

As a general rule, the higher the court in which the order is heard on appeal, the more costly and serious the proceedings. Medical officers of health should carefully consider the situation before embarking on any appeals, especially ones to the High Court or Court of Appeal.

Appeals to the High Court

An appeal to the High Court must be filed with the court and served on the other party within 20 working days of the decision being appealed against¹⁴³ or within such other period as the court specifies (where a party seeks an extension).¹⁴⁴ An appellant (ie, the person bringing the appeal) should normally file an appeal in the court nearest to the place where the decision being appealed against took place.

Unless the court otherwise directs, a notice of appeal must:

- have a heading stating the full name and giving a description of each party and referring to the Health Act 1956 – as the enactment under which the appeal is brought¹⁴⁵
- specify the decision or part of the decision appealed against
- specify the grounds of the appeal in sufficient detail to fully inform the court, the other parties to the appeal, and the decision-maker of the issues in the appeal
- specify the remedy sought (eg, cancellation of an order, variation of its duration or one of its terms).¹⁴⁶

¹⁴¹ For example, under rule 20.10(1) and (2) of the High Court Rules 2016.

¹⁴² Section 92ZT(7).

¹⁴³ Rules 20.4-5 High Court Rules. In the case of appeals to the High Court, sections 124 to 130 of the District Courts Act 2016, and Part 20 of the High Court Rules apply.

¹⁴⁴ Extensions are dealt with in rules 29A, 29(1)(b) and 14(2).

¹⁴⁵ Section 92ZT of the Health Act.

¹⁴⁶ Rule 20.9.

Appellants should attach a copy of the decision appealed against to the application, and failing that should file one with the court as soon as it becomes available.

The appeal is by way of a rehearing, taking account of the record of evidence in the District Court, rather than a completely fresh hearing of evidence. The High Court's decision is final as to the facts decided by the court.

On the applicant's without-notice-application (ie, an urgent application) the District Court may order that he or she does not need to give the registrar of the High Court security for costs.¹⁴⁷ Security for costs is a payment of money to ensure that, if a person is unsuccessful, they will be able to pay costs. The security for costs is kept in a trust account until the final outcome of the proceeding.

Appeals to the Court of Appeal

Parties can only appeal against a High Court decision with the Court of Appeal's leave. Such appeals are limited to questions of law – applying legal principles to interpret the law – as distinct from hearing disputes about questions of fact.

Applicants must file an application for leave to appeal in the Registry of the Court of Appeal in Wellington, within a period specified by the court or within 20 working days of the leave decision.¹⁴⁸ They must use the prescribed notice of appeal which must be filed on the other party who is the subject of the appeal.

The Court of Appeal's decision is final.¹⁴⁹

Prosecution for non-compliance

If the behaviour of a person who is subject to an order warrants it, and taking account of the public health risk, a medical officer of health may consider prosecution for the offence of without reasonable excuse, intentionally failing to comply with an order.¹⁵⁰ On conviction, the person may be subject to a maximum penalty of six months imprisonment or a fine of up to \$2,000.

The overall onus of proving the elements of the offence rests with the prosecution, and they must show both intention and lack of reasonable excuse as well as failure to comply.

In this context, 'intention' refers to a person foreseeing a consequence they intend will happen and want to happen – when that consequence is deliberately not compliant with the conditions of the order.

What is a 'reasonable excuse' depends on what a reasonable person would do in the circumstances (eg, a 'reasonable excuse' might be an accident preventing attendance at an examination).

¹⁴⁷ Section 92ZT(5).

¹⁴⁸ Rule 29 of the Court of Appeal (Civil) Rules 2005.

¹⁴⁹ Section 92ZU(3) of the Health Act.

¹⁵⁰ Under section 92ZW.

When the person who is the subject of the order is under 16 or lacks legal capacity, their caregiver may be prosecuted if they intentionally obstruct compliance with an order.¹⁵¹ This measure protects the vulnerable and the wider community.

Intentional obstruction could take many forms, including lying about test results, preventing a vulnerable person from getting medical treatment, confiscating their medication, or encouraging them to breach specific conditions of the order. On conviction, the caregiver may be subject to a fine not exceeding \$2,000.

These offence provisions can apply to non-compliance with either court-imposed orders or administratively imposed urgent public health orders (see chapter 10) under Part 3A of the Act.

Medical officers of health should pursue the option of prosecution rarely. In making this decision they should consider, among other things, whether there is credible evidence that an impartial judge or jury could reasonably be expected to find convincing beyond reasonable doubt.

The Ministry of Health's Prosecution Policy (see chapter 12) envisages that potential prosecutions come through the Ministry's Enforcement Unit to ensure that any prosecution action is cost-effective, consistent, and fairly managed, and gives due consideration to each case on its own merits.

Use of force

In contrast to directions, the medical officer of health can resort to force to ensure compliance with court orders when the force is reasonable in the circumstances.¹⁵² However, force may not be used to require a person to accept medical treatment. This prohibition includes using force to ensure compliance with a public health order with a treatment condition.¹⁵³ In requiring a person to comply with other types of court orders, a medical officer of health may be assisted by any number of 'assistants' – which the legislation states includes constables.

Several of the overarching principles (see chapter 4) will be relevant to a medical officer of health's decision about whether to apply force, although there may be very little time to give detailed consideration to these in a situation of urgency.

When a medical officer of health uses force, he or she must promptly report this to the Director of Public Health.

Confidentiality requirements

No person may use or disclose information provided or obtained under a court order under Part 3A of the Health Act except for the effective management of infectious diseases. The exceptions to this are that the person the information is about can use or disclose it, along with anyone else who is permitted to do so under an Act.¹⁵⁴

¹⁵¹ Section 92ZX.

¹⁵² Section 92ZV of the Health Act.

¹⁵³ The latter of which can be imposed under section 92ZA(1)(f).

¹⁵⁴ Section 92ZS.

As with appeals against directions, when a matter relating to a court order proceeds to court, unless the judge directs otherwise, only the following people may be present at the court hearing:

- the judge
- officers of the court
- the parties and their lawyers
- any other person nominated by the individual who is the subject of the hearing
- witnesses
- any other person the judge permits to be present.¹⁵⁵

The judge may by order restrict or prohibit the public availability of the court record and judgment.

¹⁵⁵ Section 92ZL(1).

10 Urgent public health orders

Nature of the order

An urgent public health order is an administrative order imposed by a medical officer of health. Its purpose is solely to detain the person it is given to at a specified premises, or a part of the premises, for 72 hours.¹⁵⁶

When the order can be imposed

A medical officer of health can give an urgent public health order when all of the following conditions are met:

- (a) an individual poses a public health risk
- (b) the medical officer of health cannot adequately manage that risk by giving a direction
- (c) the medical officer of health needs to take urgent action to address the risk
- (d) it is not practicable for the District Court to decide an application for a public health order.

Situations in which a medical officer of health cannot adequately manage a risk by giving a direction (para (b) above) might include where:

- the suspected disease can be transmitted easily or quickly or can be very serious (eg, meningococcal disease)
- the person is unlikely to comply with a direction to stay at home, and may need to be detained at a hospital or other institution
- the person's departure from New Zealand is imminent.

When a public health risk is not likely to cease within the 72-hour period of the order, the medical officer of health should use that time to prepare and submit an application to the District Court for a public health order of longer duration.¹⁵⁷ This process should occur as quickly as possible, and the medical officer of health should request urgency from the court. If the court makes a decision on whether to grant a court order during the 72-hour period during which the person is subject to the urgent public health order, the latter ceases to have effect.

Where a public health risk ceases within the 72-hour period (eg, because a laboratory confirms the person is not infectious), the medical officer of health should stop enforcing the order. In this case, there is no need to go to the court to terminate the order as it is administratively imposed rather than court imposed.

¹⁵⁶ Section 92ZF of the Health Act.

¹⁵⁷ Under section 92ZA(1)(a) or (b) – concerning an order to be detained in a hospital or to stay at a specified place of residence.

How the order is imposed

An urgent public health order must be in the form of a written notice (chapter 11 provides a template for this). The medical officer of health or another authorised person must give the notice to the person, and the 72-hour period starts from when the notice is given. On expiry of the 72-hour period, the order lapses and there is no remaining power to detain the person.¹⁵⁸ The person will be free to go, unless in the interim the medical officer of health has successfully obtained a court order to detain him or her.

The template for urgent public health orders has information accompanying it for those giving the order to convey to the people subject to it. This is not a substitute for verbally explaining the order's nature and implications, the safeguards, next steps, and relevant clinical information about the suspected disease.

A person giving an urgent public health order should promptly inform the person subject to it of certain matters, including:¹⁵⁹

- the nature of the order and its implications for that person
- steps planned (eg, applying for a court order of longer duration)
- the right to apply for judicial review (which would not be heard in the 72 hour period, so is unlikely to be feasible). The right to seek a 'writ of habeas corpus' is relevant, however, and the information accompanying the urgent public health order template references it¹⁶⁰
- any of the following general information that the medical officer of health thinks relevant:
 - symptoms, diagnosis, and treatment of the relevant infectious disease
 - how the risk of onset or transmission of the relevant infectious disease may be minimised
- how to seek further information or the assistance of an interpreter or a patient support advocate, if relevant
- how to seek information about obtaining legal aid.¹⁶¹

This person must receive this information at the time (or promptly after) they receive the public health order.¹⁶²

¹⁵⁸ Under section 92ZG.

¹⁵⁹ Set out in section 92E of the Health Act and regulation 12 of the HIND Regulations 2016.

¹⁶⁰ A writ of habeas corpus is a court order to a person or agency detaining another person to release that person. The High Court hears the application for the writ, and the Habeas Corpus Act 2001 applies.

¹⁶¹ The template refers to these matters.

¹⁶² Under section 92ZF(2) of the Health Act and regulation 13(b) of the HIND Regulations 2016.

Scenario 1

Lei travels from Bali to New Zealand on Qantas and books into a downtown Auckland hotel. He goes out to play cards and gamble at the Casino, despite feeling feverish, putting it down to the nearly 10-hour flight he has just come off. Some hours later, having drunk several whiskies he totters back to the Hotel. The next morning the bellhop finds him in the lobby, very much the worse for wear and with a measles-like rash. A doctor examines the case, suspects measles and notifies the medical officer of health. The medical officer of health asks Lei to stay in quarantine at the hotel until the infection risk has passed. Lei has travel insurance and agrees to do so.

The medical officer of health obtains information on the potential contacts – passengers from the flight Lei was on. She approaches the Casino and the hotel and makes enquiries about staff and customers who may have come into contact with Lei, but abandons these lines of enquiry as the contacts have been infrequent and diffuse. As a precaution, she leaves some pamphlets about measles at the Casino and at the hotel. The media also runs stories on the disease risk Lei poses.

Despite Lei's agreement to stay in his hotel, he makes a couple of trips out, including to the Casino. Both the hotel and Casino alert the medical officer of health of this. She visits Lei and serves him with an urgent public health order detaining him in isolation in the hotel for 72 hours, until she can obtain a court order. Lei ignores the order, checks out of his hotel in the middle of the night and takes a flight on Singapore Airlines to Singapore.

Although the medical officer of health has no disease management powers outside of New Zealand, as a good global health citizen she alerts Singapore Airlines to the disease risk Lei poses. She also notifies the National Focal Point at the Ministry of Health who then notifies the National Focal Point in Singapore.

Scenario 2

Patricia regularly flies back and forth between Papua New Guinea and Auckland, as she has relatives and business ties in both places. Her home base and immediate family are in New Zealand. As a teenager Patricia had a significant Mantoux test¹⁶³ reaction. However, she has not had any symptoms consistent with active TB in her adult life until recently. At the age of 30, Patricia was diagnosed with HIV (her case has been notified), and she is being treated for that disease. Patricia is now 32. She has lost a considerable amount of weight and energy in recent times. When she develops night sweats, she visits her doctors. The doctor suspects a case of pulmonary tuberculosis, and notifies the case, and notes that he lacks information to classify it as a confirmed case of TB. The doctor asks for chest X-rays and sends sputum tests to the laboratory. As a precaution, he also starts Patricia on full anti-tuberculosis treatment. He instructs her not to travel pending the results.

Patricia has pressing business in Papua New Guinea, and there is a possibility that without her personal intervention and presence there her business will fold. She discounts her infection risk and risk to herself on the basis that she is already taking treatment, and decides to ignore her doctor's instructions. She makes hasty arrangements to go back to Papua New Guinea. Her husband, very concerned for her safety and that of family in Papua New Guinea, tips off the doctor that Patricia is planning to get on a plane later that day. The doctor, having already notified a suspect case of TB, quickly telephones the local medical officer of health who hurries to the airport with an urgent public health order for Patricia. The effect of this is to detain Patricia for 72 hours at home, within which time confirmatory test results should be available.

The laboratory tests confirm Patricia has active pulmonary TB. Patricia is initially in denial and very annoyed. That being the case, the medical officer of health arranges for an HPO to begin contact tracing Patricia's family, and close friends and business contacts in New Zealand and Patricia reluctantly agrees to do her own contact tracing for people at risk in Papua New Guinea – by telephone and email. Her youngest child was born in New Zealand and has been vaccinated with BCG to protect against TB. However, her oldest child, born in Papua New Guinea, has symptoms consistent with active TB – lassitude and coughing. Fortunately, the laboratory test comes back negative.

¹⁶³ The Mantoux test is a screening tool for tuberculosis (TB)).

11 Templates

Introductory

This chapter contains templates for the following public health measures:

- Directions:
 - public health directions
 - directions for contacts
 - medical examination directions
 - educational institution directions
- Notice extending direction
- Notice varying direction
- Notice rescinding direction
- Template for originating application and affidavit in support – to apply for court order
- Information to be given to individual once court order imposed
- Parties' request for application to cancel an order to be dealt with on the papers
- Medical officer of health certificate for court registrar stating that an order is no longer necessary and can be cancelled
- Certificate that individual has undergone specified medical examinations
- Urgent public health orders.

These templates comprise several components:

- The measure itself
- Relevant legislation
- Information for the individual.

The instructions on the templates are to the effect that medical officers of health should specify the conditions of the order or direction themselves, and in plain English. However, as the Act and Regulations prescribe information for cases and contacts with some particularity medical officers of health should avoid altering the information for cases and contacts which is intended to appear along with the direction or order.

As Court Registry staff may have specific court filing or documentary requirements, the court-related templates are indicative only.

[Template for *remove this text*]

Public health direction

Under section 92I of the Health Act 1956

To *[name and address of individual]*

This is to tell you that you are now subject to a public health direction because of my belief on reasonable grounds that you pose a public health risk. This is because you may have been exposed to *[specify infectious disease]* and you could pose a substantial risk of serious harm to the health or safety of one more other people as a result. *[specify any other grounds relating to the nature of the disease, and relevant circumstances of the particular case – eg, that, because the individual is an intravenous drug user who shares needles, the blood-borne disease risk is greater, or that because the individual has an enteric disease and is a food handler he or she needs to stay away from work for a time]*

This public health direction applies from *[start date]* until *[specify a period within six months and no longer than is necessary to prevent of minimise the public health risk the individual poses]*.

The public health direction means:

[select and insert relevant conditions from section 92I(4) on page 2 of this template]

Signed by

Date

[supply name, contact details and health district of medical officer of health]

Administration only:

Is this infectious disease notifiable?

Yes/No

[If no, the Director of Public Health's prior approval to the direction is required.]

Signature

Date

Relevant legislation and example of its application

92I Medical officer of health may give directions to individual posing public health risk

...

- (4) The medical officer of health may direct the individual to –
- (a) participate in any of the following that are conducted by a health provider:
 - (i) counselling;
 - (ii) education;
 - (iii) other activities related to the infectious disease;
 - (b) refrain from carrying out specified activities (for example, undertaking employment, using public transport, or travelling within and outside New Zealand) either absolutely or unless stated conditions are observed;
 - (c) refrain from going to specified places either absolutely or unless stated conditions are observed;
 - (d) refrain from associating with specified persons or specified classes of persons;
 - (e) take specified actions to prevent or minimise the public health risk posed by the individual;
 - (f) stay, at all times or at specified times, at a specified place of residence, subject to specified conditions;
 - (g) accept supervision by a named person or a person for the time being holding a named office, including, without limitation, –
 - (i) attending meetings arranged by that person; and
 - (ii) providing that person with information on any action, occurrence, or plan that is relevant to the public health risk posed by the individual;
 - (h) comply with instructions to prevent the spread of the infectious disease.
-

Example:

The public health direction means that you must:

- (i) not attend antenatal classes, school, childcare centres, work or other public places until test results show you are no longer infectious with rubella or until seven days after the rash has appeared (ie, 12 March 2017), whichever is sooner.
- (ii) stay away from pregnant women for the period specified in (i) above.

Information about this direction for the individual subject to it

What if you do not comply with this direction?

If you do not comply with this direction you:

- are breaking the law
- put other people at risk of serious harm
- put your own health and safety at risk
- may be taken to court by the medical officer of health, and could as a result become subject to a court order placing more restrictions on you
- could, in exceptional circumstances, be taken to court for an offence under section 92V of the Health Act 1956 of:

Without reasonable excuse failing to comply with a direction given by a medical officer of health under Part 3A of the Health Act 1956.

Should you be found guilty by the District Court, the maximum penalty is a fine not exceeding \$2,000.

If the person subject to this direction is under 16 years of age or does not have legal capacity to understand (eg, because of severe intellectual disability), and you are responsible for their care, you have a duty to take reasonable steps to get them seen by a doctor for diagnosis and treatment. You could be taken to court for the offence of obstruction (ie, intentionally getting in the way of the person subject to the direction complying with it) under section 92W of the Health Act. Should you be found guilty by the District Court, the maximum penalty is a fine not exceeding \$2,000.

Seeking changes to, or cancellation of, directions

This direction will be reviewed regularly to make sure it is still necessary. The medical officer of health can extend, change or cancel the direction. If there is something about the direction that you wish to have changed, you should contact the medical officer of health who signed the direction and seek review.

What rights do you have to challenge the direction in the courts?

You have a right to appeal to the District Court against this direction (or part of it), including against any changes or extensions, under section 92T of the Health Act 1956. To do so you may file a notice of appeal under Part 18 of the District Court Rules 2014.

You may also have a right to apply to the High Court for judicial review of the direction: for example, if the reasons for imposing the conditions were not lawful, or the direction was given in bad faith. You should seek the advice of a lawyer before deciding whether to challenge the direction in the courts.

Privacy of information

Information about you contained in this direction may not be used or passed on by anyone but you, except for the purpose of effectively managing diseases.

Further information

If you require further information, you can contact:

- the medical officer of health named on this form – for information about the disease and this direction
- the Citizens' Advice Bureau (www.cba.org.nz, or freephone 0800 367 222)
- the Office of the Health and Disability Commissioner (www.hdc.org.nz, freephone 0800 11 22 33 or email: hdc@hdc.org.nz) for advice on disability support
- the Community Law Centre (www.communitylaw.org.nz) for legal advice
- the New Zealand Society of Translators and Interpreters (www.nzsti.org/faq/) to locate an interpreter.

The Ministry of Justice and Courts of New Zealand websites have information about going to court, including applying for legal aid and information about court-based interpreters: see www.justice.govt.nz/services/legal-help/ and www.courtsfnz.govt.nz

[Template for *remove this text*]

Direction for contacts

Under section 92J of the Health Act 1956

To *[name and address of individual]*

This is to tell you that you are now subject to a direction for contacts because of my belief that you have been in contact with an individual who may have the following infectious disease *[specify infectious disease]* and that you could pose a substantial risk of serious harm to the health or safety of one more other people as a result. *[specify any other grounds relating to the nature of the disease, and relevant circumstances of the particular case – eg, that the contact is living in crowded housing, making the transmission risk greater]*

This direction applies from *[start date]* until *[specify a period within six months and no longer than is necessary to prevent or minimise the public health risk the individual poses]*.

The direction for contacts means:

[select and insert relevant conditions from section 92J(4) on page 2 of this template]

Signed by

Date

[supply name, contact details and health district of medical officer of health]

Administration only:

Is this infectious disease notifiable?

Yes/No

[If no, the Director of Public Health's prior approval to the direction is required.]

Signature

Date

Relevant legislation

92J Medical officer of health may give directions to contacts of individuals posing public health risk

...

- (4) The medical officer of health may direct the individual to –
- (a) participate in any of the following that are conducted by a health provider:
 - (i) counselling;
 - (ii) education;
 - (iii) other activities related to the infectious disease;
 - (b) refrain from carrying out specified activities (for example, undertaking employment, using public transport, or travelling within and outside New Zealand) either absolutely or unless stated conditions are observed;
 - (c) refrain from going to specified places either absolutely or unless stated conditions are observed;
 - (d) refrain from associating with specified persons or specified classes of persons;
 - (e) take specified actions to prevent or minimise the public health risk posed by the individual;
 - (f) stay, at all times or at specified times, at a specified place of residence subject to specified conditions;
 - (g) accept supervision by a named person or a person for the time being holding a named office, including, without limitation, -
 - (i) attending meetings arranged by that person; and
 - (ii) providing that person with information on any action, occurrence, or plan that is relevant to the public health risk posed by the individual;
 - (h) comply with instructions to prevent the spread of the infectious disease.

Information about this direction for the individual subject to it

What if you do not comply with this direction?

If you do not comply with this direction you:

- are breaking the law
- put other people at risk of serious harm
- put your own health and safety at risk
- may be taken to court by the medical officer of health, and could as a result become subject to a court order placing more restrictions on you
- could, in exceptional circumstances, be taken to court for an offence under section 92V of the Health Act 1956 of:

Without reasonable excuse failing to comply with a direction given by a medical officer of health under Part 3A of the Health Act 1956.

Should you be found guilty by the District Court, the maximum penalty is a fine not exceeding \$2,000.

If the person subject to this direction is under 16 years of age or does not have legal capacity to understand (eg, because of severe intellectual disability), and you are responsible for their care, you have a duty to take reasonable steps to get them seen by a doctor for diagnosis and treatment. You could be taken to court for the offence of obstruction (ie, intentionally getting in the way of the person subject to the direction complying with it) under section 92W of the Health Act if you fail to do this. Should you be found guilty by the District Court, the maximum penalty is a fine not exceeding \$2,000.

Seeking changes to, or cancellation of, directions

This direction will be reviewed regularly to make sure it is still necessary. The medical officer of health can extend, change or cancel the direction. If there is something about the direction that you wish to have changed, you should contact the medical officer of health who signed the direction and seek review.

What rights do you have to challenge the direction in the courts?

You have a right to appeal to the District Court against this direction (or part of it), including against any changes or extensions, under section 92T of the Health Act 1956. To do so you may file a notice of appeal under Part 18 of the District Court Rules 2014.

You may also have a right to apply to the High Court for judicial review of the direction: for example, if the reasons for imposing the conditions were not lawful, or the direction was given in bad faith. You should seek the advice of a lawyer before deciding whether to challenge the direction in the courts.

Privacy of information

Information about you contained in this direction may not be used or passed on by anyone but you, except for the purpose of effectively managing diseases.

Further information

If you require further information, you can contact:

- the medical officer of health named on this form – for information about the disease and this direction
- the Citizens' Advice Bureau (www.cba.org.nz, or freephone 0800 367 222)
- the Office of the Health and Disability Commissioner (www.hdc.org.nz, freephone 0800 11 22 33 or email: hdc@hdc.org.nz) for advice on disability support
- the Community Law Centre (www.communitylaw.org.nz) for legal advice
- the New Zealand Society of Translators and Interpreters' (www.nzsti.org/faq/) to locate an interpreter.

The Ministry of Justice and Courts of New Zealand websites have information about going to court, including applying for legal aid and information about court-based interpreters: see www.justice.govt.nz/services/legal-help/ and www.courtsofnz.govt.nz

[Template for *remove this text*]

Direction for medical examination

Under section 92K of the Health Act 1956

To *[name and address of individual]*

You are now subject to a direction requiring you to have the following medical examination/s: *[specify details of each examination, health provider, time and date]*.

You are also subject to the following conditions until the day on which the medical examination/s have been completed: *[select relevant conditions from section 92K(3) on page 2 of this template]*.

This direction is in order to address the public health risk you pose due to a belief that you may have this infectious disease: *[specify disease]*.

My grounds for believing you pose a public health risk are:

- 1 that *[explain reason for believing individual has the disease (eg, you have been in contact with Joe Brown, who has the disease)]*
- 2 that if you have the disease you could pose a substantial risk of serious harm to the health or safety of one or more other people
- 3 that your doctor or a medical officer of health has requested you undergo a medical examination within a specified period to determine whether you in fact have the disease, and you have not done this.

Signed by

Date

[supply name, contact details and health district of medical officer of health]

Administration only:

Is this infectious disease notifiable?

Yes/No

[If no, the Director of Public Health's prior approval to the direction is required.]

Signature

Date

Relevant legislation

92K Direction for medical examination

...

- (3) The medical officer of health may also direct the individual, until those examinations are
- (a) participate in any of the following that are conducted by a health provider:
 - (i) counselling;
 - (ii) education;
 - (iii) other activities related to the infectious disease;
 - (b) refrain from carrying out specified activities (for example, undertaking employment, using public transport, or travelling within and outside New Zealand) either absolutely or unless stated conditions are observed;
 - (c) refrain from going to specified places either absolutely or unless stated conditions are complied with;
 - (d) refrain from associating with specified persons or specified classes of persons;
 - (e) take specified actions to prevent or minimise the public health risk posed by the individual;
 - (f) stay, at all times or at specified times, at a specified place of residence, subject to specified conditions;
 - (g) accept supervision by a named person or a person for the time being holding a named office, including, without limitation, –
 - (i) attending meetings arranged by that person; and
 - (ii) providing that person with information on any action, occurrence or plan that is relevant to the public health risk posed by the individual;
 - (h) comply with instructions to prevent the spread of the infectious disease.

Section 2(1) of the Health Act states:

‘Medical examination’ means in relation to Part 3A of the Act: The physical examination or testing of a person for the purpose of determining whether the person has or is likely to have an infectious disease, and includes –

- (a) the taking of a sample of tissue, blood, urine, or other bodily material for medical testing; and
- (b) any diagnostic tests required to detect the presence of, or immunity to, an infectious disease in a person.

Information about this direction for the individual subject to it

Choice of medical examination

The medical examination you have been directed to have must be carried out in a considerate way and comply with best practice. It must be the least invasive type of examination necessary in the circumstances.

What if you do not comply with this direction?

If you do not comply with this direction you:

- are breaking the law
- put other people at risk of serious harm
- put your own health and safety at risk
- may be taken to court by the medical officer of health, and could as a result become subject to a court order placing more restrictions on you
- could, in exceptional circumstances, be taken to court for an offence under section 92V of the Health Act 1956 of:

Without reasonable excuse failing to comply with a direction given by a medical officer of health under Part 3A of the Health Act 1956.

Should you be found guilty by the District Court, the maximum penalty is a fine not exceeding \$2,000.

If the person subject to this direction is under 16 years of age or does not have legal capacity to understand (eg, because of severe intellectual disability), and you are responsible for their care, you have a duty to take reasonable steps to get them seen by a doctor for diagnosis and treatment. You could be taken to court for the offence of obstruction (ie, intentionally getting in the way of the person subject to the direction complying with it) under section 92W of the Health Act if you fail to do this. Should you be found guilty by the District Court, the maximum penalty is a fine not exceeding \$2,000.

Seeking changes to, or cancellation of, directions

This direction will be reviewed regularly to make sure it is still necessary. The medical officer of health can extend, change or cancel the direction. If there is something about the direction that you wish to have changed, you should contact the medical officer of health who signed the direction and seek review.

What rights do you have to challenge the direction in the courts?

You have a right to appeal to the District Court against this direction (or part of it), including against any changes or extensions, under section 92T of the Health Act 1956. To do so you may file a notice of appeal under Part 18 of the District Court Rules 2014.

You may also have a right to apply to the High Court for judicial review of the direction: for example, if the reasons for imposing the conditions were not lawful, or the direction was given in bad faith. You should seek the advice of a lawyer before deciding whether to challenge the direction in the courts.

Privacy of information

Information about you contained in this direction may not be used or passed on by anyone but you, except for the purpose of effectively managing diseases.

Further information

If you require further information, you can contact:

- the medical officer of health named on this form – for information about the disease and this direction
- the Citizens' Advice Bureau (www.cba.org.nz, or freephone 0800 367 222)
- the Office of the Health and Disability Commissioner (www.hdc.org.nz, freephone 0800 11 22 33 or email: hdc@hdc.org.nz) for advice on disability support
- the Community Law Centre (www.communitylaw.org.nz) for legal advice
- the New Zealand Society of Translators and Interpreters' (www.nzsti.org/faq/) to locate an interpreter.

The Ministry of Justice and Courts of New Zealand websites have information about going to court, including applying for legal aid and information about court-based interpreters: see www.justice.govt.nz/services/legal-help/ and www.courtsofnz.govt.nz

[Template for *remove this text*]

Direction for educational institution

Under section 92L of the Health Act 1956

To *[name of person in charge, and name and address, of educational institution]*

This is to tell you that you are now subject to a direction requiring you to:

[delete inapplicable]

- (a) direct people attending the educational institution¹⁶⁴ to stay away from its property until further notice *[specify which people, and duration of direction]*
- (b) close part of the institution *[specify which part, and duration of direction]*
- (c) close the entire institution *[specify duration of direction]*.

I am serving this direction on you because I consider there are reasonable grounds to believe that:

- 1 one or more people attending the institution has, or may have, this infectious disease *[specify disease]*, and
- 2 there is a substantial risk that the disease will be transmitted to other people attending the institution, having regard to its nature and the relevant circumstances of the particular case, and
- 3 the risk of the disease being transmitted to other individuals attending the institution cannot be adequately managed solely by giving directions to the individual or individuals with the disease.
[Elaborate these beliefs where relevant – eg, ‘measles is highly contagious and several children attending the school have not been immunised against it’.]

Signed by

Date

[supply name, contact details and health district of medical officer of health]

Administration only:

Is this infectious disease notifiable?

Yes/No

[If no, the Director of Public Health’s prior approval to the direction is required.]

Signature

Date

¹⁶⁴ Defined in section 2(1) Health Act: (a) means any place where people gather for the purpose of education or training; and (b) includes an early childhood education and care centre within the meaning of section 310(1) of the Education Act 1989.

Information about this direction for a head of an educational institution

A medical officer of health must not give this direction without first consulting you as head of the educational institution.

What if you do not comply with this direction?

If you do not comply with this direction you may put others at substantial risk of serious harm to their health and safety. You may also put your own health and safety at substantial risk.

The medical officer of health may apply to the District Court for a court order which will be decided in the District Court; in this case, the application will be filed in the court and you will be notified of what happens next.

You could, in exceptional circumstances, be taken to court for an offence under section 92V of the Health Act 1956 of:

Without reasonable excuse failing to comply with a direction given by a medical officer of health under Part 3A of the Health Act 1956.

Should you be found guilty by the District Court, the maximum penalty is a fine not exceeding \$2,000.

Seeking changes to, or cancellation of, directions

This direction will be reviewed regularly to make sure it is still necessary. The medical officer of health can extend, change or cancel the direction. If there is something about the direction that you wish to have changed, you should contact the medical officer of health who signed the direction and seek review.

What rights do you have to challenge the direction in the courts?

You have a right to appeal to the District Court against this direction (or part of it), including against any changes or extensions, under section 92T of the Health Act 1956. To do so you may file a notice of appeal under Part 18 of the District Court Rules 2014.

You may also have a right to apply to the High Court for judicial review of the direction: for example, if the reasons for imposing the conditions were not lawful, or the direction was given in bad faith. You should seek the advice of a lawyer before deciding whether to challenge the direction in the courts.

Privacy of information

Information about you contained in this direction may not be used or passed on by anyone but you, except for the purpose of effectively managing diseases.

Further information

If you require further information, you can contact:

- the medical officer of health named on this form – for information about the disease and this direction
- the Citizens' Advice Bureau (www.cba.org.nz, or freephone 0800 367 222)
- the Office of the Health and Disability Commissioner (www.hdc.org.nz, freephone 0800 11 22 33 or email: hdc@hdc.org.nz) for advice on disability support
- the Community Law Centre (www.communitylaw.org.nz) for legal advice
- the New Zealand Society of Translators and Interpreters' (www.nzsti.org/faq/) to locate an interpreter.

The Ministry of Justice and Courts of New Zealand websites have information about going to court, including applying for legal aid and information about court-based interpreters: see www.justice.govt.nz/services/legal-help/ and www.courtsofnz.govt.nz

[*Template for* remove this text]

Notice extending direction

Under section 92Q of the Health Act 1956

To *[name and address of individual]*

This is to tell you that the extension/s set out below take immediate effect in relation to the attached direction/s which are currently in force.

[Attach copy of direction/s.]:

The direction/s is extended until *[specify date]*.

My reasons for extending the direction are: *[insert reasons – eg, drug resistant TB, or individual has not been taking medicine consistently and is still infectious]*.

Signed by

Date

[supply name, contact details and health district of medical officer of health]

Information about this notice for the individual subject to it

Extending directions

Directions are reviewed regularly to make sure they are still necessary.

A medical officer of health can extend a direction if he or she is satisfied that the conditions for giving the direction continue to be met – namely, that you pose a substantial risk of serious harm to the health and safety of others. This decision will take into account the nature of the infectious disease and the circumstances of your particular case. No direction may be extended for more than six months at a time. A direction cannot be extended if it has already expired.

What if you do not comply with this direction?

If you do not comply with this direction you may put others at substantial risk of serious harm to their health and safety. You may also put your own health and safety at substantial risk.

The medical officer of health may apply to the District Court for a court order which will be decided in the District Court; in this case, the application will be filed in the court and you will be notified of what happens next.

You could, in exceptional circumstances, be taken to court for an offence under section 92V of the Health Act 1956 of:

Without reasonable excuse failing to comply with a direction given by a medical officer of health under Part 3A of the Health Act 1956.

Should you be found guilty by the District Court, the maximum penalty is a fine not exceeding \$2,000.

Seeking changes to, or cancellation of, directions

This direction will be reviewed regularly to make sure it is still necessary. The medical officer of health can extend, change or cancel the direction. If there is something about the direction that you wish to have changed, you should contact the medical officer of health who signed the direction and seek review.

What rights do you have to challenge the direction in the courts?

You have a right to appeal to the District Court against this direction (or part of it), including against any changes or extensions, under section 92T of the Health Act 1956. To do so you may file a notice of appeal under Part 18 of the District Court Rules 2014.

You may also have a right to apply to the High Court for judicial review of the direction: for example, if the reasons for imposing the conditions were not lawful, or the direction was given in bad faith. You should seek the advice of a lawyer before deciding whether to challenge the direction in the courts.

Privacy of information

Information about you contained in this direction may not be used or passed on by anyone but you, except for the purpose of effectively managing diseases.

Further information

If you require further information, you can contact:

- the medical officer of health named on this form – for information about the disease and this direction
- the Citizens' Advice Bureau (www.cba.org.nz, or freephone 0800 367 222)
- the Office of the Health and Disability Commissioner (www.hdc.org.nz, freephone 0800 11 22 33 or email: hdc@hdc.org.nz) for advice on disability support
- the Community Law Centre (www.communitylaw.org.nz) for legal advice
- the New Zealand Society of Translators and Interpreters' (www.nzsti.org/faq/) to locate an interpreter.

The Ministry of Justice and Courts of New Zealand websites have information about going to court, including applying for legal aid and information about court-based interpreters: see www.justice.govt.nz/services/legal-help/ and www.courtsofnz.govt.nz

[*Template for* remove this text]

Notice varying direction

Under section 92S of the Health Act 1956

To *[name and address of individual]*

This is to tell you that the changes set out below take immediate effect in relation to the attached direction/s which is/are currently in force:

[Attach copy of direction/s, then set out the change/s to be made to it – eg, ‘condition that you are to attend counselling no longer applies’.]

My reasons for making these changes are: *[insert reasons – eg, to ensure that action taken is least restrictive alternative, without compromising public health, or because of the individual’s changing circumstances].*

Signed by

Date

[supply name, contact details and health district of medical officer of health]

Information about this notice for the individual subject to it

Varying directions

Directions are reviewed regularly to make sure they are still necessary.

A medical officer of health can vary a direction if he or she is satisfied that the changes to the direction are necessary to effectively manage the public health risk you pose. This decision will take into account the nature of the infectious disease and the circumstances of your particular case.

A direction cannot be varied if it has already expired.

What if you do not comply with this varied direction?

If you do not comply with this direction you may put others at substantial risk of serious harm to their health and safety. You may also put your own health and safety at substantial risk.

The medical officer of health may apply to the District Court for a court order which will be decided in the District Court; in this case, the application will be filed in the court and you will be notified of what happens next.

You could, in exceptional circumstances, be taken to court for an offence under section 92V of the Health Act 1956 of:

Without reasonable excuse failing to comply with a direction given by a medical officer of health under Part 3A of the Health Act 1956.

Should you be found guilty by the District Court, the maximum penalty is a fine not exceeding \$2,000.

Seeking changes to, or cancellation of, directions

This direction will be reviewed regularly to make sure it is still necessary. The medical officer of health can extend, change or cancel the direction. If there is something about the direction that you wish to have changed, you should contact the medical officer of health who signed the direction and seek review.

What rights do you have to challenge the direction in the courts?

You have a right to appeal to the District Court against this direction (or part of it), including against any changes or extensions, under section 92T of the Health Act 1956. To do so you may file a notice of appeal under Part 18 of the District Court Rules 2014.

You may also have a right to apply to the High Court for judicial review of the direction: for example, if the reasons for imposing the conditions were not lawful, or the direction was given in bad faith. You should seek the advice of a lawyer before deciding whether to challenge the direction in the courts.

Privacy of information

Information about you contained in this direction may not be used or passed on by anyone but you, except for the purpose of effectively managing diseases.

Further information

If you require further information, you can contact:

- the medical officer of health named on this form – for information about the disease and this direction
- the Citizens' Advice Bureau (www.cba.org.nz, or freephone 0800 367 222)
- the Office of the Health and Disability Commissioner (www.hdc.org.nz, freephone 0800 11 22 33 or email: hdc@hdc.org.nz) for advice on disability support
- the Community Law Centre (www.communitylaw.org.nz) for legal advice
- the New Zealand Society of Translators and Interpreters' (www.nzsti.org/faq/) to locate an interpreter.

The Ministry of Justice and Courts of New Zealand websites have information about going to court, including applying for legal aid and information about court-based interpreters: see www.justice.govt.nz/services/legal-help/ and www.courtsofnz.govt.nz

[*Template for* remove this text]

Notice cancelling direction

Under section 92S of the Health Act 1956

To *[name and address of individual]*

This is to tell you that you are now no longer subject to the following direction/s:

[specify date and type of direction imposed (eg, direction to contacts imposed on 9 January 2017)]

[Attach copy of direction/s.]

Signed by

Date

[supply name, contact details and health district of medical officer of health]

Medical officers of health should use these two templates as the first step in applying for court orders.

[*Template for* remove this text]

Originating application

Under rule 20.12 and Subpart 2 of the District Court Rules 2014

In the District Court

To: The Registrar at the District Court at *[place]*

and

To: *[name of individual to be served with this application]*

Please take notice that –

- 1 The applicant *[name of medical officer of health and public health district]* will on *[date]* apply to the court for *[delete inapplicable from list below]*:
 - Public health order under section 92Z of the Health Act 1956
 - Medical examination order under section 92ZH of the Health Act 1956
 - Order for contacts under section 92ZJ of the Health Act 1956
 - Order for extension of public health order under section 92ZD of the Health Act 1956
 - Order for variation of a court order under section 92ZR of the Health Act 1956
 - Order for cancellation of a court order under section 92ZR of the Health Act 1956.
- 2 The grounds on which the order/s is sought are as follows: *[specify the grounds relied on for the application, following as closely as possible the requirements of the relevant section of the Act – eg, applying to cancel an order because the individual concerned is no longer infectious]*.
- 3 The application is made in reliance on section 92ZN of the Health Act 1956 and *[specify relevant provision listed in 1 above]*.

Signature:

Applicant/solicitor for applicant *[delete inapplicable]*

Date:

Medical officers of health should use the following template for an affidavit accompanying an originating application, unless the District Court agrees to hear the evidence orally, or the parties can agree a statement of facts under rule 9.48 of the District Court Rules.

[*Template for* remove this text]

Affidavit accompanying originating application

Under rules 9.58–9.70 and 20.12 of the District Court Rules 2014

In the District Court at: *[place]*

I *[full name, occupation and residence]*

Swear/affirm –

- 1 I am the medical officer of health for *[insert health district]*.
- 2 I make this affidavit under *[state legislative authority to make affidavit – eg, ‘in reliance on my power to make an application for a public health order under section 92Z of the Health Act 1956 which can be commenced by way of an originating application according to rule 20.13(1)(o) of the District Court Rules 2014]*.
- 3 The facts relied on in support of this application for a *[specify order requested]* regarding *[name of individual]* are as follows: *[confine to matters relevant to the application that would be admissible if given in evidence at trial]*.

[Include relevant annexures or exhibits relied, marking them with a distinguishing letter or number.]

Sworn or affirmed in accordance with the Oaths and Declarations Act 1957.

Signature:

Sworn/affirmed at: *[place/date]*

Before me:

[Signature]

Solicitor of the court/Registrar/Justice of the Peace *[delete inapplicable]*

Medical officers of health should ensure that they complete the following form and give it to the individual concerned promptly after the court order imposed.

[*Template for* remove this text]

Information sheet once order imposed

To *[name and address of individual]*

The District Court imposed a public health order/medical examination order/order for contacts/ or order to vary or extend one of these *[delete inapplicable]* on you on *[specify date]*.

I have an obligation to give you information you need to know about the order.

The implications for you as a result of this order are: *[explain implications of order, including the following:]*

- The order will be administratively reviewed to ensure it is still appropriate from time to time.
- If the order is no longer appropriate, I can apply to the District Court to cancel or vary it.
- *[Only if the order is a public health order]* I can apply to the court to extend the order before it expires, where this is necessary to remove or minimise a public health risk.

The additional steps I plan to take to further address the public health risk you pose: *[outline steps as relevant – eg, use of telecommunications to monitor compliance]*.

You have a right of appeal to the High Court, at first instance, against the District Court's decision to impose the order/vary the order/extend the order *[delete inapplicable]*.

For assistance, you may wish to refer to:

- the Citizens' Advice Bureau (www.cba.org.nz, or freephone 0800 367 222)
- the Office of the Health and Disability Commissioner (www.hdc.org.nz, freephone 0800 11 22 33 or email: hdc@hdc.org.nz) for information about disability support advocates, if you have a disability
- the Community Law Centre (www.communitylaw.org.nz) for information about lawyers and the law
- the New Zealand Society of Translators and Interpreters' (www.nzsti.org/faq/) to locate an interpreter.

The Ministry of Justice and Courts of New Zealand websites have information about going to court, including applying for legal aid and information about court-based interpreters: see www.justice.govt.nz/services/legal-help/ and www.courtsofnz.govt.nz

Here is some information about the:

- symptoms, diagnosis, and treatment of the relevant infectious disease, and
- how the risk of onset or transmission of the relevant infectious disease may be minimised.

[provide information]

Signed by

Date

[supply name, contact details and health district of medical officer of health]

Information about this agreement for the individual

Once filed in the court, an application for cancellation of an order has the effect of suspending it until the court decides the application. This means you no longer need to comply with the order until the court makes a decision.

Medical officers of health should use this template when a public health order or order for contacts allows for administrative cancellation when the order is no longer necessary.

[*Template for* remove this text]

Certificate that order is no longer necessary

Under sections 92ZC(3)(d) and 92ZJ(4) of the Health Act 1956

To: The Registrar at the District Court at *[place]*

And

To: *[name and address of party to be served with this certificate]*

I *[name, contact details and health district of medical officer of health]*

certify that the public health order/order for contacts *[delete inapplicable]*

made on *[date of order]* at *[court location]*

concerning *[name of individual]* is no longer necessary to manage the public health risk he or she poses.

I request that you cancel the public health order/order for contacts *[delete inapplicable]* on being satisfied that the order allows for cancellation on receipt of my certificate.

Signed by

Date

Information about this certificate for the individual

Once filed in the court, an application for cancellation of an order has the effect of suspending it until the court decides the application. This means you no longer need to comply with order until the court makes a decision.

Medical officers of health should only use the following certificate to activate the public health order if test results establish the person has the infectious disease for which he or she was examined.

[*Template for* remove this text]

Certificate that individual has undergone specified medical examination/s

Under section 92ZI(3) of the Health Act 1956

To: The Registrar at the District Court at *[place]*

And

To: *[name and address of party to be served with this certificate]*

I *[name, contact details and health district of medical officer of health]*

certify:

- 1 that *[name of individual]* has undertaken the medical examination/s specified in the attached medical examination order *[attach a copy of the medical examination order]*
- 2 that the examination/s establish that he or she has the infectious diseases for which he or she has been examined
- 3 that a public health order made by the District Court concerning him/her provides that it takes effect only if the medical officer of health signs and dates this certificate under section 92ZI(3) of the Health Act *[attach a copy of the public health order]*.

I notify you that the public health order takes effect immediately on receipt and filing of this certificate.

Signed by

Date

[Template for *remove this text*]

Urgent public health order

Under section 92ZF of the Health Act 1956

To *[name of individual]*

This urgent public health order requires you to be detained immediately as at *[specify time and date of commencement]* and to stay at the following place for a period of 72 hours (three days): *[specify premises or part of premises]*. The following conditions apply: *[specify what conditions apply, if any]*.

This is because I *[specify name, contact details and health district of medical officer of health]* believe all of the following:

- 1 You have, or may have, or may carry an infectious disease that poses a substantial risk of serious harm to the health or safety of one or more other people.
- 2 This risk cannot be managed by giving you a direction.
- 3 Urgent action is required to address this risk.

The grounds on which I have formed this belief are *[specify reasons for belief (must be on reasonable grounds), having regard to the nature of the disease, including its transmissibility and mode of transmission and the relevant circumstances of the particular case – eg, individual about to leave New Zealand on a plane]*.

At the end of the 72-hour period, unless the medical officer of health has obtained a court order for your continued detention, you will be free to go where you wish.

[Date of order given to individual]

[Time order given to individual]

Signed by medical officer of health

Date

Administration only:

Is this infectious disease notifiable?

Yes/No

[If no, the Director of Public Health's prior approval to the direction is required.]

Signature of Director of Public Health (if required)

Date

Information about this order for the individual who is subject to it

What if you do not comply with this order?

If you do not comply with this order you:

- are breaking the law;
- put other people at risk of serious harm;
- put your own health and safety at risk;
- may be taken to court by the medical officer of health, and could as a result become subject to a court order with more and longer term restrictions on you;
- could, in exceptional circumstances, be taken to court for an offence under section 92ZW of the Health Act 1956 of:

Without reasonable excuse, intentionally failing to comply with an order made under Part 3A of the Health Act 1956 that is binding on you.

Should you be found guilty by the District Court, the maximum penalty is a term of imprisonment not exceeding 6 months or a fine not exceeding \$2,000.

If you are responsible for a person under 16 years of age or a person who does not have legal capacity to understand (eg, because of severe intellectual disability), who is the subject of this order, then you must take reasonable steps to get them seen by a doctor for diagnosis and treatment. If you fail to do this, you may be taken to court for the offence of obstruction under section 92ZX of the Health Act 1956. This offence is where you intentionally get in the way of the person under 16/lacking legal capacity complying with this direction. Should you be found guilty by the District Court, the maximum penalty is a term of imprisonment not exceeding six months or a fine not exceeding \$2,000.

What rights do you have to challenge the urgent public health order before the 72 hours expires?

In unusual circumstances, you may be able to get the medical officer of health who gave you this order to agree to not enforce it before the 72 hours expires. This might be possible, for example, you could receive a medical diagnosis or test results within that period which show you do not have the infectious disease and are not a carrier of it.

Right to apply to challenge unlawful detention in the High Court before the 72 hours expires

You may apply to the High Court for a 'writ of habeas corpus' challenging the legal right to detain you under this order. If the High Court accepts jurisdiction and finds that the medical officer of health has failed to show that your detention is lawful, it must grant the writ, and the order detaining you will not apply. If you wish to challenge your detention in this way, you can either seek the services of a lawyer or represent yourself in the court. An application for a writ of habeas corpus must generally be made by originating application. The court may accept an oral application made by telephoning the High Court Registry closest to where the applicant is being detained; see section 7(2) of the Habeas Corpus Act 2001. Template: Application for a writ of habeas corpus (Word, 71 KB).

You may have a right to apply to the High Court for judicial review of the urgent public health order, for example where the grounds for making it have not been satisfied. However, you

should remember that, as the order only applies for 72 hours, by the time the court is able to hear a judicial review application the period is very likely to have expired.

After the 72 hours expires

One of the reasons for imposing an urgent public health order on you is that it is not practical to wait for the District Court to decide an application for a court order. In most circumstances of urgency where you need to be detained for more than 72 hours, particularly if you do not comply with voluntary public health actions requested of you, the medical officer of health will apply for a court order within the 72 hours. If this happens, the application will be filed in the court and you will be notified of what happens next.

Privacy of information

Information about you may not be used or passed on by anyone but you, except for the purpose of effectively managing diseases.

For further information

If you require further information, you can contact:

- the medical officer of health named on this form – for information about the disease and this direction
- the Citizens' Advice Bureau (www.cba.org.nz, or freephone 0800 367 222)
- the Office of the Health and Disability Commissioner (www.hdc.org.nz, freephone 0800 11 22 33 or email: hdc@hdc.org.nz) for advice on disability support
- the Community Law Centre (www.communitylaw.org.nz) for legal advice
- the New Zealand Society of Translators and Interpreters' (www.nzsti.org/faq/) to locate an interpreter.

The Ministry of Justice and Courts of New Zealand websites have information about going to court, including applying for legal aid and information about court-based interpreters: see www.justice.govt.nz/services/legal-help/ and www.courtsofnz.govt.nz

12 Appendices

Appendix 1: Glossary

Definitions

Case: An individual who has or may have an infectious disease.

Contact: An individual who has been in contact with another person who has, or is suspected of having, an infectious disease.

Contact tracing: Tracing contacts of a person who has, or is suspected of having, an infectious disease, in order to tell them of the disease risk and prevent its transmission.

Direction: Written directions imposed by a medical officer of health on an individual. There are four types of direction:

- (1) to an individual posing a public health risk
- (2) to contacts of an individual posing a public health risk
- (3) to an individual to undergo a medical examination, or examinations, to determine whether he or she has an infectious disease
- (4) to a person in charge of an educational institution to close the institution or part of it, or to direct people attending it to stay away until further notice.¹⁶⁵

Early childhood education centre: Premises used regularly for the education or care of three or more children (not being children of the individuals providing the education or care, or children enrolled at a school being provided with education or care before or after school) under the age of six:

- (a) by the day or part of a day
- (b) but not for any continuous period of more than seven days.

Educational institution: Any place where people gather for the purpose of education or training, and it includes an early childhood education and care centre within the meaning of section 310(1) of the Education Act 1989 (but note that section 310(2) and (4) contain several exceptions to this general definition).

Formal contact tracing: Contact tracing carried out by a medical officer of health, health protection officer, or suitably qualified health or community worker nominated by a medical officer of health or DHB to contact trace. The Health Act empowers a formal contact tracer to require information about contacts from the case. Formal contact tracing is mandatory in nature.

Health practitioner: An individual who is, or is deemed to be, registered with an authority as a practitioner of a particular health profession.¹⁶⁶

Infectious diseases: A notifiable, or non-notifiable, infectious disease listed in Part 1 or 2 of Schedule 1 of the Health Act.

¹⁶⁵ Sections 92I to 92L.

¹⁶⁶ Section 5(1) of the Health Practitioners Competence Assurance Act 2003.

Informal contact tracing: Contact tracing done without a legislative footing, with no legal power to require information from the case. Some primary health providers, STI clinics and NGOs undertook informal contact tracing prior to the enactment of new Part 3A of the Health Act and should continue to do so.

Medical examination: The physical examination or testing of a person for the purpose of determining whether he or she has or is likely to have an infectious disease. The term includes:

- (a) the taking of a sample of tissue, blood, urine, or other bodily material for medical testing
- (b) any diagnostic tests required to detect the presence of, or immunity to, an infectious disease in a person.

Medical examination order: An order made by the District Court on the application of a medical officer of health.¹⁶⁷ The order requires an individual to undergo a medical examination within a specified period to determine whether he or she has a particular infectious disease.

Notices: A formal document used to convey something in writing, at the discretion of the medical officer of health or health protection officer (eg, a notice to extend, vary or cancel a direction). The Act uses the term ‘notice’ but does not define or elaborate on it.

Notifiable infectious diseases: Infectious diseases listed in Part 1 of Schedule 1 of the Health Act.

Order for contacts: An order made by the District Court on the application of a medical officer of health.¹⁶⁸ The contact must comply with certain requirements to prevent or minimise the public health risk he or she may pose.

Other infectious diseases: Non-notifiable, infectious diseases listed in Part 2 of Schedule 1 of the Health Act (eg, chlamydia, chancroid, herpes simplex and influenza). Non-notifiable, infectious diseases are ‘infectious diseases’ within the meaning of this term in Part 3A of the Health Act; as such, public health practitioners can apply public health measures to people with or suspected of having these diseases and their contacts.

Public health order: An order made by the District Court, on the application of a medical officer of health,¹⁶⁹ to comply with certain requirements the court considers necessary to prevent or minimise the public health risk the person may pose.

Public health practitioner: A medical officer of health, health protection officer, or a public health officer designated by the Director-General of Health, and includes public health nurses and others working in public health under supervision.

Public health risk: A substantial risk of serious harm that one or more individuals who have, or may have, an infectious disease pose to the health or safety of one or more persons because of the infectious disease, having regard to:

- (a) the nature of the infectious disease, including, without limitation, the transmissibility and mode of transmission of the infectious disease
- (b) the relevant circumstances of the particular case.

¹⁶⁷ Under section 92ZH of the Health Act.

¹⁶⁸ Under section 92ZJ of the Health Act.

¹⁶⁹ Under section 92Z of the Health Act.

Quarantinable infectious diseases: The diseases that are listed in Part 3 of Schedule 1 of the Health Act. As at January 2017, they are: avian influenza (capable of being transmitted between human beings), cholera, Middle East respiratory syndrome, non-seasonal influenza (capable of being transmitted between human beings), plague, viral haemorrhagic fevers (capable of being transmitted between human beings), and yellow fever.

Section A diseases: Infectious diseases that are notifiable to a medical officer of health and a local authority that are listed in Section A of Part 1 of Schedule 1 of the Health Act (eg, yersiniosis, campylobacteriosis).

Section B diseases: Infectious diseases that are notifiable to a medical officer of health, listed in Section B of Part 1 of Schedule 1 of the Health Act (eg, diphtheria and measles).

Section C diseases: Infectious diseases that are notifiable to a medical officer of health, listed in Section C of Part 1 of Schedule 1 of the Health Act. As at January 2017 they are HIV, AIDS, gonorrhoea and syphilis.

Urgent public health order: An administrative order that a medical officer of health imposes on an individual,¹⁷⁰ which has effect for 72 hours from the time it is given and requires the individual to be detained at specified premises or a part of them.

Abbreviations

CD Manual: Ministry of Health 2012: Communicable Disease Control Manual 2012. www.health.govt.nz/publication/communicable-disease-control-manual-2012.

EHO: Environmental health officer (appointed by local authorities under the Health Act 1956; the Director-General establishes minimum numbers of EHOs).

EpiSurv: The national notifiable disease surveillance database ESR operates on behalf of the Ministry of Health. EpiSurv collates notifiable disease information from public health services across the country in real-time. Data collected includes case demographics, clinical features and risk factors. EpiSurv incorporates an outbreak functionality that enables cases to be linked via a common cause. The information can be viewed via customisable local and national reports and maps.

ESR: Institute of Environmental Science and Research.

HIND Regulations: The Health (Infectious and Notifiable Diseases) Regulations.

HPO: Health protection officer.

STI: Sexually transmitted infection.

¹⁷⁰ Under section 92ZF of the Health Act.

Appendix 2: Notification provisions from the Health Act 1956 (as at 4 January 2017)

74 Health practitioners to give notice of cases of notifiable disease

- (1) Every health practitioner who has reason to believe that any person professionally attended by him is suffering from a notifiable disease or from any sickness of which the symptoms create a reasonable suspicion that it is a notifiable disease shall –
 - (a) in the case of a notifiable infectious disease, forthwith inform the occupier of the premises and every person nursing or in immediate attendance on the patient of the infectious nature of the disease and the precautions to be taken, and forthwith give notices in the prescribed form to the medical officer of health, and, if the disease is specified in section A of Part 1 of Schedule 1, to the local authority of the district:
 - (b) in the case of a notifiable disease other than a notifiable infectious disease, forthwith give notice in the prescribed form to the medical officer of health.
- (2) [Repealed]
- (3) Every health practitioner who by post-mortem examination or otherwise becomes aware that any deceased person was affected with a notifiable disease shall forthwith give notice in the prescribed form to the medical officer of health.
- (3A) A health practitioner who gives notice of a notifiable disease under subsection (1) or (3) must not disclose identifying information of the patient or deceased person if the disease is specified in Section C of Part 1 of Schedule 1.
- (3B) Despite subsection (3A), a medical officer of health may require a health practitioner to disclose identifying information of the patient or deceased person if disclosure of the identifying information is necessary to respond effectively to a public health risk.
- (3C) In this section and section 74AA, identifying information, in relation to a person means –
 - (a) the person's name, address, and place of work or education; and
 - (b) any other information required by regulations made under this Act.
- (4) Every health practitioner commits an offence against this Act who fails to comply with the requirements of this section.
- (5) [Repealed].

74AA Medical laboratories to give notice of cases of notifiable disease

- (1) The person in charge of a medical laboratory must take all reasonably practicable steps to ensure that there are in place in it efficient systems for reporting to him or her (or to any other person for the time being in charge of it) the results of a test or other procedure undertaken in it that indicate that a person or thing is, has been, or may be or have been, infected with a notifiable disease.
- (2) The person for the time being in charge of a medical laboratory to whom results are reported under subsection (1) (or who himself or herself becomes aware of results of a kind to which that subsection applies) must immediately tell the health practitioner for whom the test or other procedure concerned was undertaken, and the medical officer of health, of the infectious nature of the disease concerned.
- (2A) A person in charge of a medical laboratory who gives notice of a notifiable disease under subsection (2) must not disclose identifying information of a person who is, or has been, or may be or may have been, infected with a disease specified in section C of Part 1 of Schedule 1.
- (2B) Despite subsection (2A), a medical officer of health may require a person in charge of a medical laboratory to disclose identifying information of the person who is, or has been, or may be or may have been, infected with a disease if disclosure of the identifying information is necessary to respond effectively to a public health risk.
- (3) A person who fails to comply with subsection (2) –
 - (a) commits an offence against this Act; and
 - (b) is liable on conviction to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$500 for every day on which it has continued.

74B Medical laboratories may be required to give notice of cases of disease during epidemic

- (1) Before the commencement of section 8, an epidemic management notice may provide for this Act to have effect as if section 74AA (as to be inserted by that section) were already in force, but in relation only to the disease stated in the notice.
- (2) Unless the notice provides that section 74AA is to apply to medical laboratories in stated parts of New Zealand only, the section applies to medical laboratories throughout New Zealand.
- (3) While the notice is in force, every provision of this Act (other than this section) has effect –
 - (a) as if section 74AA were in force; but
 - (b) as if the references in that section to a notifiable disease were references to the quarantinable disease stated in the notice (or, if 2 or more notices are in force, to the quarantinable diseases stated in the notices).
- (4) The fact that the notice has expired does not affect any criminal or civil liability arising while it was in force.

85 Notice of death from infectious disease

- (1) When any person has died of an infectious disease, the funeral director or other person having charge of the funeral of the deceased shall forthwith, after having been informed of the cause of death and before the removal of the body from the building or other place in which it may then be, give to the medical officer of health notice in the prescribed form and manner of the fact of the death and the cause thereof.
- (2) [Repealed]

Appendix 3: Notification provisions and forms from the HIND Regulations 2016 (as at 4 January 2017)

6 Meaning of identifying information for purposes of notifications to be given on non-identified basis

For the purposes of section 74(3C)(b) of the Act, the person's contact details (including phone number, email address, and URL) are identifying information (and accordingly must not be disclosed in notices of diseases listed in section C of Part 1 of Schedule 1 of the Act).

7 Form for health practitioners giving notice of notifiable disease

- (1) Notice of a notifiable disease required by section 74(1) of the Act must be in –
 - (a) form 1 of Schedule 2 (if the disease is listed in section A or B of Part 1 of Schedule 1 of the Act); or
 - (b) form 2 of Schedule 2 (if the disease is listed in section C of Part 1 of Schedule 1 of the Act).
- (2) Notice of a notifiable disease required by section 74(3) of the Act must be in—
 - (a) form 3 of Schedule 2 (if the disease is listed in section A or B of Part 1 of Schedule 1 of the Act); or
 - (b) form 4 of Schedule 2 (if the disease is listed in section C of Part 1 of Schedule 1 of the Act).

8 Requirements for medical laboratories giving notice of notifiable disease

Notice of a notifiable disease required by section 74AA(2) of the Act must include, at a minimum, the information set out in Schedule 3.

9 Form for funeral director, etc, giving notice of death from infectious disease

Notice of a death from an infectious disease required by section 85 of the Act must be in –

- (a) form 5 of Schedule 2 (if the disease is listed in section A or B of Part 1 of Schedule 1 of the Act); or
- (b) form 6 of Schedule 2 (if the disease is listed in section C of Part 1 of Schedule 1 of the Act).

10 How notifications must be given

- (1) A notice required by section 74 or 85 of the Act must be given—
 - (a) by electronic means (for example, by email or fax); or
 - (b) if it is not reasonably practicable to give it by electronic means, by post or delivery.
- (2) This regulation does not apply to notices under section 74AA (which may be given orally or by any other means under that section).

Form 1 Health practitioner notice of notifiable disease (identified basis)

Section 74(1), Health Act 1956

To the medical officer of health for [*district*]

***And to** [*name of local authority*]

*This notice needs to be given to the local authority only if the notified disease is listed in section A of Part 1 of Schedule 1 of the Act.

Date:

1 Patient details

Name:

National health index number (if known):

Address:

Date of birth:

Date of death (if applicable):

Sex:

Ethnicity (if known):

Nature of work or education (if known):

Recent travel history (if known):

2 Details of disease

Disease or suspected disease being notified:

Date of onset of illness (approximately):

Laboratory tests done or ordered (if any):

Results of laboratory tests (if available):

Has the patient been hospitalised? Yes/No

If the patient has been hospitalised, the name of the hospital and date of the admission:

Any other information relevant to the risk of the patient having or transmitting the disease (for example, vaccine history, sexual behaviour or activity, or sex of partner or partners, if known):

3 Details of notifying health practitioner

Name:

Phone number:

Address:

Email address:

Instructions on use: This form must not be used to notify diseases listed in section C of Part 1 of Schedule 1 of the Act. Those diseases must be notified using form 2.

Form 2 Health practitioner notice of notifiable disease (non-identified basis)

Section 74(1) and (3A), Health Act 1956

To the medical officer of health for [district]

Date:

1 Patient details

First 2 letters of surname and the first letter of first name:

National health index number (if known):

DHB district of usual address:

Date of birth:

Date of death (if applicable):

Sex:

Ethnicity (if known):

Nature of work or education (if known):

Recent travel history (if known):

2 Details of disease

Disease or suspected disease being notified:

Date of onset of illness (approximately):

Laboratory tests done or ordered (if any):

Results of laboratory tests (if available):

If the disease or suspected disease is HIV or AIDS, whether or not there is laboratory evidence of newly acquired HIV infection (if known):

If the disease or suspected disease is HIV, AIDS, or syphilis, the date and place of last negative laboratory test (if known):

Has the patient been hospitalised? Yes/No

If the patient has been hospitalised, the name of the hospital and date of the admission:

If the disease or suspected disease is HIV, AIDS, or syphilis, has the patient been referred to specialist care? Yes/No

Any other information relevant to the risk of the patient having or transmitting the disease (for example, vaccine history, sexual behaviour or activity, or sex of partner or partners, if known):

3 Contact tracing

Are there other persons infected or likely to have been infected with the disease? Yes/No

If not already referred to contact tracing, do you consider contact tracing is required? Yes/No

4 Notifying health practitioner details

Name:

Phone number:

Address:

Email address:

Instructions on use: This form is for notification of diseases listed in section C of Part 1 of Schedule 1 of the Act. The name, address, and other contact details of the patient must not be included in this form. However, a medical officer of health may require disclosure of those matters if necessary under section 74(3B) of the Act.

Form 3 Health practitioner post-mortem notice of notifiable disease (identified basis)

Section 74(3), Health Act 1956

To the medical officer of health for [*district*]

Date:

1 Patient details

Name:

National health index number (if known):

Address:

Date of birth:

Date of death:

Address of place of death:

Sex:

Ethnicity (if known):

Nature of work or education (if known and relevant to public health risk):

Recent travel history (if known):

2 Details of disease

Disease or suspected disease being notified:

3 Notifying health practitioner details

Name:

Phone number:

Address:

Email address:

Instructions on use: This form must not be used to notify diseases listed in section C of Part 1 of Schedule 1 of the Act. Those diseases must be notified using form 4.

Form 4 Health practitioner post-mortem notice of notifiable disease (non-identified basis)

Section 74(3) and (3A), Health Act 1956

To the medical officer of health in [*district*]

Date:

1 Patient details

First 2 letters of surname and the first letter of first name:

National health index number (if known):

DHB district of usual address:

Date of birth:

Date of death:

DHB district of place of death:

Sex:

Ethnicity (if known):

Nature of work or education (if known and relevant to public health risk):

Recent travel history (if known):

2 Details of disease

Disease or suspected disease being notified:

3 Contact tracing

Are there other persons infected or likely to have been infected with the disease? Yes/No

If not already referred to contact tracing, do you consider contact tracing is required? Yes/No

4 Notifying health practitioner details

Name:

Phone number:

Address:

Email address:

Instructions on use: This form is for notification of diseases listed in section C of Part 1 of Schedule 1 of the Act. The name, address, and other contact details of the patient must not be included in this form. However, a medical officer of health may require disclosure of those matters if necessary under section 74(3B) of the Act.

Form 5 Funeral director, etc, notice of death from infectious disease (identified basis)

Section 85, Health Act 1956

To the medical officer of health for [*district*]

Date:

1 Deceased details

Name:

National health index number (if known):

Date of birth:

Date of death:

Place of death:

Name of health practitioner who signed death certificate:

Date of death certificate:

Sex:

Ethnicity (if known):

2 Details of disease

Disease or suspected disease being notified:

3 Details of notifying funeral director (or other person in charge of funeral)

Name:

Phone number:

Address:

Email address:

Instructions on use: This form must not be used to notify diseases listed in section C of Part 1 of Schedule 1 of the Act. Those diseases must be notified using form 6.

Form 6 Funeral director, etc, notice of death from infectious disease (non-identified basis)

Section 85, Health Act 1956

To the medical officer of health for [*district*]

Date:

1 Deceased details

First 2 letters of surname and the first letter of first name:

National health index number (if known):

Date of birth:

Date of death:

DHB district of place of death:

Name of health practitioner who signed death certificate:

Date of death certificate:

Sex:

Ethnicity (if known):

2 Details of disease

Disease or suspected disease being notified:

3 Details of notifying funeral director (or other person in charge of funeral)

Name:

Phone number:

Address:

Email address:

Instructions on use: This form is for notification of diseases listed in section C of Part 1 of Schedule 1 of the Act. The name, address, and other contact details of the deceased must not be included in this form.

Schedule 3 Minimum information requirements for notice of notifiable disease by medical laboratory

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1 Patient details

The following information must be provided about the patient:

(a) either—

(i) the patient's name; or

(ii) (if the disease is listed in section C of Part 1 of Schedule 1 of the Act) the first 2 letters of the patient's surname and first letter of the patient's first name:

(b) national health index number (if known):

(c) address or (if the disease is listed in section C of Part 1 of Schedule 1 of the Act) the DHB district of usual address:

(d) date of birth:

(e) date of death and cause of death (if applicable):

(f) sex:

(g) ethnicity (if known).

2 Details of disease

The following information must be provided about the disease or suspected disease being notified by the medical laboratory:

(a) name of disease or suspected disease:

(b) laboratory tests done or ordered by it:

(c) results of laboratory tests (if available):

(d) for all specimens taken for testing,—

(i) site of specimens:

(ii) type of specimens:

(iii) date taken.

3 Details of person in charge of laboratory and relevant health practitioner

The following information must be provided:

- (a) name of the person in charge of the medical laboratory and his or her phone number, address, and email address:
- (b) name of the clinical microbiologist or technician and his or her phone number, address, and email address:
- (c) name of the health practitioner ordering laboratory tests and his or her phone number, address, and email address.

Appendix 4: The Ministry of Health's Prosecution Policy

Background

Pursuant to the New Zealand Public Health and Disability Act 2000 the Ministry of Health is charged with important responsibilities regarding the health of New Zealanders. This includes entering into agreements under which the Crown provides money in return for provision of, or arrangement for the provision of, health services or disability support services. The Ministry must also oversee a number of matters controlled by regulation, through legislation which the Ministry is responsible for administering.

Enforcement activities

The Ministry must pursue its health objectives to the extent that they are reasonably achievable within the funding provided. The Ministry therefore wants to ensure that it is obtaining value for money and provide assurance that public funds are appropriately expended. The Ministry must also ensure that there is compliance with regulatory provisions for which it is responsible to protect the public and maintain public confidence in the regulatory system.

The Ministry aims to act fairly and consistently and will in each case identify the appropriate enforcement response.

The Ministry conducts its assurance activities in a number of ways. These include:

- educational activity to make service providers and those covered by regulation aware of their responsibilities
- recovering funding that has been overpaid or taking other relevant contractual action
- referring matters to relevant professional bodies or other Government agencies
- prosecution action where appropriate.

Prosecution

The prosecution policy relates specifically to those situations where prosecution may be appropriate. These situations include a breach of regulation, or activity that could be prosecuted in criminal courts. The policy is designed to establish and maintain cost-effective, consistent and fair management of prosecution action taken by the Ministry. Each case will be considered individually on its facts, but in the context of this Ministry-wide policy.

The Ministry notes that it relies on the Prosecution Guidelines issued by Crown Law from time to time to assist it in determining:

1 Whether criminal proceedings should be commenced

The test prior to commencing prosecution will be to determine first, whether evidence can be adduced in court that is sufficient to provide a reasonable prospect of conviction (the evidential test) and second, whether prosecution is required in the public interest (the public interest test). Consideration must also be given to the cost-effectiveness of the prosecution.

Some of the matters the Ministry may consider when determining the public interest test include:

- the seriousness of the offence. There is a strong public interest if a conviction is likely to result in a significant penalty
- any breach of trust (such as false claiming under the honesty based payment system) and the need to ensure public accountability. The expectations of the Office of the Auditor-General in the context of suspected fraud will be addressed where applicable
- whether the defendant was in a position of authority (such as being or representing him or herself as a qualified health professional)
- premeditation, length and scale of offending.

2 What charging document(s) should be filed

If specific charges are provided under legislation these are the charges that will be pursued unless it is determined that it is in the public interest that alternative charges be filed (such as under the Crimes Act).

The identity of the appropriate defendant(s) may be a matter on which legal advice is sought (for example multiple possible defendants or company versus individual defendant).

3 Whether, if commenced, criminal proceedings should be continued or discontinued

The Ministry will seek legal assistance from either Health Legal or a Crown solicitor (as appropriate) in making these determinations. The decision, and the reasons for it, shall be documented.

The Ministry will comply with the requirements of the Criminal Disclosure Act 2008 whenever applicable.

Appeals will be considered in consultation with a Crown solicitor.

If other agencies are involved in parallel or related investigations into a defendant's activities the Ministry may work with those other agencies and may decide which agency should be the lead agency (depending on circumstances).