

Understanding Health Orders Issued Under the Michigan Public Health Code

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The recent Michigan Supreme Court opinion (from 10/2) has absolutely no effect on the ability of a local health officer or the Director of Michigan Department of Health and Human Services (MDHHS) to issue orders under the public health code. The Orders issued by a health officer are completely separate from any executive orders issued by the Governor and do not require the existence of any state or county “state of emergency” declaration.

State Law

The public health code requires health departments to “continually and diligently endeavor to prevent disease, prolong life, and promote the public health . . .” MCL 333.2433(1). This includes “prevention and control of diseases.” When it created the public health code in 1978, the Legislature stated that “this code shall be liberally construed for the protection of the health, safety, and welfare of the people of this state.” MCL 333.1111(2). As far back as 1883, the Legislature authorized local health officers to investigate outbreaks of communicable diseases and mandate sanitary measures to combat the disease.

The ability of health officers to issue orders has not been challenged in court. The local health officer’s power is not limitless – they can only issue orders when necessary to control an epidemic. COVID-19 is an epidemic. Data shows that this epidemic still has not been “controlled.”

Two Categories of Epidemic Orders

1. Prohibiting the gathering of people – this is explicitly permitted by the statute;
2. Issuing orders to “insure continuation of essential public health services” – if reasonable health orders are not followed, there is a high probability that our essential public health services (i.e., local hospital systems) will be overrun and will not have the capacity to adequately treat all COVID-19 patients.

Violating orders issued by the local health officer is a misdemeanor – but the goal is to gain compliance, not to charge people with crimes.