



DEPARTMENT OF HEALTH SERVICES

**AUTHORITY AND RESPONSIBILITY OF
LOCAL HEALTH OFFICERS IN
EMERGENCIES AND DISASTERS**

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AUTHORITY AND RESPONSIBILITY OF LOCAL HEALTH OFFICERS IN EMERGENCIES AND DISASTERS

Legal Precautions

This report has been prepared strictly as a guide, and should not be construed as providing legal advice. To ensure compliance with applicable laws and regulations, city or county legal counsel should be consulted prior to invoking the authorities discussed in this document.

Section 1 **Background**

Purpose

As a result of recent significant flood disasters and the severe medical care crisis during the winter of 1997-98, the Department of Health Services (DHS) received numerous inquiries from local health departments, local emergency services agencies, and others regarding the definition of "health emergencies" and the authority vested in the health officer during emergencies or disasters. This document identifies the applicable sections of the Health and Safety Code, Government Code, and other statutes that apply to the authority and responsibility of the health officer and attempts to clarify these authorities.

Contents

This document relates solely to issues involving health officer authorities in emergencies or disasters. It does not discuss the day-to-day legal authorities and responsibilities of local health officers beyond their basic responsibility to protect public health.

Codes cited in this paper include the Health and Safety Code (HSC), the Government Code (GC), and the Penal Code (PC). Applicable sections are cited for each question and are quoted verbatim. The term "department" refers to the State Department of Health Services unless otherwise noted.

The document is written in a question-and-answer format for ease of use.

Section 2 General Duties and Responsibilities

In order to understand the authorities and responsibilities that arise during emergencies or disasters, it is necessary to understand the basic authorities and responsibilities that apply in day-to-day public health operations.

Question 1. **Who is responsible for protection of the public health at the local level?**

Answer. **This responsibility rests with the local governing body. The local health officer is delegated the responsibility for enforcement of public health laws and regulations.**

HSC § 101000 County health officer. “Each board of supervisors shall appoint a health officer who is a county officer.”

HSC § 101025 Preservation and protection of public health. “The board of supervisors of each county shall take measures as may be necessary to preserve and protect the public health in the unincorporated territory of the county, including, if indicated, the adoption of ordinances, regulations and orders not in conflict with general laws, and provide for the payment of all expenses incurred in enforcing them.”

HSC § 101030 Enforcement duties. “The county health officer shall enforce and observe all of the following in the unincorporated area of the county:
(a) Orders and ordinances of the board of supervisors pertaining to public health and sanitary matters;
(b) Orders including quarantine and other regulations prescribed by the department; and
(c) Statutes related to public health.”

HSC § 101375 Consent of city; enforcement duties of county health officer. “When the governing body of a city in the county consents by resolution or ordinance, the county health officer shall enforce and observe in the city all of the following:
(a) Orders and quarantine regulations prescribed by the department and other regulations issued under this code.
(b) Statutes relating to the public health.”

HSC § 101400 Contracts for county performance of city health functions. “The board of supervisors may contract with a city in the county, and the governing body of a city may contract with the county for the performance by health officers or other county employees of any or all enforcement functions within the city related to ordinances of public health and sanitation, and all inspections and other related functions.”

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- HSC § 101405 Powers of county health officers in city. “Whenever a contract has been duly entered into, the county health officer and his or her deputies shall exercise the same powers and duties in the city as are conferred upon city health officers by law.”
- HSC § 101415 Contract for city performance of county health functions. “The board of supervisors may contract with the governing body of a city in the county to secure the performance by the city health officer or other city health employees of any or all functions related to public health in any unincorporated territory adjacent to the city.”
- HSC § 101450 Duties of governing body of city. “The governing body of a city shall take measures necessary to preserve and protect the public health, including the regulation of sanitary matters in the city, and including if indicated, the adoption of ordinances, regulations and orders not in conflict with general laws.”
- HSC § 101460 Health officer; appointment. “Every governing body of a city shall appoint a health officer, except when the city has made other arrangements as specified in this code, for the county to exercise the same powers and duties within the city, as are conferred upon city health officers by law.”
- HSC § 101470 Enforcement duties. “Each city health officer shall enforce and observe all of the following:
(a) Orders and ordinances of the governing body of the city pertaining to the public health.
(b) Orders, quarantine and other regulations, concerning the public health, prescribed by the department.
(c) Statutes relating to the public health.”

Question 2. What is the role of the State Department of Health Services?

Answer DHS may take any necessary action to protect and preserve the public health. The department may conduct studies, demonstrate innovative techniques, evaluate existing projects, provide training, and disseminate information. The department may also advise local health authorities, and, if the department determines that public health is menaced, it shall control and regulate the actions of the local health authorities.

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- HSC § 100170 Maintenance and defense of actions and proceedings. “The department may commence and maintain all proper and necessary actions and proceedings for any or all of the following purposes:
(a) To enforce its regulations.
(b) To enjoin and abate nuisances dangerous to health.

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(c) To compel the performance of any act specifically enjoined upon any person, officer, or board, by any law of this state relating to the public health.

(d) To protect and preserve the public health.

It may defend all actions and proceedings involving its powers and duties. In all actions and proceedings it shall sue and be sued under the name of the department.”

HSC § 100175

Public nuisances. “The department may abate public nuisances.”

HSC § 100180

Advice to and control of local health authorities. “The department may advise all local health authorities, and, when in its judgment the public health is menaced, it shall control and regulate their action.”

HSC § 100185

State department powers; activities.

“(a) The department may perform any of the following activities relating to the protection, preservation, and advancement of public health:

- (1) Studies.
- (2) Demonstrations of innovative methods.
- (3) Evaluations of existing projects.
- (4) Provision of training programs.
- (5) Dissemination of information.

(b) In performing an activity specified in subdivision (a), the department may do any of the following:

- (1) Perform the activity directly.
 - (2) Enter into contracts, cooperative agreements, or other agreements for the performance of the activity.
 - (3) Apply for and receive grants for the performance of the activity.
 - (4) Award grants for the performance of the activity.”
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Section 3 Emergencies, Emergency Proclamations, and Health Officer Responsibilities

Question 3. **What is the “official” definition of emergency?**

Answer **There are three conditions of emergency defined in the Emergency Services Act, “state of war emergency,” “state of emergency,” and “local emergency.”**

GC § 8558 Degrees of emergency. “Three conditions or degrees of emergency are established by this chapter:

(a) "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.

(b) "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a "state of war emergency," which conditions, by reason of their magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.

(c) "Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and

severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.”

Question 4. **When the board of supervisors of a county proclaims a local emergency, does that emergency proclamation apply to the cities within the county?**

Answer. **Yes. When the proclamation is based on conditions which include both the incorporated and unincorporated territory of the county, the proclamation applies to the cities within the county. Therefore, a local emergency proclaimed by the board of supervisors for a health-related reason would apply to all of the cities in the county, including those with a city health officer.**

GC § 8630
62 Ops.Atty.Gen.
710, 11-16-79

Proclamation by local governing body. Notes of Decisions:
1. In general. “When the county has declared the local emergency based upon conditions which include both incorporated and unincorporated territory of the county, it is not necessary for the cities to also declare the existence of a local emergency independently.”

Question 5. **Can the local health officer proclaim a “local emergency?”**

Answer. **Yes. The local health officer may proclaim a local emergency if he or she has been specifically designated to do so by ordinance adopted by the governing body of the jurisdiction.**

GC § 8630

Proclamation by local governing body.
“(a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.
(b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.
(c) (1) The governing body shall review, at its regularly scheduled meetings until the local emergency is terminated, the need for continuing the local emergency. However, in no event shall a review take place more than 21 days after the previous review.
(2) Notwithstanding paragraph (1), if the governing body meets weekly, it shall review the need for continuing the local emergency at least every 14 days, until the local emergency is terminated.
(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.”

Question 6. Is it possible to proclaim a local emergency for health-related reasons?

Answer Yes. A “local emergency” as defined by GC § 8558(c) includes such health-related conditions as air pollution, epidemic, and plant or animal infestation or disease. A “local emergency” may also be proclaimed upon the existence of “other conditions” that are or are likely to be beyond the control of the services, personnel, equipment and facilities of the political subdivision. Conditions that result from a labor controversy may not be used as justification for a local emergency.

GC § 8558(c). Refer to Page 5, Question 3, for the text of this section.

Question 7. When does the Governor proclaim a “State of Emergency”?

Answer. A “State of Emergency” may be proclaimed by the Governor when “conditions of disaster or extreme peril to the safety of persons and property within the state” exist and when the Governor is either requested to do so by the appropriate official of the governing body, or finds that local authorities cannot cope with the emergency.

GC § 8625 State of Emergency Proclamation by Governor. “The Governor is hereby empowered to proclaim a state of emergency in an area affected or likely to be affected thereby when:

- (a) He finds that circumstances described in subdivision (b) of Section 8558 exist; and either
- (b) He is requested to do so (1) in the case of a city by the mayor or chief executive, (2) in the case of a county by the chairman of the board of supervisors or the county administrative officer; or
- (c) He finds that local authority is inadequate to cope with the emergency.”

Question 8. Can a local health officer request that the Governor proclaim a “State of Emergency”?

Answer. No. Such a request can only be made by the mayor or chief executive of the affected city, or by the chairman of the county board of supervisors or county administrative officer.

GC § 8625(b) Refer to Question 7 above for the text of this section.

Question 9. What authority is vested in the county or city health officer during a proclaimed emergency?

Answer. County and city health officers may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during a “local emergency,” “state of emergency,” or “state of war emergency,” within his or her

jurisdiction. "Preventive measure means abatement, correction, removal, or any other protective step that may be taken against any public health hazard that is caused by a disaster and affects the public health."

HSC § 101040

Authority to take preventive measures during emergency. "The county health officer may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any "state of war emergency," "state of emergency," or "local emergency," as defined by Section 8558 of the Government Code, within his or her jurisdiction.

"Preventive measure" means abatement, correction, removal or any other protective step that may be taken against any public health hazard that is caused by a disaster and affects the public health. Funds for these measures may be allowed pursuant to Sections 29127 to 29131, inclusive, and 53021 to 53023, inclusive, of the Government Code and from any other money appropriated by a county board of supervisors or a city governing body to carry out the purposes of this section.

The county health officer, upon consent of the county board of supervisors or a city governing body, may certify any public health hazard resulting from any disaster condition if certification is required for any federal or state disaster relief program."

HSC § 101475

Authority to take preventive measures during emergency. "The city health officer may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any "state of war emergency," "state of emergency," or "local emergency," as defined by Section 8558 of the Government Code, within his or her jurisdiction.

"Preventive measure" means abatement, correction, removal or any other protective step that may be taken against any public health hazard that is caused by a disaster and affects the public health. Funds for these measures may be allowed pursuant to Sections 29127 to 29131, inclusive, and 53021 to 53023, inclusive, of the Government Code and from any other money appropriated by a board of supervisors of a county or governing body of a city to carry out the purposes of this section.

"The city health officer, with consent of the board of supervisors of a county or the governing body of the city, may certify any public health hazard resulting from any disaster condition if certification is required for any federal or state disaster relief program."

Question 10. **What is a “health emergency?”**

Answer. **The term “health emergency” is narrowly defined in HSC § 101080 as a spill or release of hazardous waste or medical waste that is determined by the director (DHS) or local health officer to be an immediate threat to public health.**

HSC § 101080

Declaration of health emergency; conditions; duration; review. “Whenever a release, spill, escape, or entry of waste occurs as described in paragraph (2) of subdivision (b) of Section 101075 and the director or the local health officer reasonably determines that the waste is a hazardous waste or medical waste, or that it may become a hazardous waste or medical waste because of a combination or reaction with other substances or materials, and the director or local health officer reasonably determines that the release or escape is an immediate threat to the public health, the director may declare a health emergency and the local health officer may declare a county health emergency in the county or any area thereof affected by the threat to the public health. Whenever a local health emergency is declared by a local health officer pursuant to this section, the local health emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the board of supervisors. The board of supervisors shall review, at least every 14 days until the local health emergency is terminated, the need for continuing the local health emergency and shall proclaim the termination of the local health emergency at the earliest possible date that conditions warrant the termination.”

Question 11. **What powers are granted to the DHS director or local health officer when a “health emergency” is declared?**

Answer. **Once a “health emergency” has been declared pursuant to HSC §101080, the director or local health officer may obtain all necessary information about the material that has been released, spilled or escaped to abate the health emergency and protect the public health. They may provide this information to responding state or local agencies, or to medical and other professional personnel treating victims of the local health emergency. They may also sample or analyze the material to determine the information needed to protect public health.**

HSC §101085

Health emergencies; powers of health officials.
“(a) After the declaration of a health emergency or a county health emergency pursuant to Section 101080, the director or local health officer may do any or all of the following:
(1) Require any person or organization that the director or local health officer shall specify to furnish any information known relating to the properties, reactions, and identity of the material that has been released, spilled, or escaped. The director or local health officer may require

information to be furnished, under penalty of perjury, by the person, company, corporation, or other organization that had custody of the material, and, if the material is being transferred or transported, by any person, company, corporation, or organization that caused the material to be transferred or transported. This information shall be furnished to the director or local health officer upon request in sufficient detail, as determined by the director or local health officer, as required to take any action necessary to abate the health emergency or county health emergency or protect the health of persons in the county, or any area thereof, who are, or may be affected. However, the burden, including costs, of furnishing the information shall bear a reasonable relationship to the need for the information and the benefits to be obtained therefrom.

(2) Provide the information, or any necessary portions thereof, or any other necessary information available to the director or local health officer to state or local agencies responding to the health emergency or county health emergency or to medical and other professional personnel treating victims of the local health emergency.

(3) Sample, analyze, or otherwise determine the identifying and other technical information relating to the health emergency or county health emergency as necessary to respond to or abate the county health emergency and protect the public health.

(b) This section does not limit or abridge any of the powers or duties granted to the State Water Resources Control Board and to each regional water quality control board by Division 7 (commencing with Section 13000) of the Water Code. This section also does not limit or abridge the powers or duties granted to the State Air Resources Board or to any air pollution control district by Division 26 (commencing with Section 39000). This section does not limit or abridge any of the powers or duties granted to the Director of Food and Agriculture or to any county agricultural commissioner by Division 6 (commencing with Section 11401) or by Division 7 (commencing with Section 12501) of the Food and Agricultural Code.”

Question 12. **What personnel are available to carry out the responsibilities of the county health officer and protect public health during a health emergency?**

Answer **The county health officer shall have supervision and control over all environmental health and sanitation programs and personnel employed by the county during the state of emergency.**

HSC § 101310 Health emergencies. “In the event a health emergency is declared by the board of supervisors in a county, or in the event a county health emergency is declared by the county health officer pursuant to Section 101080, the local health officer shall have supervision and control over all environmental health and sanitation programs and personnel employed by the county during the state of emergency.”

Question 13. **Are county environmental health staff available to the health officer to respond to local health emergencies which are not a spill or release of hazardous waste or medical waste as defined in HSC §101080?**

Answer. **Yes. The “health emergency” that is declared by the board of supervisors in HSC §101310 is a “local emergency” which has been proclaimed for a health-related reason as defined under GC § 8558(c) pursuant to GC § 8630. Historically, this has been interpreted to include emergencies with public health consequences such as an earthquake, flood, or other disaster.**

Background Section 101310 (originally § 1155.7) was added to the Health and Safety Code in Chapter 1364, Statutes of 1974. The purpose of the section was to ensure that health officers had field personnel available to respond to an emergency. This became necessary when environmental health programs were granted the authority to form comprehensive environmental health agencies outside of the health department in accordance with §§ 1155.5 and 1155.6 of this legislation. Section 1155.7 was renumbered to §1158 in 1979 and later amended to include the ability to respond to health emergencies created by a spill or release of hazardous wastes, in Chapter 927, Statutes of 1980.

HSC § 101310 Refer to Question 12, above, for the text of this section.

GC § 8558(c) Refer to Question 3, Page 5, for the text of this section, and Question 6, Page 7, for a discussion of health-related local emergencies.

GC § 8630 Refer to Page 6, Question 5, for the text of this section.

Question 14. **Does the local health officer have the authority to order an evacuation?**

Answer. **Yes. Penal Code § 409.5 provides the local health officer with authority to order an evacuation if there is an immediate menace to the public health from a calamity such as a flood, storm, fire, earthquake, explosion, accident or other disaster. PC § 409.6 provides the same evacuation authority for an avalanche.**

Note: See the Office of Emergency Services’ publication entitled *Legal Guidelines for Flood Evacuation*, dated November 1997, for additional information related to evacuations, including a discussion of evacuation authorities, liabilities, and immunities.

PC § 409.5 “(a) Whenever a menace to the public health or safety is created by a calamity including a flood, storm, fire, earthquake, explosion, accident, or other disaster, officers of the Department of the California Highway

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Patrol, police departments, marshal's office or sheriff's office, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Section 830.2, any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (f) of Section 830.2, any officer or employee of the Department of Fish and Game designated a peace officer under subdivision (e) of Section 830.2, and any publicly employed full-time lifeguard or publicly employed full-time marine safety officer while acting in a supervisory position in the performance of his or her official duties, may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by the lifeguard or officer to enter or remain within the enclosed area. If the calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions set forth in this section. (emphasis added)

(b) Officers of the Department of the California Highway Patrol, police departments, marshal's office or sheriff's office, officers of the Department of Fish and Game designated as peace officers by subdivision (e) of Section 830.2, or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (g) of Section 830.2 may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity enumerated in this section or any riot or other civil disturbance to any and all unauthorized persons pursuant to the conditions set forth in this section whether or not the field command post or other command post is located near to the actual calamity or riot or other civil disturbance.

(c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.

(d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.”

PC § 409.6.

“(a) Whenever a menace to the public health or safety is created by an avalanche, officers of the Department of the California Highway Patrol, police departments, or sheriff's offices, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Section 830.2, and any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (f) of Section 830.2, may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by that officer to enter or remain within

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the closed area. If an avalanche creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions which are set forth above in this section. (emphasis added)

(b) Officers of the Department of the California Highway Patrol, police departments, or sheriff's offices, or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (g) of Section 830.2, may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating hazardous conditions created by an avalanche to any and all unauthorized persons pursuant to the conditions which are set forth in this section whether or not that field command post or other command post is located near the avalanche.

(c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within that area, or any unauthorized person who willfully remains within an area closed pursuant to subdivision (a) or (b), after receiving notice to evacuate or leave from a peace officer named in subdivision (a) or (b), shall be guilty of a misdemeanor. If necessary, a peace officer named in subdivision (a) or (b) may use reasonable force to remove from the closed area any unauthorized person who willfully remains within that area after receiving notice to evacuate or leave.

(d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.”
