Chapter Eight: Legal Aspects of Tuberculosis

Tuberculosis (TB) remains a major threat to the public's health due to its mode of transmission. To protect the public, the California Health and Safety Code (H&SC) and California Code of Regulations (CCR) include specific mandates for the local TB health officer, health care providers, TB laboratories, and health care institutions. This chapter gives an overview of certain legal aspects of TB as it relates to Los Angeles County (LAC), outlines the legal mandates of the local health officer (or TB controller), reviews reporting requirements for health care providers and institutions, and provides specific guidelines for the Public Health Centers (PHCs) to notify LAC TB Control Program (TBC) about problems which may require legal action.

A. Health Officer Orders

1. Types of Health Officer Orders

Each local health officer is directed to use every available means to ascertain the existence of, and immediately investigate all reported or suspected cases of active tuberculosis disease in the jurisdiction, and to ascertain the sources of those infections. If the local health officer determines that the public health in general or the health of a particular person is endangered by exposure to a person who is known to have active tuberculosis disease, or to a person for whom there are reasonable grounds to believe has active tuberculosis disease, the local health officer may issue any orders he or she deems necessary to protect the public health or the health of any other person, and may make application to the court for enforcement of the orders.

A Civil Order for Detention can be sought only after less-restrictive alternatives to detention that have been attempted or were considered and rejected have been documented. Subsequent to the detention of an individual in a health facility or other treatment facility, the TB controller, in coordination with assigned county counsel, is required to obtain a court order authorizing the individual's continued detention. See Table 8-1, page 8-3, for information on interventions that should be attempted to promote patient adherence prior to initiating a request for a Civil Order for Detention.

The following are the health officer orders that are used in Los Angeles County:

Order for Examination

This order authorizes the TB controller to bring in for examination a person who is known to have active TB disease, or for whom there are reasonable grounds to believe has active TB disease and who is unable or unwilling to voluntarily submit to an examination by a physician.

Order to Complete a Course of Directly Observed Therapy (DOT)

The Order for Directly Observed Therapy authorizes the TB controller to order a person who has active tuberculosis disease, but who is unable or unwilling to complete an appropriate prescribed course of medication, to follow a course of directly observed therapy. Although this order does not allow forcible or involuntary administration of medication, it is a less-restrictive measure that often elicits voluntary patient compliance with prescribed treatment.

Order for Detention for the Purpose of Completion of Treatment

The Order for Detention for the Purpose of Completion of Treatment authorizes the TB controller to detain a person who has active TB disease, or has been reported to the Controller as having active TB disease with no subsequent report of the completion of an appropriate prescribed course of medication for TB disease. There must also be a substantial likelihood, based on the person's past or present behavior, that he or she cannot be relied upon to participate in or complete an appropriate prescribed course of medication for TB disease, and, if necessary, follow required infection control precautions for TB disease. The behavior may include, but is not limited to, refusal or failure to take medication for TB disease, refusal or failure to keep appointments for TB disease, refusal or failure to complete the treatment for TB disease, or disregard for infection control precautions for active TB disease.

Order for Detention for the Purpose of Isolation

The Order for Detention for the Purpose of Isolation authorizes the TB controller to detain in a health facility or other appropriate treatment facility a person who has infectious TB disease, or a person who presents a substantial likelihood of having infectious TB disease, and there is a substantial likelihood that the person may transmit TB to others because of his or her inadequate voluntary separation from others.

2. Serving Legal Orders—Public Health Investigation

The PHI staff has the responsibility for investigating lost or recalcitrant TB patients and returning them to treatment. In general, (except for the order to complete a course of DOT), they serve legal orders to patients and may take legal action against a TB patient who violates an Order for Examination (e.g., file a criminal complaint with the district attorney's office, serve an arrest warrant, appear in court and testify as to the circumstances of the case). PHI staff members may also transport TB patients to clinics, hospitals or custody facilities to ensure continuity of care. PHI staff also serves as consultants to the health district and district PHI staff regarding investigation techniques and indications for legal orders.

***Table 8-1**. Examples of interventions to promote patient adherence prior to initiating a request for a Civil Order for Detention*

- Education regarding TB diagnosis and treatment
- Directly observed therapy
- Enablers (bus tokens, other modes of transportation)
- Incentives (food, clothing)
- Single-room occupancy housing
- Social or mental health services
- Placement in substance abuse rehabilitation

3. Inter-Region Detention Center

The H&SC states that persons requiring civil detention for reasons related to their TB disease must not be housed in a correctional facility. Since 1999, the LAC Inter-Region Detention Center has provided an integrated approach for the civil detention of persistently recalcitrant or chronically sputum smear-positive TB patients. As of July 2002, these facilities include acute and skilled nursing care at High Desert Hospital located in Lancaster, California and long-term patient supervision and substance abuse rehabilitation services at the Antelope Valley Rehabilitation Centers located in Acton, California. A detention coordinator is employed by TBC to facilitate and monitor the process. These services are also available to all California jurisdictions that have signed a memorandum of understanding with LAC.

4. Procedures for Requesting Orders for Examination, DOT, or Civil Detention

An Order for Examination, DOT, or a Civil Order for Detention can only be issued by the TB controller. However, staff working within the LAC Department of Health Services may request the TB controller issue a Civil Order for Detention if it is believed that a particular individual is a threat to public health. A decision to request a Civil Order for Detention is complex and involves multiple issues such as communicability, length of therapy completed, past and present adherence to infection control protocols, past and present adherence to TB medication regimens, and success or failure of less-restrictive alternatives to detention. As a guide, patients who meet one or more of the criteria in Table 8-2, page 8-6, may be considered for a Civil Order for Detention. In addition, Table 8-1, page 8-3, describes various interventions to promote patient adherence that should be considered prior to initiating a request for a Civil Order for Detention.

Procedure for Processing an Order for Examination

1. An Order for Examination may be requested by a TB clinician, area medical director, a TB liaison nurse in a County hospital, a hospital physician, or a public health nurse (PHN).

2. The TBC form, *Request for Legal Intervention* (form H-455) is submitted to the district PHI.

3. If the district PHI is unable to locate the patient, PHI staff at TBC is notified and the Order is subsequently served.

Procedure for Processing an Order for DOT

1. The PHC physician shall contact the Detention Coordinator of the TBC to obtain a blank Legal Order of Directly Observed Therapy (LODOT) form on which the PHC physician shall document that the patient has evidence of active TB.

2. On the LODOT form, the TBC physician must specify the anti-TB regimen that is currently prescribed for the patient and the recommended duration of treatment (e.g., Rifamate 2 caps daily until June 30, 2002).

3. The PHC physician must document all less-restrictive measures that have failed to result in the patient complying with DOT, and why a less-restrictive alternative is being rejected. Such less-restrictive measures may include: food vouchers, housing arrangements provided by TB Control Program, and transportation vouchers. The Public Health physician must also document dates and descriptions of the patient's past or present behavior that indicates he or she has not complied with previously-prescribed DOT. Examples of noncompliance include broken clinic appointments and missed doses of DOT.

4. The PHC shall submit the LODOT (containing documentation of noncompliance and failure of less-restrictive measures) to the Area Medical Director (AMD) for review and approval.

5. If approved by the AMD, the PHC physician shall call a TBC physician to discuss the aforementioned information. If the TBC physician agrees that a LODOT is warranted, the PHC physician shall send the completed and signed LODOT form to the TBC Detention Coordinator who will bring the LODOT to the Director of TBC or his/her designee for review and signature.

6. The TBC Detention Coordinator will then return the signed form to the PHC physician who is responsible for serving the order to the patient in person in the clinic. Even if the patient refuses to sign, the document must be signed and dated by the PHC physician and a translator/witness. A copy of the signed LODOT shall be given to the patient, a second copy is to be given to the TBC Detention Coordinator, and the original signed document must be filed in the patient's chart.

Note: This procedure should not involve Public Health Investigators unless the patient must first be located and brought to clinic in order to be served with a LODOT by the PHC Physician.

Procedure for Processing a Civil Order for Detention

1. The PHC TB clinician, area medical director, or private physician may request a Civil Order for Detention by completing the request for Legal Intervention (form H-455).

2. The PHC physician shall submit a signed summary that documents the evidence supporting the patient's diagnosis of active TB and the reason the patient is considered infectious. Brief mention of the patient's underlying medical problems (including neuropsychiatric) is also appropriate. The physician's summary must also document the incidents of noncompliance and related behaviors that show the less-restrictive measures have failed (see Appendix E). Instances of noncompliant behavior must be listed by date in chronological order. Documentation in the medical chart must support each statement that is made in the summary. Noncompliant behavior documented in other medical charts (e.g., in the hospital) should be included if available. Examples of the additional information that should be documented in the physician's summary include: broken clinic appointments or refusing to cooperate with necessary medical tests (e.g., sputum collection); DOT that was missed and/or refused; moving or traveling without notifying the health department and against medical advice; not complying with instructions on home isolation or respiratory isolation in a health facility; refusal to accept or appropriately use incentives and enablers including food coupons, transportation vouchers, housing; returning to work before being given clearance by the physician (in other words, returning to work against medical advice); using public transportation despite being counseled to avoid doing so while infectious.

3. The *Checklist in Support of a Request for a Civil Order for Detention* and the PHC physician's summary supporting the request for the Detention Order must be faxed to TBC (see Appendix E for example of form). The TBC physician responsible for detention will review the document.

4. The TB Controller agrees (or disagrees) that there is sufficient evidence to support a Civil Order for Detention. If indicated, the order is then processed by the detention coordinator, who then forwards it to the TBC PHI staff to serve the order.

***Table 8-2**. Patients for whom a request for a Civil Order for Detention should be considered*

Hospitalized TB Class 3 or 5 patients
• Refuses hospital respiratory isolation
• Threatens or leaves the hospital against medical advice
• Refuses to take anti-TB medication
• Refuses to mask or cover cough when instructed to do so
• Refuses to submit sputum specimens
TB Class 3 or 5 patients under public health center supervision
• Misses clinic appointments*
• Misses doses of anti-TB medicines or refuses DOT*
• Refuses to take anti-TB medication
• Refuses to mask or cover cough when instructed to do so
• Refuses to submit sputum specimens
• Refuses to restrict self from work or worked against medical advice
• Moves without notifying LAC health department
• Violates *Civil Order for Examination*
• Violates *Order to Complete a Course of Directly Observed Therapy*
• Refuses hospitalization for isolation and/or treatment

*See Appendix O, *Detention Communication Protocol* for further details

B. Reporting Requirements

The reporting requirements for health care providers, health care facilities, and laboratories are derived from the H&SC, the CCR, and reporting policies from TBC. These requirements are summarized in Table 8-3, page 8-7. Prompt reporting allows the local health officer to take quick action, which includes verifying the diagnosis, determining whether an outbreak is occurring, and controlling the spread of the disease.

1. Health Care Providers

Health care providers are required to notify TBC of all cases of suspected or known TB disease within one working day of identification. To initiate source case investigation (see Chapter Six, page 6-9), all children less than four years of age are also reportable to TBC if they are found to have positive tuberculin skin tests (TSTs). For these cases, *The Confidential Morbidity Report of TB Suspects and Cases* (CMR) is to be completed and faxed to TBC within one (1) working day of identification (see Appendix E for example of form). The Public Health Center will subsequently be notified.

***Table 8-3**. Reporting requirements for health care providers, institutions, and laboratories*

Reportable condition		Procedure
Healthcare providers	All cases of suspected or known TB disease	*Confidential Morbidity Report of TB Suspects and Cases* (CMR) faxed to TBC within one working day of identification
	All persons who are non-compliant with their TB regimen or fail to keep scheduled appointments	*Request for Legal Intervention* (H-455) or direct consultation with TBC physician
	All patients less than four years of age with latent TB infection	CMR faxed to TBC within one working day of diagnosis
Healthcare facilities	All cases of suspected or known TB disease	*Confidential TB Suspect Case Report* (H-803) faxed to TBC within one working day of identification
	For all hospitalized TB suspects or cases, provide a written discharge care plan prior to discharge	*TB Discharge Care Plan* (H-804) faxed to TBC or submitted to the TB Liaison Nurse (County hospitals)
	All TB suspects and cases who refuse or cease treatment or are non-compliant with their TB regimen	*Request For Legal Intervention (H-455)* or direct consultation with TBC physician
Labs	All test results that show any laboratory evidence suggestive of TB, such as smears or cultures positive for AFB or pathology	*Confidential Laboratory Report* faxed to TBC on the same day that the clinician who submitted the specimen is notified

Failure to Report

Failure to report threatens public health if it results in delayed contact investigation (CI) of an infectious case or adverse outcome of a patient's treatment (e.g., newly-acquired drug resistance due to nonadherence). Failure to report may result in a citation and/or fine. By definition, a physician's failure to report includes the following:

- No report received.
- Incomplete reporting when all requested information is known but not provided in the required time frame.
- Delayed reports that do not adhere to the required time frame.

2. Health Care Facilities

Hospitals and other health care facilities are also required to report suspected or known TB cases to TBC. *The Confidential TB Suspect Case Report* (form H-803) should be used for that purpose and TBC must be notified within one (1) working day (see Appendix E for example of form). Legal intervention may also be required for patients who refuse treatment or are nonadherent with their prescribed TB regimen as described above.

Discharge of a TB Suspect or Case From a Health Facility

The H&SC states that the local health officer must receive and approve written discharge plans for hospitalized patients with an actual or suspected diagnosis of TB prior to patient discharge (H&SC 121361). The statute also requires notification of transfer or release of persons with TB in State correctional facilities or in local detention facilities. This plan must be submitted to TBC prior to discharge from the facility using the *TB Discharge Care Plan* (see Appendix E for example of form H-804). A written response on form H-804 will be given by TBC within 24 hours of receipt of the discharge plan. In County hospitals, the hospital TB liaison nurse (LPHN) will assess the information entered on form H-804 and determine the appropriateness of discharge under the TB controller's supervision. This may include PHN home evaluation. If the discharge plan is appropriate, the LPHN will grant discharge approval for TB Control and make an appointment for outpatient follow-up at the Public Health Center. If the discharge plan is not appropriate, the LPHN will communicate the disapproval for discharge to the treating physician and outline criteria needed for discharge approval. The Surveillance Unit at TBC handles these services for the patients in the private sector.

3. Laboratories

All laboratories are required to ensure rapid and high-quality laboratory examination of specimens submitted for TB evaluation. All test results which show any laboratory evidence of TB, such as sputum or tissue smears positive for acid-fast bacilli (AFB), cultures with AFB growing, or any pathologic evidence for TB, must be reported to TBC on the same day that the clinician who submitted the specimen is notified.

Laboratories must also submit primary isolates of TB (first-positive cultures) to the Public Health Laboratory (PHL), which is required to retain these specimens for at least six months. A subculture of multidrug-resistant TB (MDR-TB) isolates must be sent to the State TB laboratory.

C. TB Alien Waivers

The following protocols reflect the current policies of the Immigration and Naturalization Service (INS) and the United States Public Health Service. The Division of Quarantine (DQ) within the Centers for Disease Control and Prevention (CDC) provides the INS with medical screening guidelines for foreign-born individuals seeking permanent admission into the United States.

For individuals fifteen (15) years of age and older, the TB evaluation consists of a chest radiograph and AFB sputum smears if the radiograph is abnormal. (In most countries, only a chest radiograph is done.) Individuals with abnormal chest radiographs are then classified as Class A, B1, or B2 (see Table 8-4, page 8-10). All Class A, B1, and B2 immigrants are classified as TB suspects (TB Class 5) until evaluated by the Public Health Center TB clinician. In children under age fifteen, no TST or CXR is required for legal immigration.

1. The quarantine station initiates the *Report on Alien with Tuberculosis* (CDC form 75.17), which is then sent to TBC. The district public health center is subsequently notified and copies of CDC form 75.17 and form 157, *Medical Examination of Applicants for United States Visas* are sent to the district public health center (see Appendix E, for an example of form CDC 75.17 only).

2. Upon notification, the district public health center should schedule a clinic appointment within the time period specified in Table 8-4, page 8-10. If unable to contact the patient, a home visit and letter should be sent to the immigrant's address. If still unable to locate or person is uncooperative, PHI intervention and/or legal orders may be necessary.

3. The history and physical examination should proceed as for other TB suspects as outlined in Chapter Three, Table 3-4, page 3-3. The patient should be classified as TB Class 5 unless otherwise directed by the clinician. If it is determined that the individual is TB Class 2 or 4 he or she should be referred for appropriate therapy (see Table 2-4, page 2-6).

4. Documentation for the immigrant suspected of having or known to have TB should be done on the same forms as other TB Class 5 patients, and includes forms H-290, H-304, H-513 and H-2546. (See Appendix E for examples of forms.)

5. The district PHC returns the completed forms to TBC. TBC is responsible for completion and return of the CDC form 75.17 to the INS.

D. Transferring Care to Other Health Jurisdictions

To ensure the continuity of care for all patients with known or suspected TB, TBC and the receiving jurisdiction should be provided with the proper information as soon as possible.

- For TB Class 2 (contacts, converters, or reactors), 3, or 5 individuals who move outside LAC, the PHN must complete the *California Confidential TB Referral Form* (see Appendix E for example of form H-20). The form is faxed to both TBC and the receiving jurisdiction within one working day, except for Class 2 reactors, in which case the form can be mailed to the receiving jurisdiction.

- For persons who are hospitalized at the time of transfer to a new jurisdiction, the *Hospital Tuberculosis Report* (see Appendix E for example of form H-1365) must be attached to form H-20 (if the patient is being transferred from a public hospital). A written discharge plan and approval from TBC are still required prior to transfer. TBC is responsible for faxing the discharge plans to the receiving jurisdiction. More complete details are in Appendix R, CHDS/CTCA Joint Guidelines, *Inter-Jurisdictional Continuity of Care Policy Statement.*

- The TB clinician must close form H-513 as "Moved outside LA County," which must then be submitted to TBC.

Table 8-4*. Description of TB alien waivers and follow-up time from notification*

Class	Description	Follow-up
A	TB, infectious (positive sputum AFB)	As soon as possible
B1	TB, clinically active, not infectious (negative sputum AFB)	Within 1 week or ASAP
B2	TB, not clinically active	Within 2 weeks