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TO: Bryan Treu
FROM: Kathy Parker
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RE: Roles of County Officials during a Public Health Emergency

I. Introduction

In the case of a public health emergency, including coronavirus transmission within Eagle County, county officials must work together to protect the community. The Board of County Commissioners (“**Board**”) may exercise general police powers or may declare a local disaster emergency as mechanisms to encapsulate a variety of directives related to addressing a public health emergency. Eagle County Public Health and Environment (“**ECPHE**”) has direct and explicit statutory authority to control a public health emergency by closing property, requiring quarantine, or monitoring. The Sheriff’s Office must maintain public order, and is also responsible for enforcing ECPHE orders and Board directives that are necessary to protect public health and safety.

II. The Role of the Board of County Commissioners

The Board has authority necessary to maintaining public health and safety during a public health emergency. The first is the county’s general police power, and the second is the Board’s statutory authority to declare local disaster emergencies.

Counties have general authority to act quickly and decisively in the face of looming disaster. Opinion of Ken Salazar, Colorado Attorney General, June 27, 2002 (“**Salazar Opinion**”) (analyzing the general police power of local governments in Colorado to order and enforce wildfire evacuations) (citing *Yakus v. United States*, 321 U.S. 414, 422-23, 431-49 (1944) (emergency caused by World War II justified price controls and significant administrative restrictions on commerce); *Miller v. Campbell County*, 722 F.Supp. 687, 690-93 (discussing

emergency takings of property). This authority allows the Board to take action to prohibit people from gathering in public, to set curfews, or other actions necessary to defend public health and safety. *Id.*

The Board also has statutory authority to address emergencies by way of C.R.S. § 24-33.5-709. The purposes of the statute, among other things, are to strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, and recovery from disasters; and to authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery. C.R.S. § 24-33.5-702(1)(d). The statute authorizes the chair of the Board to declare a local disaster emergency, which activates the response and recovery aspects of all applicable disaster emergency plans and authorizes aid and assistance under such plans. *Id.* In the case of Eagle County, the authority to declare a local disaster emergency also has been delegated to the County Manager. *Id.* To extend the declaration beyond seven days, the Board must consent.

The Board controls the county budget as well as makes decisions related to county staff and property. Thus, the Board could include in declarations direction to county staff to prioritize recovery from the event, authorization for specific funding for an event, and direction related to opening or closing publically-owned property during an event.

III. The Role of Eagle County Public Health and Environment

a. ECPHE Authority

Under “normal” circumstances warranting action by ECPHE, it will be working in conjunction with the Colorado Department of Public Health and Environment (“**CDPHE**”). ECPHE has the statutory duty to administer and enforce laws pertaining to the “orders, rules, and standards of the state board and other similar agencies.” C.R.S. § 25-1-506(3)(b)(IV)(C). ECPHE also has the statutory duty to “collaborate with the state department and the state board in all matters pertaining to public health.” C.R.S. § 25-1-506(3)(b)(XIV). Thus, where the state has taken action, ECPHE will work hand in hand to effectuate the work of the state within Eagle County.

ECPHE has a number of additional statutory duties that grant broad authority to the local agency to control public health emergencies, such as the coronavirus may cause. For example, ECPHE has the statutory duties to:

- “investigate and control the causes of epidemic or communicable diseases and conditions affecting public health,” C.R.S. § 25-1-506(3)(b)(V).
- “establish, maintain, and enforce isolation and quarantine, and in pursuance thereof, and for this purpose only, to exercise physical control over property and over the persons of the people within the jurisdiction of the agency as the agency may find necessary for the protection of the public health.” C.R.S. § 25-1-506(3)(b)(VI).
- close schools and public places and to prohibit gatherings of people when necessary to protect public health;
- investigate and abate nuisances when necessary in order to eliminate sources of epidemic or communicable diseases and conditions affecting public health.

Thus, if an action is reasonably necessary to control the outbreak of an epidemic, rather than simply requesting voluntary compliance from the affected, ECPHE may issue orders to require it, whether or not CDPHE has taken action.

b. Orders

ECPHE, via its Director, is required to issue orders or adopt rules when it desires to exercise the powers and duties vested in it by statute. C.R.S. § 25-1-5019(1)(c). Typical orders would likely only address single persons or family groups. However, a blanket order covering the entire county or certain properties within the County also is allowable under the statute.

ECPHE’s statutory duties essentially allow (or require) ECPHE to take any action necessary to control the spread of disease within the community, including through substantial measures, as long as such actions meet the standards for judicial review set forth in C.R.S. § 25-1-515.

c. Standard of Review

Judicial review is available to any person aggrieved and affected by a decision of the board of health or its Director. C.R.S. § 25-1-515(1). Such person may bring an action for review within 90 days after the public announcement of the decision. *Id.* The court may affirm the decision, reverse it, or modify it if the substantial rights of the appellant have been prejudiced as a result of the findings and decision of the public health board or director being: contrary to constitutional rights or privileges; in excess of statutory authority or jurisdiction of the county board of health or public health director; affected by any error of law; made or promulgated upon unlawful procedure; unsupported by substantial evidence in view of the entire record as submitted; or arbitrary or capricious. A court may review a decision by the written record of the decision alone.

Further, the U.S. and Colorado Constitutions require that when a person or thing is to be seized (such as in a quarantine situation), it may only be upon probable cause supported by an oath or affidavit. Colo. Const. Art 2. § 7; U.S. Const. Amend. IV. To ensure public health orders are as defensible as possible with as solid a written record as possible, the orders should set forth the specific and detailed grounds for the order in an attached affidavit.

d. Enforcement

Public health orders are enforceable by law enforcement or by the courts.¹ First, C.R.S. § 25-1-516(1)(a) sets forth that it is unlawful for any person to willfully violate, disobey, or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, or rule. Doing so is a class 1 misdemeanor and may be punished via fine or imprisonment. C.R.S. § 25-1-516(1)(b). Such persons also may be held liable for any costs of removing any nuisances, sources of filth or causes of sickness. *Id.*

Second, the public health director may request that the county attorney or the district attorney bring a civil or criminal action to enforce public health laws, orders, and rules. C.R.S. § 25-1-514. Therefore, if an infected person violated, or there was a strong reason to believe that the infected person would violate, an order for quarantine or monitoring, the county attorney could petition the court for a temporary restraining order that would be enforceable by the sheriff.

In addition to these authorities, a sheriff has separate authority, discussed further in depth below, which allows enforcement of public health orders.

IV. The Role of the Eagle County Sheriff's Office

The authority of law enforcement to enforce orders of the Board or of ECPHE comes via statutes or general police powers. As noted above, C.R.S. § 25-1-516 makes violating public health orders a Class 1 misdemeanor. Such orders are therefore enforceable through arrest and incarceration. However, there are a number of concerns related to enforcing through arrest and incarceration orders against an infected person, chiefly among them spreading illness to officers, other incarcerated persons, or members of the public.

¹ Health care providers may share patient information with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public – consistent with applicable law (such as state statutes, regulations, or case law) and the provider's standards of ethical conduct. See 45 CFR 164.512(j). Thus, providers may disclose a patient's health information to anyone who is in a position to prevent or lessen the serious and imminent threat, including family, friends, caregivers, and law enforcement without a patient's permission. HIPAA expressly defers to the professional judgment of health professionals in making determinations about the nature and severity of the threat to health and safety. See 45 CFR 164.512(j).

Colorado sheriffs also have the authority via the general police powers of government to enforce governmental directives to protect the safety of the public during an emergency. Salazar Opinion (*citing In re Interrogatories of the Governor on Chapter 118, Session Laws 135, 52 P.2d 663, 667 (Colo. 1935)*). The Salazar Opinion noted that, “Ordinarily, a citizen or visitor to Colorado is at liberty to stay at a place of his or her choosing. This liberty interest gives way to the paramount government interest in protecting public safety when the community faces a disaster.” *Id.*; also see *Smith v. Avino*, 91 F.3d 105 (11th Cir. 1996) (upholding a 3-month-long curfew as a result of Hurricane Andrew that required people to stay in their homes); *Jacobson v. Mass.*, 197 U.S. 11, 26-27 (1905) (upholding a Massachusetts law requiring mandatory small pox vaccinations); *Miller v. Campbell County*, 945 F.2d 348 (10th Cir. 1991) (upholding county’s order of evacuation for subdivision infiltrated by lethal gas).

The Salazar Opinion also explained:

Colorado's sheriffs occupy a unique position with regard to evacuation orders. They are elected, constitutional officers. Colo. Const., Art. XIV, § 8. They exercise powers described in the constitution and in statute, but they also possess residual common law powers. *Newman v. People*, 47 P. 278, 282 (Colo. 1896); *People ex rel. State Bd. Of Equalization v. Pitcher*, 138 P. 509, 512-14 (Colo. 1914) (discussing powers of the county assessor and citing at length a description of the powers of sheriffs); *McMillan v. Monroe County*, 520 U.S. 781 (1941) (sheriff represents the sovereignty of the state in his or her county). The sheriffs also exercise those powers necessarily implied by the existence of their office. *People v. Buckallew*, 848 P.2d 904, 908 (Colo. 1993) (in addition to express powers, sheriffs implied powers "which are reasonably necessary to execute those express powers"); *Skidmore v. O'Rourke*, 383 P.2d 473, 475 (Colo. 1963) (implied powers accompany the constitutional office of county treasurer).

General police powers allow a sheriff to enforce public health orders, enforce orders of the Board of County Commissioners, including through enforcing quarantines, protecting the perimeters of contaminated or quarantined areas, securing health care facilities, controlling crowds, protecting stocks of vaccines or medicines, and generally maintaining public order during a public health emergency.

V. Conclusion

The Eagle County Commissioners and ECPHE each have significant authority to take necessary actions to control a public health emergency and to protect public health and safety. The Sheriff has authority to enforce these orders. Each of these entities plays a crucial role in controlling an epidemic situation, such as where coronavirus is active in Eagle County.