



LEGAL ISSUES IN TB

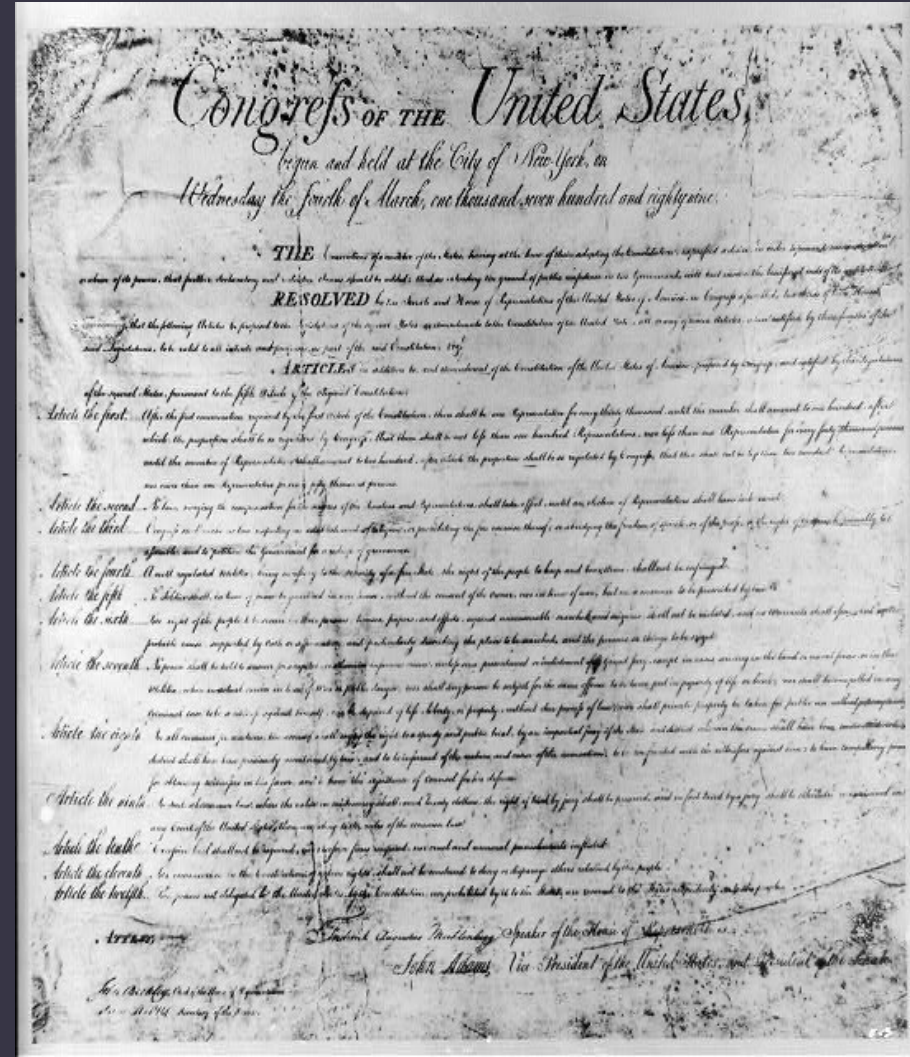
Peter Davidson, PhD
Pamela Hackert, MD, MPH, JD

Disclosures

- No conflicts. We have no relevant financial relationships to disclose.

Tenth Amendment

Police powers are the ability of a government to enact laws to coerce its citizens to do things for the public's well-being.



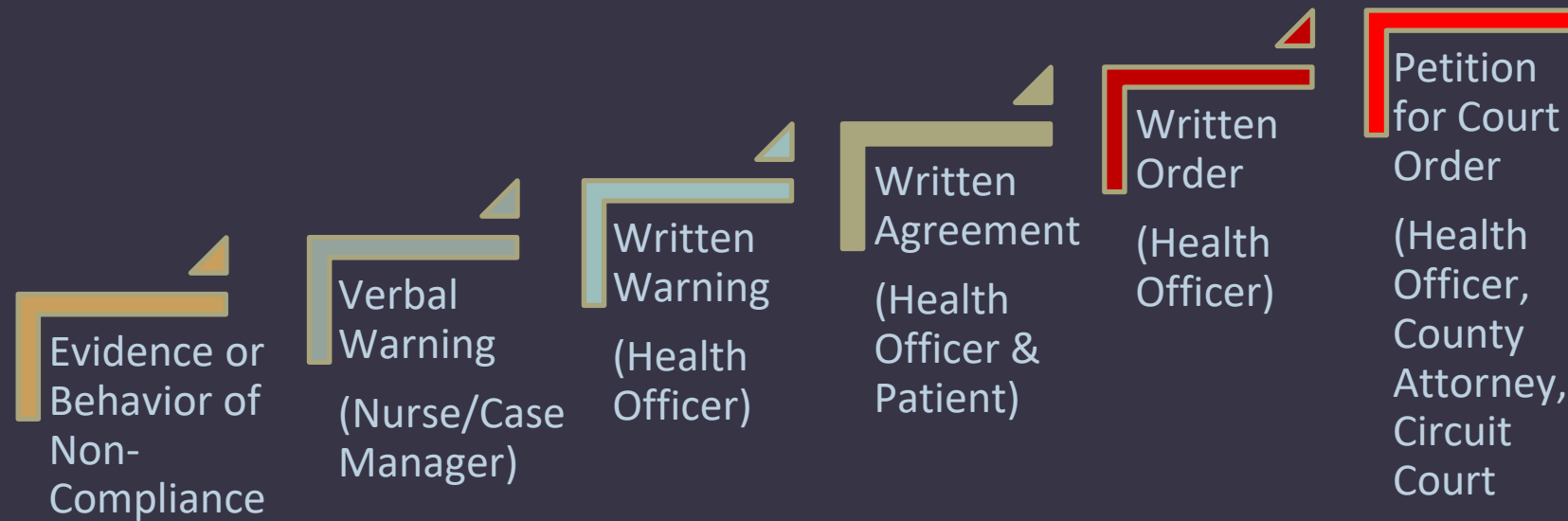
Michigan Public Health Code

- **333.2453 Epidemic; emergency order and procedures; involuntary detention and treatment; visitation within qualified health care facility; LINDA; definitions.**
 - (2) A local health department or the department may provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in sections 5201 to 5210.
- **333.5201 Definitions and principles of construction.**
 - (a) Applies to "carrier," which means an individual who serves as a potential source of infection of a specific, serious disease or infection, whether or not there is present discernible disease.
 - (b) "Health threat to others" means that an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself so as to not place others at risk of exposure to a serious communicable disease or infection.

- **333.5203 Warning notice generally.**

- (1) The health department shall issue a warning notice to the individual to cooperate in efforts to prevent or control transmission of a serious communicable disease or infection.
- (2) Shall be in writing, can be oral if an emergency, but must be followed by a written notice within three days.
 - It must be individual and specific.
 - Shall not be issued to a class of persons.
- (3) Shall include a statement that unless the individual takes the action requested in the warning notice, the local health officer shall seek an order from the probate court.
 - The individual has a right to notice and hearing before the probate court issues an order.

Flowchart of Progressive Legal Interventions



Always document the instance of non-compliance - and interventions/actions taken - at each step.

Provide education and explanation to patient at each step.

Points to Remember:

- These provisions authorize a variety of powers, including:
 - Discontinue certain behaviors
 - Compel physical exam or treatment
 - Detention
- The vast majority of public health confinement is voluntary.
- Public health officials should use the least restrictive means necessary when applied to individual freedom in quarantine situations.
- A warning is required before restriction of personal freedom.
- Due process rights are maintained.

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)**

**ORDER FOR QUARANTINE
UNDER SECTION 361 OF THE PUBLIC HEALTH SERVICE ACT
42 CODE OF FEDERAL REGULATIONS PART 70 (INTERSTATE)
AND PART 71 (FOREIGN)**

SECTION A: SUBJECT PERSON

[NAME OF SUBJECT PERSON], WHO WAS DETERMINED TO HAVE BEEN IN HUBEI PROVINCE, PEOPLE'S REPUBLIC OF CHINA, (CHINA) IN THE LAST 14 DAYS, WHO WAS ONBOARD [AIRLINE] FLIGHT #[X] ARRIVING AT [NAME OF AIRPORT].

SECTION B: FINDINGS

Based on the attached medical declaration, I find:

1. Based on the scientific evidence collected concerning COVID-19, the disease meets the definition of "severe acute respiratory syndromes" as specified under Executive Order 13295, as amended by Executive Orders 13375 and 13674.
2. The Director General of the World Health Organization has declared that the 2019-nCoV/COVID-19 constitutes a Public Health Emergency of International Concern. The Secretary of the U.S. Department of Health and Human Services has declared that 2019-nCoV/COVID-19 constitutes a public health emergency.
3. CDC reasonably believes that the subject person arriving into the United States is infected with or has been exposed to COVID-19. 42 C.F.R. §§ 71.32(a), 71.33.
4. COVID-19 is a quarantinable communicable disease in the United States, meaning that CDC may quarantine and restrict the movement of individuals who are arriving into the United States and have been infected with or exposed to the disease.

**Federal isolation and quarantine
are authorized for these
communicable diseases**

- Cholera
- Diphtheria
- Infectious tuberculosis
- Plague
- Smallpox
- Yellow fever
- Viral hemorrhagic fevers
- Severe acute respiratory syndromes
- Flu that can cause a pandemic
- Measles

Federal isolation and quarantine are authorized by Executive Order of the President. The President can revise this list by Executive Order.

LPH TB NURSE ARRIVES AT THE HOSPITAL TO INTERVIEW A 60-YEAR-OLD MAN WITH COUGH, FEVER, WEIGHT LOSS, AND SMEAR-POSITIVE SPUTUM. HE AND HIS WIFE RUN A LICENSED DAYCARE IN THEIR HOME FOR FAMILY AND FRIENDS.

A WEEK AGO, ONE OF THE INFANTS WAS HOSPITALIZED AND DIAGNOSED WITH TB. AFTER CONTACT TESTING, THE GRANDFATHER WAS TST POSITIVE AND TWO DAYS AGO WAS SENT TO THE HOSPITAL BECAUSE OF EXTENSIVE PULMONARY DISEASE BY CXR AND SEVERE COUGH.

IT IS NOW FRIDAY, AND HE IS INSISTING ON GOING HOME TODAY.

WHAT SHOULD THE LHD DO?

EXAMPLE 1:

Deescalate &
Negotiate

Are You Good at Multitasking?

- Have the Nurse Talk to the Patient
- Why Does He Want to Leave When He Feels So Poorly?

Also Required

- Issue an oral warning notice to the individual to cooperate in efforts to prevent or control the transmission of a serious communicable disease or infection.
- Tell the patient that we can seek an order from the court to compel him to stay the weekend, and he can have a remote hearing with the court and an attorney, if he wants one, on Monday.
- Tell the hospital they need to readmit him. Repeat info about the court order.
- Contact your local court to ask that they stay around to hear your order for temporary detention for an infectious patient at high risk of infecting children in his care.

Form for the Commitment or Testing for Infectious Diseases.

The screenshot shows a web browser window with the URL [courts.michigan.gov/SCAO-forms/commitment-testing-ID/](https://www.courts.michigan.gov/SCAO-forms/commitment-testing-ID/). The page header includes the Michigan Courts logo, a navigation menu, a search bar, and links for 'Cases, Opinions & Orders', 'Learning Center', and 'COURT LIVESTREAMS'. The main content area features a large blue banner with the title 'Commitment or Testing for Infectious Disease Forms'. Below this is a breadcrumb trail: 'Forms > Commitment or Testing for Infe...'. The main heading is 'SCAO-Approved Forms for Use in Commitment or Testing for Infectious Disease'. A descriptive paragraph states: 'This set of forms is used to either commit an individual for treatment of infectious disease or to order an individual to undergo testing for infectious disease. The forms must be filed in the family division of circuit court.'

<https://www.courts.michigan.gov/SCAO-forms/commitment-testing-ID/>

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	PETITION AND EX PARTE ORDER FOR TRANSPORT AND/OR TEMPORARY DETENTION	CASE NO.
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In the matter of _____

PETITION

1. I, _____, am a local health officer
Name (type or print) State Community Health Department representative and make
 this affidavit in respect to _____, who is a minor
Name (type or print) an adult and who resides in
 _____ County at _____ Address _____ City _____
 _____ State _____ Zip _____ and who is presently found at _____
Address, location, or facility

2. An emergency exists and there is reasonable cause to believe that the individual is a carrier and a health threat to others for the reasons stated in the attached affidavit.

REQUEST:

3. The individual be taken into custody and transported to _____, Name of facility
 an emergency care or treatment facility, for observation. examination. testing. diagnosis. treatment.
4. The individual be detained temporarily at the facility and a hearing be held within the next 72 hours to determine whether temporary detention should continue up to 5 days, and longer if a petition for treatment of an infectious disease is filed with him that 5 days.

I declare under the penalties of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature

Address

Name (type or print)

City, state, zip

Telephone no.

ORDER

THE COURT FINDS:

5. An affidavit has been filed in compliance with MCL 333.5207.
6. Reasonable cause exists to believe that there is a substantial likelihood the individual is a carrier and a health threat to others.

(PLEASE SEE OTHER SIDE)

Do not write below this line - For court use only

FORM FOR PETITION OF THE COURT FOR TEMPORARY DETENTION FOR INFECTIOUS DISEASE

THE COMMUNICABLE
DISEASE NURSE SAVES
THE DAY



63-YEAR-OLD MAN, PREFERRED LIVING OUTSIDE ON THE STREET OR IN PARKS. +COUGH, +CHILLS X ~2.5 YEARS, CHEST IMAGING CONSISTENT W/ PULMONARY TB, WORSENING COMPARED TO EARLIER IMAGES.

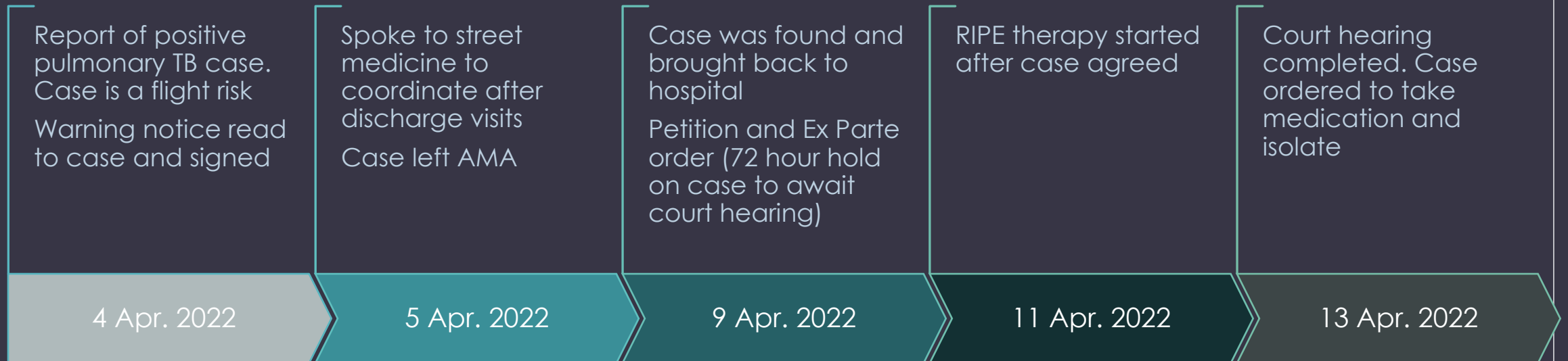
CHRONIC SUBSTANCE USE DISORDER. PERSISTENT VIOLENCE, AGGRESSIVE BEHAVIOR, REPEATED THREATS AGAINST HOSPITAL AND LHD STAFF AND REPEATEDLY REFUSING MEDICATIONS.

WHY IS A COURT ORDER APPROPRIATE? **NOT** SUBSTANCE USE, OR OTHER SINGLE POINTS OF BEHAVIOR. **APPROPRIATE BECAUSE** OF PERSISTENT BEHAVIOR UNSAFE FOR STAFF AND REFUSAL OF MULTIPLE EFFORTS THAT WERE LESS RESTRICTIVE.

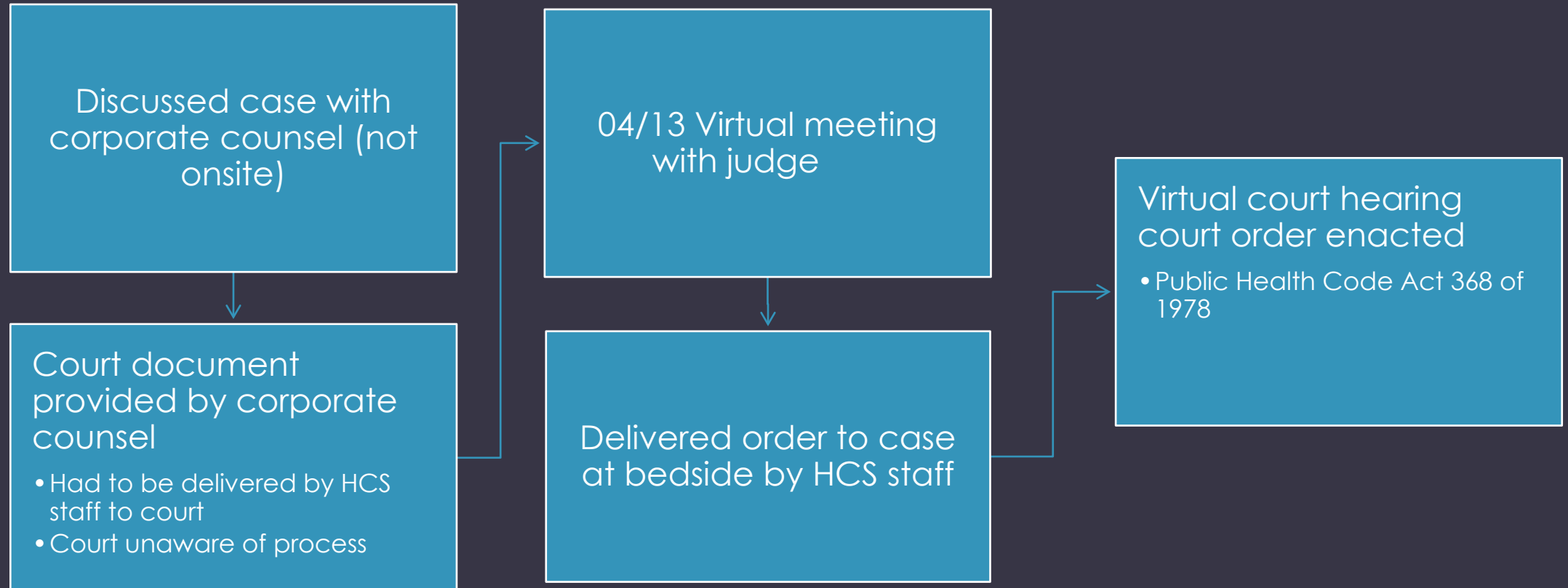
EXAMPLE 2:

When you really do need a court order?

Timeline to court order



Process to get Court Order



With permission of Kalamazoo County Health & Community Svcs.

- Ordered to isolate for the initial 14 days of treatment AND until 3 negative sputum collected.
- After hospitalization ordered to reside at Hotel # 1 with necessary means for food, clothing, and assistance with managing his financial affairs.
- 5 days a week DOT.
- Undergo LHD-directed diagnostic tests related to TB.
- Cooperate with LHD staff in compliance with order, on penalty of contempt of court for violation.
- Any lack of cooperation may result in the court ordering tether or incarceration

COURT ORDER
04/13/2022

50-SOMETHING FEMALE, UNSTABLE HOUSING, STAYED IN VARIOUS FRIENDS' OR RELATIVES' HOUSES. DIAGNOSED WITH PULMONARY TB AND STARTED TREATMENT. DISAPPEARED AFTER ~1 WEEK OF TREATMENT.

PT DID NOT HAVE HER OWN PHONE AND RELIED ON OTHERS TO STAY IN CONTACT, BUT NONE OF THE PATIENT'S CONTACTS WHO WERE KNOWN TO LHD COULD LOCATE OR CONNECT WITH THE PATIENT.

CONCERN: THE PATIENT HAD NOT TAKEN ENOUGH DOSES TO ENSURE NON-INFECTIOUSNESS BEFORE DISAPPEARING, AND HIGH RISK OF TRANSMISSION WHEREVER SHE WAS.

WHAT SHOULD LHD DO WHEN A PATIENT IS INFECTIOUS, LIKELY SPREADING TB, BUT CAN'T BE LOCATED OR REACHED?

EXAMPLE 3:

Goldilocks
(getting it just right).

Ex Parte & Emergency Court Orders

- *Ex Parte* (Latin) = “from one party.” Only one party (person or agency) is seeking action or responding to the situation.
- Michigan Health Code authorizes Health Officer to seek an *ex parte* order when patient is known or believed to be a threat to the health of others AND cannot or will not attend a court hearing.
- Health Code also provides for Emergency court orders to be issued without trial or hearing. Health Officer can petition a judge for direct order to respond to an emergent situation. For TB and other CDs, Emergency order lasts for 72 hours or 3 business days **AFTER THE PATIENT IS FOUND**.
- *Ex Parte* and Emergency provisions are almost always combined in response to TB: locate the patient, conduct medical evaluation and determine infectiousness for TB, and resume treatment.

Getting Patient Back Into Care

- LHD petitioned and judge agreed to 72-hour *ex parte* emergency order. ~3 weeks later, patient was reported to local police. Police brought patient to LHD TB clinic.
 - ***Start the 72-hour-clock!***
- During reinterview with LHD nurse & doc, patient explained she was afraid of financial strain from staying in isolation - she would spend the little cash she had saved, run out of food, and become destitute.
 - ***Reasonable, understandable, and SOLVABLE concerns.***
- LHD nurse explained about Incentives/Enablers, they could help her with pre-paid cards for food and necessities, and provide a phone and monthly plan so she could stay in contact with LHD and her family.
- Patient appreciated these offers, said with that support she would commit to her TB treatment, and she would be able to look for stable housing on her own.
- What would you do now? Is further legal action appropriate?

- Despite patient's willingness, LHD still believed she was a risk to public's health and that her initial disappearance meant she could not be trusted. LHD leaders wanted an extended court order enforcing compliance for the entire course of treatment, including court-ordered hospitalization or housing.
 - *LHD wanted to follow abundance of caution, and they felt obligated to demonstrate all efforts to protect the health of others.*
- State TB staff advised against this, but LHD petitioned the same judge for an extended order. **DENIED.**
 - *Judge did not find cause for further restrictions upon the patient.*
- State TB continued to provide Incentive/Enabler support and patient completed treatment without further concerns or legal interventions.
- Did everyone end as best friends? **NO.** Was there an equitable balance between protecting the public's health and the interests of the patient? **YES!**

(BREAKING) THE CYCLE
OF MISTRUST



SUMMARY

MICHIGAN PUBLIC HEALTH CODE GIVES LHDS FLEXIBLE AND BROAD LEGAL POWERS.

LEGAL POWERS OR INTERVENTIONS SHOULD BE THE **LAST RESORT** – **AFTER** LESS RESTRICTIVE OPTIONS HAVE BEEN TRIED.

ALMOST ALL PATIENTS WILL AGREE TO SOME MIDDLE GROUND OR COMPROMISE. THERE ARE USUALLY UNDERLYING REASONS WHY A PATIENT CHALLENGES THE LHD OR THEIR TREATMENT PLAN.

YOU CAN USUALLY FIND NEW WAYS TO ENGAGE A PATIENT, OR OFFER SUPPORT, BUT YOU CAN **NEVER TAKE BACK A COURT ORDER.**

