

# >> Tuberculosis

## Legal Interventions and When to Use Them in Oregon



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# Preface

In 2007 Oregon updated and modernized its laws related to mandatory isolation and quarantine.<sup>1</sup> These laws provide a clear legal path for mandatory isolation or quarantine while ensuring individuals are provided with proper due process.

In addition, there are Oregon laws giving state and local health officials the authority to require an individual to submit to a medical examination or comply with treatment, actions that are less restrictive than isolation or quarantine, but still mandatory.<sup>2</sup>

However, as a practical matter it is not always clear when these legal interventions should be employed or how to employ them.

This guide is intended to provide best practices for when to use legal interventions for individuals with Tuberculosis (TB) and how the use of legal interventions can accomplish the goals of treating individuals with TB and preventing spread of the disease.

## Definitions<sup>3</sup>

The following definitions apply to the terms used in this guide:

- **Adherence:**
  - » Taking every dose of medication as prescribed for the entire duration of treatment; or
  - » Following mandates specific to TB control (e.g. home isolation) that are issued by the local public health authority and backed by administrative rules.
- **Least restrictive environment:** Any surrounding or condition that restricts an individual's activities the least possible while ensuring appropriate treatment and care so risk to the public from TB is minimized.
- **Legal intervention:** Actions taken by a governmental agency to ensure an individual adheres to a law.
- **Nonadherence:** Not taking medication as prescribed or not following the recommendations of the healthcare provider or local public health authority.

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<sup>1</sup> See ORS 433.121 to 433.156 and 433.466.

<sup>2</sup> See ORS 433.035.

<sup>3</sup> Definition from *Implementing Legal Interventions for the Control of Tuberculosis*  
<http://globaltb.njms.rutgers.edu/educationalmaterials/productfolder/legalinterventions.php>.

- **Suspected pulmonary or laryngeal TB disease:** A preliminary diagnosis based on bacteriologic and/or radiographic findings and/or clinical presentation, which suggests infectiousness or potential infectiousness.
- **Confirmed pulmonary or laryngeal TB disease:** A positive sputum smear, nucleic acid amplification test or culture result for tuberculosis disease.
- **Extrapulmonary TB disease:** TB disease that is not in the lungs (e.g. lymph node).

# Introduction



Although Oregon has a relatively low incidence of TB disease, the airborne nature of TB makes it a potential threat to public health. Almost any case of TB will be cured if medication is taken as prescribed. Nonadherence can prolong an individual's illness, give rise to drug resistance and spread TB within the community.

Treating individuals with TB is important but legal interventions should only be used as a last resort. The least restrictive method of getting compliance should always be used first and if restrictions on an individual's liberty are necessary, the least restrictive environment should be chosen, unless the individual poses as imminent danger to others.

For information related to strategies to promote an individual's voluntary compliance with TB treatment such as incentives and enablers see the [Incentive/Enabler Request Form and Protocol \(doc\)](#) and [Housing Request Form and Protocol \(doc\)](#).

The focus of this guide is on the legal tools available once other compliance strategies have failed.

## Implementation of Legal Interventions

If an individual fails to adhere to treatment, or fails to undergo a required medical evaluation, it may become necessary to initiate legal interventions. The following should be considered for legal interventions:

- An individual with lab confirmed pulmonary or laryngeal TB disease who refuses to stay in voluntary home isolation, refuses to stay in airborne isolation while hospitalized or leaves the hospital against medical advice.
- An individual with lab confirmed pulmonary or laryngeal TB disease who refuses to follow a recommended course of treatment or refuses to submit to recommended periodic medical evaluations.
- An individual with extrapulmonary TB (TB disease not believed to be in the lungs) who refuses a chest x-ray.
- An individual with clinically suspected pulmonary or laryngeal TB who has

refused to undergo a diagnostic examination or adhere to a prescribed course of treatment.

- Contacts of an individual with active pulmonary or laryngeal TB who refuse to undergo a diagnostic examination.

A Local Public Health Authority (LPHA) should develop policies that define non-adherence, identify the point at which legal interventions will begin, and identify what legal interventions will be imposed and in what order. A policy could, for example, outline the following:

- An infectious individual who leaves a hospital against medical advice will be issued an administrative order for testing and treatment.
- An individual with pulmonary or laryngeal TB who misses more than 5 doses of treatment will be issued a warning notice. If the individual continues to miss doses, an administrative order for treatment will be issued.

#### TIP

Using and documenting the use of an interpreter when communicating with non-English speaking individuals is essential.

Legal interventions should be implemented after the LPHA completes a predetermined number of failed attempts to gain the individual's adherence once contact with the individual has been made. It should have been communicated clearly to the individual, orally and in writing, in a language the person understands, that failure to voluntarily comply with evaluation, treatment and isolation recommendations could result in legal actions, including court ordered isolation.

When implemented, legal interventions should progress in increments from least to most restrictive to the individual, at all times being conducted in the least restrictive environment possible. This means implementing legal interventions in a way that minimally limits an individual's activities while simultaneously ensuring appropriate treatment and care, so that the risk to the public is balanced with the individual's right to due process. Progressive legal interventions include:

- A warning notice
- An administrative order for evaluation or testing
- An administrative order for treatment
- Court-ordered involuntary isolation or quarantine (including court ordered medical evaluation and treatment)

Each option is explained below starting with the least restrictive.

## 1. Warning notice<sup>4</sup>

A warning notice is not required by law but it may be helpful to improve a person's adherence and could serve as a useful piece of evidence if a court order is later required. A warning notice is a document sent by certified mail or hand-delivered which alerts the nonadherent individual to the action they need to take and potential consequences if actions do not occur.

## 2. Administrative order requiring testing, examination<sup>5</sup>

The local public health administrator (Administrator) may issue an administrative order requiring testing or the medical examination of an individual who may have been exposed to a communicable disease. An administrative order for testing or examination would be issued to confirm a diagnosis or infectiousness. The administrative order must be in writing and contain the following:

- Identification of the communicable disease you believe the individual has and the basis for that belief;
- Whether medical or laboratory confirmation of the disease is feasible and whether such confirmation would enable control measures to be taken to minimize infection of others with the disease; and
- A statement that the individual may refuse to submit to the testing or medical examination and that if refused you may seek to impose a public health measure, including isolation or quarantine pursuant to ORS 433.121 or 433.123.

You should try to get the individual to submit to testing or an examination voluntarily before issuing an order for testing or examination. Issuing such an order must be the least restrictive means available to achieve the results necessary to minimize transmission of the disease to others.

The order should be sent by certified mail and/or hand-delivered to the individual.

<sup>4</sup> For sample warning notices go to: *Implementing Legal Interventions for the Control of Tuberculosis*  
<http://globaltb.njms.rutgers.edu/educationalmaterials/productfolder/legalinterventions.php>.

<sup>5</sup> ORS 433.035(1).

### TIP

Oregon's Isolation and Quarantine Manual, found at <http://www.oregon.gov/oha/PH/DISEASESCONDITIONS/COMMUNICABLEDISEASE/EMERGINGINFECTIONS/Documents/QuarantineManual-2017.pdf>, contains detailed instructions and forms for implementing legal interventions, with the exception of the warning notice.

### TIP

In all cases where you have the choice of sending a legal document by certified mail or hand-delivering it, you should try to hand deliver it because then there will be no question that the individual received it.

### 3. Administrative order requiring treatment<sup>6</sup>

If an individual has a communicable disease like TB, the Administrator may issue an order requiring a course of treatment, including DOT. The order must be in writing and contain the following:

- Identification of the communicable disease the individual has been diagnosed with;
- The specific treatment, medication and infection control provisions required;
- A statement that the individual may refuse the treatment and that if refused you may seek to impose a public health measure, including isolation or quarantine pursuant to ORS 433.121 or 433.123.

As stated above, you should have tried voluntary measures before resorting to an administrative order and the order must be the least restrictive means necessary to achieve the results.

The order should be sent by certified mail and/or be hand-delivered to the individual.

### 4. Court ordered isolation or quarantine<sup>7</sup>

If the individual does not comply with an administrative order the Administrator can seek a non-emergency<sup>8</sup> court order for isolation or quarantine which should include a request that the court order specific treatment and medications. It is important to remember that even if you have difficulty convincing a court that isolation or quarantine is warranted, you may be able to get the court to issue an order requiring compliance with treatment, including DOT.

The petition for a court order and all other documents filed with the court must be personally served on the individual, as well as the court order if the court grants the petition.<sup>9</sup>

Once legal interventions are deemed necessary LPHA staff should notify the Administrator and the local public health officer and provide them with documentation of all previous attempts to gain compliance from the individual. This allows the Administrator, who is charged with enforcing the legal mandates of

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<sup>6</sup> ORS 433.035(3).

<sup>7</sup> ORS 433.123 to 433.220.

<sup>8</sup> While there is a process for issuing an emergency administrative order for isolation or quarantine or petitioning the court for an emergency isolation or quarantine order, if you have been working with a person for some time to obtain compliance it is unlikely that the Administrator or a court could conclude that there is probable cause to believe the individual requires immediate detention in order to avoid a clear and immediate danger. ORS 433.121(1).

<sup>9</sup> You should consult with your attorney about how to make sure legal documents are properly served on an individual who is subject to a court order.

the control of disease, to have access to information demonstrating the program's efforts to achieve voluntary adherence, while ensuring the person's rights in keeping with due process.

Even with an administrative order or a court order, a person cannot be forced to take treatment or be put in restraints. The consequence for failing to comply with an administrative order can be court ordered isolation or quarantine until the person complies. The consequence for failing to comply with a court order can be contempt of court possibly resulting in jail time.

## Confidentiality

TB is a reportable disease in Oregon which means information obtained by the Oregon Health Authority (OHA) or an LPHA in the course of an investigation of a reportable disease is confidential and not subject to public disclosure, except that information may be released to:

- State, local or federal agencies authorized to receive the information under state or federal law;
- Health care providers if necessary for the evaluation or treatment of a reportable disease;
- Law enforcement officials to the extent necessary to carry out the authority granted to the Public Health Director and local public health administrators under ORS 433.121, 433.128, 433.131, 433.138 and 433.142;
- A person who may have been exposed to a communicable disease;
- A person with information necessary to assist the authority or local public health administrator in identifying an individual who may have been exposed to a communicable disease; and
- The individual who is the subject of the information or the legal representative of that individual.

Disclosures to a person who may have been exposed to the disease or a person with information necessary to assist public health in identifying an individual who may have been exposed to a disease may only be made if there is clear and convincing evidence that the release is necessary to avoid an immediate danger to other individuals or the public. In all cases only the minimum amount of information necessary to carry out the purposes may be disclosed.

In addition, an LPHA may be subject to the Health Insurance Portability and Accountability Act (HIPAA) if it falls within the definition of a health care provider. HIPAA limits the use and disclosure of protected health information (PHI). As a general matter PHI cannot be disclosed without an individual's consent. However, there are exceptions. Disclosures are permitted for treatment and payment purposes

and disclosures are permitted to a public health authority for public health purposes.

It can be challenging to figure out who local public health staff can talk to about an individual with TB, particularly if the individual cannot be located.

Many of the most challenging individuals to treat for TB are homeless or have other co-morbidities such as addiction or mental illness, making them unpredictable and inconsistent about adherence to a treatment regime.

While the confidentiality of reportable disease information is extremely important, it is also the case that an LPHA has the duty to investigate reportable diseases and to do contact investigations. The confidentiality laws should not be read to restrict LPHA staff from sharing information necessary to conduct an investigation, but such information sharing should be kept at a minimum. For example, an LPHA is required to initiate a contact investigation and to monitor treatment of persons with TB disease. In a situation where the identity of an individual with TB is known but the individual cannot be located, it may be necessary as part of the investigation to notify family or friends, local jails, hospital infection control programs or shelters that public health is looking for this individual and that appropriate precautions should be taken if they come into contact with the individual.

If you believe you need to disclose information about an individual who is suspected to have or has TB you should consult with your attorney about what you can disclose and to whom.

### TIP

When an individual first becomes known to you ask them to sign a HIPAA compliant authorization that would allow you to disclose information to others for purposes related to their treatment.

## Working With Law Enforcement Officials

State and local law enforcement officials have the authority to assist an Administrator in enforcing a court order for isolation or quarantine.<sup>10</sup> We also recommend that an Administrator seek the assistance of law enforcement officials when serving legal documents or when implementing an isolation or quarantine court order. An Administrator should include, in any court order, a requirement that law enforcement provide such assistance. Law enforcement officials should be educated about TB so they understand that the infectious, nonadherent individual poses a threat to public health. They should also receive training in infection control procedures, so they know how to approach infectious persons without placing themselves at risk of exposure. Their assistance may be less forthcoming in the absence of this education.

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<sup>10</sup> ORS 433.138. See also ORS 433.156.

Collaboration between the LPHA and a local law enforcement agency can facilitate the safe and effective implementation of legal interventions. It is highly recommended that LPHA staff cultivate relationships with local law enforcement officials so that in situations where you need assistance to enforce legal interventions you know who to call and what to do, and law enforcement will understand the authority under which you are acting and what their role is.

### TIP

The Oregon Public Health Division, with assistance from the Oregon Department of Justice, has created a template Memorandum of Understanding between public health and law enforcement that addresses roles and responsibilities in situations that include isolation and quarantine. For more information please contact OHA's Health Security Preparedness and Response Program at [Health.Security@dhsosha.state.or.us](mailto:Health.Security@dhsosha.state.or.us) or 971-673-1363.

## Selecting a Location for Court Ordered Involuntary Quarantine or Isolation

A petition for court ordered isolation or quarantine must specify where the individual is proposed to be detained and the setting must be the least restrictive possible. A common setting would be a hospital with a negative pressure room with a sitter or security outside the door. Other options could include a motel room with security or other type of surveillance.

Confinement cannot be in a jail unless the individual:

- Represents an immediate and serious physical threat to the staff or physical facilities of a hospital or other facility in which the individual has been confined; or
- Has been found in contempt of court because of failure to obey a court order.<sup>11</sup>

## Payment for Involuntary Quarantine or Isolation

When an appropriate setting has been established for court ordered involuntary quarantine or isolation contact the OHA, TB Program, at 503-358-8516 regarding payment of expenses.

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<sup>11</sup> ORS 433.128(2).

# Cross Jurisdictional Issues

- **Individual Moving Within Oregon or Between States**

If there is an individual with TB who is moving within Oregon or between states, which LPHA or court has legal jurisdiction may be complicated. Contact your county counsel and the OHA, TB Program, at 971-673-0169, for assistance.

- **Individual Moving On and Off Tribal Land**

State laws do not apply to tribal reservation or tribal lands and therefore tribal collaboration with state or local public health agencies is voluntary. Each tribe has a different and independent system of governance. Contact the OHA, TB Program, at 503-358-8516, for assistance with coordination with tribes.



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