CHAPTER XVIII

PERSONAL LIABILITY OF HEALTH OFFICERS

NO health officer in the United States or Canada is immune to civil actions for injuries and damages arising out of the performance of his duties. He must, therefore, be thoroughly familiar with the legal limitations upon his powers and duties, and also with the legal rights and privileges of the individual citizen, so that costly private litigation may be prevented, or, if not avoided, so that his own rights may be adequately defended and protected in court actions.

Health officers are vested with wide but not unlimited authority. As administrative and ministerial officials, who are officers of the State (whether they are state or local officials), it is their primary function to enforce impartially and equitably all laws, regulations, and orders for the protection and legitimate promotion of the public health, and to take all necessary and reasonable measures to accomplish this purpose.

So long as they do this, and so long as their efforts are reasonably calculated to preserve the public health, health officials will not be personally liable for causing injuries or damages to individuals or to private property.

If, however, the acts of a health officer or of those serving under his direction are beyond the scope of his authority, are arbitrary, oppressive, corrupt, malicious, or capricious, he may be personally liable for any resulting damages. In other words, if the health officer is guilty of malfeasance, misfeasance, and sometimes nonfeasance in his duties, he may be liable in a civil case and possibly even in a criminal action properly brought against him.

On numerous occasions aggrieved citizens have invoked the aid of the courts to invalidate the actions of health officers or to secure judgments for actual or alleged wrongs to their persons or property. The courts, in exercising their jurisdiction in such matters, will allow every intendment in favor of health laws and the mode of their enforcement, but the judiciary will also determine whether the constitutional rights of the individual have been infringed and whether the measures undertaken by the health officer have been appropriate and reasonable.

In the great majority of instances in which the proceedings of health officers have been challenged in the courts, they have been upheld as valid and personal liability has been denied. In a considerable number of cases, however, certain actions of health officials have been declared

void or invalid, and in numerous instances actual money damages have been awarded against individual health officers because of their improper, illegal, and injurious performances.

Errors of Judgment

In the absence of malice or corruption or a statutory provision imposing the liability, health officers generally are not liable for errors or mistakes in judgment in the performance of acts within the scope of their authority where they are empowered to exercise judgment and discretion.[1]

An example of such an error of judgment is an honest mistake in bringing about the quarantine or isolation of an individual. Where a person was quarantined under the belief that he was suffering from smallpox, a dangerous contagious disease, but as a matter of fact he did not have this malady or any other that endangered the public health, the members of a local board of health in Iowa who were responsible for this action were held not to be personally liable for the mistake.[2]

A similar situation arose in New Jersey where a city physician reported to a local board of health that a child had scarlet fever. Acting on this report and in accordance with the procedure outlined in a city ordinance, the residence was quarantined and a placard announcing a case of scarlet fever placed upon it. Although two consulting physicians employed by the family stated that the disease was not scarlet fever, four others to whom the symptoms were described confirmed the diagnosis of the city physician. In a suit brought against the board for trespass, false imprisonment, and libel, the court held that the members of a board of health acting in the performance of a public duty under a valid law are not personally liable for damages arising out of quarantine, even if the disease does not actually exist.[3]

Although these cases were decided many years ago (in 1906 and 1908, respectively), the same principle has been affirmed in later decisions. Thus, where a physician reported to a health department that a child was afflicted with smallpox, and the chief diagnostician of the department confirmed the diagnosis and committed the patient

1. 1 *Dillon's Municipal Corporations* 771.

2. *Beeks* v. *Dickenson County* (1906), 131 Ia. 444, 108 N.W. 311, 6 L.R.A. (N.S.) 831, 9 Ann. Cas. 812.

3. *Valentine* v. *Englewood* (1908), 76 N.J.L. 509, 71 A. 844, 19 L.R.A. (N.S.) 262, 16 Ann. Cas. 731. *Forbes* v. *Board of Health* (1891), 28 Fla. 26, 9 So. 862, 13 L.R.A. 549.

to a quarantine hospital from which she was discharged in a few days as free from the disease, the chief diagnostician was held not to be liable when the child shortly thereafter came down with true smallpox, undoubtedly contracted while in the hospital.[4] The physician who reported this case was likewise held not to be liable. The court declared in this decision:

> The public health is of the greatest concern to all. By law its keeping rests with the attending physicians, householders, and health officers. Public policy favors the discovery and confinement of persons afflicted with contagious diseases, and we think it is not only the privilege, but the duty, of any citizen acting in good faith and on reasonable grounds to report all suspected cases that examination may be made by experts and the public health thereby protected. We hold that this may be done without being subjected for liability for damages. To hold otherwise would not only invite indifference at the expense of society, but the fear of liability would well-nigh destroy the efforts of officials to protect the public health.

Other court decisions have held that there has been no liability on the part of a health official for failure to remove a smallpox patient from a private house when in his judgment he should remain there;[5] for quarantine of a vessel because of the prevalence of disease at the port;[6] for failure to provide a nurse as required by law;[7] for exclusion of an unvaccinated child from school;[8] and for fumigating a millinery shop after a case of contagious disease had been discovered there.[9]

In an early (1874) decision in Maine, the court held that an owner of a house could not recover from a health officer who had compelled him to remove the wallpaper from a room where a smallpox patient had been confined, even though considerable evidence was introduced to prove that such removal of the paper was unnecessary.[10] In the light of modern scientific knowledge, which emphasizes the role of persons and living things rather than inanimate objects in the spread of most diseases, such a requirement might not now be regarded as a

4. *McGuire* v. *Amyx* (1927), 317 Mo. 1061, 297 S.W. 968, 54 A.L.R. 644.

5. *Whidden* v. *Cheever* (1897), 69 N.H. 142, 44 A. 908, 76 A.S.R. 154.

6. *Compagnie Française de Navigation à Vapeur* v. *Louisiana State Board of Health* (1902), 51 La. Ann. 645, 25 So. 591, 56 L.R.A. 795, 72 A.S.R. 458; affirm. in 186 U.S. 380, 22 S. Ct. 811, 46 L. Ed. 1209.

7. *Rohn* v. *Osmun* (1906), 143 Mich. 68, 106 N.W. 697, 5 L.R.A. (N.S.) 635.

8. *Zucht* v. *King* (Tex.), 225 S.W. 267, affirm. (1922), 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194.

9. *Allison* v. *Cash* (1911), 143 Ky. 679, 137 S.W. 245.

10. *Seavey* v. *Preble* (1874), 64 Me. 120.

reasonable one, although the general principle of law remains the same.

This principle of law was ably set forth in a leading decision of the New York Court of Appeals, holding that the quarantine of a woman living in a house adjoining premises where a case of smallpox had occurred was valid under the terms of a legally adopted city ordinance, and that the health officer could not be held liable for damages.[11] Said the court (page 503):

The general authority of the health officer to absolutely quarantine in cases of the designated diseases "wherever he deems necessary" was not intended to and does not confer upon him unlimited power and right to control persons and property at his discretion. His action in such regard cannot be arbitrary, unreasonable or oppressive. . . . As a preliminary to his action the health officer must *deem* the action *necessary*. He must adjudge his conclusion, that is, his conclusion must rest upon his knowledge of the facts and of the correct rules for their interpretation and application acquired through a reasonable and fair investigation and consideration at such sources as a person of ordinary perception and intelligence, charged with the responsibilities of the office, would regard as authentic and trustworthy. The conclusion thus reached must be that the action he orders is essential to public health. Conditions must exist which render, within reason and fair apprehension, his action essential for the preservation of the health of the public. For a mere error of judgment the officer cannot be held liable. Unreasonable and arbitrary action or malicious or partial action, or action in excess of his authority, causing injuries, supports his liability.

In a recent case which came before a Federal Circuit Court of Appeals, it was pointed out that the duty laid on a health officer is a public duty, a duty to protect the general public, but the office does not charge the incumbent with any individual duty to a particular person.[12] This case arose out of a disastrous typhoid fever epidemic which occurred at the Manteno State Hospital in Illinois in 1939, and which caused sixty-three deaths. A number of construction workers who suffered from the disease, which was alleged to have been contracted from the water supply of the hospital, sued the bondsmen of the directors of the state departments of welfare and of health, and also the bondsmen of the managing director of the hospital. The court held, however, that there was no liability on the part of these officials. Said the court:

11. *Crayton* v. *Larabee* (1917), 220 N.Y. 493, 116 N.E. 355, L.R.A. 1918 E. 432.

12. People for use of *Trust Co. of Chicago* v. *Maryland Casualty Co.* (1942), 132 F. (2d) 850.

In such a situation, the law seems to be clear that if the duty discharged is a public duty and not a duty which the individuals owe to any particular person, then for their negligence or wanton or wilful omission in the performance of this public duty, the officers are not liable, except to the State.

The state welfare director was indicted and tried in the state courts for this omission of duty, but a jury was unable to agree on a verdict in the case. He was convicted later by a judge sitting without a jury, and ordered removed from office and fined $1,000, but the decision was set aside by the Illinois Supreme Court on the grounds that the State had failed to prove that the epidemic was actually caused by the water supply.[13]

Culpable Errors

Errors of judgment by health officials may in some cases lead to justifiable actions for damages. Members of a local board of health in Texas were adjudged personally liable for causing the removal of a boy afflicted with smallpox and his mother from their own home to an unheated tent, the removal having taken place during cold, wet weather.[14] Probably as a result of their exposure, both of the quarantined patients died. The board members were held guilty of gross negligence, which was inexcusable even if they acted, as claimed, under the terms of a city ordinance.

A similar case arose in Kansas, where a local health officer transferred a smallpox patient from her home to a dirty cabin lacking in sanitary conveniences.[15] For this mistake in judgment, damages and costs amounting to about $3,000 were awarded against the health officer. The court in granting this judgment pointed out that "A health officer, while required to obey his lawful orders and perform his official duty, is never excused for wanton conduct and inhumane treatment to patients suffering from serious illness. . . ."

Where a board of health in South Carolina compelled the isolation of an elderly, refined white woman in a pesthouse which had been used for Negroes suffering from smallpox, this action was held to be unreasonable and invalid.[16] The patient in this case had anesthetic leprosy, which was shown to be non-contagious or only mildly dan-

13. *People* v. *Bowen* (1941), 376 Ill. 317, 33 N.E. (2d) 587.

14. *Aaron v. Broiles* (1885), 64 Tex. 316, 53 Am. Rep. 764.

15. *Moody* v. *Wickersham* (1922), 111 Kan. 770, 207 P. 847, 24 A.L.R. 794.

16. *Kirk* v. *Aiken Board of Health* (1909), 83 S.C. 372, 65 S.E. 387, 23 L.R.A. (N.S.) 1138. *White* v. *City of Charleston* (S.C. 1842), 2 Hill 576.

gerous to others through close, intimate contact. The action of the board in quarantining the lady was enjoined by the court, but the members of the board were absolved from personal liability since they had performed in good faith what they had considered to be their duty.

"Personal liability," said the court in this case, "depends on proof of bad faith. True, bad faith may be shown by evidence that the official action was so arbitrary and unreasonable that it could not have been taken in good faith; but there is no showing in this case."

Illegal Actions

Where a law specifically sets forth the procedure to be followed in controlling communicable diseases, in abating nuisances, or in undertaking other measures to protect the public health, the health officer must comply with that procedure, unless summary action is essential to the public welfare and its necessity can be proved.

In an early case, a health officer in Massachusetts, who had quarantined a smallpox patient in a boarding house and had seized and destroyed a quantity of furniture and other property without obtaining a warrant as required by law, was held to have been personally liable for his acts.[17] Even if all he did was done honestly, as the court pointed out, the health officer must act only within the authority conferred upon him by the statutes. In a similar case, a judgment was awarded against the members of a board of health for seizing a house and using it as a smallpox hospital without securing the necessary warrant for that purpose.[18]

When a local board of health properly hired a building for a smallpox isolation hospital but maintained it in such a negligent and careless manner that damage was done to an adjoining property owner, the members of the board were held personally liable on the grounds that they were guilty of misfeasance, or wrongful action.[19] They would not have been liable for nonfeasance, or failure to act, according to this decision.

If the action of a health official is inspired by improper motives, such as collusion with an individual to promote his personal welfare, the health official may be liable for damages. Thus, the secretary of a state board of health was adjudged personally liable for causing the

17. *Brown* v. *Murdock* (1885), 140 Mass. 314, 3 N.E. 208.

18. *Hersey* v. *Chapin* (1894), 162 Mass. 176, 38 N.E. 442.

19. *Barry* v. *Smith* (1906), 191 Mass. 78, 77 N.E. 1099, 5 L.R.A. (N.S.) 1028, 6 Ann. Cas. 817.

outlet of waters from a lake to be obstructed so that a nuisance was created, especially since the evidence showed that his order was due to collusion and was a mere pretense.[20] A state dairy commissioner who connived in the sale of impure milk to a local dealer was held, in an early Washington decision, to be liable because of a corrupt act.[21]

Destruction of Property

In the course of his official duties, a health officer may be required to destroy or injure private property. If such action is justified by the exigencies of the occasion and is actually necessary for the preservation of the public health, there is no liability, but the health officer may be called upon in court to prove that his action was a reasonable one.

When a health officer deliberately destroys property under the belief that it is dangerous to health, but as a matter of fact it is not and could not be so considered by any reasonable, prudent person, he will be liable for damages. Thus, the president of a board of health was held personally liable for arbitrarily ordering the fumigation of a vessel, although it had not come from an infected port and it carried a clean bill of health.[22]

Said the court in an early New York case:

> Whoever abates an alleged nuisance and thus destroys or injures private property or interferes with private rights, whether he be a public officer or a private person, unless he acts under the judgment or order of a court having jurisdiction, does it at his peril, and when the act is challenged in the regular judicial tribunals it must appear that the thing abated was in fact a nuisance. This rule has the sanction of public policy and is founded upon fundamental constitutional principles.[23]

In this case it was held, however, that under existing laws the members of a board of health were not liable for ordering the removal of certain river dams as nuisances. But where a board of health ordered the destruction of certain horses on the supposition that they had glanders, a dangerous disease, and they did not have this malady, the

20. *Overmyer* v. *Barnett* (1919), 70 Ind. A. 569, 123 N.E. 654.

21. *McKenzie* v. *Royal Dairy* (1904), 35 Wash. 390, 77 P. 680.

22. *Beers* v. *Board of Health* (1883), 25 La. Ann. 1132, 48 Am. R. 256. *Jarvis* v. *Pinckney* (1836), 3 Hill 123, Riley 123 (S.C.)

23. *People ex rel. Copcutt* v. *Board of Health* (1893), 140 N.Y. 1, 35 N.E. 320, 23 L.R.A. 481, 37 A.S.R. 522. *Raymond* v. *Fish* (1883), 50 Conn. 80, 50 Am. R. 8.

board members were held liable for the wrongful act.[24] Livestock officials also have been held liable for the destruction of cattle thought to be but not actually afflicted with disease.[25]

Seizure and Examination of Persons

The liberty of persons actually known to be suffering from communicable diseases, or reasonably suspected of having such diseases, may properly be restrained by health officials in the interests of the public health. Such restraints must, however, be based upon facts susceptible of proof in court, and carried out in accordance with procedures authorized by law. Otherwise, liability may result, as was shown by an interesting case in Michigan.

During the first world war, an eighteen-year-old girl living near an army camp was persuaded by a deputy sheriff to go to the office of the city health officer. Here she was subjected to a physical examination, made, according to her testimony, against her will. Since the examination revealed that she had gonorrhea, she was sent to a hospital, where a laboratory test showed that she also had syphilis. After twelve weeks of treatment, she sued the health officer for damages, on the grounds of assault and false imprisonment.[26]

Since no testimony had been introduced to prove that the health officer had reasonable grounds for suspecting the existence of venereal disease in this person and hence had acted in an arbitrary manner in seizing and examining her, a judgment was awarded against him. The fact that subsequently the patient was shown to have venereal disease did not excuse the lack of legitimate cause for the initial examination. Said the court:

> It would be an intolerable interference by way of officious meddling for health officers to assert and then asume the power of making physical examination of girls at will for venereal disease. If the health officer had power at all to examine plaintiff, he had no right to exercise it without reasonable cause; such cause to precede examination and in no way depend upon the result of the examination. In any event defendant had no right to suspect and examine plaintiff so long as she had no accuser.

24. *Miller* v. *Horton* (1891), 152 Mass. 540, 26 N.E. 100, 10 L.R.A. 116, 23 A.S.R. 850.

25. *Pearson* v. *Zehr* (1891), 138 Ill. 48, 29 N.E. 854, 32 A.S.R. 113. *Lowe* v. *Conroy* (1904), 120 Wis. 151, 97 N.W. 942, 66 L.R.A. 907, 102 A.S.R. 983, 1 Ann. Cas. 341.

26. *Rock* v. *Carney* (1921), 216 Mich. 280, 185 N.W. 798, 22 A.L.R. 1178. See *Wong Hoy Woon* v. *Duncan* (1894), 3 B.C. 318.

Whether this case in all its aspects is good law today is a question, especially since many statutes authorizing examination of prostitutes and others likely to be carriers of venereal disease are now in force.[27] The case indicates, however, the necessity for health officials to use due care in interfering with individual rights and strictly to follow procedures authorized by law.

Libel and Slander

Libellous statements by health officers may occasionally result in lawsuits against them and may give rise to judgments. Libel is defined as malicious publication, expressed either in writing or by signs and pictures, tending to discredit the memory of the dead or the reputation of the living and expose a person to public hatred, contempt, or ridicule. Slander is the same, but is oral or spoken instead of written.[28]

Defamatory words may be either actionable *per se,* as the false imputation that a person has venereal disease or any other loathsome affliction, or they may be not injurious on their face, but actionable by innuendo. The truth is a proper defense in most cases of alleged libel or slander.

Certain kinds of communications are privileged and will not support a libel suit. Thus, reports and comments by a health officer in the proper discharge of his official duties are absolutely privileged, and all communications between physician and patient are privileged. Thus, if a school medical director informs the parents of a girl that she has venereal disease, such a statement is not libellous but conditionally privileged.[29]

Health officials should, however, refrain from abusive, intemperate, and malicious statements about individuals, either for use in the public press or when made directly to persons, in correspondence, or in other ways.

The Effects of Statutes on Liability

Statutory provisions in modern public health laws frequently exempt health officers for personal liability for acts done in the course of their official duties. An excellent example of such a law is a section in the

27. See Chapter X, on Venereal Disease, pages 168-171.

28. See J. A. Tobey, Libel and public health, *Am. J. Pub. Health,* 16:1174, November 1926. See also page 316 *infra.*

29. *Kenney* v. *Gurley* (1923), 208 Ala. 623, 95 So. 34, 26 A.L.R. 813. See *Valentine* v. *Englewood* (1908), 76 N.J.L. 509, 71 A. 344, 19 L.R.A. (N.S.) 262, 16 Ann. Cas. 731. *Hubbard* v. *Allyn* (1908), 200 Mass. 166, 86 N.E. 356.

New York Public Health Law (* 21-b), adopted in 1913, which reads as follows:

No health officer, inspector, public health nurse, or other representative of a public health officer, and no person or persons other than the city, village or town by which such health officer or representative thereof is employed shall be sued or held to liability for any act done or omitted by any such health officer or representative of a health officer in good faith and with ordinary discretion on behalf or under the direction of such city, village, or town or pursuant to its regulations or ordinances, or the sanitary code, or the public health law. Any person whose property may have been unjustly or illegally destroyed or injured pursuant to any order, regulation or ordinance, or action of any board of health or health officer, for which no personal liability may exist as aforesaid, may maintain a proper action against the city, village or town for the recovery of proper compensation or damages. Every such suit must be brought within six months after the cause of action arose and the recovery shall be limited to the damages suffered.

While this law and similar laws prevent the bringing of lawsuits against health officials acting in good faith in the performance of their duties, it offers no protection against court actions brought against health officers as individuals for damages due to acts beyond the scope of their authority or for acts that are arbitrary, oppressive, malicious, or unreasonable.[30] Such statutes afford a partial protection, but do not alter the legal principles of the health officer's liability that have been set forth in this chapter.[31]

30. See 24 *American Law Reports* 798.

31. 35 St. Rept. (N.Y.) 126 (Opinion of Attorney General).