CHAPTER XXI

LAW ENFORCEMENT AND COURT PROCEDURE

THE material so far in this book has been concerned largely with the application of substantive law to public health. The substantive law, as distinguished from adjective law, is that which deals with the powers and rights of the State as a sovereignty, and with the duties, obligations, rights, and privileges of individual members of society. The adjective law is that which deals with the remedies to be applied when a legal right has been violated, and also with the methods of procedure by which these remedies are administered. As one author has pertinently expressed it, using an analogy between law and medicine, "the remedies of the law are the materials which are designed to heal the wounded rights of individuals."[1]

Law enforcement is to a considerable degree a matter for the courts, though, as has been shown, health officials who are administrative officers have a wide latitude of authority and may often legitimately act in a summary manner. The action of an officer of the executive branch of government is practically never final, however, and there always remains an appeal to the courts. This does not mean that the court will necessarily reverse the act of an executive official, but it does mean that everyone is entitled to his day in court, and that he may bring suit in order to obtain what he considers to be justice for an infringement of his legal rights. This is due process of law.

Courts in General[2]

A court, according to Blackstone, is a place where justice is judicially administered. It may be a court of record, where formal records are kept for perpetual testimony and are entitled to be received as authoritative evidence by other courts; or it may be a court not of record, generally an inferior one. The court may have general or special jurisdiction. There are, for instance, certain courts whose sole jurisdiction is over minors, as the juvenile courts, or domestic relations, or wills, or some other special phase of law or class of persons or things. When all the special problems have been parcelled out, however, there always must remain at least one court of general jurisdiction.

1. W. L. Clark, *Outlines for Review*, Brooklyn, American Law Book Co., 1923.

2. C. N. Callender, *American Courts, Their organization and procedure*, New York, McGraw-Hill, 1927.

The jurisdiction of a court may be original or appellate. The former is for the hearing of the facts in all controversies as they arise, while the latter is for review of the decisions of lower courts on matters of law. The right of reasonable appeal to higher tribunals is well recognized in this country. A court may, finally, have either exclusive or concurrent jurisdiction. Exclusive jurisdiction means that a particular controversy can be tried in the first instance only in that court, as, for instance, a matter of sex delinquency might be tried only in a Morals Court or Domestic Relations Court in a particular State where such a court had been established by statute. Concurrent jurisdiction means that two or more courts have power to hear and determine the same cause of action. When this is the case, the plaintiff may elect which to choose. The party beginning a suit or action is called the plaintiff in civil cases and the prosecution in criminal cases, while his opponent is the defendant.

State Courts

The judiciary system in the States was inherited from England, although there have been many changes in the organization and procedures in our courts since the time of the American Revolution. Today, there is considerable variety in the court systems in the forty-eight States, but in general the judicial branch of the state government consists of one supreme court or court of appeals, established in all States except New Hampshire by the state constitutions; one or more intermediate courts of appeals; local courts of original jurisdiction over civil cases, equity matters, crimes, and probate; and the minor judiciary, consisting of magistrates, justices of the peace, coroners, police courts, etc.

Infractions of municipal health ordinances and violations of local board of health regulations usually come before justices of the peace, magistrates, or judges of police courts. These are courts not of record; they have jurisdiction over minor criminal matters or misdemeanors, such as violations of traffic laws and the like. Sometimes these courts also have jurisdiction over civil matters, such as contracts involving relatively small sums. The judge may not be required to be a lawyer, and cases are generally tried without a jury. The parties appearing in these summary courts may, however, be represented by lawyers, although the rules of evidence and the procedure are seldom as strict or rigid as in the courts of record.

The magistrates' courts are also used for preliminary hearings in more serious criminal cases, the magistrate or justice of the peace merely conducting a hearing to determine whether the accused shall

be held for action by a grand jury or other indicting agency. The ultimate guilt of the person is not decided, as that is left for a proceeding in a higher court having criminal jurisdiction.

The coroner is a magistrate whose function it is to inquire into the causes of all deaths occurring within his district by violence or by unnatural or unknown causes. He is usually a county officer, and may impanel a special jury to conduct an inquest, the results of which may lead to an indictment or information for a crime. The coroner is elected and may be a physician, a lawyer, or a layman. Where necessary, he performs autopsies or has them performed.

When a physician refuses to sign a death certificate, the coroner usually is required to make an investigation. If a child dies of diphtheria because of wilful neglect or refusal of the parents to use or permit the use of antitoxin, the case would usually be one for the coroner. In many of the larger cities and in some States, the office of coroner has been supplemented by that of medical examiner, a qualified physician who investigates homicides and violent deaths, performs autopsies, and renders reports to district attorneys, coroners, and grand juries. He is not a judicial officer, but he may summon witnesses and hold hearings.

In bringing or instigating an action before a minor court, a health official should make certain that he has a sound case, one in which sufficient evidence exists to justify the action and secure a conviction. The health officer generally needs the assistance of the city solicitor or town attorney, although if he is sufficiently experienced in the procedures followed and is familiar with the personality of the magistrate, he may be able properly to conduct a case in these somewhat informal hearings.

Ordinarily, an appeal by the defendant is allowed from the decision of a justice of the peace, magistrate, or police court, to the next highest of the state courts. This is a trial court of original and more or less general jurisdiction, which may be known as the district court, county court, court of common pleas, circuit court, superior court, or, in the larger cities, municipal or city court.

Violations of state health laws, sanitary codes, or regulations of the state board of health are generally brought in the first instance in one of these local state courts of general jurisdiction. The court must, however, have jurisdiction over the person and the subject matter involved. If an individual living just across the state line in Connecticut maintains a nuisance which jeopardizes the health of a resident of New York, a private action would have to be brought in the appropriate court in Connecticut, unless the maintainer of the nuisance happened

to come across to the New York jurisdiction, where he could be served with a summons. If this nuisance were of sufficient magnitude and importance, an action could be brought in a Federal District Court, since it involved a controversy between citizens of different States.[3]

In many of the States, particularly the larger and more populous commonwealths, there are intermediate courts of appeals, to which appeals on matters of law can be taken from the trial courts.[4] Matters of fact are determined by juries in the trial courts, after listening to evidence offered by witnesses and presentations by the attorneys. There is no appeal on matters of fact, although the admissibility of certain evidence as ruled upon by the presiding judge may be appealed as a matter of law, as may also the charge to the jury made by the judge, and other matters.

These intermediate courts of appeals are known by a variety of names, such as the Appellate Division of the Supreme Court in New York, the Court of Criminal Appeals in Oklahoma and Texas, the Superior Court in Pennsylvania, the Supreme Court in New Jersey, the Appellate Court in Illinois and Indiana, and the Court of Appeals in Missouri. In some instances the decisions of these courts are final, but usually there is a further right of appeal to the highest court or court of last resort of the State.

In all States except New Hampshire, the court of final appeal is established by the state constitution. These courts are most frequently known as the Supreme Court of the State, but sometimes are called the Court of Appeals (as in Kentucky, Maryland, and New York), or the Court of Errors and Appeals (as in New Jersey). These courts interpret the state and Federal Constitutions, state legislation, and acts of Congress, and they consider appeals from the decisions of the lower state courts of record. In matters affecting the state constitution and state legislation they are the final authority, unless a federal question is involved or a right under the Federal Constitution is infringed or alleged to have been infringed, when there may be a further and final appeal to the Supreme Court of the United States.

Since the decisions of courts of last resort, both federal and state, are part of the great body of the law, citations and references to court decisions in text books such as this are almost invariably those of the courts of higher appellate jurisdiction.

In addition to the trial and appellate courts in the States, there are

3. See pages 347-349.

4. In a criminal case the defendant can appeal, but the people or State cannot appeal from the decision of a trial court.

usually special courts, such as probate, orphans, or surrogates courts, which are concerned with wills and the estates of decedents; juvenile courts,[5] concerned with misdemeanors of children under sixteen years of age; family or domestic relations courts; land courts; and others.

The principles of equity jurisprudence, as exercised by the state courts, are explained in Chapter I, on Public Health and the Law.

Federal Courts

The highest tribunal in this country is the United States Supreme Court, which is established by the Federal Constitution. The Supreme Court has original jurisdiction over certain controversies, for example, those arising between the States. Its principal jurisdiction, however, is appellate, as it may review cases coming from inferior federal courts and from the highest courts of the States when any matter involving the Federal Constitution is concerned. Thus, if one State believes that a stream between it and an adjoining State is so badly polluted by the latter as to endanger the health of its citizens an original suit could be brought in the United States Supreme Court, as has actually been done in a number of instances.[6] If, in a controversy between a health department and an individual, the latter believes that a right guaranteed by the Federal Constitution has been violated and, the case having gone through several state courts, the highest court in his State decides against him, he may appeal to the United States Supreme Court, usually on a writ of certiorari. This Court may, however, deny the writ and refuse to review the case, either because a federal question is not involved or because the lower court has satisfactorily ruled on the matter or for some other reason. In such instances the decision of the lower court becomes *stare decisis,* and part of the law of the land.

Of more than 35,000 cases which have been adjudicated by this court, it is estimated that more than one hundred have dealt directly with the public health. A vast number of others have, of course, had a direct or indirect influence on this subject.

The Supreme Court of the United States consists of a Chief Justice and eight Associate Justices, who are appointed for life by the Presi-

5. See B. Flexner, *et al., The Child, the Family, and the Court,* Publication No. 193, U.S. Children's Bureau, rev. ed., 1933.

6. *Louisiana* v. *Texas* (1900), 176 U.S. 1, 44 L. Ed. 347, 20 S. Ct. 251. *Missouri* v. *Illinois* (1901), 180 U.S. 208, 45 L. Ed. 497, 21 S. Ct. 331. *Kansas* v. *Colorado* (1901), 185 U.S. 125, 46 L. Ed. 838. *Missouri* v. *Illinois* (1905), 200 U.S. 496, 50 L. Ed. 572.

dent with the consent of the Senate. It meets in the Supreme Court Building in Washington, beginning its term in October.

The Constitution empowers Congress to establish inferior federal courts. By the Judiciary Act of 1789, which has since been modified and amended, this has been done. The country has been divided into eleven circuits, each having a Circuit Court of Appeals; each circuit is divided into districts having a United States District Court, of which there are now more than ninety. The Circuit Courts of Appeals review cases coming from the District Courts. These District Courts have jurisdiction over all controversies arising under the Federal Constitution, acts of Congress, and treaties; over controversies between citizens of different States where the amount involved exceeds $3,000; over crimes, offenses, and other matters arising under federal laws, such as the Food, Drug, and Cosmetic Act, narcotic laws, patent laws, copyright laws, postal laws, quarantine laws, internal revenue laws, Meat Inspection Act, etc.; over admiralty and maritime matters; over cases in which the United States is a party; over proceedings in bankruptcy; and over various other classes of cases.

There is at least one United States District Court in each State, and in the larger States there are several; in New York there are four, known as the Eastern, Western, Northern, and Southern Districts of New York. Cases in these courts may be heard by a judge and jury or merely by a judge, although in criminal cases the accused must be tried before a jury of the district in which the crime was committed. The federal courts cannot try penal cases under state laws but only under federal laws, although they use the court procedures and rules of the courts of the State in which they are situated.

Appeals from the decisions of the United States District Courts are taken to the Circuit Courts of Appeals, from which they may be appealed under certain conditions to the United States Supreme Court. This court not only has original jurisdiction in legal controversies between the States but also in cases affecting ambassadors, public ministers, and consuls. Where the validity of a law or treaty of the United States has been ruled against by the highest court of a State, or where the validity of a state law which is alleged to contravene the Federal Constitution has been upheld by a state court of last resort, there may be an appeal to the United States Supreme Court.

In addition to the District Courts, Circuit Courts of Appeals, and the Supreme Court, other federal courts include a Court of Claims, a Customs Court, a Court of Customs and Patent Appeals, an Emergency Court of Appeals, a Tax Court, and the courts of the District of

Columbia. The United States Court of Appeals for the District of Columbia is one of the eleven Circuit Courts of Appeals.

Rules of civil and criminal procedure to be followed in the lower federal courts are prescribed by the United States Supreme Court in accordance with authority granted by Congress.

Public health matters coming before the federal courts usually include matters under various federal laws affecting the public health, cases under state health laws which are appealed on constitutional questions, and cases between citizens of different States, between a State and citizens or persons of another State, and between the States. Under the Eleventh Amendment to the Federal Constitution, a citizen of one State cannot sue another State, but a State can bring an action in a federal court against a citizen or corporation in another State.

Court Procedure

Health officers seldom have occasion to appear in the federal courts, but it may be necessary for them to act as complainants, aid in the preparation of cases, and testify in local inferior courts and in the state trial courts. A health officer who is constantly involved in court actions, either as plaintiff or prosecutor or as defendant, would hardly be classed as an efficient public officer, since he should be able to administer the public health of his community or State and enforce the public health laws in the great majority of cases by means of persuasion and education and by suitable action before the board of health. There are occasions, however, when court action must be taken as a last resort. In such instances, the health officer must know how best to undertake his part in the proceedings, although the legal aspects of the case should usually be handled by a competent licensed attorney.

When a local ordinance has been violated and it becomes necessary to bring the offender into court, assuming that all other methods of dealing with him have failed, the first step is to bring charges against him. The violation of health laws or regulations usually constitutes a misdemeanor, though in some instances it might be a more serious crime. In any event the action is a criminal one and is brought before a criminal court, usually an inferior one, as a police court or magistrate. The municipal attorney, or sometimes the health officer himself, fills out a complaint form, often called an information, and turns it over to the magistrate. The information or other complaint must be precise and complete and where an order has been violated must give its terms or substance.[7] The magistrate issues a summons, which a

7. *State* v. *Tyrell* (1924), 100 Conn. 101, 122 A. 924.

constable or officer serves on the accused person, who is ordered by it to appear in court on a certain day and hour. At the stated time a hearing is held, usually without a jury, and the issue is decided after both parties and their witnesses have been heard. The accused may, of course, be represented by an attorney.

Under some state laws a local board of health itself may issue a warrant for an offender against the health ordinances or regulations and summon him to appear before the board for a hearing. It may even sometimes impose a fine upon him, if he is found guilty; but if he refuses to pay, he must be sued for the amount of the fine before a local magistrate or justice or in a state court. Imprisonment cannot be imposed by municipal boards such as boards of health, unless there is very clear authority, which is exceptional. The power of local boards to fix penalties may arise by implication from the terms of a statute,[8] or health authorities sometimes may be allowed to prescribe penalties not to exceed a certain amount.[9] If the state law gives the exact sum of the penalty to be imposed, it must be followed. If no penalty is provided for in an ordinance, one cannot be set following a violation to apply retroactively to that particular act. Permission illegally given by one in authority is no excuse for the violation of an ordinance[10] and the intention or lack of it in such violation is no defense.[11]

Many state laws require or imply that before court action is taken the accused should be accorded a hearing by the board of health. It is, in fact, always wise to hold such a hearing, not only in justice to the defendant, but also because it brings out his defense, which it is sometimes useful to know in advance. The desirability of a hearing does not, of course, preclude summary action without it if the protection of the public health demands such a procedure.

The essential fact to remember in taking offenders to court is to have a thoroughly prepared case. It is necessary, in order to be successful, to be able to prove the case conclusively. This means that all the facts must be capable of support by creditable witnesses. In a criminal trial the defendant is entitled to the benefit of the doubt and his guilt must be established beyond a reasonable doubt.[12] A health officer should hesitate, therefore, before going into court with a case

8. *New Orleans* v. *Stein* (1915), 137 La. 652, 69 So. 43.

9. *Carthage* v. *Colligan* (1915), 216 N.Y. 217, 110 N.E. 439.

10. *New York Health Department* v. *Hamm* (1893), 24 N.Y.S. 730.

11. *New York Health Department* v. *Sulzberger* (1912), 78 Misc. 134, 137 N.Y.S. 998.

12. *State* v. *Racskowski* (1913), 86 Conn. 677, 86 A. 606, 45 L.R.A. (N.S.) 580, Ann. Cas. 1914 B 410.

unless he has good evidence to support it. Magistrates and judges of inferior municipal courts are not always great sticklers for technical points of law, but they generally insist upon having the facts proving guilt clearly demonstrated.

Suppose, for instance, that a local ordinance prohibited the sale within the city of X of milk from any dairy not approved by the local health authorities, the ordinance being consistent with state law. A milk dealer is suspected of procuring milk from a particularly filthy place and selling it within the city. The health officer instructs two sanitary inspectors to get the evidence. In an automobile they trail the dealer to the forbidden farm, see him load his truck with a number of cans of milk, and, satisfied that they have the necessary facts, return home. When the case comes up in court, the milk dealer admits that he went as the inspectors have testified and got the dirty milk, but swears that he did not sell it but fed it to his pigs. Or he may swear that he did not sell this particular milk within the city of X but in some other locality. His attorney may even introduce witnesses to support these contentions. Who is to prove that he is wrong? For lack of definite proof that he has sold the milk as charged, he would be acquitted or discharged.

If the inspectors had trailed the dealer back to his plant and had seen him transfer the milk into bottles and had caught him in the act of selling this same milk within the city limits, they would have had a good case, as far as the evidence was concerned. Losing a court action always lowers the prestige of the health department.

It is frequently difficult to prove that a physician has failed to report a birth, death, or case of communicable disease according to law, because he can always swear that he deposited his report in the mail within the time limit required. If he actually did so, he has complied with the law, since mailing a letter is a delivery of it. Who is to prove that he did not mail it? It is, of course, not difficult to prove tardiness in reporting, but this is hardly a serious enough matter for court action, except possibly in the case of a chronic, persistent, or deliberate offender. In prosecuting a physician for failure to report a case of communicable disease, evidence showing the existence of previous cases in the same vicinity may be admitted by a court as tending to raise the inference that the physician recognized the case.[13]

Evidence and Witnesses

Evidence is that which is legally submitted to a competent tribunal as a means of ascertaining the truth of any alleged fact under investi-

13. *State* v. *Pierce* (1913), 87 Vt. 144, 88 A. 740.

gation before it. Proof is the effect of evidence. Testimony is the statement of a witness. Testimony must be concerned with actual facts which have been apparent to the senses of the witness, and cannot include opinions or heresay. There is, of course, some evidence which borders on opinion, as a statement that a person appeared sick or intoxicated, was suffering pain, or seemed insane. The weight of any testimony depends upon the subject matter, the way it is presented by the witness, and his apparent intelligence and good faith. Every witness must take an oath to tell the truth before testifying. A witness first testifies on direct examination, under interrogation by the attorney who has called him as a witness, and then is cross-examined by the opposing counsel. He may be recalled for redirect examination on matters raised in the cross-examination.

The best witness is one who is frank, honest, calm, composed, intelligent, and concise in his answers. He replies to all questions candidly but simply, and does not volunteer unrequested information. When his attorney rises to object to a question on cross-examination, as is his right, the witness stops and waits until the judge rules on the objection. He tells the facts as he knows them without embellishment or evasion. He does not get flustered, irate, or unbalanced under a gruelling, apparently insulting, or poisonously suave cross-examination. Such a witness makes a good impression and helps to win a case. Health officers who are called as witnesses should keep these attributes in mind.

Anyone can be called as a witness by means of a subpoena issued by a court, and when called is required to attend the court and testify. A person who is compelled to testify against his will and over his strenuous objection does not, however, always make a satisfactory witness. Considerable diplomacy is often necessary in dealing with witnesses. The defendant in a criminal case cannot be required to testify on matters that would tend to incriminate him.

In the trial courts, rules of evidence are precise and well established. Compliance with these rules and procedures is, of course, the business of the attorneys who conduct a case. Although an outline of rules of evidence is beyond the scope of this treatise, an example will make clear the necessity for rigid adherence to the requirements. In a case brought against an individual for violation of an ordinance which provided that it shall be unlawful for any person to refuse, fail, or neglect to obey any legal order of the health officer, the written order of the health officer was not produced in court and an attempt was made to prove its existence by oral testimony. Since the rules of evidence require that a written instrument must be proved by submitting it,

unless there is an unusually good reason for not being able to do so, this case was remanded for this reason (among others) for a new trial by the Supreme Court of Washington, to which an appeal had been taken by the alleged violator of the health officer's order.[14]

The propriety of the use of health department records in private litigation is discussed on pages 136 and 152.

Expert Witnesses

An expert witness is "one who has made the subject upon which he gives his opinion, a matter of particular study, practice or observation, and who has a particular knowledge on the subject which must be recognized in law as a distinct department of human knowledge and endeavor."[15] Health officers, sanitarians, and physicians are often called upon to give expert testimony. Unlike ordinary testimony, which must deal with facts, expert evidence is made up of opinions based on facts. The expert must first be qualified as such by preliminary questioning and must show that he is really expert upon the question in issue. His opinion may be founded on information based on his own examination of persons or things involved, or it may be developed by hearing the testimony in court, or it may be in reply to a hypothetical question. The last is a question propounded by counsel setting forth certain facts which are assumed to be true and upon which an opinion is asked. For instance, a sanitarian, testifying as an expert might be asked, "If ten cases of smallpox developed in three days in a city of 10,000 population, where no cases of this disease had appeared for eight years immediately preceding, would this be an epidemic or an emergency?" The answer, which obviously would be yes, would be an expert opinion. Counsel for the other side would, of course, have an opportunity to cross-examine the witness. A person who attempts to testify as an expert should, of course, have a thorough knowledge of his subject and also an understanding with the attorney for whom he is appearing as to the nature of his testimony. Such an understanding is proper and may be readily admitted. A physician may testify as to matters connected with medical science, even if he has not made a special study of the matter in question.

One mistake often made by expert witnesses, however, is that they try to be too expert on too many topics. The more circumscribed they keep their expertness, the better for them and for the case. If a physician is called to the stand to testify as an expert on a case arising out

14. *City of Roslyn* v. *Pavlinovitch* (1920), 112 Wash. 306, 192 P. 885.

15. E. D. Brothers, *Medical Jurisprudence*, 3d ed., St. Louis, Mosby, 1930.

of a disease caused by an industrial condition, he should qualify as an expert only in that particular disease, or perhaps in industrial hygiene, not in the whole field of medicine or public health.

Expert witnesses are engaged by the attorneys representing a case, or by their clients, and are entitled to reasonable fees for their testimony in private litigation. A health officer who testifies as an expert in an action brought by or against the health department would not, as a rule, be entitled to special compensation. If he testified as an expert in a case between two private parties, he would merit a substantial fee. He should, of course, make certain that the time involved and the nature of his testimony in such private causes do not conflict with his official duties.

Legal Remedies

The court actions brought against persons who violate health laws and regulations usually are criminal actions, although there are other legal remedies that may be invoked to safeguard the public health. One of these is the equitable remedy of injunction, the purpose of which is to require by court action that a particular duty or obligation shall be performed, or that an improper act shall not be done. The injunction may, therefore, either be mandatory or preventive. Failure to obey an injunction granted by a court of equity constitutes contempt of court and is punishable by fine or imprisonment or both. An injunction will be issued only when an adequate remedy at law is lacking.

An example of the use of the injunction in public health work is in the abatement or prevention of nuisances.[16] In many States, health departments are authorized to enjoin by court order an act or acts by an individual that menace the public health, even before actual injury has occurred.[17] The courts will not, of course, issue an injunction unless it is clearly proven that the act complained of or the duty sought to be required are matters of real public health import. The courts will not, for example, enjoin the erection of a hospital merely on the supposition that it will eventually become a nuisance.[18]

Remedies against Health Authorities

Just as there are proper legal remedies against those who wilfully transgress the public health laws, so too there are remedies which may

16. See Chapter XIII, on Nuisances and Sanitation.

17. *Ex parte Gounis* (1924), 304 Mo. 428, 263 S.W. 988.

18. See page 156.

be invoked by individuals or public authorities against health officials who are oppressive, unreasonable, negligent, unconstitutional in their actions, or who are improperly holding the office, acting under invalid laws, or otherwise performing their duties in an illegal manner. These remedies are often set forth in state laws and must be undertaken in the manner provided in the statutes.

When a person has been arrested or deprived of his liberty by quarantine, isolation, or commitment to a hospital, jail, or institution, he is entitled to have the legality of his detention passed upon by a court of record. This he may do by means of a writ of habeas corpus, a command by the court to produce or "have the body" of the person in court at a specified time.

The writ of habeas corpus has been employed in numerous instances of quarantined persons and of individuals detained for examination for suspected venereal disease,[19] but in the great majority of cases the detention by the health authorities has been upheld as a valid procedure.[20] Occasionally, however, an individual has been released when it did not appear to the satisfaction of the court that the detention was justified, or because the detention was unreasonable.[21] Habeas corpus is sometimes used to secure a quick review by a higher court of the action of a magistrate or police judge in the preliminary part of a criminal action. The writ itself is always issued as a matter of right, but a release does not necessarily follow.

When health authorities do not perform duties which they should, the writ of mandamus may be utilized. This is a command in the name of the State directed by a court of record to some tribunal, corporation, public board or officer, requiring such board or person to do some act therein specified which it was, in the opinion of the court, the duty of the board or person to perform. Thus, a board of health may refuse to issue a license and the person claiming it may seek to compel the board by mandamus to issue it. Mandamus may be used to compel payment of legitimate expenses by a board, or to enforce observance of ministerial duties by an officer.

In certain cases where a health officer has done an act regarded as unlawful, a writ of certiorari may be asked against him from a court of record. Certiorari is the writ generally employed to review and determine the validity of a judicial or quasi-judicial proceeding, and may

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

20. *Barmore* v. *Robertson* (1922), 302 Ill. 422, 134 N.E. 815, 22 A.L.R. 835.

21. *Wragg* v. *Griffin* (1919), 175 Ia. 243, 170 N.W. 400, 2 A.L.R. 1327.

be issued by a court superior to the court or administrative board which is responsible for the act or decision in question.

To determine proper title to an office, such as that of health officer, the writ of quo warranto is usually employed.[22]

The equitable remedy of injunction may be employed against health officers, as well as by them. Where it is alleged that a law, ordinance, board of health regulation, or order of a health officer is unconstitutional and invalid, an attempt to enjoin its operation and enforcement is frequently made. In order to determine whether an injunction should issue, the court usually must pass upon the constitutionality of the law or action.

Courts are usually hesitant in attempting to restrain the actions of health authorities by means of injunctions, and in most cases these writs have been denied, since the protection of the public health might suffer. Where the acts of a health officer are fraudulent, oppressive, or contrary to the public interest, an injunction may, however, be granted.[23]

Health officers may be sued for personal damages in private actions brought against them for injuries caused or alleged to have been caused by the improper discharge of their duties. Unless they have been guilty of misfeasance, malfeasance, or nonfeasance in office, they will not, as a rule, be liable.[24] Health officers should, however, so conduct themselves as to minimize the possibility of court actions against them, without, of course, reducing vigor and force when these characteristics are necessary to their official work.

22. *Clay* v. *Civil Service Commission* (1916), 89 N.J.L. 194, 98 A. 312.

23. *Chase* v. *Middleton* (1900), 128 Mich. 647, 82 N.W. 612. *Farmers Dairy League* v. *City and County of Denver* (Colo. 1944), 149 P. (2d) 370.

24. See Chapter XVIII, on Personal Liability of Health Officials.