

Mary C. Mayhew, Commissioner )  
State of Maine Department of Health )  
and Human Services, )  
  ) Petitioner, )  
  ) v. )  
Kaci Hickox, )  
  ) Respondent. )

Order Pending Hearing

The State has requested that the court issue an order restricting Respondent's activities pending the final hearing on its Verified Petition for a Public Health Order. This decision has critical implications for Respondent's freedom, as guaranteed by the U.S. and Maine Constitutions, as well as the public's right to be protected from the potential severe harm posed by transmission of this devastating disease. Given the gravity of these interests, the Court yesterday entered a temporary order maintaining the status quo until a further hearing could occur this morning. It was imperative that the court take the necessary time to review in detail the parties' submissions, the arguments of counsel, and the cases cited by counsel regarding the necessity of entering an order pending the final hearing in this matter.

Maine Law authorizes a court to "make such orders as it deems *necessary to protect other individuals from the dangers of infection*" pending a hearing on a petition for a public health order. 22 M.R.S. § 811(3) (2014) (emphasis added). At this point in time, the only information that the Court has before it regarding the dangers of infection posed by Respondent, who has potentially but not definitely been exposed to the Ebola virus, derives from the Affidavit of Shiela Pinette, D.O., Director of the Maine Center for Disease Control and Prevention, together with the attachments from the U.S. Centers for Disease Control. In her affidavit, Dr. Pinette averred, *inter alia*:

8. Ebola Virus Disease is spread through direct contact with the blood, sweat, vomit, feces and other body fluids of *a symptomatic person*. It can also be spread through exposure to needles or other objects contaminated with the virus.  
...
12. Transmission of Ebloa is usually through direct contact with the blood, sweat, emesis, feces and other body secretions of an infected person, or exposure to objects (such as needles) that have been contaminated with infected secretions.  
...
14. *Individuals infected with Ebola Virus Disease who are not showing symptoms are not yet infectious*. Early symptoms of Ebola are non-specific and common to many other illnesses.
15. Symptoms usually include: fever, headache, joint and muscle aches, weakness, diarrhea, vomiting, stomach pain, and lack of appetite. *Ebola may be*

*present in an individual who does not exhibit any of these symptoms, because they are not yet infectious.*

16. The incubation period for the virus, before it can be determined that a person does not have Ebola virus, is 21 days ("the incubation period"). A person who is infected with Ebola virus can start to show symptoms of the disease (become infectious) at any point during the incubation period. A person can test negative for Ebola virus in the early part of the incubation period and later become infectious and test positive.

17. The Respondent remains at risk of being infected with Ebola, until the 21-day time period has passed. The most common time of developing symptoms is during the second week after last exposure. Respondent entered that second week starting October 28, 2014. The surest way to minimize the public health threat is direct active monitoring and additional restrictions on movement and exposure to other persons or the public until a potentially exposed person has passed the incubation period. For Respondent that period expires November 10, 2014.

18. Symptoms usually appear 8 to 10 days after exposure and 90% of cases develop symptoms within the first 14 days of exposure. So the time of greatest risk of showing symptoms and becoming infectious is within the first 14 days of the incubation period. Once someone is displaying symptoms and is actually infected with Ebola, they become increasingly infectious and extremely ill, requiring attendance for basic daily needs within a matter of a few days. There is no known cure for Ebola.

...

27. Respondent is asymptomatic (no fever or other symptoms consistent with Ebola), as of the last check pursuant to her direct active monitoring this morning. Therefore the guidance issued by US CDC states that she is subject to Direct Active Monitoring. Health care workers in the "some risk" category require direct active monitoring for the 21-day incubation period.

28. Direct active monitoring means the MeCDC provides direct observation at least once per day to review symptoms and monitor temperature with a second follow-up daily by phone. The purpose of direct active monitoring is to ensure that if individuals with epidemiologic risk factors become ill, they are identified as soon as possible after symptoms onset so they can be rapidly isolated and evaluated. Once a person is symptomatic they become contagious to others, and their infectiousness increases very quickly.

...

(10/30/2014 Aff. of Dr. Pinette, at 2-4).

Based on the information in this affidavit with attachments and arguments of counsel, the Court finds by clear and convincing evidence that an order is necessary. With regard to the contents of the order, the court finds that ordering Respondent to comply with Direct Active Monitoring and to engage in the steps outlined below is "necessary to protect other individuals from the dangers of infection." The Court is aware that Respondent has been cooperating with Direct Active Monitoring and

intends to continue with her cooperation. While this Court has no reason to doubt Respondent's good intentions, it is nevertheless necessary to ensure public safety that she continue to comply with Direct Active Monitoring until a hearing can be held on the State's Petition. The State has not met its burden at this time to prove by clear and convincing evidence that limiting Respondent's movements to the degree requested is "necessary to protect other individuals from the dangers of infection," however. According to the information presented to the court, Respondent currently does not show any symptoms of Ebola and is therefore not infectious. Should these circumstances change at any time before the hearing on the petition—a situation that will most quickly come to light if Direct Active Monitoring is maintained—then it will become necessary to isolate Respondent from others to prevent the potential spread of this devastating disease.

For the foregoing reasons, the Court hereby ORDERS that, pending the hearing on the petition, Respondent shall:

1. Participate in and cooperate with "Direct Active Monitoring" as that term is defined by the United States Centers for Disease Control in its October 29, 2014 *Interim U.S. Guidance for Monitoring and Movement of Persons with Potential Ebola Virus Exposure* and in paragraph 28 of Dr. Pinette's October 30, 2014 affidavit.
2. Coordinate her travel with public health authorities to ensure uninterrupted Direct Active Monitoring; and
3. Immediately notify public health authorities and follow their directions if any symptom appears.

This Order is intended to and does supersede the Temporary Order entered on October 30, 2014 in this matter.

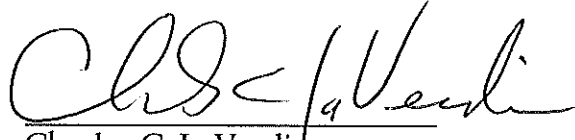
The Court pauses to make a few critical observations. First, we would not be here today unless Respondent generously, kindly and with compassion lent her skills to aid, comfort, and care for individuals stricken with a terrible disease. We need to remember as we go through this matter that we owe her and all professionals who give of themselves in this way a debt of gratitude.

Having said that, Respondent should understand that the court is fully aware of the misconceptions, misinformation, bad science and bad information being spread from shore to shore in our country with respect to Ebola. The Court is fully aware that people are acting out of fear and that this fear is not entirely rational. However, whether that fear is rational or not, it is present and it is real. Respondent's actions at this point, as a health care professional, need to demonstrate her full understanding of human nature and the real fear that exists. She should guide herself accordingly.

Further, since Respondent has waived her right to confidentiality pursuant to 22 M.R.S. § 811(6)(E), it is hereby ORDERED that all filings, orders, and hearings in this matter shall be open to the public.

This Order shall be incorporated into the docket by reference pursuant to M.R.Civ. P. 79(a).

Dated: October 31, 2014

A handwritten signature in cursive script, appearing to read "Charles C. LaVerdiere". The signature is written in black ink and is positioned above the printed name and title.

Charles C. LaVerdiere  
Chief Judge, Maine District Court