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LEGAL MEMORANDUM

Ref: DPHSS 08-0660

TO: Director, Department of Public Health and Social Services

FROM: Attorney General *ALS*

SUBJECT: Quarantine of Persons Suffering from Infectious Diseases

Your Memorandum of August 18, 2008 requests legal assistance with the problem of persons suffering from infectious diseases. In particular, Chuuk State of the Federated States of Micronesia is experiencing an outbreak of multi-drug resistant (MDR) tuberculosis, causing you to be concerned about treating FSM citizens entering Guam, especially in light of their occasional failure to provide medical authorities with complete addresses and phone numbers and to follow up with treatment. The authorities, however, are trying to prevent infected persons on Chuuk from leaving there. You inquire about the procedures available to DPHSS to confine persons who are afflicted with TB.

The Bureau for Communicable Disease Control is part of the Department of Public Health and Social Services. The applicable law is 10 GCA Chapter 3, Article 3, entitled Disease Control. 10 GCA §§3309 and 3310 authorize the Director to impose "isolation and quarantine" on persons who may transmit illnesses to other persons. For the purpose of your inquiry, the key section is 3309, which provides:

3309. Isolation and Quarantine: Regulations. Isolation and quarantine shall be imposed *in accordance with regulations*. Such regulations shall designate the disease for which isolation or quarantine is necessary, and such other requirements concerning diagnosis, treatment, release and other pertinent matters as may be necessary. (emphasis added).

This section authorizes the Director to impose isolation and quarantine, but only according to regulations he has previously enacted. Both the head of the BCDC and the Compiler of Laws have advised this Office that there are no such regulations in place.

Therefore, the involuntary quarantine or isolation of a person suffering from an infectious disease would be very problematic. Not only are there no specific procedures for quarantine, but a court might rule that DPHSS has no authority to isolate these persons in the absence of such procedures. It behooves DPHSS to enact regulations that establish procedures for the quarantine and isolation of persons whose neglect of or resistance to treatment put others at risk, as soon as

possible. These persons cannot be involuntarily deprived of their liberty without due process of law.

A person who suffers from infectious tuberculosis and who fails to comply with a prescribed treatment regimen can be placed in jail or in a hospital when there is no less restrictive alternative to his confinement. In re Washington, 735 N.W.2d 111 (Wis. 2007); City of New York v. Antoinette R., 630 N.Y.S.2d 1008 (Sup.Ct. 1995). See also City of Newark v. J.S., 652 A.2d 265 (N.J. 1993).

Several basic issues must be considered when creating the procedures by which involuntary quarantine or isolation can be ordered. First, only a person who has been exposed to an infectious disease may be quarantined. In re Smith, 40 N.E. 497 (N.Y. 1895). The government cannot confine anyone based on mere suspicion that they are ill. Wragg v. Griffin, 170 N.W. 400 (Ia. 1919). A health officer with the necessary statutory authority may examine someone suspected of having such an illness against the person's will. Ex parte Kilbane, 67 N.E.2d 22 (Oh. 1945); Ex parte Fowler, 184 P.2d 814 (1947). Before pursuing an involuntary quarantine, the government must usually demonstrate that it has tried to treat the patient with a medical regime without success. City of Newark vs. J.S., 652 A.2d 265 (N.J. 1993). Persons undergoing involuntary quarantine must be given proper medical treatment. In re Washington, supra. They can not be merely "warehoused."

We call your attention to Chapter 19 of 10 GCA on Emergency Health Powers. That chapter grants extensive quarantine authority to you, but only in cases of bioterrorism, natural disasters, epidemics and the like and only when *I Maga'lahi* declares a public health emergency. 10 GCA §1940; 10 GCA, Article 6. Thus, Chapter 19 can not be used in the case of one or two infected persons. It pertains only to large scale emergencies.

DPHSS should now create a legal procedure containing due process safeguards by which it can quarantine and treat infected persons who do not comply with their treatment programs and who may endanger the health of other persons. The procedure must, at a minimum, address the concerns we have raised herein about who may be quarantined and for what purposes. Then DPHSS must enact this new legal procedure through the Administrative Adjudication Law. 5 GCA Chapter 9, Article 3. Only then will DPHSS be free to take the necessary steps to protect Guam against infectious diseases.


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