



COVID-19 FOR COPS

BOARD OF HEALTH & POLICE ENFORCEMENT: PRACTICAL COLLABORATION

Issued May 4, 2020 – May be copied and circulated without limitation

A memorandum of appointment is the best way for municipal police and their Board of Health (BOH) to practically enforce all the Governor's orders — including the most recent one concerning "face covering." As you are no doubt aware, the Governor issued Emergency Order No. 31 on May 1. It requires that citizens cover their face with a mask or cloth, in certain situations, beginning May 6.¹

- **Agents of your local BOH are authorized to enforce Order No. 31 with assistance from State or municipal police.**² Naturally, I have received emails and phone calls asking how, practically, that can occur. It will be unwieldy if police officers must notify and await the arrival of a BOH agent every time they want to notify, educate, warn, or ticket a violator. This is a waste of resources and an imposition on our local health officials who have a number of other duties related to COVID-19. It also will turn what can be quick and successful police interactions into prolonged waits for BOH agents. With warmer weather likely to bring on many more mask and social distance violations, how can it make sense to hamstring the spontaneous intervention of local police — which, let's face it, is the only local agency that has personnel driving around the community 24/7? To avoid this unnecessarily cumbersome approach, consider:
- **Under 111, § 30, your BOH may appoint police officers as agents.** 111, § 30 states: "Boards of health may appoint agents or directors of public health to act for them in cases of emergency . . . , and any such agent or director shall have all the authority which the board appointing him had; but he shall in each case within two days report his action to the board for its approval, and shall be directly responsible to it and under its direction and control." [emphasis added]
- **Get the appointment in writing.** While 111, § 30 does not specify the process by which agents must be appointed³, it makes sense to memorialize the appointment in a simple written document. My suggested language is:

¹ To get an in-depth breakdown of Order No. 31, go to www.ledimensions.com.

² The exact quote from Order No. 31 is: "The Department of Public Health, local boards of health and authorized agents pursuant to G.L. c. 111, § 30 are authorized to enforce this Order and if necessary may do so with the assistance of State or municipal police."

³ I do not think that officers need to be sworn, for example. See 138, § 56 discussing agents of the liquor licensing board who, traditionally, have been sworn officers, but have not taken a separate oath for this position.

Dear Chief [Name]:

I am the Director of the [Town/City] Board of Health (BOH) and, given the unprecedented need for community outreach and enforcement during the COVID-19 pandemic, I am communicating the BOH's recent decision on [date] to designate all sworn officers, supervisors, and commanders of the [Town/City] Police Department as "agents" of the [Town/City] Board of Health. The BOH has this authority under G.L. c. 111, § 30.

This appointment will be for the duration of the state of emergency pertaining to COVID-19, or until rescinded by the BOH, whichever happens first.

As agents, you will be able to engage in all public outreach, enforcement, and mitigation activities that our existing staff can perform. To have its officers function effectively in this role, the [Town/City] Police Department agrees to consult with the BOH, to be guided by its regulations during public health activities, and to document and forward reports within two days to the BOH.

I look forward to our collaboration to keep our citizens safe during this current emergency. Thank you.

- **The BOH should take the leadership role when it comes to perspective, policy, and protocol relating to the enforcement of the Governor's orders.** The police can assist that process by being allowed to intervene as agents, without having to summon BOH personnel in every instance.
- **At the same time, the police are solely responsible for determining when behavior is criminal** — e.g., trespass, disorderly conduct, A&B — and what law enforcement response makes the most sense — e.g., arrest, complaint, warning, or walking away.
- **In any event, please do not get overly legalistic or antagonistic when sorting out police and BOH decision making.** As we emphasize in all of these high stress situations: The paramount goal is public safety, voluntary compliance, and community cohesion.
- **Finally, the State police may want to receive this same written appointment** from the Department of Public Health (DPH), which is the state authority involved in COVID-19 enforcement and guidance.