

Checklist for Public Health Employees in the Event of Legal Action



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Although rare, occasionally public health laboratories, newborn screening programs, and their directors and staff become involved in a lawsuit. Since it is so rare, public health employees might not be familiar with policies and procedures around lawsuits and may lack relationships with legal staff who might assist.

The following checklists are intended to assist public health employees with questions they might want to ask before or after a lawsuit has been filed. Answers to some of the questions may already be known because they arise in a laboratorian's day-to-day activities. Most, however, are not exclusive to either situation.

BEFORE A LAWSUIT IS FILED

- How should I handle requests for newborn screening dried blood spots, for example, from a parent or attorney? Is there a documented process for this?
- How should I handle requests for newborn screening results, for example, from a parent or attorney? Is there a documented process for this?
- What is our record retention policy? How do I handle different types of records (e.g., DBS cards, test results, emails, personal notes, etc.)? What is the record retention policy for contractors (e.g., if you contract out your lab or follow-up)?
- Who is our legal counsel?
 - What are their qualifications?
 - When should I seek the advice of legal counsel?
 - Is there a procedure or "chain of command" that I need to follow to gain access to them?
- If I am involved in litigation:
 - Will an attorney be provided to me?
 - Who is liable for any judgment against me?
 - Does the state carry insurance or protect me financially?
 - Should I have malpractice insurance? If I have it, how does this affect the state's representation of me or payment of a judgment?
 - What are the general standards that apply in the event that I am sued? For example, is there a "tort claims act," "governmental immunity" protection, or similar state statute that applies, and what does this mean?
 - What does it mean for "the state" (or department) to be sued and/or for me to be sued personally?
 - Do the answers to the questions above depend on whether I am an active employee, retiree, contractor, or part of a union?

- Does my agency have written policies or procedures for a lawsuit that are applicable? If so, what are they and how can I obtain them?
- Is there training available to minimize and manage risk of a lawsuit? To understand applicable laws and how we can best work with legal counsel?

AFTER A LAWSUIT IS FILED

- If somebody tries to serve me with legal papers, what should I do and whom should I tell?
- If I heard that a lawsuit was filed or is going to be filed, but no one has been served with it, whom should I tell?
- If I am named in a lawsuit, does this mean that I did something wrong?
- How do I ask for an attorney?
- Can I hire my own attorney?
 - If I do, what will this mean for the lab/department?
 - If I do, who will pay for the attorney?
- What policy is there for “the state” to obtain outside experts (e.g., legal counsel with special expertise, experts regarding newborn screening or testing methods)?
- How should I conduct myself while a lawsuit is pending (e.g., discussing the case with others, requests for records, etc.)?
- To legal counsel:
 - Would you explain the course of a lawsuit? What can I expect?
 - I am overwhelmed with requests from attorneys. Can I ignore these requests so that I can do my job?
 - What assistance will I get to prepare for a deposition or testifying in court?

The best time to communicate about these issues is *before* a lawsuit is filed, when it is possible to correct any gaps in protocol and lessen anxiety should legal action be taken.

Nothing contained in this guide should be construed as legal advice. For information regarding specific litigation, please contact a licensed attorney in your state.