



LAWYER UP TO LEVEL UP: LEGAL STORIES FROM THE FIELD

Introduction

Local health departments (LHDs) serve as one of the primary enforcers of state and local laws related to the health of their communities. To facilitate this function, LHDs engage with attorneys who can provide a wide range of services that are critical beyond just litigation. These services can include advising on new policy, enforcing current regulations, and interpreting directives from federal and state authorities. In addition, public health attorneys offer a balanced approach to public health law by crafting policies that are defensible, enforceable, and protect population health while considering the perspectives of community members.

To better understand different forms of LHD-attorney partnerships, NACCHO worked with [CDC's Public Health Law Program](#). We conducted in-depth interviews and a questionnaire to explore various structures used by LHDs to engage legal professionals. While some employ dedicated public health attorneys, many LHDs rely on legal counsel hired by their state health agency or non-specialized counsel such as those assigned by their County Attorney's Office (CAO).

How Nassau County Department of Health (NCDOH) Engages Legal Counsel to Bolster Public Health

To engage with public health attorneys, Nassau County Department of Health (NCDOH) uses a direct employment model with two dedicated attorneys on staff. Prior to employing dedicated legal counsel, NCDOH worked with attorneys at the CAO. The first attorney we hired, Jerry Giuliano, was doing municipal environmental work at the CAO when they started handling some of our cases. There was one particular case he worked on that ended up in court. The case was an imminent public health hazard involving people with a very contagious strain of tuberculosis. During the court battle, NCDOH needed Jerry to deal with issues immediately and he did. After he successfully litigated the case, we really recognized the value of having a legal professional dedicated solely to NCDOH's work.



NCDOH's Health Commissioner at the time negotiated with the CAO so that we could hire Jerry as an LHD employee reporting directly to her. Fortunately, the CAO allowed the hiring on the condition that they could continue assigning some cases to him. As time passed and the CAO's administration changed, Jerry's position transitioned to focus exclusively on NCDOH's programs.



Overview of Nassau County Department of Health (NCDOH)

- Operates in New York's second-most populous county
- Serves a large jurisdiction (i.e., a population of 500,000+) of suburban and urban communities
- Employs two attorneys as dedicated legal counsel that report directly to the Health Commissioner



Value of Dedicated Legal Counsel

Attorneys employed by an LHD are likely to:

- Have expertise in public health issues
- Be dedicated to the LHD's work rather than splitting time among many clients
- Be accessible to and build trust among LHD staff beyond just the executive team



Potential Barriers to Dedicated Legal Counsel

- LHD covers most of the costs associated with attorney fees

Jerry is embedded within NCDOH's executive team and a key player in decision-making processes with the county's administration and other CAO attorneys. So, when it came time to hire a second attorney, we needed the Board of Health's support to use LHD funds in that way. We leveraged the respect our county officials have for our attorney's work and our LHD's positive reputation. Our model practice awards through NACCHO elevate our status across the county, state, and country. Although every LHD has its unique challenges, the award shows NCDOH has done great work; it shows that our work improves the health of our community. In addition, our connection to NACCHO strengthens our ties with state and federal legal partners; our attorneys attend convenings focused on public health law and access field experts at NACCHO and CDC for quick resources and support. NCDOH's good standing in the community, along with our attorney's relationships with county officials, helped us galvanize support for a second staff attorney.

Both attorneys now serve in a variety of capacities beyond traditional enforcement and litigation roles. For example, they are involved in external policy considerations, drafting regulations to ensure they're

legally sound. They help pass ordinances, as well as write opinions on upcoming rules to help NCDOH make an official recommendation or objection. They also conduct internal trainings to build staffs' capacity and knowledge about programmatic liability and risks, including how to best approach compliance checks and how changes in laws (e.g., confidentiality, lead) affect their work. Although their primary responsibility is to minimize NCDOH's legal risk, our attorneys' philosophy is based in education and partnership. Before issuing a fine, they host compliance conferences to educate establishments on why the laws, regulations, and





policies help protect the community's safety and health. As a result of this approach, NCDOH has not had an enforcement case go to court in the last 15 years, even though they have seen 500-800 cases per year.

Our decision to employ dedicated legal counsel generated a return on investment. Although NCDOH covers our attorneys' salaries, the value they bring to our work outweighs those costs. NCDOH receives a 36% reimbursement from the state for public health activities, which includes the work of our attorneys. In addition, the fines and penalties issued through NCDOH's environmental health program each year are twice as much as their salaries, even though this work accounts for only 15-20% of their job responsibilities.

In addition to the tangible monetary value dedicated counsel brings to our LHD, employing attorneys helps us ensure our approach to public health is the most effective. Our county executive branch and legislature reach out for our attorneys' opinions about how best to move forward. For example, we implemented an ordinance to protect our aquifer, requiring residential underground tanks to be double walled. This was more restrictive than the state and federal laws, but ultimately, was needed to keep our community's groundwater safe. Another example occurred during the COVID-19 pandemic when CDC and New York guidance about masks in schools conflicted with one

another and with the will of a split-minded community. The issue was a very complex and politically charged one, but our attorneys played an integral role in aligning NCDOH's public health ordinances with community needs and regulations at the state and federal levels.

NCDOH is seen as the right place to go for public health law advice. Our attorneys receive calls all the time from other Health Commissioners—both within and outside of the state—for advice. We share drafts of laws and collaborate on how to address state-wide issues. Even attorneys from our CAO look to them for guidance. We have found that it is very hard to become a subject matter expert in public health law if you are not entrenched in it all the time. A staff attorney deals with issues affecting LHD work every day and can be responsive to our programs and the nuances of the law. Ultimately, these relationships with other LHDs and agencies throughout the state helps add consistency to how the law applies to us all.

For additional information on this project and other resources to support your attorney-LHD partnership, visit NACCHO's [Public Health Law webpage](#).

To hear a [NACCHO Podcast Series](#) interview with Jerry Giuliano, "Public Health Law and the Pandemic," go to <https://naccho.libsyn.com/naccho-podcast-public-health-law-and-the-pandemic-with-jerry-giuliano>

How Local Health Departments in Nebraska Engage Legal Counsel to Bolster Public Health

Some LHDs in Nebraska—along with the Nebraska Association of Local Health Directors (NALHD)—engage an independent attorney with expertise in public health.



I'm Tana Fye, and I started working with LHDs in Nebraska about 15 years ago and expanded my practice over time through my work with NALHD. Because all LHDs in the state are a part of this association, I represent them when a unified approach to a state-wide issue is needed. For example, when one LHD contacts me to write a memo on an issue that is applicable to all the LHDs in Nebraska, I contact NALHD to share the resource and invite them to support the effort. In addition to providing legal counsel for the association, I also present at their annual meetings on topics including board structures, virtual meetings, and governing documents.

This highlights the kinds of work an attorney can do with LHDs, who are often unaware of services beyond litigation. Recently, a lot of LHDs have been asking for advice about records requests and data sharing. Many health directors were stretched so thin during the pandemic—handling contact tracing, vaccine rollouts, masking events, and directed health measures—that they did not have time to address those data requests on their own.

So, I worked with IT companies to track down data and fulfill the requests in compliance with HIPAA. In addition, I have written bylaws, revised policies to support accreditation, drafted data sharing agreements, enforced directed health measures, and created procurement processes. In many cases, the LHDs did not have any formal documentation of these processes, which opened them up to legal risk and inconsistent practices.

My work with an LHD usually begins by them approaching me through either the local health director or NALHD. There may be other staff that manage the programs who I connect with later, but the directors must approve the work first. This is because my fees are paid by the LHD unless it is an issue where I am representing NALHD—in which case, my fees are paid by the association. LHDs typically use general operating funds for attorney costs because they cannot be covered by many grants. However, issues I worked on that were specific to COVID-19 mitigation policies and emergency response were paid via



Overview of Nebraska's Local Health Departments

- Operate in a decentralized state (i.e., LHDs are governed locally) with LHDs organized into regions
- Serve mostly frontier and rural communities
- Some work with an independent attorney who specializes in public health law



Value of Engaging Independent Legal Counsel

- Attorneys can have expertise in public health issues
- Jurisdictions across the state can receive consistent counsel



Potential Barriers to Engaging Independent Legal Counsel

- Attorneys split time among many LHDs



grant funding tied to the response. Although I am most accessible to LHD leadership, the more work I do within an LHD, the more they trust me and connect me with their other employees.

Despite the cost, working with an independent public health attorney has incredible benefits. Some of my biggest successes have been averting potential crises by creating protocols to ensure practices meet all legal standards for employment, data security, and government transparency.

An attorney's expertise extends beyond the courtroom and can guide LHDs to take a course of action that mitigates legal risk. The use of independent legal counsel can also bolster LHD capacity because we have the expertise and are dedicated to the success of public health work.

For additional information on this project and other resources to support your attorney-LHD partnership, visit NACCHO's [Public Health Law webpage](#).

How the South Carolina Department of Health and Environmental Control Engages Legal Counsel to Bolster Public Health

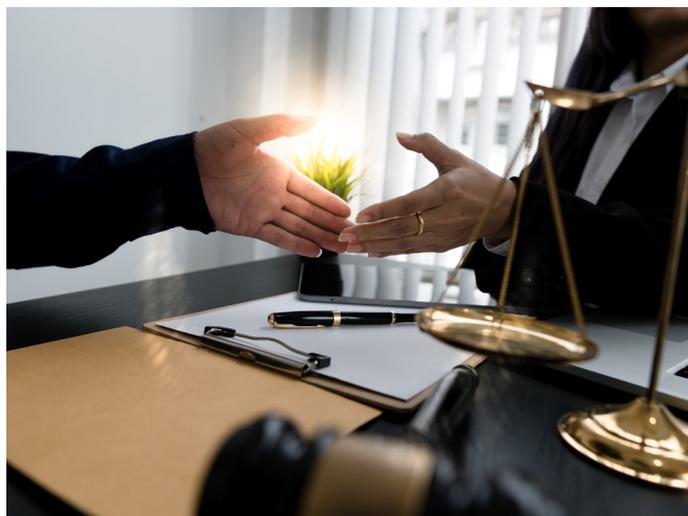
The South Carolina Department of Health and Environmental Control (SCDHEC) is a state health agency that uses a direct employment model to provide dedicated public health attorneys to LHDs throughout the state. SCDHEC has employed dedicated legal counsel for most of its existence, dating back to the early 1970's. For most of that time, our attorneys provided legal support to the entire agency through the Office of

General Counsel (OGC). Approximately 15 years ago, our structure changed so that OGC assigned individual attorneys to work in specific deputy areas, including public health, environmental control, and health regulations. While our attorneys still sit in the OGC and are compensated through state funds, four out of 18 attorneys provide legal support solely to public health programs—including the 46 LHDs in South Carolina.



Our public health attorneys aim to cultivate a culture of partnership with the staff of every LHD in the state. They meet regularly with the Regional Health Directors who direct the LHDs to form a close working relationship. They also conduct face-to-face trainings with LHD staff and are available to each of them for counsel and advice, regardless of the staff member's position in the agency. Further, they reinforce the idea that our public health attorneys are a resource to help LHDs accomplish their public health mission. As a result, our LHD staff know our attorneys and view them as members of the public health team.

Our public health attorneys provide a breadth of services beyond what one might traditionally see offered by legal counsel. For example, when a public health policy is updated at SCDHEC, such as a policy regarding the reporting of child abuse, they collaborate with LHD staff on the revisions and train staff on the new policy. In addition to drafting policies, they also advise on contracts, confidentiality and privacy, and data management practices. Our public health attorneys receive daily requests from LHD staff for legal counsel about whether certain data, such as medical records, can be released. Uniquely, they offer support related to hurricanes, preparedness, and sheltering for the public health preparedness program by crafting legal procedures, as well as reviewing and revising emergency response plans. In addition, a member of the public health law team is embedded in the emergency response team to act as counsel to the incident command whenever Incident Command Structure is activated.



SCDHEC's structure allows each of our public health attorneys to be available to all LHD staff, whose scopes of practice span various areas of public health (e.g., family planning, immunizations, disease surveillance, tuberculosis). One benefit of this approach is that our public health attorneys avoid specialization and gain a breadth of knowledge and expertise across all areas of public health law. We have seen other areas of OGC become siloed, such as when an attorney is dedicated to only one aspect of environmental law. Sometimes, these silos are necessary to provide the best legal counsel possible, particularly in highly regulated areas of law. However, for public health, our clients see the value in having all four of our attorneys available to any staff member on any public health topic. Some natural siloing does occur, such as when a staff member gets used to working with a particular attorney and their relationship strengthens. However, all our public health attorneys must be prepared to provide legal counsel across all our public health programs.

When hiring new attorneys for our public health law team, we previously tried to find candidates with experience in public health law but found that was rarely possible. For a candidate to have public health law experience in South Carolina, that meant they worked for SCDHEC already. If a candidate had public health law experience from another state, we struggled to entice anyone to change jurisdictions, particularly when it would mean taking another bar exam.

Learning from those experiences, we found success by shifting our focus from the "hard" skills (e.g., experience in public health law) to instead focusing on the "soft" skills (e.g., an attorney's ability to work well on a team and communicate effectively with different audiences). One of the big differences between private practice and working with LHDs is that, in private practice, attorneys communicate mostly with other lawyers, who speak the same language. When working with LHDs, attorneys must be able to explain complex legal concepts in a way that is understandable to non-lawyers, and they must be able to listen patiently and ask questions of doctors,



Overview of South Carolina Department of Health and Environmental Control (SCDHEC)

- Operates in a centralized state, in which all 46 LHDs are governed by SCDHEC
- Employs a team of four attorneys dedicated to public health
- The Office of General Counsel hires attorneys that are accessible to all LHDs in the state



Value of Engaging Dedicated Legal Counsel at the State Level

Attorneys employed by a state health agency are likely to:

- Have expertise in public health issues
- Be aware of state policy priorities and can help translate policies consistently across the state LHD landscape
- Be accessible at no-cost to the LHD



Potential Barriers to Engaging Dedicated Legal Counsel at the State Level

- Attorneys split time among many LHDs
- LHDs may work with different attorneys over time

nurses, and epidemiologists to understand the issues being raised. Therefore, it is important to hire attorneys who believe in the mission of the agency, who have a passion for public service, and who can work effectively with non-lawyers for the protection and improvement of the public health.

For additional information on this project and other resources to support your attorney-LHD partnership, visit NACCHO's [Public Health Law webpage](#).

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