

12-1-2020

MANDATORY QUARANTINE: Administrative Order by the Georgia Department of Public Health for Public Health Control Measures: Isolation Protocol

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Recommended Citation

Matthew C. Daigle & Carissa L. Lavin, *MANDATORY QUARANTINE: Administrative Order by the Georgia Department of Public Health for Public Health Control Measures: Isolation Protocol*, 37 GA. ST. U. L. REV. 81 (2020).

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MANDATORY QUARANTINE

Administrative Order by the Georgia Department of Public Health for Public Health Control Measures: Isolation Protocol

CODE SECTIONS:	O.C.G.A. §§ 31-2A-4; 31-5-8; 31-12-2.1, -4; 38-3-2, -3, -51
ADMINISTRATIVE ORDERS:	GA. DEP'T OF PUB. HEALTH, ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES; AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES; SECOND AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES; THIRD AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES; FOURTH AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES; FIFTH AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES; SIXTH AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES; SEVENTH AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES
EFFECTIVE DATES:	March 21, 2020; March 23, 2020; April 3, 2020; April 15, 2020; May 6, 2020; May 12, 2020; June 1, 2020; June 16, 2020
SUMMARY:	The Administrative Order for Public Health Control Measures and its subsequent amendments outlined the Isolation and Quarantine Protocols for individuals who either tested positive for COVID-19 or were suspected of

COVID-19 infection based on symptoms or prolonged exposure to the virus.

Introduction

Coronavirus Disease 2019 (COVID-19), a severe respiratory disease, was first identified in Wuhan, China.¹ On March 11, 2020, the World Health Organization (WHO) declared a COVID-19 pandemic.² As of October 10, 2020, in the United States alone, there had been more than 7.6 million confirmed cases and 213,000 deaths attributed to COVID-19.³ The virus spreads through the air by coughing or sneezing, through close personal contact such as touching and shaking hands, and through touching of the mouth, nose, and eyes.⁴ Those infected with COVID-19 may display a wide array of symptoms, including fever, chills, cough, difficulty breathing, fatigue, body aches, headache, loss of taste or smell, sore throat, congestion, nausea, and diarrhea.⁵ Infected individuals may display symptoms anytime between two-to-fourteen days after being exposed to COVID-19.⁶ Symptoms range from mild to severe, and some people remain asymptomatic the entire time they are infected and contagious.⁷ Older adults and people with underlying medical conditions are at heightened risk for developing severe illness or death.⁸ According to the Centers for Disease Control and Prevention

1. *What is COVID-19?*, GA. DEP'T OF PUB. HEALTH, <https://dph.georgia.gov/what-covid-19> [<https://perma.cc/RCB5-BJA6>].

2. *New ICD-10-CM Code for the 2019 Novel Coronavirus (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 1, 2020), <https://www.cdc.gov/nchs/data/icd/Announcement-New-ICD-code-for-coronavirus-3-18-2020.pdf> [<https://perma.cc/EFK8-CQUA>].

3. *United States COVID-19 Cases and Deaths by State of CDC COVID Data Tracker*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> [<https://perma.cc/6XPG-8AMD>].

4. *Id.*

5. *Symptoms of Coronavirus of Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> [<https://perma.cc/DB9D-JFAF>] (May 13, 2020).

6. *Id.*

7. *Id.*

8. *People with Certain Medical Conditions of Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> [<https://perma.cc/NJ6X-XEDR>] (July 30, 2020). Risk factors

(CDC), adults ages sixty-five and older account for eight out of ten COVID-19 related deaths reported in the United States.⁹

Background

Public Health State of Emergency

In Georgia, the Governor may declare a state of emergency in response to a public health emergency after calling a special session of the Georgia General Assembly.¹⁰ On March 14, 2020, Governor Brian Kemp (R) declared a Public Health State of Emergency in Georgia.¹¹ At the time Georgia had reported over sixty laboratory-confirmed cases of COVID-19, and the CDC had declared the disease to be “‘community spread,’ meaning people have contracted the virus . . . as a result of direct or indirect contact with infected persons, including some who are not sure how or where they became infected.”¹² Governor Kemp subsequently extended the Public Health State of Emergency through a series of additional Executive Orders.¹³

identified by the Centers for Disease Control and Prevention (CDC) include asthma, chronic kidney disease, chronic lung disease, diabetes, hemoglobin disorders, liver disease, severe obesity, serious heart conditions, being immunocompromised, being sixty-five or older, and living in a nursing home or other long-term care facility. *Id.*

9. Older Adults of *Coronavirus Disease 2019 (COVID-19)*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> [<https://perma.cc/MFL4-UQM4>] (July 30, 2020).

10. O.C.G.A. § 38-3-51 (2012 & Supp. 2020).

11. Ga. Exec. Order No. 03.14.20.01 (Mar. 14, 2020) (on file with the Georgia State University Law Review).

12. *Id.* at 1.

13. *Id.*; Ga. Exec. Order No. 04.08.20.02 (Apr. 8, 2020) (on file with the Georgia State University Law Review); Ga. Exec. Order No. 04.30.20.01 (Apr. 30, 2020) (on file with the Georgia State University Law Review); Ga. Exec. Order No. 06.11.20.01 (June 11, 2020) (on file with the Georgia State University Law Review); Ga. Exec. Order No. 06.29.20.01 (June 29, 2020) (on file with the Georgia State University Law Review); Ga. Exec. Order No. 07.31.20.01 (July 31, 2020) (on file with the Georgia State University Law Review); Ga. Exec. Order No. 08.31.20.01 (Aug. 31, 2020) (on file with the Georgia State University Law Review); Ga. Exec. Order No. 09.30.20.01 (Sept. 30, 2020) (on file with the Georgia State University Law Review). As of October 10, 2020, Governor Kemp had, for the seventh time, extended the Public Health State of Emergency through November 9, 2020. Ga. Exec. Order No. 09.30.20.01, *supra*, at 2.

Effect of Public Health State of Emergency Declaration

Declaring a Public Health State of Emergency empowers the Governor to take appropriate actions that may be considered necessary to promote and secure citizens' safety.¹⁴ This power includes suspending regulatory statutes governing State conduct and state agencies if complying with those procedures imposes an obstacle to responding to the emergency.¹⁵ The Governor may utilize all available state resources reasonably necessary to manage the emergency.¹⁶

Governor Kemp's Order declaring a Public Health State of Emergency directed the Georgia Department of Public Health (DPH) to work with the Georgia Emergency Management and Homeland Security Agency "to take any action necessary to promote the public's health . . . without limitation," including "planning and executing public health emergency assessments, mitigation, preparedness response, and recovery for the state" and "implementing a program of active monitoring [of persons with or suspected to have COVID-19], which may include a risk assessment . . . and twice daily temperature checks for a period of at least fourteen (14) days or until the [person] tests negative for COVID-19."¹⁷ The DPH was also charged with "implementing quarantine, isolation, and other necessary public health interventions" consistent with Georgia law that authorizes the DPH to segregate, isolate, and quarantine individuals with communicable diseases where failing to do so would likely endanger the public health.¹⁸

The Administrative Order for Public Health Control Measures

Pursuant to this directive, the DPH issued an Administrative Order requiring persons with known or suspected COVID-19 cases to isolate themselves until they had been fever-free for a minimum of

14. § 38-3-51(c)(4).

15. § 38-3-51(d)(1).

16. § 38-3-51(d)(1)-(2).

17. Ga. Exec. Order No. 03.14.20.01, *supra* note 11, at 3.

18. *Id.*; O.C.G.A. § 31-2A-4 (2019); O.C.G.A. § 31-12-4 (2019).

seventy-two hours (without the use of fever-reducing medicine), until their other symptoms had improved, and until at least seven days had passed since they began displaying symptoms.¹⁹ Asymptomatic persons had to isolate themselves for a minimum of ten days after receiving a positive laboratory test.²⁰ The Order also outlined a protocol for persons who had been exposed to the illness, requiring that those persons quarantine in an approved location (often their home) for fourteen days after receiving notice of exposure from a healthcare provider, public health official, or isolated or infected individual.²¹ The Order required the quarantined individual to take their temperature twice a day and monitor any symptoms of illness.²² If the person developed any COVID-19 symptoms during his or her quarantine, then he or she was considered a person with a suspected case and was required to follow the isolation protocol.²³ Failure to abide by the Order was considered a misdemeanor, and the DPH was allowed to provide information to law enforcement to ensure compliance with the Order and facilitation of criminal prosecution.²⁴

Iterations of the Administrative Order for Public Health Control Measures

The Administrative Order for Public Health Control Measures was effectively a living document, changing as the Governor's Office and the DPH learned more about COVID-19 and its transmission.²⁵ As of

19. GA. DEP'T OF PUB. HEALTH, ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES 2 (Mar. 22, 2020) (on file with the Georgia State University Law Review) [hereinafter ADMIN. ORDER]. The required length of self-isolation time varied between the several iterations of the order. *See infra* notes 28–45 and accompanying text.

20. GA. DEP'T OF PUB. HEALTH, SEVENTH AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES 2–3 (June 16, 2020) (on file with the Georgia State University Law Review) [hereinafter SEVENTH AMEND. ORDER]. The original Order was amended several times as the medical community learned more about the virus. *See infra* notes 28–45 and accompanying text. For example, the original Order did not include guidance for asymptomatic individuals. *See* ADMIN. ORDER, *supra* note 19.

21. SEVENTH AMEND. ORDER, *supra* note 20, at 3.

22. *Id.*

23. *Id.* at 3–4.

24. *Id.* at 4; O.C.G.A. § 31-5-8 (2019).

25. *See* ADMIN. ORDER, *supra* note 19; Telephone Interview with Kristin Miller, Dir. of Legal Couns., Ga. Dep't of Pub. Health (June 3, 2020) (on file with the Georgia State University Law Review) [hereinafter Miller Interview].

October 10, 2020, the DPH had issued eight amendments to the Administrative Order.²⁶ The vast majority of amendments were either clerical edits, adjustments of effective dates or references to then-current Executive Orders, or changes to define symptoms as described by information promulgated by the CDC.²⁷

Amended Administrative Order

The Amended Order implemented three changes.²⁸ First, the “NOW, THEREFORE” paragraph directly cited sections from the Georgia Code from which the Order derived its authority.²⁹ Second, the new Order added a fourth condition to Section 4, requiring isolation for those who tested positive but showed no symptoms.³⁰ Finally, Section 8 carved out an exception to the quarantine requirement for healthcare providers, emergency medical service workers, and other first responders who otherwise would have met the exposure requirement.³¹

Second Amended Administrative Order

The Second Amended Order removed language specifically quantifying confirmed COVID-19 cases in the state.³² Additional amendments included changing symptom descriptions and quantifying the term “prolonged exposure” as “ten (10) minutes or

26. See *infra* notes 28–45 and accompanying text. This *Peach Sheet* addresses only the initial Administrative Order and the first seven amendments.

27. Miller Interview, *supra* note 25.

28. GA. DEP’T OF PUB. HEALTH, AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES 1–3 (Mar. 23, 2020) (on file with the Georgia State University Law Review) [hereinafter FIRST AMEND. ORDER].

29. *Id.* at 1.

30. *Id.* at 3.

31. *Id.*

32. Compare FIRST AMEND. ORDER, *supra* note 28, at 5 (“WHEREAS, as of this date, laboratory testing has confirmed more than 500 cases of COVID-19 in the [S]tate of Georgia, a number that continues to rise . . .”), with GA. DEP’T OF PUB. HEALTH, SECOND AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES 1 (Apr. 3, 2020) (on file with the Georgia State University Law Review) [hereinafter SECOND AMEND. ORDER] (“WHEREAS, the number of cases of COVID-19 in the [S]tate of Georgia continues to grow . . .”).

more” based on updated guidance from the CDC.³³ This iteration also removed enforcement language referencing involuntary detention for violation of the Order.³⁴ Finally, the Second Amended Order added a section stipulating that the Order would terminate “thirty (30) days following the end of the Public Health State of Emergency.”³⁵

Third Amended Administrative Order

The Third Amended Order added a third “WHEREAS” section addressing Governor Brian Kemp’s extension of the Public Health State of Emergency.³⁶ Further, the amendments updated references of COVID-19 symptoms to reflect then-current guidance from the CDC.³⁷ Finally, the Order added “critical infrastructure workers” to the list of exceptions to the quarantine Order.³⁸

Fourth Amended Administrative Order

Clerical edits to the Fourth Amended Order adjusted dates and titles to reflect the then-current Executive Order.³⁹ Additionally, the Fourth Amended Order increased the minimum isolation time period from seven days to ten days, increased exposure time from ten minutes to fifteen minutes, and edited symptom descriptions based on updated guidance from the CDC.⁴⁰

33. SECOND AMEND. ORDER, *supra* note 32, at 3.

34. *Id.*

35. *Id.* The Public Health State of Emergency was extended multiple times. *See* sources cited *supra* note 13.

36. GA. DEP’T OF PUB. HEALTH, THIRD AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES 1 (Apr. 15, 2020) (on file with the Georgia State University Law Review) [hereinafter THIRD AMEND. ORDER] (“WHEREAS, on April 8, 2020, Governor Kemp issued Executive Order 04.08.20.02, extending the Public Health State of Emergency through and including May 13, 2020 . . .”).

37. *Id.*

38. *Id.* at 3.

39. GA. DEP’T OF PUB. HEALTH, FOURTH AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES 1 (May 6, 2020) (on file with the Georgia State University Law Review) [hereinafter FOURTH AMEND. ORDER].

40. *Id.* at 2–3.

Fifth Amended Administrative Order

The Fifth Amended Order updated references of COVID-19 symptoms to reflect then-current guidance from the CDC.⁴¹

Sixth Amended Administrative Order

The Sixth Amended Order updated several references to COVID-19 symptoms to reflect then-current guidance from the CDC.⁴²

Seventh Amended Administrative Order

The Seventh Amended Order contained only one change, though it may have been the most significant change at the time.⁴³ Unlike the prior amendments, which provided general clarifications or updates based on developing understanding of COVID-19, the Seventh Amended Order altered the cooperation requirements of an isolated person and shifted the burden of notification to state and local public health officials.⁴⁴ Where prior Orders instructed the isolated individual to notify “those persons with whom the isolated person has been in close contact,” the Seventh Amended Order required state or local personnel to identify, locate, and notify those potentially infected persons and limited the obligations of the isolated person to

41. GA. DEP’T OF PUB. HEALTH, FIFTH AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES 2 (May 12, 2020) (on file with the Georgia State University Law Review) [hereinafter FIFTH AMEND. ORDER] (providing more details on fever symptoms).

42. GA. DEP’T OF PUB. HEALTH, SIXTH AMENDED ADMINISTRATIVE ORDER FOR PUBLIC HEALTH CONTROL MEASURES 2 (June 1, 2020) (on file with the Georgia State University Law Review) [hereinafter SIXTH AMEND. ORDER] (adding congestion or runny nose, nausea or vomiting, and diarrhea to the list of CDC-recognized symptoms).

43. Compare SIXTH AMEND. ORDER, *supra* note 42, at 3 (“Each isolated person shall, to the extent practicable, provide notification of the isolated person’s COVID-19 status to those persons with whom the isolated person has been in close contact . . . before symptoms began.”), with SEVENTH AMEND. ORDER, *supra* note 20, at 3 (“Each isolated person shall cooperate with state and local public health personnel by answering questions as necessary to identify and locate those persons with whom the isolated person has been in close contact . . . beginning two (2) days before the test sample was obtained.”).

44. SEVENTH AMEND. ORDER, *supra* note 20, at 3.

“answering questions as necessary to identify and locate those persons.”⁴⁵

Analysis

Source of Authority

The Administrative Order derived its authority from a combination of legislative enactments and executive action. Upon the Governor’s declaration, and with concurrence from both houses of the General Assembly, the emergency powers of the State activate.⁴⁶ The DPH, pursuant to the Governor’s allocation of those emergency powers, coordinates all aspects of the State’s response to the Public Health State of Emergency.⁴⁷

The DPH’s enabling act explicitly enumerates the powers of the department, among them the authority to “[i]solate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department’s rules and regulations.”⁴⁸ Further, the legislature instructs the DPH to “promulgate rules and regulations appropriate for management of any public health emergency,” including “the isolation or segregation of persons with communicable diseases or conditions likely to endanger the health of others.”⁴⁹ Although all rules and regulations must be adopted pursuant to the Georgia Administrative Procedure Act, this Act provides an expedited process for the adoption of emergency rules where an agency finds “imminent peril to the public health, safety or welfare,” including summary process quarantines.⁵⁰

45. *Id.*; SIXTH AMEND. ORDER, *supra* note 42, at 3.

46. GA. CONST. art. V, § 2, para. 7; O.C.G.A. § 31-2A-4 (2019). Approval from the General Assembly served as a condition precedent to the declaration of the Public Health State of Emergency. O.C.G.A. § 38-3-51 (2012 & Supp. 2020). The scope of emergencies in the affairs of the state included public health emergencies. O.C.G.A. § 38-3-3 (2012 & Supp. 2019).

47. § 38-3-51.

48. 2011 Ga. Laws 705, § 3-1, at 710–11 (codified at § 31-2A-4).

49. O.C.G.A. § 31-12-2.1 (2019); O.C.G.A. § 31-12-4 (2019); 2011 Ga. Laws 705, § 3-1, at 710–11.

50. O.C.G.A. § 50-13-4 (2013 & Supp. 2020). Such a rule may be adopted without notice or hearing but must be submitted to the Committees on Judiciary of both the House of Representatives and the Senate. *Id.*

Public health control measures may take effect through the DPH's issuance of an Administrative Order.⁵¹ Specifically, isolation or quarantine Orders may address residential confinement, travel conditions, individual or group exclusion from certain places, and self-monitoring and reporting of specified health conditions, among other things.⁵² While such an Order may be appealed by the individual or group subject to it, due process rights may be restricted due to the circumstances of the emergency.⁵³

Constitutionality

Across the country, State quarantine Orders were met with resistance from individual, state, and federal actors alleging that such Orders violated the Constitution.⁵⁴ Though questions specifically addressing the constitutionality of quarantine Orders for confirmed cases of COVID-19 have gone unanswered, the Supreme Court has offered a glimpse of what its answer might be.⁵⁵ Concurring with an opinion denying an application for injunctive relief, Chief Justice Roberts invoked a century-old precedent regarding the states' right to take certain measures to protect the health and safety of the people.⁵⁶

51. GA. COMP. R. & REGS. 511-9-1-.03(3) (2016) ("The Department may implement a public health control measure through the issuance of an administrative order.").

52. *Id.* at 511-9-1-.05(1)(b).

53. See O.C.G.A. § 38-3-51(i)(2) (2012 & Supp. 2020) ("The following due process procedures shall be applicable to any quarantine or vaccination program instituted pursuant to a declaration of a public health emergency."). Such limitations may include limited access to counsel where such contact may threaten the integrity of the quarantine; prohibition of judicial stay of quarantine Orders pending appeal; and limited subpoena power due to the emergency circumstances, among others. *Id.*

54. Memorandum from William Barr, Att'y Gen., Dep't of Just., to the Assistant Att'y Gen. for C.R. & all U.S. Att'ys (Apr. 27, 2020) (on file with the Georgia State University Law Review); see also John Curran et al., *COVID-19 and the Constitution: How the Bill of Rights Is Being Tested by the Coronavirus*, LAW.COM (May 29, 2020, 10:45 AM), <https://www.law.com/newyorklawjournal/2020/05/29/covid-19-and-the-constitution-how-the-bill-of-rights-is-being-tested-by-the-coronavirus/> [https://perma.cc/AW26-E5AM].

55. *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613–14 (2020) (Roberts, C.J., concurring) (stating that it is "quite improbable" that it is unconstitutional for the government to limit attendance at places of worship to 25% of the building's capacity in response to the COVID-19 pandemic).

56. *Id.* Relying on *Jacobson v. Massachusetts*, the Chief Justice denied an injunction that would prevent enforcement of a California Executive Order, pending resolution of the case on its merits, which attempted to limit the spread of COVID-19. *Id.*; see also *Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905).

Evaluating the constitutionality of mandatory vaccination laws, the Court in *Jacobson v. Massachusetts* refused to “strip the [state’s] legislative department of its function to care for the public health and the public safety when endangered by epidemics of disease,” finding that such authority came from the State’s police power.⁵⁷ Further, the Court reiterated its prior stance that “it has distinctly recognized the authority of a State to enact quarantine laws and ‘health laws of every description.’”⁵⁸

The Court in *Jacobson* balanced the individual liberties protected by the Constitution with the community’s “right to protect itself against an epidemic of disease which threatens the safety of its members,” ultimately finding that the state’s mandatory vaccination laws did not violate the Constitution.⁵⁹ Although the isolation and quarantine protocols offer a different mechanism to do so, Georgia, like Massachusetts, effectuates public health and safety measures through the exercise of the State’s police power.⁶⁰ Moreover, Georgia’s legislature delegates the authority to implement such measures to the DPH for the purpose of “provid[ing] for the common defense and to protect the public peace, health, and safety,” similar to the authority granted by the Constitution of Massachusetts.⁶¹ Most significantly, the *Jacobson* Court specifically mentioned the application of a quarantine to illustrate where the need for the collective safety of the public surpasses the liberties of the individual.⁶²

57. *Jacobson*, 197 U.S. at 37.

58. *Id.* at 25.

59. *Id.* at 27, 38. In evaluating the constitutionality of the State’s exercise of police power, the Court balanced the necessity of the action to protect public health, whether the action would reasonably serve the desired purpose, and the benefit the action aimed to achieve with the potential harm the action might impose. *Id.* at 34–38.

60. O.C.G.A. § 38-3-51 (2013 & Supp. 2020); *Jacobson*, 197 U.S. at 25.

61. MASS. CONST. pt. 1, art. VII; § 38-3-51; O.C.G.A. § 38-3-2 (2012); *Jacobson*, 197 U.S. at 27, 35 (“[T]he legislature has the right to pass laws which, according to the common belief of the people, are adapted to prevent the spread of contagious diseases.”). Additionally, the *Jacobson* Court identified the Board of Health as the appropriate decisionmaker for determining a course of action during a public health emergency. *Jacobson*, 197 U.S. at 27.

62. *Jacobson*, 197 U.S. at 29. The Court in *Jacobson* considered a hypothetical to illustrate the application of quarantine Orders imposed against individuals for the greater good of the larger community:

An American citizen, arriving at an American port on a vessel in which, during the voyage, there had been cases of yellow fever or Asiatic cholera, although apparently

Prior to the outbreak of COVID-19, the DPH only issued a single public health Administrative Order, resulting in minimal state case law specifically addressing the legality of such Orders.⁶³ However, Georgia courts have relied on *Jacobson* as support for the State's ability to enforce community safety measures that arguably limit individual freedoms.⁶⁴ For example, in *Anderson v. State*, the court found the defendants guilty of a misdemeanor for violating a statute that required parents to enroll their children in school where the school required the students to be vaccinated and the defendants refused to vaccinate their children due to their religious beliefs.⁶⁵ The court reasoned that “[l]iberty of conscience is one thing. License to endanger the lives of others by practices contrary to statutes passed for the public safety and in reliance upon modern medical knowledge is another.”⁶⁶

Though the isolation protocol's authority originated from an Administrative Order, not a statute, this previous ruling suggests that Georgia courts would likely uphold such an Order because the DPH was empowered with the authority to establish the protocol, the protocol was based on reliable medical knowledge, and it was intended to provide for the overall public safety. Moreover, the Supreme Court of Georgia has upheld exercises of the State's police power to address public safety, reasoning that “[a] person's

free from disease himself, may yet, in some circumstances, be held in quarantine against his will on board of such vessel or in a quarantine station, until it be ascertained by inspection, conducted with due diligence, that the danger of the spread of the disease among the community at large has disappeared.

Id.

63. Miller Interview, *supra* note 25. The single Order from 2014 pertained to the quarantine of an individual who contracted Ebola. *Id.*

64. *Anderson v. State*, 84 Ga. App. 259, 263, 65 S.E.2d 848, 850–51 (1951) (stating that defendants' refusal to vaccinate their children before sending them to school “amounted to a transgression of the rights of others”); *Thorpe v. Mayor & Alderman of Savannah*, 13 Ga. App. 767, 772, 79 S.E. 949, 952 (1913). In *Thorpe*, the court adopted the *Jacobson* logic that the greater good of the community at large outweighs the individual interest when public health may be at risk:

It is not “an element in the liberty secured by the Constitution of the United States that one person, or a minority of persons, residing in a community and enjoying the benefits of its local government,” should have the powers of subordinating the welfare and safety of the entire population to their notions of what may be the best means of safeguarding the health of that community.

Thorpe, 13 Ga. App. at 772, 79 S.E. at 952 (quoting *Jacobson*, 197 U.S. at 38).

65. *Anderson*, 84 Ga. App. at 264, 65 S.E.2d 852.

66. *Id.* at 264, 65 S.E.2d at 852.

right . . . ceases where it overlaps and transgresses the rights of others.”⁶⁷ For the time being, the Georgia DPH’s Administrative Orders appear to pass constitutional muster at both the state and federal levels.

Conclusion

The outbreak of COVID-19 resulted in a pandemic that brought the world to a grinding halt. In an effort to mitigate the spread of the virus and protect the health of Georgians, Governor Brian Kemp (R) declared a Public Health State of Emergency, authorizing the Georgia DPH to issue the Administrative Order for Public Health Control Measures and establish an isolation and quarantine protocol for those persons with known or suspected cases of COVID-19. The Order evolved with the State’s understanding of COVID-19 and its transmission. Although state and federal case law suggests the State’s actions would survive constitutional scrutiny, Georgia’s response to a new problem raises old questions of constitutionality, individual rights, and the State’s police power, clearing a path for challenges that could reshape the jurisprudence of public health.

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67. *Jones v. Moultrie*, 196 Ga. 526, 531, 27 S.E.2d 39, 42 (1943) (“Every one’s [sic] rights must be exercised with due regard to the rights of others.”). In *Moultrie*, the court rejected the plaintiffs’ contentions that an ordinance restricting outdoor sales on certain sidewalks violated their First and Fourteenth Amendment rights as protected by the Constitution, allowing the city to enact rules addressing public safety. *Id.* at 529–30, 27 S.E.2d at 42.

