



Improving how DHEC protects the public from communicable diseases

By Tom Davis

That government is best which governs least, and getting nonsensical laws off the books and stopping attempts to add ridiculous new ones – e.g., requiring animal shelters to be supervised by veterinarians, banning midwifery and out-of-hospital births, subjecting homeschooled children to state supervision, to name just a few from the South Carolina General Assembly's 2013 session – are among the most important things state lawmakers can do.

That said, however, society does require government to provide certain core functions, and among those are protecting citizens from communicable diseases – a fact impressed upon me last week as I, along with other members of the State Senate Medical Affairs Committee, investigated the recent outbreak of tuberculosis in the rural upstate community of Ninety Six that resulted in more than 100 people contracting the TB germ, including 53 schoolchildren.

Highly contagious diseases such as tuberculosis warrant the use of state coercive power because those infected can transmit it easily to unsuspecting community members simply by coughing into the air they breathe. The choice of an individual with TB to move freely about the community violates the right of others not to be exposed to the illness. Simply put, my right to

swing my fist ends where your nose begins.

Here in South Carolina, that public-protection duty falls to the South Carolina Department of Health and Environmental Control (DHEC), a huge state agency infamous for its bias toward inaction. Catherine Templeton, in her brief tenure as DHEC Director, deserves credit for attacking the department's history of institutional lethargy, for peeling away layers of red tape and insisting that employees be more proactive, especially in matters of public health.

Such reform, however, is clearly still a work in progress, given the 83-day delay between the time DHEC knew a janitor at an elementary school in Ninety Six was infected with TB and when it decided to inform students' parents of the potential contagion. Again to her credit, Templeton recognized this delay was inexcusable, frankly admitted that "DHEC screwed this up," and fired the employees – three regional nurses and a mid-level supervisor – whom she said were not sufficiently proactive in the public interest.

Yet some critical questions remain unanswered. The nurses in Ninety Six asked their supervisors in Columbia for permission to test schoolchildren and were denied permission to do so. "Although you were advised by Central Office TB staff not to follow up on TB testing on the group of students at the school," a termination letter reads, "it was still your decision on whether or not further testing should be done." Templeton is right to insist that DHEC employees push back against bureaucratic inertia, but should the nurses have been fired for not disobeying orders from their supervisors?

More questions: Does federal legislation – in particular, the Health Insurance Portability and Accountability Act, "HIPPA," and the Family Education Rights and Privacy Act, "FERPA" – prohibit individual nurses from acting on their own initiative, overriding the orders of their superiors, to test schoolchildren? Have all DHEC employees involved in the initial decision to keep the threat of TB contagion concealed from the public been held accountable? Templeton's efforts to make DHEC less bureaucratic and more proactive will be undercut if it turns out a few lower-level employees were scapegoated while higher-ups were given a pass.

The TB incident in Ninety Six also brings important public policy issues to the fore. First, DHEC should be a cabinet agency, with its director appointed by the governor. It is currently an independent island of government, with no elected official accountable for its actions. Second, the legislature's standing committees should conduct oversight hearings on all state agencies on a regular schedule, not on an ad hoc crisis-management basis. Our constitutional form of

government, with its system of checks and balances, works only if each branch does its job.

Finally, the institutional bias of state agencies to withhold information from the public is too strong, and that's dangerous: a republican form of government will ultimately fail if the actions of those who hold power are unknown to those to whom they are supposed to be accountable. Templeton says the TB fiasco in Ninety Six could have been averted if the nurses had pushed back against their supervisors' orders to keep things secret, and that's true. But are South Carolina's whistleblower laws strong enough to encourage such pushback? That is a question the legislature must debate when it reconvenes in 2014.

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