

SUMMARY OF CURRENT COVID-19 ENFORCEMENT IN PA AS OF DECEMBER 16,  
2020.

The following information is gathered from personal observations as well as media reports and reports from members of the public. This information is expected to change. If you find a significant change in enforcement, please report it to me.

Please note: This information covers all of Pennsylvania generally. There are 6 counties in PA that have their own county health department: Allegheny, Bucks, Chester, Erie, Montgomery, Philadelphia. If you are in one of those counties, the enforcement may be carried out differently.

I. All Pennsylvania Businesses-

All Pennsylvania Businesses could be subject to the Virus and Disease Prevention and Control Law of 1955- 35 P.S. 521.20 and the Administrative Code of 1929- 71 P.S. 1409.

Those provisions provide that *if there is a virus outbreak at your business*, the Department of Health may issue a “control measure” in the form of a quarantine order. If you receive such an order, you have the right to due process- meaning that a judge can review the order and shorten or eliminate it.

If, after receiving such an order, you violate the order, you can receive a citation. This citation is a summary citation- the least serious type of offense in PA. It is equally as serious as a traffic ticket. You have a right to a hearing before your local Magisterial District Judge on the citation. Most local police departments have stated that they will not issue such citations. A large number of District Attorneys have stated that they will not prosecute such citations.

A violation of 35 P.S. 521.20 carries possible fines of between \$25 and \$300. A violation of 71 P.S. 1409 carries possible fines of between \$10 and \$50.

These citations are generally being issued by the PA Department of Health in conjunction with the PA Department of Agriculture. I have done 4 of these hearings. All 4 of my clients have been found not guilty. The most well known was Taste of Sicily. I am also aware of at least 3 other cases where businesses were found not guilty. I am only aware of one business who was found guilty. That business owner represented himself at the first hearing and has hired me to handle his appeal.

I am not aware of any new citations being issued since the Taste of Sicily hearing in late October 2020. Nevertheless, various government agencies continue to threaten these citations.

## II. Restaurant License Holders

Restaurant License holders are expected to follow the food code, which deals with safe food storage and preparation. The code says nothing about having to comply with the Governor's/Department of Health's Orders.

Restaurant licenses are overseen by the Department of Agriculture.

In May 2020, dozens of restaurants did open for indoor dining while their counties were still in Red or Yellow phases. The Department of Agriculture singled out 4 businesses, including Round the Clock Diner and Taste of Sicily.

After giving the restaurants warnings, the Department of Agriculture did issue "Emergency Temporary Suspensions" of restaurant licenses. Emergency Temporary Suspensions do not exist under PA law. All 4 restaurants chose to remain open. For the next several weeks, the Department of Agriculture issued weekly increasing fine

notices to the restaurants. All 4 restaurants remained open and requested hearings on the fines, claiming that the entire procedure was unlawful.

When their counties went to green, all 4 restaurants immediately had their licenses reinstated.

It is my understanding that 1 of the 4 restaurants did settle with the Department of Agriculture. The remaining restaurants- including Round the Clock and Taste of Sicily are still open and have not paid any fines. The restaurants have requested hearings. No hearings have been scheduled at this time.

As far as I am aware, the Department of Agriculture has not taken any new licensing action since June 2020. The Department of Agriculture has been involved in issuing the summary citations discussed in the first section of this document. The Department of Agriculture did send out a new warning e-mail on December 14, 2020. That e-mail was literally directed to dozens of businesses and did not single any one out.

### III. Liquor Licenses

PA liquor license holders must follow the Liquor Code. The Liquor Code contains a lot of requirements. However it does not contain a requirement that you follow the Governor's/Department of Health Orders

The PLCB/BLCE only have the power to enforce the Liquor Code. The Governor/Department of Health do not have the power to change the liquor code. Only the state legislature can do so. The liquor code has not changed since prior to

the pandemic. There is no indication that the state legislature will change the liquor code.

#### A. Suspensions of License

According to the PLCB, they issued 21 emergency 14 day liquor license suspensions during the past 3-4 months. These suspensions are illegal.

Liquor license owners have a property right in their liquor license. A liquor license cannot be suspended unless you first receive notice, have an opportunity for a hearing and then either waive the hearing or lose the hearing. There is a narrow exception that allows for immediate suspension in times of public danger, but in that case, a hearing is still to be immediately scheduled. The PLCB is not using that exception.

In the Tunnelton Inn case, I appealed a 14 day suspension. The Court of Common Pleas of Indiana County granted a supersedeas, and my clients only served 1 day of the 14 day suspension. We are set for trial on the case in Indiana County. Last week the PLCB filed a motion to withdraw the suspension. Tunnelton Inn is requesting that the Court still hear the case and rule on the merits. A positive decision will effect liquor license enforcement in all of PA. At this point, it is unclear as to when we will get a decision on this. The Court could refuse to hear the issue.

As far as I am aware no new suspensions have been issued since the Tunnelton Inn appeal in early November 2020.

## B. Citations

The most common means of enforcement is citations that have been issued by the BLCE.

The procedure is as follows:

1. BLCE observes violation
2. BLCE consults with supervisors as to whether to issue warning or citation. Supervisors may approve Citation.
3. Citation is sent out by Major Jeffrey Fisher of the BLCE. COVID citations are seeking a maximum fine of \$1,000.
4. With the citation you will receive a waiver form. Signing the waiver form means that you accept the proposed fine and plead guilty.
5. If you do not sign the waiver form, a hearing will be scheduled before a PLCB Administrative Law Judge. An Administrative Law Judge is an employee of the PLCB who has taken an oath to act independently of the PLCB and hear cases.
6. As far as I am aware, no COVID citation hearings have occurred before an ALJ at this time. I am being told that COVID hearings most likely will not occur until mid-2021.
7. If you disagree with the ALJ decision, you can appeal. Your case will leave the Administrative Law Procedure and will be heard by a county judge in the county where you are located. Most county judges are show deference to their local businesses.

As far as I am aware, no liquor license holder has lost their license in over 30 years. Many license holders have had to pay fines or serve suspensions. PLCB has asked for liquor license revocation in some cases, however, the County judges have repeatedly found that revocation was too harsh a penalty.

Right now, BLCE enforcement is complaint-based. That means that BLCE is not doing regular undercover work or patrol work. They are spending all or nearly all their time responding to complaints. There is not a discernable pattern of enforcement. I have clients who have received 4 warnings and no citations. I have clients who have received no warnings and immediately started getting citations. I have one client, who has not followed COVID orders since September and has received no warnings and no citations. In other words, I cannot predict how BLCE/PLCB will respond to your situation at this time.

Hundreds of bars have received warnings. Dozens of bars have received citations. Many of those bars have received multiple citations.

BLCE cannot shut you down without notice and a court hearing. If BLCE does see a COVID violation, their standard procedure is to talk to you, get identifying information and then issue a warning or citation a week or so later. BLCE is not arresting people or chaining bars shut.

If BLCE does want to meet with you or inspect, their Standard Operating Procedure does suggest that they should give you a chance to reschedule a day or two later.

You are allowed to communicate with them through an attorney.

You are allowed to video record any interaction with government officials. **YOU MUST** tell them that they are being recorded.

BLCE did send out a new warning letter on December 11, 2020 to numerous liquor license holders. This letter did not single out an licensee I am not aware of any new enforcement tactics.

#### IV. Other Licenses

Most other professional licenses are overseen by the Pennsylvania Department of State. This includes barbershops, salons, spas, massage licenses, etc.

The license requirements of each professional license are slightly different. There is nothing in any licensing requirement that states that you must follow the Governor's or Department of Health Orders.

The businesses that have been contacted by the state have received warnings because of "unethical behavior" or "gross incompetence."

I am aware of dozens of businesses that have received warning letters from the Department of State. I am aware of several businesses that have received increased inspections and have been given a hard time.

I am not aware of any licensee that has actually received a citation or been placed into licensing proceedings by the Department of State.

SHOULD YOU RECEIVE ANY ENFORCEMENT INFORMATION THAT IS  
SIGNIFICANTLY DIFFERENT THAN THE INFORMATION IN THIS DOCUMENT,

PLEASE CONTACT ME

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