

# Inspection Warrants to Enter Private Property

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## **PUBLIC HEALTH ISSUE**

Health officers may need a warrant from the courts that allows entry into private property to investigate sanitary conditions at private residences or facilities. Some issues may not be easily observed or documented from a drive-by of the location and require closer inspection. As a government official, you can and should request access to these out of sight or remote areas under certain circumstances. As stated in the Fourth Amendment to the United States Constitution, you cannot demand access to these areas (without a warrant) as citizens have the right “to be secure in their persons, houses, papers, and effects.”

If a health officer has a reasonable belief that a sanitation or public health concern exists in a location that cannot be easily observed from a public vantage point, the health officer has the option to file an administrative inspection warrant with the NH Judicial System. These warrants provide authorization by a court to enter a certain area of a location within a certain timeframe. This document is not intended to create an attorney/client relationship and the information presented here does not replace one to one legal advice, which is needed to assess the specific facts of each situation. It is advisable to discuss any need for an administrative inspection warrant with your local board of selectman and town attorney prior to filing with the local court system.

## **ROLE OF THE LOCAL HEALTH OFFICER**

The duties of the Health Officer, under [RSA 128:5](#), include enforcing public health laws and rules and conducting investigations as directed by the local board of health or the Department of Health and Human Services. In completing investigations into public health concerns, it may be necessary for the local Health officer to acquire an administrative inspection warrant. Under [RSA 147:3](#), Health Officers “may obtain an administrative inspection warrant under [RSA 595-B](#), including authority to forcibly enter therein and make such search, pursuant to [RSA 595-B:5](#).” It is important that Health Officers execute the administrative inspection warrant exactly as outlined in the court authorization.

## **LAWS AND REGULATIONS**

- [RSA 128 Town Health Officers](#) – This state law provides Health Officers the authority to enforce public health laws and rules, as well as, make such sanitary investigations as may be directed by the local board of health, or as may be required by the department of health and human services.
- [RSA 147 Nuisances; Toilets; Drains; Expectoration; Rubbish & Waste](#) - This state law provides Health Officers the authority to respond to local nuisance concerns in the areas of local rulemaking, inspections, and enforcement. [RSA 147:3](#) authorizes local Health Officers, in the performance of their duties, to obtain administrative inspection warrants pursuant to [RSA chapter 595-B](#). Administrative

- [RSA 595-B Administrative Inspection Warrants](#) - This state law defines and outlines the process of obtaining an administrative inspection warrant. Administrative inspection warrants are categorized differently under the New Hampshire statutes than “search warrants,” which fall under RSA chapter 595-A, but the same constitutional protections apply to administrative inspection warrants as search warrants. *See, e.g., State v. Turmelle*, 132 N.H. 148, 153 (1989).

## PROCEDURE

Before starting the process of developing an Inspection Warrant, it is advised that the Health Officer visit the NH Judicial Branch website at [New Warrant Process | New Hampshire Judicial Branch \(nh.gov\)](#) to become familiar with the process.

## OBTAINING A WARRANT: PROBABLE CAUSE

Each warrant must be authorized by a proper judicial official (i.e. a judge) and is only issued upon a finding of “probable cause” supported by an affidavit laying out the specific facts and circumstances giving rise to the finding of probable cause in accordance with [RSA 595-B:1 - :2](#).

“Probable cause” is defined in [RSA 595-B:2](#), II as “legislative or administrative standards for conducting a routine or area inspection, testing or sampling are satisfied with respect to the particular place, dwelling, structure, premises, vehicle or records, or there is probable cause to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, vehicle or records.” This definition allows for the “probable cause” standard to be satisfied in either of two ways.

The first way of satisfying the probable cause standard is simply a rule in statute or administrative rules that allows for routine inspections, such as with inspections of restaurant kitchens. All that really needs be proved is that (1) the rule exists, and (2) the premises which the Health Officer wishes to inspect qualifies. For example, [RSA 143-A](#) permits food service establishments to be subject to periodic health inspections, and 123 Main Street is a restaurant. Therefore, 123 Main Street is subject to an inspection and, if the owner does not allow the local Health Officer to make the routine inspection, the local Health Officer may obtain an administrative warrant from a judge ordering the owner to allow the local Health Officer to make the inspection.

The second way of satisfying the probable cause standard is the traditional method. In this variation, “probable cause” is most often defined in the context of the criminal law –

“The presence or absence of probable cause is determined by reference to an objective standard designed to measure the probability or likelihood of criminal activity based upon a given set of facts and circumstances. The test is whether a reasonable and prudent person in the position of the officer who conducts the search or makes the arrest and possessed of his knowledge would believe that seizable items could be found or that an offense has been or is being committed.” *State v. Ball*, 124 N.H. 226, 235 (1983).

However, a briefer explanation in the Health Officer context may be that there is “a reasonable basis for the search.” *See State v. Beede*, 119 N.H. 620, 626 (1979) (describing “probable cause.”). In

other words, the affidavit that accompanies the request for the warrant must describe not only what the Health Officer wishes to find out and/or obtain a sample of, but also why the Health officer believes that evidence of some violation *may* be discovered as a consequence of being allowed entry into the location and/or being allowed to obtain and test a sample. For example, the Health Officer may write, “based on the information provided to me by the municipal police department (and listing that information), and the information provided to me by the municipal fire department (and listing that information), and X, Y, Z reasons, I have reason to believe that methamphetamine was manufactured at 123 Main Street in violation of the law. I would like to take samples of the drywall to be tested for the presence of methamphetamine.”

Once a judge determines that probable cause exists, he or she will issue the warrant “particularly describing each place, dwelling, structure, premises, vehicle or record to be inspected, tested or sampled, designating on the warrant the purpose and limitations of the inspection, testing or sampling, including the limitations required by [RSA chapter 585-B].” [RSA 585-B:3](#). In other words, the judge will tell the local Health Officer what he or she may do.

## **EXECUTING AN ADMINISTRATIVE INSPECTION WARRANT**

Once the local Health Officer has the warrant, he or she must “execute” it, *i.e.* do what it says, within 7 days. [RSA 585-B:4](#). Warrants may only be executed between 8:00 a.m. and 6:00 p.m., unless otherwise specified by the judge. RSA 585-B:5. When a warrant is executed, a copy of the warrant must be left at the property searched along with a receipt for anything taken from the premises. [RSA 585-B:6](#).

Once the warrant has been executed, a “return” must be made. The “return” describes when the warrant was executed and is typically accompanied by an “inventory,” a listing of anything seized by the state, *i.e.* taken, during the execution of the warrant. [RSA 585-B:6](#).

Although [RSA 585-B:7](#) states that a failure to obtain an administrative warrant is does not automatically exclude the evidence obtained from future court proceedings, in the absence of a warrant or clearly documented permission by the owner, it is extraordinarily difficult to overcome the hurdles necessary to get the information obtained admitted into evidence in a subsequent court proceeding.

## **EDUCATIONAL RESOURCES**

Municipal police departments and municipal prosecutors appointed pursuant to RSA 41:10-a are often the best option for local officials looking for hands-on experience with drafting or having their draft warrant applications reviewed. These resources should be able to provide information about particular preferences, including formatting, and rules of the local court.

At times, county attorneys and the New Hampshire Attorney General’s Office *may* have trainings available that can be attended by non-law enforcement personnel, and geared toward warrant writing. Here are some additional resources:

- **Training video at NH Judicial Branch** [Training on Livestream](#)

- Law Enforcement Warrant FAQs [warrant-faq.pdf \(nh.gov\)](#)

**For More Information:**

New Hampshire Municipal Association

Legal Services Department

603-224-7447

[legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org)