

BEFORE THE ARKANSAS STATE BOARD OF HEALTH AND  
THE ARKANSAS DEPARTMENT OF HEALTH

IN THE MATTER OF:  
TEMPLE LIVE MAY 15, 2020, EVENT  
200 North 11<sup>th</sup> Street, Fort Smith, AR 72901

**CEASE AND DESIST ORDER**

Pursuant to the authority vested in me by Arkansas law and the Rules of the Arkansas Board of Health and the Arkansas Department of Health (ADH), you are hereby officially notified as follows:

1. On March 11, 2020, the Governor of Arkansas issued Executive Order 20-03, declaring a public health emergency for the State of Arkansas because of COVID-19. COVID-19 is an infectious, contagious, and communicable disease in Arkansas, meaning that the Secretary of the Arkansas Department of Health may quarantine, isolate, and further restrict the movement of persons to control the disease.
2. On March 26, 2020, the Governor issued Executive Order 20-10, declaring the entire State of Arkansas a disaster area in which ingress and egress to and from, the movement of persons within, and the occupancy of premises therein, may be controlled. In conjunction with a directive issued by the Secretary of Health, Executive Order 20-10 imposed restrictions on gatherings of ten (10) or more people to limit the spread of COVID-19. Due to the high risk of community spread of COVID-19, gatherings of more than ten (10) people in any confined indoor or outdoor space were prohibited until further notice. Gatherings subject to this directive include, without limitation, community, civic, public, leisure, commercial, or sporting events, concerts, conferences, conventions, fundraisers, parades, fairs, and festivals.

3. On May 5, 2020, the Governor of Arkansas issued Executive Order 20-25 extending the response to the public health emergency by forty-five (45) days. The Governor ordered that all public and private gatherings of any number of people occurring outside a single household or living unit are subject to the directives of the Secretary of Health. The Governor also allowed food establishments to resume dine-in operations on May 11, 2020, pursuant to the directives of the Secretary of Health, while also adhering to the Alcoholic Beverage Control regulations.

4. Moreover, pursuant to Ark. Code Ann. § 20-7-101 et seq., and the Rules pertaining to Reportable Communicable Disease promulgated therefrom, the Secretary of Health has the authority to impose restrictions upon commerce and travel and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable disease into the State, or from one place to another within the State. Indeed, in response to COVID-19, significant measures have been taken through Executive Orders and Health Directives issued by the Secretary of Health to limit person-to-person contact, restrict gatherings, and suspend businesses that require significant person-to-person interaction.

5. According to your website, <https://fortsmith.templelive.com/>, last accessed on today's date, tickets to your May 15, 2020, large indoor venue event went on sale April 27, 2020.

6. On May 4, 2020, a Health Directive issued for Large Indoor Venues, which provided that, only after May 18, 2020, may an audience of fifty (50) people or fewer be allowed, in addition to several other limitations.

7. On May 5 and 6, 2020, ADH staff notified you that the planned indoor venue event at TempleLive on May 15, 2020, with 229 persons in attendance was not compliant with Health Directives. On May 7, 2020, ADH staff notified you by phone through counsel, that

you should postpone your event as it did not comply with the Health Directive. On May 11, 2020, I personally advised you by phone through counsel that you should postpone your event, and as of today's date, it is my understanding that you intend to violate the orders of the Governor and the Health Directive by holding your event on May 15.


8. The Reportable Communicable Disease Rules of the Arkansas Board of Health make it unlawful for you to violate a Directive issued by the Secretary of Health pursuant to the public health emergency. By your proposed actions, you are in violation of the Arkansas Public Health Code. Those Rules authorize me, as Secretary of Health and Director of the Arkansas Department of Health, to order you to CEASE AND DESIST the conduct described above. Your failure to comply with this Order and postpone your event to be in compliance with the Health Directives will result in a violation of the Arkansas Public Health Code, Ark. Code Ann. § 20-7-101, et seq.

9. There are also other rules and laws, applicable to your facility involving food establishment permits. Moreover, all licenses issued to establishments for the sale or dispensing of alcoholic beverages are privilege licenses, and the holder of such privilege license is to be held to a high duty of care in the operation of the licensed establishment. It is the duty of every holder of an alcoholic beverage permit issued by the State of Arkansas to operate the business in a manner that is in the public interest and does not endanger the public health, welfare, or safety. This is in addition to the requirement that all establishments remain in good standing with the Department of Health.

10. Indeed, public health laws protecting Arkansans include those involving a Public Nuisance, which are actions or use of property that interfere with the public's health or safety. The Governor may also require the Board of Health to examine your proposed event

as a nuisance affecting the security of health in any locality in the State. See Ark. Code Ann. § 20-7-113. A violation of one or more of these rules or laws may result in administrative penalties, a civil or criminal fine or imprisonment, if convicted, or all of the above.

WHEREFORE, it is ORDERED on this 12th day of May, 2020, that you should CEASE AND DESIST any conduct in violation of the Public Health Code in Title 20 of the Arkansas Code and the Board of Health's Reportable Communicable Disease Rules.



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Nathaniel Smith, M.D., MPH  
Secretary of Health  
Arkansas Department of Health