

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

State of Minnesota, by Jan Malcolm, in her  
official capacity as the Commissioner of the  
Minnesota Department of Health,

Court File No. \_\_\_\_\_

Plaintiff,

**COMPLAINT**

vs.

Fay's Homestyle Catering LLC; and Fay Scott,  
individually and d/b/a Fay's Homestyle  
Catering,

Defendants.

Plaintiff the State of Minnesota, by Jan Malcolm, in her official capacity as the Commissioner of the Minnesota Department of Health ("MDH"), for her Complaint against Defendants Fay's Homestyle Catering LLC and Fay Scott, individually and d/b/a Fay's Homestyle Catering, hereby states and alleges as follows:

### INTRODUCTION

1. This is a complaint for injunctive relief pursuant to Minn. Stat. §§ 144.99, subds. 5 and 6, and 145.075, to enjoin Defendants from operating as a food and beverage service establishment in order to protect the public health. Although MDH's investigation is ongoing, MDH has a high degree of confidence that Fay's Homestyle Catering, operated by Defendant Fay Scott, prepared and served food that led to a large foodborne illness outbreak caused by bacterial intoxication. In its investigation, MDH has also uncovered violations of Minnesota regulations that apply to food and beverage service establishments and has taken regulatory action against Defendants, which includes issuing a cease and desist order that orders Defendants to cease

operating as a food service establishment for 72 hours. The Commissioner seeks a court order enjoining Defendants from operating a food and beverage service establishment.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to Minn. Stat. § 144.99, subd. 5, which gives authority to Plaintiff Commissioner Malcolm to bring an action for injunctive relief to enjoin violations of statutes, rules adopted or issued by MDH, licenses issued by MDH, or under any other law enacted for the preservation of public health. Minn. Stat. § 144.99, subds. 1, 5.

3. This Court also has jurisdiction over this action pursuant to Minn. Stat. § 144.99, subd. 6, which gives authority to the Commissioner to issue an order to cease an activity covered by Minn. Stat. § 144.99, subd. 1, if the continuation of the activity would result in an immediate risk to public health, which is effective for a maximum of 72 hours. The Commissioner has authority to seek an injunction to restrain such activities for a period beyond 72 hours. The Commissioner issued such a cease and desist order to Fay's Homestyle Catering on September 8, 2022.

4. In addition, the Court has jurisdiction over this action pursuant to Minn. Stat. § 145.075, which gives the Commissioner to bring an action in district court to enjoin any violation of a rule the Commissioner is empowered to enforce or adopt, or to enjoin as a public health nuisance any activity or failure to act that adversely affects the public health.

5. Venue is proper in Ramsey County pursuant to Minn. Stat. § 144.99, subd. 5. In addition, Defendants are located in Ramsey County.

### **PARTIES**

6. Plaintiff is the Commissioner, the administrative and executive head of the Minnesota Department of Health. The Commissioner has broad statutory authority to protect,

maintain, and improve public health. Pursuant to Minn. Stat. ch. 157, the Commissioner is responsible for licensing and regulating food, beverage, and lodging establishments, and for adopting and enforcing rules regarding food, beverage, and lodging establishments. *See* Minn. Stat. §§ 157.011, 157.20; Minn. R. ch. 4626; *see also* Minn. Stat. § 144.99, subd. 1.

7. Defendants are caterers. Defendant Fay's Homestyle Catering LLC is a limited liability company registered with the Minnesota Secretary of State's Office. Its registered office address is 1200 Broadway Avenue, Ste. 250, Minneapolis, MN 55411, and its principal executive office address and mailing address is 1976 County Road B East, Maplewood, MN 55109.

8. Defendant Fay Scott is Fay's Homestyle Catering LLC's manager and registered agent.

9. "Fay's Homestyle Catering" holds a license with the Minnesota Department of Health to operate a food service establishment. The primary operator on the license is "Fays Home Style Catering." The secondary operator on the license is Defendant Fay Scott. The license is issued to "Fays Home Style Catering," located at 1976 East County Road B, Maplewood, MN 55109. The license establishment name is "Fay's Homestyle Catering," and the establishment address, or the location where the establishment is licensed as a food service establishment, is 705 3rd St. E., St. Paul, MN 55106.

### **REGULATORY FRAMEWORK**

10. MDH is responsible for licensing food, beverage, and lodging establishments, and enforcing the health and safety standards those establishments are required to meet under Minn. Stat. ch. 157.

11. Pursuant to the Commissioner's rulemaking authority set forth in Minn. Stat. § 157.011, the Commissioner has adopted the Food Code, Minn. R. ch. 4626. MDH is charged with enforcing the Food Code.

12. Many of the regulatory requirements of Minn. Stat. ch. 157 and the Food Code aim to promote the health and safety of food and beverage service establishment consumers and employees, as well as the health and safety of the general public. *See* Minn. Stat. ch. 157; Minn. R. ch. 4626.

13. The Food Code essentially requires that food establishment operations be conducted in a non-residential setting with adequate equipment and space to safely prepare food, including the capacity to safely cool and heat food. For example, the Food Code requires that equipment for cooling and heating food, and holding cold and hot food, be in sufficient number and capacity to provide specific temperatures. *See* Minn. R. 4626.0675.

14. Any person, firm, or corporation engaged in the business of conducting a food and beverage service establishment is required to obtain an annual license from MDH. *See* Minn. Stat. § 157.16, subd. 1.

15. A food and beverage service establishment is defined as “a building, structure, enclosure, or any part of a building, structure, or enclosure used as, maintained as, advertised as, or held out to be an operation that prepares, serves, or otherwise provides food or beverages, or both, for human consumption.” Minn. Stat. § 157.15, subd. 5. The Food Code includes catering in its definition of a food establishment. Minn. R. 4626.0020, subp. 35(A)(1).

16. The Health Enforcement Consolidation Act of 1993, codified in Minn. Stat. §§ 144.989-.993 (“HECA”), authorizes the Commissioner to enforce laws and rules pertaining to food and beverage service establishments, and licenses issued by MDH, in Minnesota. *See* Minn. Stat. § 144.99, subd. 1. Specifically, under HECA, the Commissioner may issue administrative orders requiring correction of violations and imposing penalties, and may suspend or revoke a license issued under MDH’s statutory authority for serious or repeated violations. *Id.*,

subds. 3-4, 9. HECA also authorizes the Commissioner to seek injunctive relief in a district court action. *Id.*, subd. 5. In addition, the Commissioner may issue an order to cease an activity covered by HECA if continuation of the activity would result in an immediate risk to public health. *Id.*, subd. 6. Such an order is effective for a maximum of 72 hours, but the Commissioner has authority to seek an injunction to restrain activities beyond 72 hours. *Id.*

17. The Commissioner is also authorized to bring an action to enjoin any violation of a statute or rule that the Commissioner has authority to enforce, “or to enjoin as a public health nuisance any activity or failure to act that adversely affects the public health.” Minn. Stat. § 145.075.

### **FACTUAL BACKGROUND**

18. Defendant Fay Scott manages and operates Fay’s Homestyle Catering. Fay’s Homestyle Catering is a catering business.

19. Fay’s Homestyle Catering is licensed as a food service establishment through MDH. The current license period is May 1, 2022 through May 1, 2023. The establishment that the license is issued to is “Fay’s Homestyle Catering,” and the establishment address on the license is 705 3rd St. E., St. Paul, MN 55106.

20. The establishment address, 705 E. 3rd St. E., is the location of a business known as Kitchen on the Bluff. Kitchen on the Bluff provides a commercial kitchen space that can be rented by food businesses.

21. Fay’s Homestyle Catering food service establishment license is by its terms “not transferable as to person or place.” Accordingly, under the license, the only location the establishment can be located—and therefore the only location where Fay’s Homestyle Catering can cook at and prepare food under its license—is the Kitchen on the Bluff address.

***MDH's investigations of foodborne illness outbreaks***

22. MDH has authority to investigate foodborne illness outbreaks in Minnesota. A foodborne disease or illness outbreak is an incident in which two or more persons experience a similar illness after ingestion of a common food, and epidemiological analysis implicates the food as the source of the illness.

23. MDH detects foodborne illness outbreaks through routine surveillance activities and through reports MDH receives from members of the public, healthcare providers, and other entities such as restaurants and schools. MDH maintains a hotline, online survey, and email address where MDH can receive reports of foodborne illness outbreaks.

24. A licensed food and beverage service establishment is required under Minnesota's Food Code to notify the regulatory authority of any complaint from a consumer having or suspected of having diarrhea or vomiting, among other conditions; or if an imminent health hazard may exist because of an onset of an apparent foodborne illness outbreak. Minn. R. 4626.0040(D), 4626.1795(A).

25. In an outbreak investigation, a MDH epidemiologist coordinates with environmental health specialists or health inspectors. The environmental health inspectors generally focus on evaluating food safety practices at the restaurant or establishment where the outbreak likely occurred and interviewing employees, which includes assessing the food preparation and storage practices to determine if a procedure may have contributed to the outbreak. The epidemiologists' investigation involves doing interviews, which includes gathering information on individuals' exposure history and illness history; setting up and running a detailed analysis; and if available, arranging for testing of specimens.

26. This investigation is conducted to try to attempt to confirm an etiologic agent, or cause, of the foodborne illness outbreak.

***August 27 event***

27. On August 27, 2022, Fay's Homestyle Catering catered an event in White Bear Lake, Minnesota. The event was attended by over 200 guests.

28. The catered food prepared and served by Fay's Homestyle Catering at the August 27 event included roast beef, chicken, and various side dishes.

***MDH investigation of August 27 event and outbreak***

29. Beginning on September 3, 2022, over the Labor Day holiday weekend, MDH received several calls and voicemails to its hotline for reporting foodborne illnesses. After the holiday weekend, on Tuesday, September 6, the MDH staff member who monitors the hotline began to call individuals back about their reports. Through these calls to the hotline, MDH learned about an outbreak associated with the August 27 event catered by Fay's Homestyle Catering.

30. MDH assigned an epidemiologist and environmental health inspector, or sanitarian, to investigate the outbreak.

31. An organizer of the event was one of the callers. This individual indicated that approximately 100 guests out of the approximately 215 to 217 guests at the event had become sick. The reported illness symptoms included diarrhea. This individual also indicated that some guests reported the food was cold and that the roast beef tasted odd, such as bitter or sour or that it tasted like lamb.

32. Organizers of the event spoke to Fay Scott of Fay's Homestyle Catering after the August 27 event, and reported that guests had become ill following the event. The illnesses were reported to Ms. Scott by or before September 2, 2022.

33. Despite being told that guests had become ill after the catered event, Fay Scott failed to notify MDH of the consumer complaints and of the possible outbreak.

34. MDH created an electronic survey to gather information from guests of the August 27 event. MDH has also interviewed guests. The survey and interviews have asked guests questions about what food and beverages individuals had at the event, and about any symptoms they experienced.

35. MDH has thus far gathered information from 41 attendees through interviews and/or the electronic survey. Of those 41 attendees, 14 meet the definition of a “case” for purposes of MDH’s investigation, meaning they experienced diarrhea and/or vomiting. The most commonly reported symptom was diarrhea. 100% of the people who qualified as “cases” ate the roast beef catered by Fay’s Homestyle Catering at the event; in other words, 14 of the 14 attendees who thus far meet the definition of a “case” ate roast beef. In contrast, only 37% of people who did not get sick—the control group in the investigation—ate roast beef; in other words, of the 19 attendees in the control group who did not report any symptoms, only 7 ate roast beef.

36. MDH has also conducted an environmental health investigation of the outbreak and Fay’s Homestyle Catering. MDH contacted Kitchen on the Bluff, the space where Fay’s Homestyle Catering is licensed to operate and prepare food. MDH learned that there is no record of Fay’s Homestyle Catering preparing food at Kitchen on the Bluff for the August 27 event.

37. On September 7, 2022, MDH contacted Fay Scott to gather information on the food she served and prepared at the August 27 event and where the food was prepared.

38. Although Fay Scott had not reported consumer complaints about illness to MDH, when MDH contacted her, Ms. Scott began speaking about complaints she had received, was dismissive of them, and indicated she had contacted her insurance provider.



39. Fay Scott told MDH that she prepared food at the Kitchen on the Bluff address and had emailed staff at Kitchen on the Bluff about using the space.

40. Staff at Kitchen on the Bluff denied that they had been contacted by Fay Scott, and had no record of Ms. Scott using the space for the August 27 event.

41. Fay Scott provided information to MDH on the preparation of the food for the event. For example, Ms. Scott indicated that she cooked the roast beef for about 5-6 hours, cooled it on the counter for about 1 hour, placed it in the cooler, reheated it at 2 p.m. on August 27, and placed it in a Cambro to transport it to the event.

42. The methods that Ms. Scott provided to MDH raised concerns to MDH related to proper cooling and reheating methods.

43. Although MDH's investigation of the outbreak is ongoing, MDH has a high degree of confidence that the August 27 catered event led to a very large outbreak caused by *Clostridium perfringens* ("*C. perfringens*") bacterial intoxication, that the vehicle for the outbreak was the roast beef prepared and catered by Fay's Homestyle Catering, and contributing factors to the outbreak were time and temperature abuse.

44. MDH also maintains that the outbreak was preventable, and specifically could have been prevented by properly complying with Minnesota's Food Code and employing basic food safety techniques.

45. *C. perfringens* is a bacteria that, under certain circumstances, can produce toxins that when ingested can sicken people and thus cause bacterial intoxication. *C. perfringens* intoxication generally results from meat or other food that is not cooled properly, and then also not reheated to an appropriate temperature.

46. *C. perfringens* commonly causes diarrhea and stomach cramps shortly after eating contaminated food, which often lasts for about 24 hours. Although *C. perfringens* most often is not gravely serious, in very rare cases it can cause serious illness and injury. In addition, being acutely ill from diarrhea for a day or two is in and of itself serious and impactful for individuals experiencing such symptoms.

47. Kitchen on the Bluff indicated to MDH that it would be terminating its agreement with Fay's Homestyle Catering. Kitchen on the Bluff subsequently issued a letter terminating its contract with Fay's Homestyle Catering.

48. As a result, Fay Scott and Fay's Homestyle Catering will not have access to the commercial kitchen space at Kitchen of the Bluff, which is the location of Fay's Homestyle Catering's food service establishment. Accordingly, Fay's Homestyle Catering will not be able to operate and prepare food at the location for which it is licensed.

***Fay's Homestyle Catering and past outbreaks***

49. Fay's Homestyle Catering is associated with and/or implicated in two past outbreaks that occurred in 2009 and 2013, of which MDH is aware, involving similar issues related to improper temperature and timing procedures. In connection with the 2013 outbreak, MDH issued an administrative penalty order to Fay's Homestyle Catering for failing to obtain a license to provide catering services, which was upheld by the Minnesota Court of Appeals. *In re Admin. Penalty Order of Fay's Homestyle Catering*, No. A15-0967, 2016 WL 1619230 (Minn. Ct. App. Apr. 25, 2016).

***MDH's September 2022 enforcement actions against Fay's Homestyle Catering***

50. As explained above, on September 7, 2022, MDH staff conducted an inspection of Fay's Homestyle Catering after receiving reports of the outbreak at the August 27 catered event. During its inspection, MDH observed the following violations of the Food Code: (1) the person in charge, Fay Scott, failed to notify the regulatory authority of reports of consumers having diarrhea following the event she catered on August 27, 2022, in violation of Minn. R. 4626.0040; (2) the person in charge, Fay Scott, described using improper cooling methods to the MDH inspector, such as placing hot food to cool on the counter without monitoring the temperature, in violation of Minn. R. 4626.0030; (3) the food establishment service failed to discontinue all food operations due to the onset of an apparent foodborne illness and notify the regulatory authority immediately, in violation of Minn. R. 4626.1795; and (4) the operator's commercial kitchen access has been revoked by the establishment authority, in violation of Minn. R. 4626.1797.

51. On September 8, 2022, MDH issued and served a Nonforgivable Administrative Penalty Order to Defendants.

52. Also on September 8, 2022, MDH issued and served a letter informing Defendants that the license for Fay's Homestyle Catering will be revoked.

53. In addition, on September 8, 2022, MDH issued and served a Cease and Desist Order signed by Assistant Commissioner Daniel Huff, to Fay Scott and Fay's Homestyle Catering, based on the violations discovered during the September 7 inspection, outlined above. MDH found that the continuation of the activities posed an immediate risk to the public health. The Cease and Desist Order ordered that "Ms. Fay Scott, its agents and employees, must cease and desist operation of a food and beverage service establishment at Fay's Homestyle Catering for a period

not to exceed 72 hours commencing at the time of receipt of this order.” A copy of the Cease and Desist Order is attached as Exhibit A to this Complaint.

54. MDH has determined it is necessary to prohibit Defendants from operating a food service establishment to prevent any further risk to the health of the public.

**COUNT I**  
**MINN. STAT. § 144.99, SUBD. 5**

55. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

56. Defendants violated the Food Code, and in particular Minn. R. 4626.0040, 4626.0030, 4626.1795, and 4626.1797. MDH also reasonably believes that Defendants caused a foodborne illness outbreak that sickened a significant number of people after catering an event on August 27, 2022. Defendants also do not have access to the commercial kitchen space where Defendants are licensed to operate and prepare food, and the license by its terms is not transferable to another location.

57. Defendants have not, cannot, or will not take steps necessary to adequately protect public health by safely operating a food service establishment under Minnesota law, thereby presenting an immediate risk to public health.

58. An injunction should issue, pursuant to Minn. Stat. § 144.99, subd. 5, that prohibits Defendants from operating a food service establishment.

**COUNT II**  
**MINN. STAT. § 144.99, SUBD. 6**

59. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

60. Defendants violated the Food Code, and in particular Minn. R. 4626.0040, 4626.0030, 4626.1795, and 4626.1797. MDH also reasonably believes that Defendants caused a foodborne illness outbreak that sickened a significant number of people after catering an event on August 27, 2022. Defendants also do not have access to the commercial kitchen space where Defendants are licensed to operate and prepare food, and the license by its terms is not transferable to another location.

61. MDH has determined that allowing Defendants to continue operating a food service establishment will result in an immediate risk to public health, and therefore issued a cease and desist order pursuant to Minn. Stat. § 144.99, subd. 6.

62. Defendants have not, cannot, or will not take steps necessary to adequately protect public health by safely operating a food service establishment under Minnesota law, thereby presenting an immediate risk to public health.

63. An injunction should issue, pursuant to Minn. Stat. § 144.99, subd. 6, that prohibits Defendants from operating a food service establishment.

**COUNT III**  
**MINN. STAT. § 145.075**

64. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference.

65. Defendants violated the Food Code, and in particular Minn. R. 4626.0040, 4626.0030, 4626.1795, and 4626.1797. MDH also reasonably believes that Defendants caused a

foodborne illness outbreak that sickened a significant number of people after catering an event on August 27, 2022. Defendants also do not have access to the commercial kitchen space where Defendants are licensed to operate and prepare food, and the license by its terms is not transferable to another location. Defendants have not, cannot, or will not take steps necessary to adequately protect public health by safely operating a food service establishment under Minnesota law, thereby endangering the public.

66. Defendants' acts and omissions violate Minnesota law, and also constitute a public health nuisance that "adversely affects the public health." Minn. Stat. § 145.075.

67. An injunction should issue, pursuant to Minn. Stat. § 145.075, that prohibits Defendants from operating a food service establishment.

### **RELIEF**

WHEREFORE, the Commissioner respectfully requests that the Court issue its order and judgment as follows:

1. Declare that allowing Defendants to continue operating a food service establishment presents an immediate risk to the public health, and a public health nuisance.
2. Issue an order pursuant to Minn. Stat. §§ 144.99, subds. 5 and 6, and 145.075, permanently enjoining Defendants from operating a food and beverage service establishment.
3. Grant such further and other relief as the Court deems just and proper.

Dated: September 13, 2022

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Rachel Bell-Munger

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DEPARTMENT OF HEALTH

**MINN. STAT. § 549.211  
ACKNOWLEDGMENT**

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2020).

Dated: September 13, 2022

/s/ Rachel Bell-Munger

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ATTORNEYS FOR PLAINTIFF

COMMISSIONER OF THE MINNESOTA

DEPARTMENT OF HEALTH

#5318410-v1





# CEASE AND DESIST ORDER

**Ms. Fay Scott  
Fay's Homestyle Catering  
1976 East County Road B  
Maplewood, Minnesota 55109**

Case No. 0029424-824

## I. AUTHORITY

- A. Minnesota Statutes, section 144.99, subdivision 6, provides that the Commissioner of Health, or an employee of the Minnesota Department of Health (MDH) designated by the commissioner, may issue an order to cease an activity covered by Minnesota Statutes, section 144.99, subdivision 1, if the continuation of the activity would result in an immediate risk to public health.

A cease and desist order is effective for a maximum of 72 hours. The commissioner must seek an injunction or take other administrative action authorized by law to restrain activities beyond 72 hours. The issuance of the cease and desist order does not preclude the commissioner from pursuing other enforcement action including the assessment of an administrative penalty of up to \$10,000 or securing an injunction.

- B. Minnesota Statutes, sec. 144.99, subd. 2(2), gives the Commissioner of Health the authority to enter any property for the purpose of conducting surveys or investigations.
- C. Minnesota Rules, chapter 4626, regulates Food and Beverage Establishments. Minnesota Rules, chapter 4626.0010 - 4626.1855, are the standards with which food establishments must comply in the handling, storing, preparation and service of food to the retail food consumer.

## II. FINDINGS OF FACT

1. Ms. Fay Scott, operates Fay's Homestyle Catering, located at 705 Third Street East, Saint Paul, Minnesota.
2. On September 7, 2022, a representative of the MDH Food, Pools, and Lodging Services Section inspected Fay's Homestyle Catering in Saint Paul, Minnesota. During the course of this inspection, the MDH found the following violations of public health requirements:
  - a. Minnesota Rules, part 4626.0040: The person in charge failed to notify the regulatory authority of reports of consumers having diarrhea following an event she catered on August 27, 2022.
  - b. Minnesota Rules, part 4626.0030: The person in charge described using improper cooling methods to the inspector such as placing the hot food to cool on the counter without monitoring the temperature.
  - c. Minnesota Rules, part 4626.1795: Discontinue all food operations due to the onset of an apparent foodborne illness and notify the regulatory authority immediately.
  - d. Minnesota Rules, part 4626.1797: The operator's commercial kitchen access has been revoked by the establishment authority.
3. As a result of the violations and facts specified above, MDH finds that the continuation of the above activities pose an immediate risk to the public health. Accordingly, the commissioner is authorized to issue a cease and desist order to you pursuant to Minnesota Statutes, section 144.99, subdivision 6.

## III. ORDER

IT IS HEREBY ORDERED, THAT Ms. Fay Scott, its agents and employees, must cease and desist operation of a food and beverage service establishment at Fay's Homestyle Catering for a period not to exceed 72 hours commencing at the time of receipt of this order. The issuance of this order does not preclude the commissioner from pursuing any other enforcement action available to the MDH.

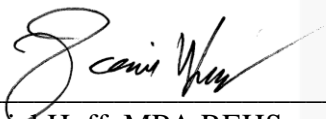
## IV. CORRECTIVE ACTION

This order may be lifted any time during the 72-hour period upon a demonstration by you, and verification by MDH, that the violations specified within this order have been corrected and an immediate risk is no longer posed to the public health.

You must contact Angie Wheeler at 651-201-5634 of the Food, Pools, and Lodging Services Section during the 72-hour period to verify that the violations specified in this order have been corrected and there is no longer an immediate risk to the public health. Additional communications may be directed to:

Minnesota Department of Health  
Environmental Health Division  
Food, Pools, and Lodging Services Section  
P.O. Box 64975  
St. Paul, MN 55164-0975  
(651) 201-4500

SO ORDERED this 8<sup>th</sup> day of September, 2022.



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Daniel Huff, MPA REHS  
Assistant Commissioner | Health Protection Bureau

MINNESOTA  
JUDICIAL  
BRANCH