

WASHINGTON STATE BOARD OF HEALTH

Date: October 13, 2021

To: Washington State Board of Health Members

From: Keith Grellner, Chair

Subject: Complaint Against Clallam County Local Health Officer

Background and Summary:

Under RCW 70.05.120, any person may file a complaint with the State Board of Health (Board) concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health. The Board's authority extends to state statutes in chapters 70.05, 70.24, and 70.46 RCW and Board rules. When a complaint is received, the Board determines whether the complaint falls within its authority to review and, if so, whether it merits further action. If it does, the Board may request a preliminary investigation.

On September 16, 2021 the Board received a complaint against the Clallam County Local Health Officer (LHO), Dr. Allison Berry. The complaint, co-signed by two complainants, alleges violations of Chapter 70.05 RCW. The complaint specifically alleges that the health officer:

1. Failed to uphold public health law by issuing a health order not in accordance with RCW 70.05.070(1), "...under the direction of the local board of health...".

This allegation is in the context of a health order issued by Clallam County Local Health Officer Dr. Berry on September 2, 2021 that requires persons in Clallam County to be fully vaccinated against COVID-19 in order to enter a bar or restaurant, with some exceptions. The order went into effect on September 4, 2021. The complainants claim that Dr. Berry acted outside the scope of the local health officer's authority by not first receiving explicit direction from the Clallam County Board of Health to issue such an order. The complaint also includes as an attachment, the agenda from the Clallam County Board of Health's August 17, 2021 meeting, noting that it did not include an agenda item to consider and take possible action on a health order.

According to their website, the Clallam County Board of Health held a regularly scheduled meeting on September 21, 2021, at which the board discussed the health order, following significant public comment on the topic. The Clallam County Board of Health took no formal action. Their website indicates a special meeting of the Clallam County Board of Health was subsequently held on September 28, 2021. At this meeting, the Clallam County Board of Health passed a resolution supporting the health order and

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commending Dr. Berry and the staff of the Human Services Department for their work responding to the COVID-19 pandemic.

Board policy 2015-001 allows the subject local health officer or administrator to respond to the complaint if they choose. Dr. Berry submitted a response on October 7, 2021 to the complaint and included in her response information regarding her work with the Clallam County Board of Health and a copy of the resolution passed by that board on September 28, 2021.

RCW 70.05.070 states “[t]he local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW [70.05.040](#) or [70.05.035](#), if any, shall “take certain actions to protect public health, including to “[c]ontrol and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction.” Under Board rule, local health officers , “...shall when necessary, conduct investigations and institute disease control and contamination control measures...or other measures he or she deems necessary based on his or her professional judgement, current standards of practice and the best available medical and scientific information” (WAC 246-100-036(3)). The manner in which local boards of health provide direction to local health officers is not dictated by state law and will most likely vary across jurisdictions.

The Board received additional correspondence related to this complaint following the posting of the agenda. These are available for review under Tab 5.

Recommended Board Actions:

The Board may wish to consider, amend if necessary, and adopt one of the following motions:

The Board determines that an investigation is warranted and directs staff to conduct a preliminary investigation under RCW 70.05.120 and report their findings to the Board.

OR

The Board determines that the complaint does not merit a preliminary investigation due to lack of sufficient information indicating a possible violation of relevant public health law and directs staff to notify the complainants of their decision.

Staff

Samantha Pskowski, Policy Advisor

To request this document in an alternate format or a different language, please contact Kelie Kahler, Washington State Board of Health Communication Manager, at 360-236-4102 or by email at kelie.kahler@sboh.wa.gov. TTY users can dial 711.

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