

# WASHINGTON STATE BOARD OF HEALTH

## Final Minutes of the State Board of Health

June 1, 2021

Electronic meeting via GoToWebinar

### State Board of Health members present:

Keith Grellner, RS, Chair  
Thomas Pendergrass, MD, MSPH Vice-Chair  
Fran Bessermin  
Stephen Kutz, BSN, MPH  
Vazaskia Crockrell  
Temple Lentz, MOL

### State Board of Health members absent:

Umair A. Shah, MD, MPH  
Bob Lutz, MD, MPH  
Elisabeth L. Crawford

### State Board of Health staff present:

Michelle Davis, Executive Director  
Melanie Hisaw, Executive Assistant  
Kelie Kahler, Communication Manager  
Stuart Glasoe, Health Policy Advisor  
Samantha Pskowski, Health Policy Advisor  
Kaitlyn Donahoe, Health Policy Advisor  
Lilia Lopez, Assistant Attorney General

### Guests and other participants:

Karen Sutherland, Ogden Murphy Wallace PLLC

Keith Grellner, Chair, called the public meeting to order at 3:30 p.m. and read from a prepared statement (on file). He then asked board members to introduce themselves.

### 1. APPROVAL OF AGENDA

**Motion:** Approve June 1, 2021 agenda

**Motion/Second:** Vice Chair Pendergrass/Member Kutz. Approved unanimously

2. **EXECUTIVE SESSION** – The Board met in Executive Session to discuss legal advice regarding potential litigation related to the SRHD matter pursuant to RCW 42.30.110(1)(i). Keith Grellner, Board Chair, read from a prepared statement on file announcing the purpose and time for the executive session. No notes were taken.

### 3. SPOKANE REGIONAL HEALTH DISTRICT (SRHD) PRELIMINARY INVESTIGATION PRESENTATION

Chair Grellner introduced Karen Sutherland, Ogden Murphy Wallace PLLC. Ms. Sutherland said the purpose of this preliminary investigation was to make a preliminary determination, at the request of the Washington State Board of Health, as to whether Spokane Regional Health District (SRHD) Administrative Officer Amelia Clark refused or neglected to obey or enforce provisions of chapter 70.05 RCW, particularly RCW 70.05.050, with respect to the termination of former SRHD Local Health Officer Dr. Bob Lutz. She said this preliminary investigation was conducted pursuant to RCW 70.05.120. She summarized the allegations that Dr. Lutz was removed from his position as SRHD Health Officer on October 29, 2020 without notice and an opportunity for a hearing before the SRHD Board of Health as to the reason for his removal.

Ms. Sutherland said the report reflects the outcome of a preliminary investigation, which is one step in a larger process. She said the investigation is not a final determination as to whether Ms. Clark did or did not refuse or neglect to obey or enforce the provisions of chapter 70.05 RCW, and that determination would be made by the Washington State Board of Health.

Ms. Sutherland said the findings of this preliminary investigation are based on a preponderance of the evidence. She said where the statements of witnesses were inconsistent, the findings are based substantially on her determination of the credibility of the evidence including witness demeanor.

She said that just because there isn't a preponderance of evidence, it does not mean that an action or event did not occur; it just means that, taken as a whole, the available evidence does not exceed the 50% probability threshold used to determine if there is a preponderance of evidence.

Ms. Sutherland outlined and summarized the report (see meeting materials on file). Ms. Sutherland said she interviewed 7 witnesses. She said her preliminary findings go chronologically and that she found heavier weight on information right after the events of October 29.

Ms. Sutherland said the SRHD executive sessions that occurred before and after Dr. Lutz's termination were confidential. She said for this reason she was unable to obtain specific information related to those meetings.

Ms. Sutherland said the preliminary investigation shows Dr. Lutz was removed as the SRHD Health Officer on October 29, 2020 by Ms. Clark, and that some parts of the meeting between Ms. Clark and Dr. Lutz on October 29, 2020 are undisputed. She said that after analyzing the disputed parts, there is a preponderance of evidence to support a finding that Dr. Lutz was not given the option of a hearing. He was told he was terminated (or removed as health officer) immediately, given a separation agreement, effective immediately on October 29, and given until 4 p.m. the next day to convert his termination to a resignation.

Ms. Sutherland said the next question was whether Dr. Lutz was being paid on administrative leave on October 30, 2020. She said there is no evidence other than Ms. Clark saying so to support that. She said that Dr. Lutz was placed on administrative leave on November 2, 2020 which was made retroactive back to October 30, 2020.

Ms. Sutherland said she was asked to examine whether Dr. Lutz was removed from his position on October 29, 2020, and her answer is that he was. She said complaints were brought to the Washington State Board of Health on November 3, 2020, and this investigation is a response to the complaints. Ms. Sutherland said her response to the question, of what if he was put on administrative leave on October 29, 2020, was that's not what happened, and that would be a totally different fact pattern.

Ms. Sutherland said another issue of importance is that Ms. Clark did not have the authority to remove or terminate him.

Chair Grellner asked Board Members if they had questions.

Vazaskia Crockrell, Board Member, asked about possible remedies if the Board decides Ms. Clark needs to remedy the situation. Ms. Sutherland mentioned examples in the Board's procedure and indicated there may be others.

Thomas Pendergrass, Vice Chair, asked about findings on the November 5, 2020 SRHD Board of Health meeting. Ms. Sutherland said she watched the hearing on November 5, 2020, read the minutes, and took the information of what happened prior to that date and used that information to help her understand what happened prior (on October 29, 2020). Ms. Sutherland said she looked at it closely for the purpose of seeing the evidence if Dr. Lutz was removed on October 29, 2020.

Stephen Kutz, Board Member, asked about the initial meeting of the SRHD Executive Session prior to the incident with Dr. Lutz on October 29, 2020 and if they took action after the executive session. Ms. Sutherland said no, not related to Dr. Lutz or his employment. Member Kutz asked if there was a rebuttal regarding his termination at the November 5, 2020 SRHD Board of Health meeting and if he was given his right to a hearing under the regulations. Ms. Sutherland said yes and there was notice ahead of the November 5, 2020 hearing. She said she didn't make a determination of whether the hearing was official. She said she didn't focus on this matter because she didn't see it as part of her scope of the complaint as it was given to her.

Ms. Sutherland said the complaint to the Washington State Board of Health was made on November 3, 2020 before the November 5 SRHD Board of Health meeting. She said one option coming out of this meeting today could be to request findings based on the November 5, 2020 SRHD Board of Health meeting.

Member Crockrell clarified her concern that Dr. Lutz was terminated on October 29, 2020 and if any hearing happened afterwards, he was already terminated. Ms. Sutherland said her findings support this. Lilia Lopez, Assistant Attorney General, reminded Board members that these findings are preliminary, and they don't prove anything at this point. Ms. Sutherland concurred the preliminary findings are just that, not a final determination.

Member Kutz asked Ms. Sutherland what the decision was for Dr. Lutz from the executive session before the incident on October 29, 2020. Ms. Sutherland replied she was unable to get that information.

Temple Lentz, Board Member, asked Ms. Sutherland if the Board had additional questions about the executive session, whether there is an opportunity for a waiver of confidentiality? Ms. Sutherland directed the question to Ms. Lopez. Ms. Lopez said that could be difficult.

#### **4. DECISION AND NEXT STEPS FOLLOWING SRHD PRELIMINARY INVESTIGATION --POSSIBLE ACTION**

Vice Chair Pendergrass referenced what happened before the meeting on October 29, and asked if there was a movement to move towards termination, why was a decision not made at that time? He commented that the Board sent Ms. Sutherland as an investigator, but not with subpoena power.

Vice Chair Pendergrass offered the motion:

**Motion:** The Board determines that the information provided in the preliminary hearing investigation warrants a hearing to determine whether Ms. Clark is guilty of failing to obey or enforce provisions of RCW 70.05.050. The Board directs staff to notify Ms. Clark that a hearing will be scheduled, and notice provided pursuant to the provisions of chapter 34.05 RCW.

Fran Bessermin, Board Member, said she seconded the motion.

Board Member Discussion continued:

Member Kutz said his issue is asking for a hearing and only mentioning the one individual limits getting to the bottom of what occurred.

Member Crockrell asked if the Board held a hearing, whether it would have subpoena power to find out what happened in executive session.

Member Lentz commented that it was unlikely the Board would get additional information, which creates a gap in the information. She said that if the local board of health is not willing to waive confidentiality, then we have to work with what we have and try to make a determination. She shared her support of this motion.

Member Bessermin stated the complaint was made against the Administrator, not the local board of health. She said the State Board of Health should be cautious. She said the complaint was whether due process by the Administrator was correct.

Member Kutz said it is necessary to understand what happened in conversation with Ms. Clark on October 29, 2020.

Vice Chair Pendergrass said whatever the local board of health did in executive session if they were going towards termination, they should have made a motion or move towards a hearing and termination in open session. At no point has that been indicated. He said the State Board was left with the question of what led Ms. Clark to decide it was

okay to dismiss this physician and why did she choose to? He indicated the State Board of Health should go to a formal hearing to understand if the RCW was followed. He said he didn't see the State Board of Health getting to that point without going through a formal, legal hearing.

Chair Grellner said he was torn. He said he read the preliminary report and based on what was before the State Board of Health, there was intent to terminate Dr. Lutz. He said interviews with newspapers and the press release by the SRHD all occurred under Ms. Clark's authority. He said Ms. Clark took Dr. Lutz to task at the local board of health meeting on November 5, 2020. He said she had to approve the press release that went out on October 30, 2020 about the termination. He said Dr. Lutz got paid between October 29 and November 5 but had no access to his materials. He said whether the board directed Ms. Clark before November 5 to terminate, if errors were made, the local board of health decided to back Ms. Clark. He said the only way to know what happened is to have a hearing and have Ms. Clark testify under oath, and then the State Board of Health will determine whether the violation occurred or not.

Member Crockrell commented that there was information to show Ms. Clark was wrong and did not follow the RCW and questioned how it could be remedied.

Vice Chair Pendergrass reminded the State Board of Health that at this point we are still dealing with interpretation sharing, and that the State Board of Health has not taken legal action. He said the State Board of Health needs to follow the rules to evaluate Ms. Clark's performance to see how the Administrator executed a personnel matter.

Member Crockrell thanked Vice Chair Pendergrass for his statement.

Member Bessermin agreed with Vice Chair Pendergrass and said a hearing would provide clarity. She said Chair Grellner's questions were valid and holding a hearing would be proper. She said not doing so would be unfair to Ms. Clark.

Chair Grellner asked Ms. Sutherland when she interviewed people if they were under oath. Ms. Sutherland said they were not under sworn oath. She said the interviews were voluntary and she asked them to answer truthfully and completely. Chair Grellner said this compels a hearing, as Dr. Lutz and Ms. Clark would be under oath and this is the only way for the State Board of Health to hear the parties under oath.

Chair Grellner re-read the motion again and called the question.

**Motion/Second:** [Vice Chair Pendergrass/Member Bessermin](#). [Approved unanimously](#)

## **5. REVIEW AND DISCUSSION OF BOARD POLICY 2015-001 RESPONDING TO COMPLAINTS AGAINST A LOCAL HEALTH OFFICER OR ADMINISTRATIVE OFFICER – DESIGNATION OF PRESIDING OFFICER**

Lilia Lopez, Assistant Attorney General, outlined the next steps based on the State Board of Health's decision to hold a hearing. She said the State Board of Health is the decision maker but needs to decide on who takes care of the procedural steps under the Administrative Procedure Act (APA). She said boards and commissions may hire an administrative law judge to make sure procedural requirements of the APA are met.

Member Kutz said if Chair Grellner presides it could stifle his participation.

Vice Chair Pendergrass said he supports the request for an administrative law judge.

Ms. Lopez said the Office of Administrative Hearings (OAH) would handle the process and procedure, but the Board is still responsible for the decision.

Member Crockrell said she supports this. She second the motion.

Member Bessermin stated her concern regarding the budget and asked Ms. Davis to respond. Ms. Davis said when the State Board of Health decided to engage a third-party investigator she reached out to the Department of Health (DOH). She said DOH has statutory authority to provide for the State Board of Health to carry out the work. She said she would talk to DOH. She said so far DOH said it has not indicated it would be problematic to move ahead with the administrative law judge.

Chair Grellner asked Ms. Lopez to explain the last two options. Ms. Lopez said the administrative law judge cannot issue a final order. She said to her knowledge most boards and commissions issue the final order. Member Kutz added it's the Board's responsibility.

Chair Grellner asked if the administrative law judge would do the questioning or if Ms. Lopez or the Board would assist. Ms. Lopez stated that another attorney from the Attorney General's (AG) office would present the case which would include asking questions of the witnesses. She said Board members will also be able to ask questions.

Member Kutz suggested changing the motion language from preliminary order to final order. Ms. Lopez said according to the motion, the State Board of Health will issue a final order.

Member Lentz offered the motion:

**Motion:** The Board directs staff to hire an administrative law judge through the Office of Administrative Hearings to serve as the presiding officer for the purpose of conducting the hearing but not for issuing an initial order.

**Motion/Second:** Member Lentz/Member Crockrell. Approved unanimously

Member Kutz asked if the State Board of Health will have a meeting to formulate some questions for the AG office assigned prosecutor. Ms. Lopez said State Board of Health members can formulate questions once they hear the questions by the person assigned to the case.

Vice Chair Pendergrass asked for timeline. Ms. Lopez described the next steps saying that staff at the OAH will start the process, including a pre-hearing conference to get a date scheduled for the parties. She said after that a notice of hearing with a date would be determined. She said OAH can sometimes do that fairly fast, hopefully in the next three months. She said it would depend on calendars of the participants and the judge.

Vice Chair Pendergrass said he was concerned about the length of time and preferred to move expeditiously.

Chair Grellner asked whether the State Board of Health could compel others to testify. Ms. Lopez said yes.

Member Kutz asked Chair Grellner that if Ms. Clark had admitted any wrongdoing would we be having this conversation? Chair Grellner said he doesn't think we have an answer at this point. Ms. Lopez agreed saying whether that would make a difference would be up to the State Board of Health.

Member Kutz thanked Ms. Lopez for the work she's done. Chair Grellner thanked Ms. Lopez and Ms. Davis for their work to prepare for this meeting. Vice Chair Pendergrass praised the staff work.

## **6. BOARD MEMBER COMMENTS**

Keith Grellner, Board Chair asked for Board member comments.

Vice Chair Pendergrass said the last State Board of Health meeting did not go as well as it would with the Chair present.

Chair Grellner thanked Vice Chair Pendergrass. Chair Grellner said Ms. Sutherland did a very good job with the preliminary investigation. He asked State Board of Health members to think about people and questions that they might have so after the process starts with the OAH thoughts can be shared with Ms. Lopez and Ms. Davis.

Ms. Lopez said that State Board of Health members will have the opportunity for questions at the hearing.

Member Kutz reflected on his time as a Health Administrator and the need to better prepare Administrators. He said this situation provides an opportunity to do some learning as a state and health departments on better preparing people for the hard things that happen.

Chair Grellner said organizations have some responsibilities as well as HR resources and legal counsel. He said these are difficult situations especially with an elected local board involved and positions serving at will to the local board. Chair Grellner said the best we can all do is work to find the truth and make our decision based on the truth.

Member Bessermin moved to adjourn.

Member Kutz seconded the motion.

## **ADJOURNMENT**

Keith Grellner, Chair, adjourned the meeting at 5:11 p.m.

## **WASHINGTON STATE BOARD OF HEALTH**

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Keith Grellner, Chair

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