

## Washington State Board of Health Policy & Procedure

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| Draft Policy Number: | 2015-001                                                                                                     |
| Subject:             | Responding to Complaints Against a Local Health Officer or Administrative Officer <u>Under RCW 70.05.120</u> |
| Approved Date:       | January 14, 2015 <u>(Revised November 9, 2022)</u>                                                           |

### Policy Statement

RCW 70.05.120 allows any person to file a complaint with the Washington State Board of Health (~~board~~Board) alleging the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health. The ~~B~~Board ~~shall~~will review complaints that allege a local health officer, or administrative officer, has refused or neglected to obey or enforce the provisions of chapters 70.05, 70.24 and 70.46 RCW, ~~and the state board of health~~or Board rules, regulations, or orders. The ~~B~~Board will review a complaint to determine whether it merits a preliminary investigation. The ~~B~~Board may dismiss a complaint that is beyond the scope of RCW 70.05.120, lacks sufficient information to support a preliminary investigation, or is frivolous in nature. If the ~~B~~Board determines a preliminary investigation is warranted, the ~~B~~Board ~~shall~~will assign ~~members and/staff~~ or ~~staff~~a third-party investigator, as appropriate, to conduct a preliminary investigation and to report their findings to the ~~board~~Board. The ~~board~~Board will then review the findings of the investigation and ~~make a final determination regarding~~determine how to proceed. The Board may determine that further information is necessary, close the complaint, or hold a hearing based on the findings of the preliminary investigation.

### Procedure

- 1) **Complaint Review and Notifications:** Board staff, in consultation with the Executive Director, will respond to the complainant within five business days acknowledging receipt of the complaint. The Executive Director or staff will notify Board members that a complaint has been received and will be brought to the Board for review at the next regularly scheduled ~~B~~Board meeting. If no regular meeting is scheduled within 60 days of receipt of the complaint, or if the agenda for the regular meeting cannot accommodate review of the complaint, the Executive Director will notify the Chair of the need to schedule a special ~~B~~Board meeting for the purpose of reviewing the complaint. The Executive Director will also ~~shall~~ notify the subject local health official and will provide a copy of the complaint for ~~his or her~~their information and ~~review, and~~review and inform the official that ~~he or she~~they may provide a written response to the complaint if ~~he or she~~they so ~~chooses~~choose. The Executive Director ~~shall~~will notify the complainant and the subject local health official of dates and times that the Board is scheduled to review or

discuss the complaint. As part of the initial review, the Board will determine whether a complaint falls within its authority to review, and whether the complaint merits further action. Board staff may consolidate multiple complaints against the same official(s) about the same subject matter will be consolidated for review. The Board may dismiss a complaint that is beyond the scope of RCW 70.05.120, lacks sufficient information to support a preliminary investigation, or is frivolous in nature. The Board will notify the complainant(s) and the local health official named in the complaint(s) of complaint dismissal.

- 2) **Preliminary Investigation:** If the Board determines that a complaint is within the scope of RCW 70.05.120, and merits further review, the Board may direct ~~members and/or~~ staff to conduct a preliminary investigation. The Board may ~~designate~~ identify a ~~sponsor~~ Board member to ~~oversee~~ be available for consultation with staff activities. ~~The during the~~ preliminary investigation. This Board member will recuse themselves as necessary from further participation in resolution of the complaint. The Board may direct staff to hire a third-party investigator to conduct the preliminary investigation when necessary to avoid a potential conflict of interest with the Board. The preliminary investigation may include, but may not be limited to: a review of relevant statutory and rule authorities; gathering other background information and evidence; and interviewing the complainant, ~~witnesses, or named parties/individuals regarding~~ the local health official named in the complaint, and others regarding the complainant's allegations. Background information includes, but is not limited to, laws, rules, court decisions, and documents submitted by the complainant and local health ~~jurisdiction~~ official named in the complaint, and other state or local entities involved ~~in the complaint. Board staff may interview witnesses, any parties named or implicated in the complaint. In addition to conducting interviews, the individual(s) designated to conduct the investigation may~~ consult with content or industry experts, ~~and consult with~~ appropriate representatives of named or implicated agencies, and others as appropriate. The Board may request the Department of Health to provide assistance in conducting the preliminary investigation.
- 3) **Findings:** ~~The sponsor and board~~ Board staff ~~or a third-party investigator~~ assigned to conduct the investigation ~~shall~~ will present the findings of the preliminary investigation and a recommendation for Board consideration at a ~~regular~~ Board meeting. As described above, Board staff ~~shall~~ will notify the complainant and subject local health official of the date and time of the Board meeting at which the Board will review findings. The complainant and may request that they local health official named in the complaint will be given the opportunity to provide comment at the meeting.
- 4) **Determination: Review of Findings** Based on the findings of the preliminary investigation, the ~~board~~ Board will ~~make a determination regarding the complaint~~ determine how to proceed. For example, it may request further information if it cannot reach a conclusion based on the results of the preliminary investigation; close the complaint if it concludes that the local health officer or administrative officer did not ~~fail~~ refuse or fail to obey or enforce the provisions of chapter 70.05, 70.24 or 70.46 RCW, or

~~the state board of health Board rules, regulations, or orders; or, if it determines that the local health officer or administrative officer failed to obey or enforce the provisions of chapter 70.05, 70.24 or 70.46 RCW, or the state board of health rules or orders, direct the officer to remedy the failure; or, if necessary, hold a hearing under the Administrative Procedure Act (APA), chapter 34.05 RCW regarding the officer's removal to determine if the local officer is guilty of the alleged acts.~~

~~5) **Hearing:** If the Board determines that a hearing is necessary, it will be held pursuant to the provisions of chapter 34.05 RCW.~~

~~6)~~

5) **Hearing:** If a hearing is called, the Board will designate a presiding officer for the proceedings in accordance with RCW 34.05.425. The Board, members of the Board, or an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH) may serve as the presiding officer. If an ALJ is designated, the Board will determine the scope of the ALJ's duties at that time. The ALJ's scope of duties may include presiding over the hearing and/or serving as decision maker. If an ALJ is involved, OAH will schedule the proceedings. The proceedings will be conducted in accordance with the APA and applicable procedural rules.

6) **Notice of Final Disposition:** Unless the Board has called a hearing and OAH has notified the local health official named in the complaint(s) of the final disposition, the Board will notify the complainant(s) and the local health official of the final disposition of the complaint.