

# WASHINGTON STATE BOARD OF HEALTH

**Date:** January 9, 2023

**To:** Washington State Board of Health Members

**From:** Keith Grellner, Board Chair

**Subject:** Complaint Against Washington State Local Health Officers

## 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, or Board rules, regulations, and orders. When a complaint is received, the Board reviews it to determine whether it merits further action in accordance with Board Policy 2015-001. If it does, the Board may request a preliminary investigation.

On December 27, 2022, the Board received a complaint against "local health officers of the various counties of the state of Washington." No specific local health officers or jurisdictions are referenced in the complaint. The complaint, filed by a single complainant, alleges that local health officers are failing to carry out public health "laws or rules and regulations," specifically concerning COVID-19. The complaint alleges that the health officers are:

1. Refusing to comply with any of their clearly defined duties under the Washington State Communicable Disease and Pandemic Response Concept of Operations – [Appendix 4: Pandemic Response, Emergency Support Function \(ESF\) 8: Public Health, Medical and Mortuary Services, Washington State Comprehensive Emergency Management Plan \(CEMP\)](#).
2. Refusing to take any steps to control and prevent the spread of a dangerous and highly infectious SARS coronavirus in their jurisdictions under [RCW 70.05.070](#).
3. Failing to protect the public by refusing to enforce rules and regulations relating to isolation and quarantine under [WAC 246-100-040 through 060](#).
4. Failing to protect the public by enforcing the Statewide Face Covering Order issued by the Washington State Department of Health, as referenced in the [Secretary of Health Amending Order 20-03, 20-03.10, Face Coverings – Statewide](#).

The allegation then goes on to state that the failure of local health officers to enforce COVID-19 public health rules or laws is causing preventable risks to the public and leading to preventable deaths. The complainant ends their letter with the request to "do everything reasonably possible to ensure that our public health laws are reasonably enforced."

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The complainant submitted supplementary information to support their complaint on January 3, 2023. The supplemental information references a letter, dated December 9, 2022, from various local health officers and healthcare leaders in Washington outlining recommendations for prevention and treatment strategies to protect the public against the recent surge in viral respiratory illnesses like influenza, respiratory syncytial virus (RSV), and COVID-19. In addition, the supplemental document references Public Health Seattle King County's [COVID-19 After Action Report](#) and a [letter of promulgation from Governor Jay Inslee](#) for the 2019 Washington State Comprehensive Emergency Management Plan.

On October 31, 2022, Governor Jay Inslee ended all COVID emergency orders, including Washington's state of emergency declaration.<sup>1,2</sup> This decision marked the transition from the state's emergency pandemic response to ongoing monitoring and prevention activities, such as promoting health behaviors like masking and vaccinations. A news briefing from the Governor's office, dated October 28, 2022, states, "The COVID-19 pandemic remains, but it's no longer an emergency thanks to vaccinations, medical treatments, and the innumerable efforts of countless Washingtonians since the state had the nation's first documented case in January 2020."<sup>1</sup>

With this transition from pandemic emergency response, COVID-19 has been deactivated from Washington's Emergency Support Function (ESF) 8. Washington State's Comprehensive Emergency Plan Management (CEMP) provides a policy-level framework for statewide emergency planning, response, and initial recovery from emergencies and disasters in the state.<sup>3</sup> The CEMP also includes 20 ESFs, published in a separate document, that outline the specific roles, responsibilities, and functions of state agencies in emergencies. The Department of Health is the coordinating agency for ESF 8.

While all emergency orders were rescinded at the end of October, orders like the Secretary's statewide Face Covering Order remain active. The Secretary of Health's masking order continues to cover healthcare and long-term care facilities, as well as some correctional facilities.<sup>1,2</sup>

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, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, etc....or other measures he or she deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information" (WAC 246-100-036(3)). The manner in which local health officers institute measures they deem necessary will most likely vary across jurisdictions.

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Board Policy 2015-001 allows the subject local health officer or administrator to respond to the complaint. A notice was sent out to all local health officers in Washington to notify them of the complaint, that the Board will review the complaint during its January 9, 2023 meeting, and that they may respond in writing to the complaint if they so choose.

### 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 complainant of the Board's decision.

### Staff

Molly Dinardo, 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](mailto:kelie.kahler@sboh.wa.gov). TTY users can dial 711.

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1. Governor Jay Inslee. State's COVID emergency order ends next week. Published October 28, 2022. Accessed December 29, 2022. <https://www.governor.wa.gov/news-media/state%E2%80%99s-covid-emergency-order-ends-next-week>
  2. Governor Jay Inslee. Inslee announces end to remaining COVID-19 emergency orders and state of emergency by October 31. Published September 8, 2022. Accessed December 29, 2022. <https://www.governor.wa.gov/news-media/inslee-announces-end-remaining-covid-19-emergency-orders-and-state-emergency-october-31>
  3. Washington Military Department Emergency Management Division. Washington State Comprehensive Emergency Management Plan | Technical Resources. ASPR TRACIE. Published 2019. Accessed December 28, 2022. <https://asprtracie.hhs.gov/technical-resources/resource/5411/washington-state-comprehensive-emncy-management-plan>