

# WASHINGTON STATE BOARD OF HEALTH

## Final Minutes of the State Board of Health

January 9, 2023

Electronic meeting via ZOOM Webinar

### State Board of Health members present:

Keith Grellner, RS, Chair

Kelly Oshiro, JD, Vice Chair

Elisabeth Crawford

Patty Hayes, RN MN

Socia Love-Thurman, MD

Scott Lindquist, MD, MPH, State Medical Epidemiologist for Communicable Disease,  
Secretary's Designee

Dimyana Abdelmalek, MD, MPH

Umair A. Shah, MD, MPH

Stephen Kutz, BSN, MPH

Melinda Flores

### State Board of Health members absent:

### State Board of Health staff present:

Michelle Davis, Executive Director

Melanie Hisaw, Executive Assistant

Kelie Kahler, Communication Manager

Stuart Glasoe, Health Policy Advisor

Kaitlyn Campbell, Health Policy Advisor

Molly Dinardo, Health Policy Advisor

LinhPhung Huynh, Department of Health

Lindsay Herendeen, Health Policy Analyst

Cait Lang-Perez, Health Policy Analyst

Miranda Calmjoy, Health Policy Analyst

Jo-Ann Huynh, Administrative Assistant

Hannah Haag, Community Outreach  
Coordinator

Grace Cohen, Department of Health

Lilia Lopez, Assistant Attorney General

### Guests and other participants:

Alexandra Montañó, Director, Policy and  
Legislative Relations, Disease Control  
and Health Statistics

Jeremy Simmons, Department of Health

Keith Grellner, Board Chair, called the public meeting to order at 9:32 a.m. and read from a prepared statement (on file). He then detailed operating procedure and ground rules for conducting a virtual meeting, and asked board members to introduce themselves.

## 1. APPROVAL OF AGENDA

**Motion:** Approve January 9, 2023 agenda

**Motion/Second:** Member Hayes/Vice Chair Oshiro. Approved unanimously

## 2. ADOPTION OF NOVEMBER 9, 2022 MEETING MINUTES

**Motion:** Approve the November 9, 2022 minutes.

**Motion/Second:** Vice Chair Oshiro/Member Crawford. Approved unanimously

## 3. BOARD ANNOUNCEMENTS AND OTHER BUSINESS

Michelle Davis, Board Executive Director greeted the Board and directed Board members to materials in their packets. Ms. Davis said that Cait Lang-Perez, health impact review analyst for the Board would be on parental leave during legislative session. She announced that Kaitlyn Campbell, policy advisor to the Board, would be taking a senior policy advisor position at the Health Benefits Exchange. She said Ms. Campbell served as Board staff since May 2020, and described her many contributions to the Board. Ms. Davis asked the Board to join her in thanking Kaitlyn for her contributions to the Board's work over the last two years and wished her the best in her future endeavors.

Ms. Davis provide an update on health impact reviews, and said the HIR Team recently completed a Health Impact Review of SB 5002, Concerning alcohol concentration. She said the team is currently working on a Review of HB 1169, Concerning legal financial obligations, and noted the bill was similar provisions to 3SHB 1412 from the 2022 legislative session, on which a Health Impact Review was completed.

Ms. Davis reported that the HIR team is continuing its outreach to legislative members, and has been invited to present in a House Republican Caucus Meeting on Thursday, January 19. She said the team continues to monitor legislative bill introductions including bills related to previous Health Impact Review topics.

Ms. Davis described the meeting materials including meeting notes from December policy committee meetings, the CR-103 emergency rule for covid reporting, and the rescission of the emergency rules. She said rescission was needed because the updated Notifiable Conditions chapter went into effect on January 1, 2023.

Ms. Davis directed the Board to see three letters from the Department of Health to laboratory directors, clinicians, and state agency and local public health partners. She said the letters request provisional reporting of COVID-19, MPOX and carbapenemase producing organisms. She reminded the Board that it has granted the state health officer the authority to request additional data components to be submitted with reports and specimen submittal of notifiable conditions under WAC 246-101-015.

Ms. Davis noted the 2023 legislative session had just started and referred to the legislative statement that the Board will review later on the agenda. She said she would provide regular updates to the Board during legislative session.

Stephen Kutz, Board Member, took opportunity to thank Kaitlyn Campbell for all her work, and wishes her all the best.

## 4. DEPARTMENT OF HEALTH UPDATE

Umair A. Shah, Secretary of Health and Board Member, shared the department's update (see materials on file, Tab4A).

Scott Lindquist, State Epidemiologist for Communicable Diseases and Member Shah presented on the Department of Health's (DOH) 2023 goals and priorities. As part of the Transformation Health/Transactional Health plan, DOH has identified 5 priority areas: Health and Wellness, health systems and workforce transformation, environmental health, emergency response and resilience, global and one health.

Dr. Lindquist provided a Respiratory Virus Update. While Washington State is still considered high activity for RSV in the U.S., DOH is seeing a decrease in positive cases, people presenting for testing, and in hospitalizations, with no indications of another peak. He provided a summary of DOH's syndromic surveillance system, which collects data by electronically tracking online medical entries. He also presented an updated on the COVID-19 virus. Washington is seeing an emergence of new variants of COVID-19 that are more infectious but not more deadly. He also reviewed the changes DOH is making for notifiable conditions modernization, updating: update data systems/applications, reporting forms and guidelines updates, communications, and training.

Board Member Kutz asked if DOH is seeing signs of "immunization fatigue" and if that was related to the high rates of RSV. Member Shah responded that there is some concern regarding immunization fatigue, and that media coverage of the COVID vaccine has made some parent concerned about all childhood vaccines.

Patty Hayes, Board Member asked if there's a timeline of if, and when, the mask mandate on healthcare facilities will be lifted and) what language is appropriate to discuss COVID-19 and if it could be described as "endemic". Member Shah responded to the first question that it would be unlikely that the mask mandate in healthcare facilities will be lifted. DOH is tracking COVID rates weekly to see when it will be appropriate to lift. He also stated they are taking into consideration the broad definition of healthcare facilities in Washington and if the mandate can and should be limited to inpatient facilities. Dr. Lindquist responded to the second question, stating that COVID could eventually be labelled as "endemic", but that will require stabilization of rates as well as a decrease in the continuous emergence of new variants.

## 5. PUBLIC COMMENT

Bill Osmunson, DDS, MPH, spoke in opposition to water fluoridation, and talked about neurotoxic and cognitive development hazards of fluoridation to humans. Dr. Osmunson said he treats dental fluorosis; chipped, cracked, and broken teeth. Dr. Osmunson stated the cost of water fluoridation is 30x higher than the savings and that fluoride should be treated as a drug.

Alicia Flegel, mother of 3 in King County, WA, spoke in opposition to the COVID-19 vaccine for school entry for children, stating that children are not in the category for risk, and that children have good immune systems.

Natalie Chavez spoke in opposition to the Human Papillomavirus Vaccine (HPV) and talked about studies and dangers of the HPV vaccine to children. Natalie Chavez said she was shocked to hear at the recent Vaccine Advisory Committee (VAC) meeting of

the discussion to lower the age to 9 years in WA state for the HPV vaccine and for annual reminders given to health care providers.

Grace Yuan, legal counsel for Puget Sound School Coalition, respectfully asked the board to not act on item 8, Rulemaking Petition to revise the Environmental Health and Safety Standards for Primary and Secondary Schools. Grace Yuan said we are all using the same standards in testing water, 5 ppb (parts per billion), and that rulemaking is not necessary at this time.

Susan Prosser stated their concern regarding COVID-19 vaccine mandatory requirements for children.

Lara Gabriel, a mother, and nurse stated their opposition to the COVID-19 vaccine and spoke about the harmful effects of myocarditis. Lara Gabriel said myocarditis cases have increased at least 5% in those vaccinated, and proposed the risk for myocarditis be provided with vaccine administration. Laura Gabriel talked about the decrease for COVID-19 vaccine recommendations in healthy children in other countries, specifically Sweden, UK and Denmark.

Chair Grellner closed public comment at 10:52 a.m.

## **6. EMERGENCY RULEMAKING – ON-SITE SEWAGE SYSTEMS, WAC 246-272A-0110, PROPRIETARY TREATMENT PRODUCTS AND SUPPLY CHAIN SHORTAGES – POSSIBLE ACTION**

Chair Grellner introduced the Department of Health's request for the third emergency rule for on-site sewage system proprietary treatment products.

Stuart Glasoe, Board Staff, discussed the Board's statutory authority to regulate on-site sewage systems. He explained the Department's request that the Board adopt a third emergency rule to allow retrofits and maintenance of proprietary treatment products with comparable components during supply chain disruptions. He explained that the Board previously adopted this emergency rule in June 2022 and October 2022.

Jeremy Simmons, Department of Health summarized the need for the emergency rule and implementation to date. He explained that there was a shortage of ultraviolet (UV) bulbs used in sewage treatment systems, caused by the shuttering of the manufacturer Salcor in April 2022, as well as other supply chain disruptions associated with the COVID-19 pandemic. Mr. Simmons said that use of the substitute bulbs has been successful and allowed thousands of septic systems across the state to continue functioning. He said that the Department is requesting adoption of a third emergency rule as the current rule is set to expire early next month. Mr. Simmons also shared that the Department is working on a permanent rule that would allow for the use of substitute parts in case of certified supply chain issues.

Elisabeth Crawford, Board Member, asked Mr. Simmons to elaborate further on potential long-term solutions to this issue. Mr. Simmons replied that with regards to the proprietary Salcor bulbs, the company has been purchased and production will start pending a National Science Foundation (NSF) recertification process, which takes around 6 months to complete. He also spoke about mechanisms within the draft

permanent rule that would allow manufacturers to use substitute parts in the event of supply chain shortages. Member Crawford then asked if there might need to be another emergency rule after this one. Mr. Simmons replied that this is likely. Mr. Glasoe elaborated that this emergency rule will be filed about February 10, 2023, and last 120 days. Mr. Glasoe said that there may need to be another emergency rule depending on the timeline for the permanent rule adoption.

Member Crawford asked about the Department's process for staying current with newly approved parts by the NSF. Mr. Simmons replied that the Department does not monitor manufacturers and described the manufacturer's process for registering products with the Department. Member Crawford then asked how similar issues might be prevented in the future, given that this process is manufacturer-driven. Mr. Simmons replied that there is not currently a great mechanism for preventing manufacturer-related supply issues. He clarified that once a shortage is identified, the approval process for substitute parts takes one to two weeks.

Melinda Flores, Board Member, asked how often certification is required for these products. Mr. Simmons replied that while NSF requires manufacturers to recertify products, the Department does not. He said that the manufacturer only needs to maintain their registration administratively for their products to remain registered, given there is no contrary feedback from industry or local health jurisdictions. He said that there is a proposal in the draft permanent rule for products to be field tested after NSF testing.

Kelly Oshiro, Board Vice Chair, asked about Salcor's market share and the extent of the disruption that their shuttering caused. Mr. Simmons replied that Salcor had about 65 percent market share, with tens of thousands of their proprietary UV bulbs being used across the state. He said that the shuttering was very disruptive and had impacts on the real estate market.

Member Kutz shared his support for continuing the emergency rule. He then asked what the Department has done historically when manufacturers of proprietary products have gone out of business. Mr. Simmons replied that there has not been a good solution at the regulatory level. He said that when manufacturers have shuttered historically, there was a sufficient supply of other products that consumers could purchase. He said he hopes the permanent rule can move the Department closer to a solution.

Chair Grellner asked whether there is currently sufficient supply of the two products approved to be used as substitutes for the Salcor bulbs. Mr. Simmons replied that there is, and that the Department has received another application for a substitute part. Mr. Simmons said that with Salcor's repurchasing and expected production restart, there should no longer be supply issues for treatment UV bulbs.

**Motion:** The Board directs staff to file a third CR-103E, Emergency Rulemaking Order, upon expiration of the second emergency rule, filed as WSR 22-21-070, to amend WAC 246-272A-0110 to help ensure on-site sewage system proprietary treatment products continue to function properly without negatively impacting treatment, operation, or maintenance during supply chain shortages or other manufacturing disruptions.

**Motion/Second:** [Member Kutz/Member Lindquist](#). Approved unanimously.

**7. UPDATE – ON-SITE SEWAGE SYSTEMS, CHAPTER 246-272A WAC**

[Keith Grellner, Board Chair](#), introduced the update, briefly explaining board authority for on-site sewage systems and introducing the informational presentation on the on-site sewage rulemaking. [Jeremy Simmons, Department of Health](#), presented background on on-site sewage systems, the rules and rulemaking process, highlights of key issues and revisions in the draft rules, and anticipated next steps in the rulemaking project (presentation on file).

Board members had no questions on the presentation and rulemaking project.

The Board recessed for lunch at 12:25 p.m. and reconvened at 1:00 p.m.

**8. RULEMAKING PETITION – THE BOARD HAS RECEIVED A PETITION TO REVISE ENVIRONMENTAL HEALTH AND SAFETY STANDARDS FOR PRIMARY AND SECONDARY SCHOOLS, CHAPTER 246-366A WAC – POSSIBLE ACTION**

[Keith Grellner, Board Chair](#) invited [Kaitlyn Campbell, Board Staff](#) to present on the petition to revise Chapter 246-366A WAC.

[Kaitlyn Campbell, Board Staff](#) reviewed the petition for rulemaking from Representative Pollet to revise certain sections of Chapter 246-355A WAC and provided context regarding the rules, which have been suspended since 2009 due to a budget proviso. In the 2021 legislative session, the Legislature passed Engrossed Second Substitute House Bill 1139, which requires primary and secondary schools to regularly sample, test, and remediate lead in drinking water that have built (or plumbing was replaced) prior to 2016. The 2021 law incorporates more stringent and protective standard and is more prescriptive than Board's suspended rules. She went on to explain that the petition argues that the legislature has fully funded implementation of the new lead standards, meeting the budget proviso; however, it is unclear whether the funding will be sufficient to fulfill the new statutory requirements. She also let the Board know that given the rules are currently not in effect, there is no conflict between the suspended rules and the law.

[Chair Grellner](#) invited board members to discuss the petition.

[Member Kutz](#) asked how many areas within a school would need to be tested and whether the predominant source of lead would be drinking fountains. [Juan Gamez and Theresa Sanders \(Office of Environmental Health and Safety\)](#) stated that many fixtures had not been replaced yet. They provided context that buildings built after or had fixture replacement after 2016 would not be tested. They also explained the testing process, to confirm it's the fixture that has lead, not the water source itself.

[Member Hayes](#) and [Member Flores](#) asked if the governor's proposed budget supports a maintenance budget of 2.8 million and how the budget will be distributed amongst schools. [Ms. Campbell](#) confirmed initial 2022-2023 DOH provided funds initially for testing and then separate grant for fixture replacement and maintenance needs. Future funding is unclear but there is a proposed capital budget for additional funds for OSPI.

Member Hayes and Member Flores were interested in the intent behind the petition. Ms. Campbell stated the understanding was the petitioner would like the Board's rules to mirror the law. They also discussed whether the budget proviso had been met.

Chair Grellner asked for a motion before continuing the conversation.

Member Kutz motioned to accept the petition; Member Hayes seconded.

Board Vice Chair Oshiro asked if there are any risks to accepting or denying the petition. Lilia Lopez, Assistant Attorney General stated that she did not see legal risk voting either way.

Member Kutz asked if by opening the school rules to only address lead in the drinking water, would the Board be going against the legislature. Chair Grellner shared that he believed accepting the petition would be in violation of the budget proviso.

Dimyana Abdelmalek, Board Member asked what it would look like to meet the budget proviso. Chair Grellner and Ms. Campbell provided context regarding the role of the legislature and the budget proviso.

Member Kutz withdrew his initial motion and made a new motion.

**Motion:** The Board declines the petition for rulemaking to revise applicable sections of chapter 246-366A WAC to reflect testing, remediation, and notification requirements for lead in school drinking water under RCW 28A.210.410 for the reasons articulated by Board members. The Board directs staff to notify the petitioner of the Board's decision.

**Motion/Second:** Member Kutz/Member Hayes. Approved unanimously.

## 9. 2023 LEGISLATIVE STATEMENT – POSSIBLE ACTION

Michelle Davis, Board Executive Director, reviewed the SBOH's legislative session procedures and reviewed the changes made to the Statement of Policy (statement on file).

Member Hayes thanked other board members for their comments and staff for the updates to the document to make it more organized and readable.

**Motion:** The Board adopts the Statement of Policy on Possible 2023-24 Legislative Issues as discussed on January 9, 2023.

**Motion/Second:** Member Hayes/Member Flores. Approved unanimously

## 10. BRIEFING – ABBREVIATED RULEMAKING FOR HUMAN REMAINS REDUCED THROUGH NATURAL ORGANIC REDUCTION, CHAPTER 246-500-055 WAC

Member Hayes introduced the Board's Human Remains Rule.

Molly Dinardo, Board staff, described Chapter 246-500 WAC, which establishes standards for health and safety measures in the handling of human remains. Molly shared that in 2019, the legislature passed Engrossed Second Substitute Senate Bill (ESSB) 5001, concerning human remains. The law authorized two new methods of disposition – alkaline hydrolysis and natural organic reduction (NOR).

The law became effective May 1, 2020. Department of Licensing (DOL) conducted rulemaking to incorporate new disposition methods, which became effective in June 2020. Shortly after the DOL did its rulemaking, the Board initiated its own rulemaking to update chapter 246-500 WAC to include NOR and alkaline hydrolysis as new disposition methods and added two new sections of the rule relating to each disposition method. These new rules went into effect in January 2021.

The Board's rule implementation plan recognizes the Department of Licensing Funeral and Cemetery Board's oversight of facilities and licensees that handle the disposition of human remains. Board staff provide technical assistance and support regarding implementation of the Board's rules. As part of implementation follow-up, Board staff created and administered a post-rulemaking survey for NOR facilities to determine whether rule implementation was successful or if clarification was needed.

Ms. Dinardo presented an overview of the survey and findings from the four NOR facilities surveyed. Based on findings from the post-implementation survey, staff identified a need for rulemaking to clarify rule language in WAC 246-500-055. Specifically, Table 500-A includes a typo that needs to be corrected. Molly provided additional background on this section of the Board's rule, detailed staff's proposal to initiate exception rulemaking, and explained that this rule qualifies for exception rulemaking under RCW 34.05.310(4)(d). Molly also mentioned that if Board Members approve this proposal, staff would file a CR-102 by February 1<sup>st</sup>, and a rules hearing would be held during the Board's March 8<sup>th</sup> meeting.

**Motion:** The Board approves the rulemaking proposal and directs Board staff to move forward with exception rulemaking under RCW 34.05.310(4)(d) to correct typographical errors and to clarify the testing parameters language in WAC 246-500-055 and submit the CR-102 to initiate rulemaking.

**Motion/Second:** Vice Chair Oshiro/Member Abdelmalek. Approved unanimously

Chair Grellner said he supported this change.

## **11. LOCAL HEALTH OFFICERS COMPLAINT – POSSIBLE ACTION**

Chair Grellner introduced the complaint filed on Dec 27, 2022, against local Public Health Officers, alleging local health officers have failed to take any steps to control COVID-19 and failed to protect the public by not complying with public health laws, rules, or regulations.

Member Abdelmalek indicated that she would recuse herself from this item as she is the Local Health Officer for Thurston County.



Member Hayes said it strikes her the complainant didn't list what they expected to happen, it was just listed broadly across all health officers that they didn't do their job. The lack of specificity leads to no specific information to do follow-up, therefore she recommends not moving forward.

Member Crawford, said the complainant is from Snohomish County, and agrees with Member Hayes that there is nothing mentioned in the complaint describing what outcomes the resident was expecting other than listing what they think a local health officer should be doing. Member Crawford recollected how hard her health county board worked, saying Dr. Spitters addressed the cases and mobilized the staff at the health district. She said Dr. Lewis has been very proactive and she is perplexed by the complaint. She doesn't think the complaint is merited and recommended to not consider at this time.

Member Kutz said this pandemic has put everyone in a hard place. All jurisdictions had pushes and pulls from different directions, had people from both sides of the equation, from people wanting no masks to wanting masks required. We already know the difficulties around quarantine. We all know that if everyone was masked and quarantined there would be less cases, but our health officers generally worked through this complex process admirably, and they did the best they could, without absolute authoritarian rule, which would have been brought to a halt right away. Member Kutz made the motion to deny the complaint. While the complaint described a perfect world, it's not something that was achieved anywhere across the world in anywhere he saw.

**Motion:** 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.

**Motion/Second:** Member Kutz/Member Hayes. Approved unanimously

Scott Lindquist, State Medical Epidemiologist and Secretary's Designee, added that as a state epidemiologist, he understands the roles of health officers. He has no concerns with health officers in our state, and he finds the complaint non-specific and without merit.

Chair Grellner said he agrees with board member comments. He notes that while we've received push back from both sides, the perception that we have done too much is considerably higher than what we haven't done. The last two years we've had an astronomical number of comments that we have gone too far. The mask order as it stands now only address health care, long-term care, and corrections facilities. He doesn't believe the complaint has merit.

## 12. BOARD MEMBER COMMENTS

Chair Grellner called for any comments.

Member Crawford shared that this may be her last meeting with the Board. Member Crawford, who represents Washington cities on the Board, said that the Snohomish Health District has integrated into Snohomish County as a public health department.

She said that with this transition, the composition of the Board is now changed, and she may no longer have a position within it. She said it was a pleasure to work with the Board and thanked Board members and staff.

Chair Grellner said that he hopes she does have a place on the Board and thanked Member Crawford for her service.

Chair Grellner and Members Flores, Kutz, and Hayes thanked Member Crawford and Ms. Campbell for their work at the Board and wished them well on their future endeavors. Member Flores thanked Ms. Dinardo for her presentation during the meeting.

Member Hayes shared that the Washington State Public Health Association is hosting a Public Health Legislative Education Day on February 23, 2023. She said this event will be a great opportunity to learn about public health issues under discussion in the legislature and to connect with other public health colleagues.

Chair Grellner encouraged Board members to attend the event as well and shared his experiences attending past years. He said that Board members could reach out to him, Member Hayes, or Executive Director Davis for further details.

Chair Grellner then shared that he recently spoke to John Austin, the previous Board Chair, who sent along his regards. He said that Mr. Austin recommended that the Board consider writing a letter of thanks to Dr. Stephen Fauci, who recently left his post at the federal level. Members Flores, Kutz, Hayes, and Abdelmalek shared their support for this idea.

## **ADJOURNMENT**

Keith Grellner, Board Chair, adjourned the meeting at 2:47 p.m.

## **WASHINGTON STATE BOARD OF HEALTH**

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Keith Grellner, Chair

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