

## MEMORANDUM

### VIA EMAIL

DATE: April 29, 2021

TO: Keith Grellner, Chair, Washington State Board of Health

FROM: Karen M. Sutherland

RE: Preliminary Investigation Report re: Complaint Against Spokane Regional Health District Public Health Administrative Officer

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### I. INTRODUCTION

The purpose of this preliminary investigation is 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. This preliminary investigation is being conducted pursuant to RCW 70.05.120. To summarize, the allegations are 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.

This Report reflects the outcome of a preliminary investigation, which is one step in a larger process. It 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. That determination will be made by the Washington State Board of Health (“State BOH”).<sup>1</sup>

### II. RECORDS REVIEWED AND WITNESSES INTERVIEWED

The records reviewed are listed in Appendix 1, which is attached hereto. The determination as to which witnesses to interview was made by the investigator based on reviewing relevant documents and video recordings of the October 30, 2020 press conference and the SRHD BOH meeting held on November 5, 2020. For this preliminary investigation, the selection of witnesses for interviews focused on witnesses with non-cumulative, firsthand knowledge of disputed facts that were not protected from disclosure by the attorney-client privilege, the executive session exemption to the Open Public Meetings Act (“OPMA”), or other applicable law.

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<sup>1</sup> See RCW 70.05.120(1).

The following witnesses were interviewed:

- Dr. Robert Lutz, former SRHD Health Officer, because he had firsthand knowledge of the meeting that occurred in Ms. Clark's office after the SRHD Board meeting on October 29, 2020.
- Amelia Clark, SRHD Administrative Officer, because she is the subject of the investigation and she had firsthand knowledge of the meeting with Dr. Lutz that occurred after the SRHD Board meeting on October 29, 2020.
- Ben Wick, SRHD Board Chair and Mayor of the City of Spokane Valley; because he had firsthand knowledge of the meeting with Dr. Lutz that occurred after the SRHD Board meeting on October 29, 2020.
- Breean Beggs, SRHD Board Member and Spokane City Council President, because he spoke with Ms. Clark on October 29, 2020 shortly after her meeting with Dr. Lutz about what happened at the meeting, and he had a similar conversation early the following week with Mr. Wick.
- Dr. John Wiesman, former Washington State Secretary of Health, because he was identified as having spoken with Ms. Clark about coverage if Dr. Lutz was removed from his position as the SRHD Local Health Officer before she met with Dr. Lutz on October 29, 2020.
- Lyndia Wilson, Division Director of the SRHD Preventive Public Health Division, because she spoke with both Ms. Clark and Dr. Lutz on October 29, 2020 shortly after Ms. Clark's meeting with Dr. Lutz.
- Sue Winters, SRHD Human Resources ("HR") Director, because of her role in the process by which Dr. Lutz was removed from his position and separated from his employment with SRHD.

The SRHD Board of Health asserted that various exemptions to the OPMA protect information about what occurred in the SRHD Board's executive sessions from disclosure. At the direction of the attorney for the SRHD Board, Mr. Beggs would not answer questions regarding his understanding of the purpose of the meeting with Dr. Lutz because his understanding came from the executive session, and he would not answer questions about the severance package Dr. Lutz was offered because this knowledge came from the executive session. Mr. Wick also would not answer questions on these topics because they had been discussed in executive session.<sup>2</sup> In light of the SRHD attorney's interpretation of the OPMA, the other SRHD Board members were not interviewed since their knowledge also would have been subject to the assertion that it was exempt from disclosure under the OPMA.

### III. SUMMARY OF RELEVANT EVIDENCE

All the information the witnesses provided and all the records that were obtained during this preliminary investigation were considered in drafting this Report even if they are not specifically referenced in this

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<sup>2</sup> An opinion from the Attorney General, AGO 2017 No. 5, states, in part: "**1. Are the members of the governing body of a public agency prohibited by the Open Public Meetings Act from disclosing information shared during executive sessions that are properly called under the Open Public Meetings Act? Brief Answer:** Yes. Participants in an executive session have a duty under the OPMA to hold in confidence information that they obtain in the course of a properly convened executive session, but only if the information at issue is within the scope of the statutorily authorized purpose for which the executive session was called." (emphasis added). The opinion is online at <https://www.atg.wa.gov/ago-opinions/whether-information-learned-executive-session-confidential>.

Report. This Summary of Relevant Evidence summarizes the most salient parts of the evidence obtained in the preliminary investigation to illustrate the basis for the findings and recommendations, but it does not contain all the evidence obtained due to its volume.

Evidence regarding Dr. Lutz's work performance and conduct prior to October 29, 2020 was reviewed to assist in determining the purpose of Ms. Clark's meeting with Dr. Lutz on October 29, 2020. However, the reasons for Dr. Lutz's removal and the termination of his employment are not analyzed in this Report because they are beyond the scope of this preliminary investigation.

#### **A. October 29, 2020**

##### **1. Before the SRHD Board Meeting**

Dr. Wiesman, who at the time was the Secretary of Health for the Washington State Board of Health, stated in his investigation interview that Ms. Clark called him and gave him a heads-up there would be a meeting with the SRHD Board, and she expected Dr. Lutz to either get a clear performance improvement plan or he'd be terminated.<sup>3</sup> Dr. Wiesman stated that he told her, " thanks," and that was it. His best recollection is she said there's going to be this meeting with the Board and, out of that meeting, one of these two things is going to happen. Dr. Wiesman's clear understanding was that it was an engagement with the SRHD Board and some clear action would be taken by that group, somehow. It didn't cross his mind to talk about statutes, so he can't speak to what process was or wasn't used. He had no conversations with anyone else on the SRHD Board or in charge about Dr. Lutz's departure, just with Ms. Clark. Dr. Wiesman's sense on the timeline was that it would happen that day; they'd either put Dr. Lutz on a clear, accelerated performance improvement plan, or terminate him. Or a decision would be made to terminate him – whether they would carry it out that day or not, he didn't know, but there was an intent to make decisions that day.

##### **2. At the SRHD BOH Meeting**

The SRHD Board held its regular meeting on October 29, 2020. The meeting minutes state, in part:<sup>4</sup>

#### **EXECUTIVE SESSION**

The Board adjourned at 12: 35 p.m. for 30 minutes for an executive session pursuant to RCW 42.30.110(1)(i)<sup>5</sup> and RCW 42.30.110(1)(g).<sup>6</sup> At 1:05 p.m., the BOH Chair requested

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<sup>3</sup> Ms. Clark had prepared a draft performance improvement plan and circulated it to Ben Wick and Mary Kuney on June 23, 2020 and updated it on June 25, 2020, but it was never finalized or provided to Dr. Lutz. See email from Ms. Clark to Mr. Wick and Ms. Kuney dated June 23, 2020, Subject: "Confidential – Perf Eval" and email from Ms. Clark to Mr. Wick and Ms. Kuney dated June 25, 2020, Subject: "Confidential: 20200625 BLutz Letter – Wick." The City of Spokane Valley withheld production of the performance improvement plan on the grounds that it was a draft that was never finalized or provided to the employee. Doc 2377071/Confidential-Perf Eval-REDACTED.pdf and Doc 2377071/Confidential: 20200625 BLutz Letter – Wick REDACTED.pdf.

<sup>4</sup> Online at <https://srhd.org/media/documents/MinutesBOH20201029F-signed.pdf>. Doc 2340341/2.

<sup>5</sup> RCW 42.30.110(1)(i) includes certain discussions with legal counsel.

<sup>6</sup> RCW 42.30.110(1)(g) includes reviewing the performance of a public employee. It also states: "when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public."

an extension of the executive session for 20 minutes. At 1:29 p.m., the BOH Chair requested an extension of the executive session for an additional 20 minutes. At 1:50 p.m., the BOH Chair requested an extension of the executive session for an additional 10 minutes.

#### **MEETING RECONVENED**

The meeting reconvened at 2:00 p.m. No action was taken.

The SRHD BOH's activities during Executive Session are not included in the minutes and were not made available to the public because the OPMA allows agencies to exclude the public from executive sessions held during a regular or special meeting if the executive session is for one of the purposes listed in the statute. See RCW 42.30.110. However, some information about the executive session that was held on October 29, 2020 was provided in the interviews conducted for this investigation.

In his interview, Mr. Beggs stated that he expected Ms. Clark to meet with Dr. Lutz after the October 29, 2020 SRHD Board of Health meeting. When Mr. Beggs was asked for his understanding of the purpose of Ms. Clark having a meeting with Dr. Lutz on October 29, 2020, Ms. Yakely (the attorney representing the SRHD Board in this investigation) stated that he was not to answer that because his understanding came from the executive session. When Mr. Beggs was asked if he expected Ms. Clark to give Dr. Lutz a severance agreement, Ms. Yakely stated that if his knowledge is from an executive session, he can't answer the question. After taking a break to talk to Ms. Yakely, Mr. Beggs stated that he can't answer a question regarding any knowledge about a potential severance agreement based on executive session privilege. When Mr. Beggs was asked if the SRHD Board approved the severance agreement, Ms. Yakely instructed Mr. Beggs not to answer. Mr. Beggs stated that at no time has he ever been aware of the District approving any severance agreement. When Mr. Beggs was asked, did the Board authorize, agree, or direct removing Dr. Lutz from his position on the 29th of October, Ms. Yakely instructed him not to answer. Mr. Beggs stated that he released a statement that at no time to his knowledge did the Board ever authorize Dr. Lutz's removal on October 29.

When Mr. Wick was asked in his interview if he saw the severance agreement before it was given to Dr. Lutz, he responded that it was executive session and/or attorney-client privilege. He also stated he couldn't answer that question. When Mr. Wick was asked if the SRHD board approved the severance agreement, he stated he's not sure he can answer that. When asked whether that was because he didn't know or because of attorney-client privilege or because it was discussed in executive session, he stated because it was discussed in executive session.

In her interview, Ms. Clark stated that the SRHD BOH had not approved the separation agreement she gave to Dr. Lutz. She stated that she still had to get it approved. When asked if the board reviewed it before she met with Dr. Lutz on October 29, 2020, she stated no, not that she recalls. When asked if the SRHD board authorized her to remove Dr. Lutz from his position as the Local Health Officer on October 29, 2020, Ms. Clark stated no. Ms. Clark stated that before she met with Dr. Lutz on October 29, 2020, her understanding about her authority to remove him from his position as the SRHD Local Health Officer was that she's the leader and administrator of the Health District and all employees report to her. Ms. Clark stated that per the bylaws, if she wants to hire or terminate a Health Officer, she has to have the SRHD BOH approve that decision. When asked if that meant approve before or after, she stated that she

would have to reread the bylaws, but how she remembers it is that she would make a recommendation to them.

Per the minutes, the SRHD Board reconvened after the executive session. The public portion of the meeting included a Health Officer Report by Dr. Lutz.<sup>7</sup> The minutes do not reflect any action being taken with respect to Dr. Lutz's position as the Local Health Officer.

***3. Ms. Clark's and Mr. Wick's October 29, 2020 Meeting with Dr. Lutz***

The information summarized below is from interviews of Dr. Lutz, Ms. Clark, and Mr. Wick, as they were present for the meeting, and from interviews with Mr. Beggs and Ms. Wilson because they were identified as having spoken with both Ms. Clark and Dr. Lutz after the meeting ended.

***i. Information from the Interview of Dr. Lutz***

After the October 29, 2020 SRHD BOH meeting, Ms. Clark and SRHD Board Chair Ben Wick met with Dr. Lutz in Ms. Clark's office. Dr. Lutz stated that he did not know Mr. Wick would be present for his meeting with Ms. Clark. Dr. Lutz stated that before the meeting, neither Ms. Clark nor the SRHD Board of Health had said or done anything that would cause him to believe they intended to remove him from his position as Health Officer. To summarize, Dr. Lutz described the meeting with Ms. Clark and Mr. Wick as follows:

Ms. Clark was at her desk and Mayor Wick was at one end of the conference table and Dr. Lutz was at the other end. There were initial greetings and then Ms. Clark made a comment about the humanitarian award Dr. Lutz had received the day before and then referenced that in her opinion, homelessness was not a priority of the Public Health Officer. He told her he believed contrary to that, that he had a responsibility to the whole population, including those that are homeless. Then she discussed other things that she found fault with and said, "You're terminated, effective immediately." It took him by surprise, and he tried to respond. She said, "Effective immediately." She said, "Here's a severance package" and he said that he would take it to read it. She said that it needed to be on her desk at 4:00 p.m. on Friday. She said, "You need to leave all your office items here," referring to his key and computer and cell phone and badges, and that he would have to contact HR to get the rest of his belongings, to get his office cleared out.

At that point, Mayor Wick escorted Dr. Lutz back to his office. Dr. Lutz asked to say goodbye to his administrative assistant, which Mayor Wick allowed him to do, then they escorted him downstairs and out of the building. The only thing he left with was a severance package.

When asked, did Ms. Clark seem to have her mind made up or was she assessing what he said, Dr. Lutz stated it was apparent the decision was a fait accompli, and that this was sort of perfunctory. He stated that he tried to respond to the accusations, but it didn't really make a difference. He stated that Mayor Wick made no objections and did not offer any other comments.

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<sup>7</sup> See SRHD BOH minutes, online at <https://srhd.org/media/documents/MinutesBOH20201029F-signed.pdf>. Doc 2340341/3.

Dr. Lutz stated that neither Ms. Clark nor Mayor Wick said anything about a performance improvement plan or something similar. He stated that Ms. Clark had the severance package on her desk in a folder and she said, "Here's a severance package." He is not sure if she said what it provided. She attempted to bring it to him to review, and he said, "I'm not going to review it here, I'll take it with me." She did not say what would happen if it wasn't back on her desk by 4:00 tomorrow. Just, "Here's a severance package. I need it back on my desk by 4:00 tomorrow."

Dr. Lutz stated that neither Ms. Clark nor Mr. Wick said anything about him being on administrative leave. Dr. Lutz stated that neither Ms. Clark nor Mr. Wick said anything about the SRHD BOH's role as it related to a separation from employment.

When asked if there was any way he could have performed SRHD Health Officer duties after the meeting ended, Dr. Lutz stated he didn't need the computer to do his job, but he had been told that he was terminated effective immediately, so it didn't seem he had any capacity to maintain that role. He stated that he was not able to access SRHD email or its offices after the October 29, 2020 meeting. He had to arrange to pick up his possessions through HR. Dr. Lutz stated that at the time the October 29, 2020 meeting ended, it seemed very clear that he had been terminated effective immediately. He stated that it did not seem there was any room for discussion. Given that the Mr. Wick was there as the Chair of the Board, Dr. Lutz left there saying that his job was finished.

***ii. Information from the Interview of Ms. Clark***

Ms. Clark stated that the purpose of her meeting with Dr. Lutz on October 29, 2020 was to meet with Dr. Lutz along with Mr. Wick to discuss performance issues. Ms. Clark doesn't recall if she had a corrective action plan ready to give to Dr. Lutz at the meeting on October 29, 2020. She stated that she knew what she wanted to talk to him about. She stated that she did have a severance agreement ready to give to Dr. Lutz at the meeting. She stated she doesn't recall when it was drafted. The agreement came from their legal counsel.

Before the meeting on October 29, 2020, she told Mr. Wick the performance issues she was going to talk to Dr. Lutz about. When asked if she talked to Mr. Wick about what would happen if Dr. Lutz didn't give the answers she wanted about his performance, Ms. Clark stated that she doesn't recall the specifics, she just knows that when Dr. Lutz came to meet with her and Mr. Wick in her office, she was going to talk about performance issues.

To summarize, Ms. Clark described the meeting with Dr. Lutz and Mr. Wick as follows:

Ms. Clark stated that she started going through the performance issues with Dr. Lutz, and he either would not speak or kept repeating, "I stand by my actions." She asked Dr. Lutz to resign and to let her know by 4:00 on October 30 if he would resign. She stated that he didn't really respond. She stated that she gave him an opportunity to respond, but he was just sitting there. When asked if she said anything about terminating his position, she stated that she told him that if he didn't resign, she would go forward and request approval of termination.

Ms. Clark stated that she doesn't think she said anything that would cause Dr. Lutz to believe he was terminated in the meeting. Ms. Clark stated that Dr. Lutz, as the health

officer and as a board member, should know that she doesn't have that authority because it's in the bylaws that she would have to get it approved.

Ms. Clark stated that she took Dr. Lutz's SRHD identification, keys, cellphone, and laptop at the end of the October 29, 2020 meeting with him. Ms. Clark stated that at the end of the meeting, she gave him a draft of a separation agreement so he could see what she'd take to the board. She stated that he was to let her know if he chose to resign by 4:00 the next day. There was a timeline in the separation agreement for him to get it back to her.

When Ms. Clark was asked if she removed Dr. Lutz from his position as SRHD health officer on October 29, 2020, she stated no. She stated that she asked him to resign and let her know by 4:00 p.m. on October 30.

Ms. Clark stated that she talked to Mr. Beggs on the night of October 29th or 30th. She does not recall the specifics of the conversation, but she's pretty sure, as he's an attorney, she explained to him that when she met with Dr. Lutz, like with negotiating, they were too far apart to come to any understanding related to performance issues. When asked, did Mr. Beggs express any surprise or concern about how the meeting went, she stated she didn't recall.

***iii. Information from the Interview of Mr. Wick***

Mr. Wick stated that he found out that Dr. Lutz had been removed from his position as SRHD Health Officer when he was in the meeting with Ms. Clark and Dr. Lutz.

To summarize, Mr. Wick described the meeting with Dr. Lutz and Ms. Clark on October 29, 2020 as follows:

Mr. Wick stated that the meeting started out with Ms. Clark talking about performance issues with Dr. Lutz. He can't remember the exact details. There was some discussion about Eastern Washington University. There was some back and forth with Dr. Lutz defending his actions and giving his perspective on it. They went through a couple other issues. It didn't seem to go very well. Then Ms. Clark asked for Dr. Lutz's resignation. When asked how Dr. Lutz responded, Mr. Wick stated that he initially was stunned. Dr. Lutz couldn't believe it was happening and let them know it was his dream job. He said he stood by his actions. There was an offer of a severance package. At first Dr. Lutz didn't want to take the paperwork. Mr. Wick thinks that Dr. Lutz didn't understand that Ms. Clark was trying to hand it to him as opposed to discussing it. He eventually took the paperwork. Then he was asked for his keys and badge and all of that. Mr. Wick stated that he walked Dr. Lutz out after meeting. Mr. Wick stated that Dr. Lutz briefly stopped to talk to his administrative assistant on his way out.

When asked if Ms. Clark said anything along the lines of Dr. Lutz being terminated at this meeting, Mr. Wick said yes, she asked for his resignation and said she'd be seeking his termination. To the best of his knowledge, those were the words she used.

When Mr. Wick was asked whether he or Ms. Clark, during the meeting with Dr. Lutz on the 29th, said anything to Dr. Lutz about what his status was as of the end of the meeting, he stated he believed so. What Dr. Lutz was told about his status was that his resignation was requested and that he was – Mr. Wick remembers it was a suspension, but he can't remember if that was right. Mr. Wick stated that it was a suspension or probation.

***iv. Information from the Interview of Mr. Beggs***

Mr. Beggs stated that he received word that Dr. Lutz had been terminated on the night of October 29, 2020. Mr. Beggs stated that he can't go into details because it was an email from the attorney that he received at 5:40 p.m. As a result of the email, he called Ms. Clark. Mr. Beggs stated that Ms. Clark told him that she had terminated Dr. Lutz at a meeting that afternoon. Mr. Beggs stated that he didn't ask for the circumstances. Mr. Beggs stated that he wanted to be clear what the status was – he asked and Ms. Clark said, "he's been terminated." Mr. Beggs stated that Ms. Clark said that she gave Dr. Lutz the right to convert his termination to resignation in lieu of termination if he gave her notice of that the next day.

When Mr. Beggs was asked if he remembered any other details of the meeting Ms. Clark had with Dr. Lutz, Mr. Beggs stated not that he recalls. She may have spoken a little bit, but she did not provide him with a narrative or details. Mr. Beggs' focus was that he was surprised that they had gone from a corrective action approach to termination, so he wanted to be really clear on what Dr. Lutz's status was. When asked whether he had any communications with Ms. Clark about the purpose of her meeting with Dr. Lutz outside of executive session, he stated no, just the phone call where she explained what happened at that meeting.

When Mr. Beggs was asked whether he expected Ms. Clark to take Dr. Lutz's SRHD identification, keys, cell phone and laptop during the meeting, and for SRHD to disable Dr. Lutz's access to his email and remotely wipe his cell phone on October 29, 2020, Mr. Beggs stated that to his knowledge, the Board never authorized, agreed, or directed any of those activities.

When Mr. Beggs was asked if he is aware of any communications anyone else had with Ms. Clark about her meeting with Dr. Lutz after it occurred, he stated just the information he got from the attorney in an email dated October 29 at 5:40 p.m. entitled "Attorney/Client Privilege" at the top. He stated that he would leave it to the lawyers to figure out if it fits, and that he had a phone call with Attorney Michelle Fossum that evening. Ms. Yakely stated that's privileged. Mr. Beggs stated that he also received a text that evening from Dr. Lutz. It said, "call me." He had received that text before he spoke with Ms. Clark. Mr. Beggs returned the text and spoke briefly with Dr. Lutz, who confirmed the same thing – that Dr. Lutz had been terminated. Mr. Beggs stated that he encouraged Dr. Lutz by acknowledging personally that they were having a tough time, like, "Yeah, this is tough."

Mr. Beggs stated that he had a call with Mr. Wick on Monday or Tuesday the following week to get his recollections about the meeting. He didn't take detailed notes, but his general recollection was that Ms. Clark had notified Dr. Lutz that his employment was terminated. When asked if there was anything else that Mr. Beggs recalls about his conversation with Mr. Wick, Mr. Beggs stated that Mr. Wick explained to Mr. Beggs that he did not have a lot of recall about the details, or who said what and when.

**v. Information from the Interview of Ms. Wilson**

Ms. Wilson stated that she was called into Ms. Clark's office about 5:00 p.m. on October 29, 2020. Mr. Wick was still there when Ms. Wilson got there. Ms. Clark told Ms. Wilson that Ms. Clark decided to let Dr. Lutz go. Ms. Wilson asked why, and Ms. Clark said that she couldn't work with him any longer and that there were trust issues. Ms. Wilson stated that it was her understanding that letting Dr. Lutz go was effective immediately and he was escorted out of the building. Ms. Wilson's understanding of Dr. Lutz's employment status after he left was that he was done.

Ms. Wilson stated that they talked about how to cover his standing orders if he was terminated. Ms. Clark brainstormed some ideas about who to contact to take over. When asked, was he terminated at that point, on October 29th, Ms. Wilson stated that she doesn't know any details beyond that he was let go. It was her assumption since they were brainstorming how to cover his responsibilities. The verbiage that Ms. Clark used was just that she decided to let him go.

Ms. Wilson talked to Dr. Lutz later that day on the 29th. He just said he'd been let go and was told to leave the building, and they just talked about what he felt were the reasons why. She can't recall much more than that. She doesn't remember the details, just that he couldn't get along with Ms. Clark, and there were communication issues between them.

**4. Additional Information related to the events of October 29, 2020**

The Separation Agreement that Ms. Clark gave to Dr. Lutz during the October 29, 2020 meeting stated, in part:<sup>8</sup>

Employee worked for the District in the position of Health Officer. Employee was separated from employment effective October 29, 2020. The parties have agreed to enter into this Agreement to memorialize the terms of Employee's separation from employment.

In consideration of the following mutual covenants and agreements, the parties agree:

1.0 **Separation of Employment.** Employee was separated from employment effective October 29, 2020 ("Separation Date"). ...

3.0 **Release and Discharge.** ...

The claims released and discharged also include, but are not limited to, any ... claims that Employer violated the Public Records Act or Open Public Meetings Act, and/or any claims that either Party acted wrongfully in any way toward the other Party. ...

The copy of the Separation Agreement provided by Ms. Fossum, who is general counsel for SRHD, is a PDF named, "Draft BL Separation Agreement.102520.pdf," which may indicate that it was prepared on October 25, 2020. In an email, Ms. Fossum stated, "This Separation Agreement is the one that was given Dr. Lutz."<sup>9</sup>

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<sup>8</sup> Doc 2343947.

<sup>9</sup> Email from Ms. Fossum to Ms. Sutherland dated January 5, 2020, Subject: "SRHD."

At 5:35 pm on October 29, 2020, Ms. Clark called SRHD Program Manager Todd Miller and requested to begin Dr. Lutz's termination procedure. Mr. Miller's notes state: "Phone call from Amelia at 5:35pm, Request to begin termination procedure on Blutz account. Checklist steps remaining to do: \* Remove scan entry from MFP \* Recover computer, cell phone, other peripherals \* After 30 days steps."<sup>10</sup>

At 5:45 pm on October 29, 2020, Program Manager Todd Miller sent an email to Ms. Clark detailing the steps taken to disable Dr. Lutz's access to SRHD accounts:<sup>11</sup>

Bob's account has been disabled (and password reset to a random sequence).

0365 sign ins blocked (could take up to 60 minutes).

Added you with access to Bob's OneDrive. Link to his OneDrive: [http://my.sharepoint.com/personal/blutz\\_srhdcorg](http://my.sharepoint.com/personal/blutz_srhdcorg)

Turned off external share links from Bob's OneDrive.

Disabled Exchange Activesync.

Disabled OWA and OWA connectivity.

Added your account with Send as and Send on behalf of permissions to Bob's email.

You already had Full Access permissions to Bob's email.

Remote Wipe command sent to Bob's work cell phone.

When Ms. Clark was asked in her investigation interview if she called Todd Miller and requested to begin Dr. Lutz's termination procedure after she met with Dr. Lutz on October 29, 2020, she stated yes. Ms. Clark stated that in her experience, and the precedent at the Health District, when you ask someone to resign or place them on administrative leave, you restrict their access and Mr. Miller is the person at SRHD she'd call to start that process, along with HR. When Ms. Clark was asked if she would request to begin a termination procedure if she was putting someone on administrative leave, she stated that "termination procedure" is what it's called in their system when they remove access from all phones and the building swipe card.

When Ms. Winters was asked whether, when SRHD puts someone on administrative leave, is it part of SRHD's procedure to ask Todd Miller to begin the termination procedure on the employee's account, she stated yes. She stated that they refer to it as the termination procedure because they turn off all computer access, collect their badge, all that kind of thing, and how to reach them by phone. She stated that it is called termination even if someone resigns or is placed on paid administrative leave. She stated that it's just a trigger for them to log out the systems.

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<sup>10</sup> Doc 2343749/34.

<sup>11</sup> Email from Todd Miller to Ms. Clark dated October 29, 2020 at 5:45 PM, Subject: "Disabled Account."

**B. October 30, 2020**

On October 30, 2020 at 7:47 am, Ms. Clark sent an email to "Team SRHD" that stated, in part, as follows:<sup>12</sup>

Team SRHD –

This year we have been through a lot. Through all the difficulties, your resiliency has shown through. While we are still working on the pandemic response and our ongoing, daily public health activities we are faced with another challenge.

Yesterday, October 29 was Bob Lutz's last day at the Health District.

ELT is currently working with our community partners and our Medical Director of Treatment Services, Dr. Mary Bergum to assist us with orders and other duties as needed.

Once we work through additional details related to Health Officer Coverage, I will keep you informed and up to date.

In her investigation interview, Ms. Clark stated that what she meant in the email when she said, "Yesterday, October 29, was Bob Lutz's last day at the health district" was that she had asked him to resign on October 30 and she knew she was going to go forward to request his termination approval before the board, so she needed to send something to the staff so that they knew. She stated that if he didn't resign and the Board didn't agree with her request to terminate him, then she would have had to retract the email. She stated that "Team SRHD" is all employees. She believes there are around 300 recipients.

On October 30, 2020 at 8:54 am, Sue Winters sent an email to Ms. Clark and Ann Pitsnogle that stated, in part, as follows; the yellow highlighting in the email is Ms. Clark's response:<sup>13</sup>

Hi Ann and Amelia,

I know you have a lot going on today. HR has some housekeeping things we need to do with Dr. Lutz leaving.

1. Short-term, who should Katie Dickeson and Taruwe Rilometo report to? **Misty**
2. Did you collect Bob's badge? Yes
3. Bob was issued two keys we need back AAM #51 and NMH2 no #. **I received – Ann has**
4. You will need to collect his cell phone, surface pro and anything else he was issued. **Yes – Already taken care of**

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<sup>12</sup> Email from Ms. Clark to [srhd@srhd.org](mailto:srhd@srhd.org) dated October 30, 2020, Subject: "Important Update." Doc 2331998.

<sup>13</sup> The email chain includes the email from Ms. Winters to Ms. Clark and Ms. Pitsnogle, cc Jaime Gardner, Jill Barrett, and Sue Winters, Subject: "Dr. Lutz"; Ms. Clark's response to Ms. Winters dated October 30, 2020 at 4:16 pm; and Ms. Clark's response to Ms. Winters cc Ms. Pitsnogle dated October 30, 2020 at 7:14 pm. Doc 2377070/access/20201030714.pdf and 2377070/access/20201030843.pdf.

5. HR will begin the termination process in the system. I want to confirm that his last day of pay and employment was yesterday and that he is not eligible for rehire.

In case he contacts one of you here's some general information on benefits:

- His hire date with us was 5/16/2017 so he does not qualify for sick leave payout.
- His medical and dental benefits will continue through November 30, 2020. **Ok**

In her investigation interview, Ms. Winters stated that she probably first became aware that consideration was being given to removing Dr. Lutz from his position as SRHD Local Health Officer when Ms. Clark sent an email to all in the office on October 30th stating that October 29th was his last day. She didn't know if he resigned or was terminated or what, just that he was no longer working here. Ms. Winters stated that the email came out on Friday morning and Ms. Winters works half days on Fridays and every other week she works from home, and she was working from home that morning. After she saw the email, she sent Ms. Clark an email with questions, the last day of pay, did she need to collect his badge or computer, standard things to collect when someone is on administrative leave, resigns, or is terminated. Then she was off work at 11:30.

When Ms. Winters was asked whether Dr. Lutz was serving as SRHD Health Officer after October 29th, she stated that she believes the email said that Mary Bergum was, until they got Dr. Velázquez approved. She had no role in the transferring over of duties Dr. Lutz was handling to the folks who handled them after him.

On October 30, 2020 at 9:53 AM and 12:03 PM, Mr. Miller sent emails to Ms. Clark describing the continuing offboarding process for Dr. Lutz.<sup>14</sup>

On October 30, 2020, Kelli Hawkins issued a News Release that stated, in part, as follows:<sup>15</sup>

#### **Spokane County Board of Health Ask Health Officer to Resign**

**Spokane, Wash.** -Yesterday, the Spokane County Board of Health asked Spokane County Health Officer Dr. Bob Lutz to resign, effective Oct. 30, 2020.

The decision was made during the executive session of the Board's regular monthly meeting. A media availability is scheduled via Zoom at 11 a.m.

In her investigation interview, Ms. Clark stated that she was aware that the press release quoted above was sent. When asked if she had a role in the press release, such as drafting or reviewing or approving, she stated that Kelli Hawkins drafted it. Ms. Clark stated that there was an internal misunderstanding about the verbiage that they corrected in the following press release. When asked if she reviewed the press release before it went out, Ms. Clark stated she doesn't recall. When asked, where did Kelli Hawkins get the verbiage for it, Ms. Clark stated she doesn't recall.

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<sup>14</sup> Email from Todd Miller to Ms. Clark dated October 30, 2020 at 9:53 AM, Subject: "Disabled Account (Continuing our offboarding process)." Doc 2343749/30.

<sup>15</sup> Doc 2343749/52.

Ms. Wilson stated that she did not have any role in the email that Ms. Clark sent on October 30, 2020 to Team SRHD that stated in part, "Yesterday, October 29, was Bob Lutz's last day at the health district." She was just one of the recipients. When Ms. Wilson was asked in her investigation interview whether Dr. Lutz was serving as the Health Officer after October 29, she stated that's what they were trying to sort through, was he still on staff? Ms. Wilson also did not have a role in the press release that was sent out on October 30th by Ms. Hawkins. Ms. Wilson stated that Ms. Clark did that directly with Ms. Hawkins.

In his investigation interview, Mr. Beggs stated that he had some email communications with Ms. Clark about the meeting after she met with Dr. Lutz on October 29, 2020, but it was also directed at their attorney and was entitled "Attorney/Client Communication." It was sent on the following day (October 30, 2020) at 10:34 a.m. He stated that he got at least one reply about one minute later from Ms. Clark, but the District may have decided that it is attorney/client communication. Mr. Beggs stated that he wants to be on the record that the emails that say they are attorney/client privileged aren't necessarily attorney/client privileged just because they say it, or that executive session is privileged based on discussions about it. Ms. Yakely stated that Mr. Beggs doesn't have the ability to waive the privilege.<sup>16</sup>

On October 30, 2020, the SRHD held a press conference regarding Dr. Lutz that began at 11:15 am. In the press conference, the statements made by Ms. Clark included the following (the numbers in bold italics refer to the time stamp on the recording of the press conference):<sup>17</sup>

**12:33**

Reporter: ... So, you guys didn't actually say it, is Dr. Lutz officially resigned?

Ms. Clark: Um, hi. Thank you for that question. Um. The date was ef... effective yesterday.

Off-screen whisperer: I thought it was today.

Reporter: And who is going to replace him?

Ms. Clark: Uh, we are in the process of putting together our recruitment plan uh, to hire another Health Officer. Uh, at this time we do have, um, folks internally who can help cover some of his duties and have also, uh, reached out to the state.

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<sup>16</sup> Email from Breean Beggs to Michelle Fossum and Amelia Clark, cc Ben Wick and Mary Kuney dated October 30, 2020 at 10:34 AM, Subject: "Confidential attorney client communication," Doc 2350790. This email is online at <https://www.kxly.com/emails-show-clark-promised-to-correct-inaccurate-statement-on-lutzs-dismissal-but-she-never-did/> and at <https://www.5newsonline.com/article/news/investigations/lutz-expected-to-be-disciplined-not-fired/293-bde1b51c-3cf0-4f80-80fb-5c4adee61753>. In an email to Ms. Sutherland dated January 6, 2021, Subject "RE: SRHD." Ms. Fossum stated, in part: "KREM did a PRR to Spokane County. Within that response was an email that should have been redacted based on attorney client privilege. ... The Board has not waived the attorney client privilege as to that inadvertent disclosure by the County." However, the email was still posted on the KREM website as of January 12, 2021 and the KXLY website as of January 15, 2021.

<sup>17</sup> Online at <https://www.youtube.com/watch?v=bNd6kWNtQic&t=659s>. The quoted portion of the press conference in this Preliminary Report was prepared by the Investigator's office. No transcript was provided to the Investigator.

**13:45**

Reporter: This is Sam Wohlfeil with the Inlander. Um, can you please clarify, you said effective yesterday, was that effective yesterday that you were asking Dr. Lutz to resign or his actual termination was effective with the Board of Health vote at that time?

Ms. Clark: Um, so again, the Board of Health did not vote on that. Um, it was from a discussion had during the uh, executive session.

Reporter: So is he officially no longer an employee or what is the official status of him today?

Ms. Clark: So again, um, you know this is a personnel issue, so I cannot go into detail.

**14:51**

Reporter: This is Casey Decker from KREM 2 News. I'm sorry did you just say that you can't even tell us whether or not he currently works for SRHD?

Ms. Clark: No, what I, what I asked the question that I heard was, um, if I can give like, if it was a culminating issue. That was the question I was asked.

Reporter: Ok, I heard the reporter from the Inlander ask for clarification on what point did he actually step down, or was he terminated, and, um, I'm, I'm still looking for clarification on that as well.

Ms. Clark: Oh ok, um. My apologies, I thought that you meant from the last question. So, um, yeah it was effective yesterday.

**15:33**

Reporter: Hi this is Sam from the Inlander again. What was effective yesterday?

Ms. Clark: That Dr. Lutz is no longer the Health Officer at the Health District.

Off-camera whisperer: Starting today.

Ms. Clark: ... starting today.

**15:44**

Reporter: This is Arielle with the Spokesman. Was Dr. Lutz asked to resign and he resigned or did you terminate him on a recommendation of the Board?

Ms. Clark: No because this is a personnel issue, I'm not, able to go into that question.

Reporter: So you can't tell us if he was terminated or if he resigned?

Off-camera whisperer: Yes.

Ms. Clark: So, uh, you know at this point, um, under advice of counsel I really can't go into details regarding that.

**22:10**

Reporter: Isn't it procedural? How is that a personnel matter?

Ms. Clark: So, um, the proce... eh, if you're asking about the process I can, I can talk about that. Um, so, our bylaws do indicate that, um, you know in this case so for example of the Health Officer, the Supervisor, who is me, the Administrative Officer, um, I have to um, to seek, uh, the Board's support in this, and um, that is what I did yester... yesterday.

**23:35**

Reporter: Amelia this is Arielle with The Spokesman. When were employees notified of Dr Lutz's either resignation or termination, I'd still like some clarity on that. When were employees notified of that and when was the executive team of the Health District notified of that?

Ms. Clark: The executive team was notified yesterday evening, um, and then this morning I notified uh, staff. I did, um, and I sent that out prior to 8 AM.

Reporter: So were staff told that Dr. Lutz resigned or that he was terminated?

Ms. Clark: Well I think um, you, you have a copy of the email that staff have sent to you, of all my communication.

**26:28**

Reporter: Uh, so from my understanding, to remove him from his role there would have had to been a vote taken place by the Board in a public session, not executive. Is that wrong?

Ms. Clark: I'm going to have Ben Wick, um, assist with that.

Mayor Wick: Um, our, our bylaws actually say that it, um, if the Board of Health has to, um, um, app... approve or concur with the, the executive director or Administrative Officer's decision.

Reporter: So the board and the administrator Amelia Clark all approved the, resignation of Dr. Bob Lutz?

Ms. Clark: Yes, I you know I took my action um, yesterday with the full support of the Board.<sup>18</sup>

**27:20**

Reporter: And so they did this, sorry this is Rebecca with The Spokesman again, so this decision which is an action, did happen in a meeting that was not open to the public, so an executive session?

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<sup>18</sup> Some second-hand and third-hand communications regarding what took place during the executive session were obtained during the investigation, but they have not been relied on in this report due to the inability to effectively question those who were present about the accuracy of the texts in light of the executive session exemption to the OPMA. See, e.g., texts with the heading "Fri Oct 30, 5:11 PM" attached to an email from Mr. Beggs to Hannahlee Allers dated January 1, 2021, Subject: "Screenshot 2021-01-01 at 6.59.41 PM." Doc 2400135.

Ms. Clark: No, no. During the executive session I brought forth my concerns, and again, like as, uh, Chair Wick was si... stating um, I don't, it doesn't take a vote in this situation.

After Ms. Clark made the above statements, SRHD Public Information Officer ("PIO") Kelli Hawkins made statements at the end of the press conference that included the following:

**29:47**

Reporter: Several people still have questions... [Broadcaster starts talking over end of conference.]

**31:54**

Ms. Hawkins: That has not happened at this time.

Reporter: Is that going to happen if he doesn't resign?

Ms. Hawkins: That is future decisions to be made and also something that needs to be discussed within personnel.

**32:10**

Reporter: Ok, if he is terminated, is that an action that you think has to happen in public?

Ms. Hawkins: I cannot discuss that at this time. I am sorry you guys, I just if, please if, please send me your questions, I'm...

Reporter: Kelli, this... nobody understands what's happened. I, I don't mean to speak for everybody but...

Ms. Hawkins: I unders...

Reporter: ... he was asked to resign, we don't know if he resigned. We don't know if he's terminated, but we don't have a Health Officer. This is public information! This is basic!

Ms. Hawkins: Yes, and so we're explaining where we are at right now and we will make sure you are updated as soon as we have more information.

Reporter: Is that later today? What does that mean?

Ms. Hawkins: Thank you, I have to hang up the press conference right now you guys.

Reporter: What time can we expect this?

Reporter: Yeah, will you have another press conference later today?

Ms. Hawkins: I will, let you know as soon as I know more. Thank you.

During the press conference, Mr. Beggs had the following text exchange with John Sklut:<sup>19</sup>

[Mr. Sklut]: ... On behalf of Gonzaga University I would like to share some thoughts on our positive working relationship with Dr. Bob Lutz ...

{Mr. Beggs}: ... I am listening to the press conference right now and they are incorrectly stating that it was the health board who made the decision. I am a big supporter of Dr. Lutz's work and will keep you posted on how best for you to share your university's response once I know more.

On October 30, 2020, Mr. Beggs had the following exchange of texts with Lisa Gardner, the City of Spokane Communications Director:<sup>20</sup>

[Ms. Gardner] Reading the statement now. For clarification: was Dr. Lutz asked to resign or terminated?

[Mr. Beggs] They were a little bit vague about that but essentially it was a termination. Because if he didn't resign he would be terminated and they confirmed today that his last day of work was yesterday even though they gave him until today to take the resignation offer, I just sent you back the final.

[Mr. Beggs] Let me know when you have distributed it and I will start answering calls

On October 30, 2020, Mr. Beggs released a statement through Ms. Gardner that included the following:<sup>21</sup>

Spokane—City Council President Breean Beggs has issued the following statement in his personal capacity as a response to the announcement today from Spokane Regional Health District:

"Yesterday evening I received the unexpected news that the Spokane County Public Health Officer had been terminated from his position at the Spokane County Health District.

The Spokane County Health District By-Laws provide at Article IV, Section 3 that: "The Board of Health shall approve the appointment and termination of a District Health Officer." (emphasis added.) [sic] To my knowledge, the Spokane County Health District Board has not taken any action to approve the termination of Dr. Lutz. In order to do so, the Board would have to vote at a meeting that was properly noticed and open to the public, subject to the Governor's orders on open public meetings.

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<sup>19</sup> Texts with the heading "Fri Oct 30, 11:18 AM" attached to an email from Mr. Beggs to Hannahlee Allers dated January 1, 2021, Subject: "Screenshot 2021-01-01 at 9.05.28 PM." Doc 2400173. Mr. Beggs made similar statements in at least one other text. See texts with the heading "Fri Oct 30, 11:05 AM" attached to an email from Mr. Beggs to Hannahlee Allers dated January 1, 2021, Subject: "Screenshot 2021-01-01 at 9.06.36 PM." Doc 2400174.

<sup>20</sup> Texts with the heading "Fri Oct 30, 5:33 PM" attached to an email from Mr. Beggs to Hannahlee Allers dated January 1, 2021, Subject: "Screenshot 2021-01-01 at 8.56.58 PM." Doc 2400168.

<sup>21</sup> Email from Breean Beggs to Hannahlee Ahlers dated October 30, 2020 at 7:03 PM, Subject: "FW: CITY COUNCIL PRESIDENT RESPONDS TO SPOKANE REGIONAL HEALTH DISTRICT ANNOUNCEMENT" produced by the City of Spokane in response to a Public Records Act ("PRA") request.

Much of what I know about this situation was derived from an executive session meeting of the Board yesterday, and by law, I am not authorized to reveal that information absent a waiver of confidentiality. I look forward to the required public board meeting when I can address the merits of the situation as I see it from my perspective and on behalf of the City of Spokane which I represent on the Health Board.

I have greatly appreciated the leadership and the work of the entire staff of the Health District, including Dr. Lutz, in supporting Spokane through this pandemic. We would be in a much worse situation without their work, and I understand the deep community concern at this turn of events. I join those requesting prompt answers to how the District will fill the duties of those unique tasks granted only to an authorized local public health officer.

My request to the public is that they presume the same good intentions I do of all those working at the Health District. I commit to following our by-laws and the Open Public Meetings Act, and working hard to restore confidence in the organization.”

### **C. October 31, 2020**

On October 31, 2020, Ms. Hawkins sent out a press release that stated in part as follows:<sup>22</sup>

**Spokane, Wash.** – The Spokane Regional Health District (SRHD) provided further information and clarification regarding Spokane County Health Officer Dr. Bob Lutz.

#### **General Comments:**

SRHD acknowledges that this is difficult timing for such a transition. Administrator Amelia Clark would not have sought the employment separation of Dr. Lutz during the COVID 19 pandemic if other viable options were available. Administrator Clark determined that the performance issues were such that they needed to be addressed immediately for the benefit of SRHD and the community.

#### **Reporting Structure:**

The SRHD Bylaws provide that the Health Officer reports to the Administrator. The Bylaws further provide that “[t]he Board of Health shall approve the appointment and termination of a District Health Officer.”

#### **Events:**

- Oct. 29 Regular Board of Health meeting - During the meeting, the Board went into executive session. No decisions were made or votes taken by the Board during the executive session. SRHD apologizes for prior reports that implied that a vote had been taken during executive session and for the incomplete information provided at Friday’s press conference.
- Oct. 29 – Subsequent to the board meeting, Administrator Clark met with Dr. Bob Lutz. SRHD Board Chair Ben Wick attended the meeting as a witness. Administrator Clark told Dr. Lutz of her decision and offered to accept his resignation as Health Officer or his employment would be terminated. Dr. Lutz

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<sup>22</sup> Email from SRHD-PIO dated October 31, 2020, Subject: “SRHD Provides Further Information Regarding Spokane County Health Officer.” Doc 2332000.

was given until 4:00 pm on Oct. 30 to submit his resignation, but he did not do so. SRHD does not comment on the reasons for the separation of employment other than during the hearing before the board absent written consent of the affected employee.

**Future Events:**

- Consistent with the SRHD Bylaws and Washington State law, the SRHD Board of Health will schedule a special board meeting via videoconference to determine whether to approve Administrator Clark's request to terminate Dr. Lutz. Both Administrator Clark and Dr. Lutz will be provided an opportunity to address the Board prior to a vote. The vote will occur in open session. This meeting will be scheduled as soon as possible while also providing at least twenty-four hour public notice prior to the meeting as required by law. Consistent with SRHD's COVID processes, the public notice will include information on how the public can provide written comment to the Board prior to the meeting.
- If the Board approves Dr. Lutz's termination, the Board will then address whether to approve Administrator Clark's recommendation that Dr. Mary Bergum, Medical Director for SRHD's Treatment Services Division, serve as Interim Health Officer. Dr. Bergum is a licensed medical physician with 16 years of experience and has expressed a willingness to serve as Interim Health Officer if approved. She will provide support to the epidemiology team and COVID-19 response efforts including guidance recommendations to the community. SRHD will continue to work with Washington State DOH on COVID-19 guidance appropriate for Spokane County's phase.
- The SRHD COVID response team, including the multiple employees working in epidemiology, will continue to be focused on protecting our community by implementing the guidance issued by State Department of Health and advocating for Spokane County on issues related to the pandemic as they have since the pandemic began. In addition, Administrator Clark has already confirmed continued assistance from the Washington State Department of Health, as needed. ...

On October 31, 2020, Dr. Lutz released the following statement to media outlets:<sup>23</sup>

In light of the recent events surrounding my employment with the Spokane Regional Health District, I have hired attorney Bryce Wilcox from Lee & Hayes. To be clear, I have not resigned. I maintain a strong desire to continue working to promote the health and safety of the citizens of Spokane County and this region. The manner, timing, and motivation underlying the request I resign is troubling, and I have hired Mr. Wilcox to assist me in pursuing all available legal remedies should the SRHD's Board decide to terminate my employment. Like everyone else, I am now in limbo and am awaiting word

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<sup>23</sup> See, e.g., email from Mr. Wilcox to Helen Smith from KREM 2 News dated October 31, 2020, Subject: "Statement from Dr. Bob Lutz on his employment at the health district." Doc 2346562. This statement is online at various news outlets; see, e.g., <https://www.5newsonline.com/article/news/health/coronavirus/timeline-dr-lutz-firing-spokane-health-officer/293-9a4d0856-d5be-4b3d-ac8b-f4eab7b0d22b>.

from the Board regarding my employment status. Further information will be forthcoming after I hear from the Board.

On October 31, 2020, Mr. Beggs sent an email to Hannahlee Ahlers that stated, in part, as follows:<sup>24</sup>

I share your interest in this very concerning development in the middle of a pandemic response. Given the potential for litigation and the requests by the Health District attorneys, I am not commenting further than the statement I issued Friday evening which I have copied below. Please continue to express your desire for the best public health possible, including independent medical opinions and statements from public health professionals. I look forward to commenting more specifically at the upcoming public meeting that the Health District Board will be having on this topic.

On October 31, 2020, Mr. Beggs also responded to a text by stating as follows:<sup>25</sup> "I issued a written statement last evening which should be on Facebook right now. I could probably talk more by phone later today. As usual, it is all more complicated than we can talk about but it appears the proper procedures were followed by opinion. It turns out that understate [sic] law there Hass [sic] to be public notice and a hearing to answer exactly the questions that the public is asking right now."

#### **D. November 1, 2020**

On November 1, 2020, SRHD Board member Kevin Freeman emailed a statement to the Small Cities Mayors, Administrative Officer, Health Officer, and members of the media.<sup>26</sup> The statement read, in part, as follows:

I sincerely apologize for muddled communications, including a press conference that answered no questions regarding the request for Dr. Lutz's resignation and subsequence announced termination. It was the responsibility of the Board of Health to ensure clear communication to our community, and we as Board did not do this. I do not blame SRHD staff for this confusion.

I have received hundreds of emails from citizens, institutions, and agencies requesting clarity and transparency in this matter. Because this is a personnel issue, legal requirements typically require confidentiality. The SRHD and we as a Board have erred on

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<sup>24</sup> Email from Breean Beggs to Hannahlee Ahlers dated October 31, 2020, Subject: "statement" produced by the City of Spokane in response to a PRA request.

<sup>25</sup> Text to "Andrew B" with the heading "Sat Oct 31, 9:52 PM" attached to an email from Mr. Beggs to Hannahlee Allers dated January 1, 2021, Subject: "Screenshot 2021-01-01 at 8.47.50 PM." Doc 2400158. Mr. Beggs also sent text to others stating that "There was never a board vote nor would we be allowed to vote during executive session." Text to Andrew Billig, Adam McDaniel, Marcus Ricelli, and Timm Ormsby (date not included) attached to an email from Mr. Beggs to Hannahlee Allers dated January 1, 2021, Subject: "Screenshot 2021-01-01 at 8.52.54 PM." Doc 2400164.

<sup>26</sup> Email from Kevin Freeman to Mary Kunej, Josh Kearns, Al French, Chuck Hafner, Andrea Frostad, jkinleynd, Ben Wick, Linda Thompson, kstratton, Betsy Wilkerson, and Breean Beggs, cc Michelle Fossum dated November 1, 2021, Subject: "Official Statement from BOH Small Cities Representative, from CD provided by the City of Spokane Valley."

the side of caution in dealing with this matter, thus the lack of specific information at this time. ...

**What's next.**

There will be a special meeting of the Board where the SRHD Administrative Officer will present her request to terminate Dr. Lutz from his position as Health Officer. Dr. Lutz will have an opportunity to respond, and the Board will decide to approve or deny her request. The meeting will occur in the very near future, at a date and time yet to be determined by the Board. Due to COVID-19 social distancing guidelines, that will be a virtual meeting. Public notice will be provided prior to the meeting, and the public will be able to view the meeting as it happens.

If the Administrative Officer presents sufficient information during the hearing showing that Dr. Lutz's continued employment as Health Officer is detrimental to the Spokane Regional Health District, I will vote for his termination. I do not make this statement lightly. ...

**E. November 2, 2020**

On November 2, 2020, Mr. Beggs emailed a statement to City of Spokane Communications Director Lisa Gardner and others that he described as ready to publish. It stated, in part, as follows:<sup>27</sup>

"I am grateful that the Spokane Regional Health District issued a statement on Saturday correcting the inaccurate information from its Friday media release and press conference. Despite several requests, the District has still not clarified who is currently acting as Spokane's Local Health Officer.

1. Pursuant to RCW 70.05.050: "...the local health officer shall not be removed until after notice is given and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal." Spokane's by-laws provide that the local health officer may only be appointed or removed by formal action by the Board of Health. Many read that to mean that Dr. Lutz remains employed by the SRHD as Spokane's Local Health Officer, and if so, I hope that he will continue acting as the Health Officer until such time as the Board considers and makes a formal decision on the issue of removal.

2. RCW 70.05.120 sets out serious consequences for any violation of the law set out above. See a copy of those consequences pasted in below. Spokane's Board of Health needs to investigate and remedy any potential violations of state law that interfered with our local health officer's performance of his duties over the past few days and in the future until there is official board action on the issue of removal.

3. The Board of Health appears to be the exclusive appointing and removal authority for both the Health Administrator and the Health Officer. A few years ago, the Board

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<sup>27</sup> Email from Breean Beggs to Lisa Gardner, Brian McClatchey, and Hannahlee Ahlers dated November 2, 2020 at 12:55 PM, Subject: "RE: Health Statement" and attachment thereto, produced by the City of Spokane in response to a PRA request.

changed its governance to have the Health Officer take direction from and report to the Health Administrator. If they disagree with each other on either's performance that would undermine the District or public health, the Board is the final authority. I share the requests of the community to have that open public meeting as soon as possible, where each can present their version of events and opinions so that the Board can restore order and credibility at the Health District.

4. In the future I believe it will be helpful if the Board creates a more specific description of the lanes of independent authority for both the Health Administrator and the Health Officer, as well as an alternative method of dispute resolution if they see things differently from each other."

On November 2, 2020, the City of Spokane provided a press release "In response to Friday's announcement by Spokane Regional Health District." It included a statement from SRHD Board Member Karen Stratton that stated, in part: "As a member of the board, I can confirm that no formal vote was taken on any matter. In fact, any vote would have violated state law, as the board was in executive session, and formal actions or votes are not permitted in executive session under the Open Meetings Act."<sup>28</sup>

On November 2, 2020, Dr. Lutz, through his lawyer, Bryce Wilcox, released the following statement to media outlets:<sup>29</sup>

I understand from media reports that a SRHD Board meeting will be scheduled to address the status of my employment, although I have not been personally advised of such. I intended to await that meeting before commenting further, as I wanted to address the issues directly with the Board. However, recent statements from the SRHD contained inaccurate and misleading information concerning my separation from employment that need to be clarified. To be clear, Amelia Clark fired me last Thursday. She told me in a meeting late Thursday afternoon that I was terminated "effective immediately," requested my SRHD identification, keys, cell phone and laptop, and told me I could contact HR to retrieve my personal items. She also provided me with a written severance offer, stating that I had until the next day (Friday) at 4:00 p.m. to resign and sign the agreement. The offer of severance required me to waive my claims against the SRHD in exchange for 3-months pay, and a confidentiality agreement preventing me from disclosing the settlement terms. I refused to accept SRHD's severance offer, as I do not think Ms. Clark's actions were justified or lawful. As things stand, I was told I was fired and have been denied access to my office, phone, files, records and my computer since last Thursday. I do not know who is currently acting as the SRHD's public health officer.

After Dr. Lutz's statement was released, Mr. Freeman texted Mr. Wick as follows: "Good evening Ben, Kevin Freeman here. Is the attached statement from Dr. Lutz true? At the meeting, did Amelia fire him

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<sup>28</sup> Email from Karen Stratton to Kyle Overbust dated November 2, 2020, Subject: "Fwd: City Council Members Responds to SHRD Announcement," produced by the City of Spokane in response to a PRA request.

<sup>29</sup> Email from Mr. Wilcox to Arielle Dreher, Helen Smith, Maher Kawash, Luke Thoburn, Olivia Messer, Mike Baker, [tedm@inlander.com](mailto:tedm@inlander.com), and [dnadvornick@kpbx.org](mailto:dnadvornick@kpbx.org). Doc 2346565. This statement is online at various news outlets; see, e.g., <https://www.5newsonline.com/article/news/health/coronavirus/timeline-dr-lutz-firing-spokane-health-officer/293-9a4d0856-d5be-4b3d-ac8b-f4eab7b0d22b>.

directly at the meeting, or did she ask him to submit his resignation? If his statement is inaccurate, you need to respond ...” Mr. Wick did not respond.<sup>30</sup>

On November 2, 2020, Ms. Clark called SRHD Human Resources Manager Sue Winters and directed that Dr. Lutz be placed on paid administrative leave, retroactive to October 30, 2020.<sup>31</sup> In her investigation interview, Ms. Winters stated that in the phone call, Ms. Clark said to place Dr. Lutz on administrative leave effective October 30th, until further notice. Ms. Winters stated that she notified the two finance managers to do that in the system because they had to release the code. Ms. Winters stated that she did not have any discussion with Ms. Clark or anyone else about placing Dr. Lutz on administrative leave before November 2. Ms. Winters stated that she was not surprised because she knows there had been some discussions about things that had transpired from a performance standpoint for a couple years, from the prior director, and when Ms. Clark was the administrator. She stated that it is not uncommon for HR to not be involved in discussions at that level. She stated that typically, if there are going to be any issues, or any investigation, she gets directed to put someone on administrative leave. So, when she got the email on Friday (October 30) saying Dr. Lutz was no longer working here on October 29th, then got called to put him on administrative leave on November 2nd, she felt there was more going on that HR was not involved with.

When Ms. Clark was asked in her investigation interview when she placed Dr. Lutz on administrative leave, she stated she doesn't recall, but is pretty sure it was October 30 because she was waiting to see if he was going to resign by 4:00. She stated that she did not tell him she was putting him on paid administrative leave on the October 29 because he had until October 30 at 4:00 to let her know if he was resigning.

When Ms. Clark was asked whether she called Sue Winters on November 2, 2020 and directed that Dr. Lutz be placed on paid administrative leave, retroactive to October 30, 2020, she stated she doesn't recall. She stated that she probably spoke to Sue Winters because she's the HR director. Ms. Clark stated that she didn't recall if she spoke to Sue Winters about putting Dr. Lutz on paid administrative leave before November 2.

When Ms. Clark was asked what Dr. Lutz's status was between October 29 and November 2 when she requested to place him retroactively on paid administrative leave, she stated she placed him on administrative leave on October 30 when she didn't receive a resignation from him. When asked what steps she took to put him on administrative leave on October 30, she stated she called Sue Winters. Ms. Clark stated that she doesn't recall exactly when she called Ms. Winters, but knows she placed Dr. Lutz on administrative leave on October 30. When asked, is it possible that she didn't call Ms. Winters until November 2, Ms. Clark stated she doesn't recall. When Ms. Clark was asked, did she tell Dr. Lutz that he was on paid administrative leave, she stated she believes that legal counsel informed his legal counsel. She does not recall when.

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<sup>30</sup> The text was provided in response to a PRA request to the City of Spokane Valley.

<sup>31</sup> Email from Sue Winters to Kim Kramarz and Paula Maxwell, cc Sue Winters and Amelia Clark dated November 2, 2020 at 3:10:09 pm, Subject: “Paid Administrative Leave.” Doc 2343749/28.

When Ms. Clark was asked, was Dr. Lutz serving as the SRHD Health Officer between October 29, 2020 and November 5, 2020, she stated he was on administrative leave, so she had Health Officer coverage through another physician.

On November 2, 2020 Heather Yakely<sup>32</sup> sent an email to Mr. Wilcox that stated, in part:

To clarify Dr. Lutz [sic] current employment status, the Director considers Dr. Lutz as being placed on paid administrative leave until such time as the Board votes. Notice for that meeting has not yet been issued and we will be providing you with a summary of the allegations prior to the hearing so that you can discuss with your client. We hope to have the meeting scheduled for Thursday this week.

In his investigation interview, Dr. Lutz stated that the first time they heard about administrative leave was the following week. It came up because there was an email sent out to the agency the following day indicating that Dr. Lutz's last day had been Thursday, and it implied he'd resigned. There was a sort of buzz in the community because word got out. Dr. Lutz retained Bryce Wilcox and then put out a statement saying he hadn't resigned. Dr. Lutz first heard about administrative leave the following week, on Monday or Tuesday (the 2<sup>nd</sup> or 3<sup>rd</sup> of November). He believes it was in response to the press releases that Mr. Wilcox initiated.

#### **F. November 3, 2020**

On November 3, 2020, Ms. Clark sent Mr. Wilcox a letter stating, in part, as follows:<sup>33</sup>

As you know, I have asked the Board of Health ("BOH") to approve my decision to terminate your employment as SRHD Health Officer based on the conduct set forth below. Although you report to me as the Administrator, the SRHD BOH Bylaws provide that the Board must approve the decision to terminate the Health Officer.

The Board of Health will hold a public meeting on November 5, 2020 at 3:00 p.m. I will have 30 minutes to present the reasons for my decision to the Board and then you will have 30 minutes to present your response. The Board will then have the opportunity to ask questions of either or both of us. I will not be allowed to ask questions of you or the Board, and you will not be allowed to ask questions of me or the Board. Neither party will be allowed to call witnesses. The Board intends to hear both presentations in open public session. If you would like the Board to consider hearing the facts in executive session, you may request the same in writing no later than 5:00 p.m. on November 4, 2020 and it will be submitted for the Board's consideration.

A summary of the misconduct alleged against you is set forth below. ...

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<sup>32</sup> Email from Ms. Yakely to Mr. Wilcox cc Jaclyn Rouse dated November 2, 2020 at 5:29 pm, Subject: "Bob Lutz/SRHD." Doc 2341114/6.

<sup>33</sup> See Letter from Ms. Clark to Dr. Lutz c/o Mr. Wilcox date November 3, 2020, Re: Statement of Employment Issues. Doc 233192/9.

**G. November 5, 2020**

The agenda for the November 5, 2020 Special Meeting included, among others, the following items:<sup>34</sup>

7. Potential Executive Session – Discuss Complaint or Charge against Public Employee per RCW §42.30.110(1)(f); Review the Performance of a Public Employee per RCW §42.30.110(1)(g) and Legal Advice re Litigation or Potential Litigation per RCW §42.30.110(1)(i)
8. Action Items
  - a. Potential SRHD Board of Health Action Regarding Prior Executive Session – *Mayor Ben Wick, Board of Health Chair*
  - b. Potential SRHD Board of Health Action Regarding Approval of the Termination of Dr. Bob Lutz, Health Officer – *Mayor Ben Wick, Board of Health Chair*
  - c. Potential SRHD Board of Health Action Regarding Approval of the Appointment of an Acting Health Officer – *Mayor Ben Wick, Board of Health Chair*

The minutes from the special meeting of the SRHD Board that took place on November 5, 2020 included a vote to terminate Dr. Lutz’s employment:<sup>35</sup>

**ACTION ITEMS**

Potential SRHD Board of Health Action Regarding Approval of the Termination of Dr. Bob Lutz, Health Officer – Mayor Ben Wick, Chair

**Motion:** *To terminate employment with Dr. Bob Lutz effective immediately.*

**Motion/Second:** *French/Kerns*

**Approved:** *8 Yea/4 Nay (Beggs, Stratton, Wilkerson, Kinley)*

Potential SRHD Board of Health Action Regarding Approval of the Appointment of an Acting Health Officer – Mayor Ben Wick, Chair

**Motion:** *To appoint Dr. Frank Velázquez as interim health officer for Spokane Regional Health District.*

**Motion/Second:** *French/Thompson*

**Approved:** *Unanimously*

**Motion:** *To amend the original motion to end the interim health officer appointment at the next regular Board of Health meeting subject to reauthorization.*

**Motion/Second:** *Beggs/Wilkerson*

**Approved:** *Unanimously*

A recording of the special meeting of the SRHD BOH held on November 5, 2020 (except for the Executive Session) is available online.<sup>36</sup> The recording of the hearing includes the following exchange between Mr.

<sup>34</sup> Attachment to email from SRHD-PIO to undisclosed recipients dated November 3, 2020, Subject: “SRHD Board of Health’s Special Meeting – Nov. 5” provided by the City of Spokane in response to a PRA request.

<sup>35</sup> Online at <https://srhd.org/media/documents/MinutesBOH20201105F-signed.pdf>. Doc 2336260.

<sup>36</sup> See, e.g., <https://www.youtube.com/watch?v=3oXLBUGp46A>.

Beggs and Ms. Clark that is relevant to the issue of whether Dr. Lutz was removed prior to the November 5, 2020 special meeting (the italicized numbers reflect the time stamp on the video recording):

**1:25:25**

Mr. Beggs:<sup>37</sup> Yes. Um, Amelia, I wanted to go to the corrective action plan. So, um, the County, I think, released an email exchange between you and me, um, where I said that I thought that on Thursday after the board meeting the plan, your plan, stated plan was to present a written corrective action plan, um, to Dr. Lutz. And then I think we learned afterwards that, um, you ended his employment. So I'm wondering, what, what happened? Did you talk to somebody else, did something happen at the meeting, how did we not get the corrective action plan and instead got a termination?

Ms. Clark: Sure. Um, so I can address that by saying that I did have a corrective action plan written out that I was going to give to Dr. Lutz last Thursday October 29<sup>th</sup>. When Chair Ben Wick and I sat down and met with him and in, um, our conversation, I felt like the corrective action plan wasn't going to be effective. So, for example, when I discussed with Dr. Lutz my concern that he had sent, um, out emails, uh, to community members about me and my performance, um, he stated, I stand by my actions. And that was what he kept saying over and over. And if I'm, you know, counseling an employee and they're, they keep saying they're standing by their actions, it was my understanding when I, um, sat down with Dr. Lutz on the 29<sup>th</sup> that I would be, I would be able to, uh, do either the corrective action or to explain that I was, um, going to make my request for termination.

Mr. Beggs: Did you share the corrective action plan with him?

Ms. Clark: No. I sat down to in the discussion. I did not.

Mr. Beggs: And did you say that you were only going to request termination or was he terminated, because at the press conference the next day the statement I wrote down was that he no longer works at the Health District. And so I'm just curious about that.

Ms. Clark: Yes. So, I provided Dr. Lutz with, um, the document that um, was a release. It was for him to review, which would outline severance. Um, and that I would, I would be going forward requesting the termination, but felt it was effective that he needed to go ahead and go. Um, as a professional with many years of HR experience, typically after these conversations, um, it's better to look into things like administrative leave or having someone out of the building because it can further, um, create a toxic work environment, and that's where I already felt that we were.

Mr. Beggs: And my question, I just never heard anything in the press releases or on Friday, that you, that it was going to be a request for a termination, it seemed like the termination decision had already been made. Did you actually use that phrase, "I'm going to request the Board to terminate you," or did you say that his job had ended?

Ms. Clark: Um, I don't recall the specifics of that, but I do remember saying that I would be going forward with requesting termination.

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<sup>37</sup> In the transcript prepared by Mark A. Snover, CSR, for Dr. Lutz's attorney, this exchange begins on p. 65 line 24. Doc 2346560.

Mr. Beggs: And then maybe, hopefully close to last, um, as of that point on Thursday evening was he no longer serving as the health officer, as far as the authority to act as the Health Officer?

Ms. Clark: On Thursday?

Mr. Beggs: Yes.

Ms. Clark: Yeah, so, I mean, obviously he was still, um, listed as the health officer. I had checked with, um, the State and I had also made arrangements internally to be working with our medical director from Treatment Services for needing to do the important things like vaccines and, um, other orders that Dr. Lutz has written. Um, and that in the absence of someone actively working as the health officer, my understanding from the State Department of Health was that if there was an issue related to enforcement or needing to regulate something, that I could reach out to them.

Mr. Beggs: I guess my question was, he, Dr. Lutz was no longer acting as the health officer after your meeting with him Thursday. Is that fair to say?

Ms. Clark: Yes. Um, I, I would say that.

Mr. Beggs: Okay. Thanks.

**1:30:07**

When Mr. Beggs was asked in his investigation interview, at what point did the SRHD Board of Health authorize the termination of Dr. Lutz from his position as the Local Health Officer, Mr. Beggs stated he doesn't know the date, but when they had the hearing was the first authorization to his knowledge.

When Mr. Beggs was asked whether Dr. Lutz was serving as the SRHD Health Officer between October 29, 2020 and November 5, 2020, Mr. Beggs stated that his knowledge based on comments by the Health District at the press conference of October 30th, where they said as of the date, he is not an employee of the Health District. That was their statement, and his understanding, from everything he knew, that Dr. Lutz was no longer serving in that capacity, practically and directly, in any functional way.

When Mr. Beggs was asked what Dr. Lutz's status was between October 29, 2020 and November 5, 2020, he stated that from a functional, lay perspective, Dr. Lutz was terminated on October 29<sup>th</sup>. Mr. Beggs' understanding is that Dr. Lutz had the ability to turn that into a resignation by the end of business on the 30th, and Dr. Lutz didn't do that. Mr. Beggs stated that at some point, there was a discussion of administrative leave. Mr. Beggs was not aware of that until the following Monday (November 2, 2020). Mr. Beggs was not aware of the District's communications with Dr. Lutz or his lawyer on that and has never seen any paperwork on that.

When Mr. Beggs was asked when did other people take over any of Dr. Lutz's duties as SRHD Health Officer, he stated his best understanding is that on the afternoon or evening the Board voted to terminate Dr. Lutz, the Board entertained a motion to appoint Dr. Velázquez as Health Officer. His recollection is not of an executive session, but of a public vote. Mr. Beggs is not aware of anyone serving as Health Officer between October 29 and when Dr. Velázquez was appointed by the Board as Interim Health Officer.

When Mr. Wick was asked in his investigation interview at what point did the SRHD Board of Health authorize the termination of Dr. Lutz from his position as the Local Health Officer, he stated that it was at the public meeting. He doesn't remember the date. When asked, was Dr. Lutz removed from his position by Ms. Clark before the board voted to terminate Dr. Lutz on November 5, 2020, Mr. Wick stated that Dr. Lutz wasn't their Health Officer then. When asked what Dr. Lutz's status was between October 29, 2020 and November 5, 2020, he stated he was "underneath a suspension or something similar." When Mr. Wick was asked, when did other people take over any of Dr. Lutz's duties as SRHD Health Officer, Mr. Wick stated that they didn't have a formal Health Officer until they appointed an Interim Health Officer at the Board of Health meeting, but the District does have a team of epidemiologists. When asked, was Dr. Lutz doing any Health Officer duties after the meeting on the 29th, Mr. Wick stated not that he's aware of.

When Dr. Lutz was asked in his investigation interview how his time was recorded for payroll purposes for the October 29th through November 5th time period, Dr. Lutz stated that he learned Ms. Clark ended up doing it for him. He believes that payroll was due that Friday. Dr. Lutz stated that he was unable to complete his time card. Normally, he would do it when payroll is due. He was paid eventually through November 5th, but that came post facto. He got paid by direct deposit, so he doesn't know when it normally comes in, and there was no formal written documentation. Typically, when he'd submit his time card, he'd get notification from Finance that his time card had been accepted and approved, and money would show up in his account.

When Ms. Clark was asked in her investigation interview at what point the Board of Health authorized the termination of Dr. Lutz from his position as Local Health Officer, she stated it was at the special board meeting on November 5th. When asked how, and when, Dr. Lutz's time was recorded for payroll purposes for the October 30th through November 5th time period, she stated it was recorded as paid administrative leave. She stated that Dr. Lutz reports to her so she would approve his timecard, but administrative leave starts the process to be sure it gets inputted into the time system correctly. She stated that she would have to check with Ms. Winters regarding when Dr. Lutz's time would have been entered into the electronic system.

Ms. Winters stated that they had another conversation to start the termination process, and the paid administrative leave went through November 5th. Then there was the official termination process notification that went out to a number of people in HR and payroll that was showing Mr. Lutz was placed paid administrative leave from October 30th through November 5th, and his official last day was November 5th.

#### **H. November 9, 2020**

The following background and summary are from a memo dated November 9, 2020 from Keith Grellner, Chair, to Washington State Board of Health Members, Subject: "Complaint Against Spokane Regional Health District Public Health Administrator:"<sup>38</sup>

#### **Background and Summary:**

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<sup>38</sup> This memo was included in the materials for the state BOH meeting held on November 9, 2020, online at <https://sboh.wa.gov/Meetings/MeetingInformation/2020/November9Online>. Doc 2331890/1.

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. 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 direct members and/or staff to conduct a preliminary investigation.

On November 3, 2020 the Board received two complaints against the Spokane Regional Health District Administrator (SRHD), Amelia Clark. The complaints, one from Ben Stuckart and a second submitted by Maria Howard, PhD and co-signed by an additional 162 individuals, both allege violations of Chapter 70.05 of the Revised Code of Washington (RCW). An additional complaint alleging violations of Chapter 70.05 RCW was received by the Board from Ron Tussey on November 6, 2020.

The complaints specifically allege that the health administrator failed to:

1. Terminate the local health officer in accordance with RCW 70.05.050; “...the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal”.

These allegations are in the context of the termination of the SRHD Health Officer, Dr. Bob Lutz, on October 29, 2020. The complainants claim that Dr. Lutz was removed from his position with neither an opportunity for a public hearing, or a full meeting and vote of the SRHD Board of Health. In his complaint, Mr. Stuckart provides a link to a press release from the SRHD which states no vote was held. The complainants also note the SRHD Board of Health’s by-laws reflect that a local health officer may only be appointed or removed by formal action by the SRHD Board.

The SRHD Board of Health held a special meeting on Thursday, November 5, 2020, the agenda for which included a possible action regarding the approval of the termination of Dr. Bob Lutz, Health Officer. At that time, the SRHD Health Board voted to terminate Dr. Lutz effective immediately.

#### 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 complaints lack sufficient information to support a preliminary investigation and direct staff to notify the complainants of their decision.

Per the minutes of the November 9, 2020 Washington State Board of Health Meeting:<sup>39</sup>

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

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

On November 9, 2020, Michelle Fossum, General Counsel for the SRHD, responded by letter to the notice that the complaints would be investigated.<sup>40</sup> Her letter states, in part, as follows:

I am General Counsel for Spokane Regional Health District. I am writing in response to your email to SRHD Administrator Amelia Clark dated Thursday, November 5, 2020 advising her that the Washington State Board of Health will consider two complaints that she violated RCW 70.05.050 by removing the Health Officer without a hearing of the SRHD BOH.

On November 5, 2020, the Spokane Regional Health District Board of Health held a public meeting during which Administrator Clark advised the Board of her reasons for seeking termination. Dr. Bob Lutz, with the assistance of counsel, was also provided the opportunity to rebut those allegations. The Board asked questions of both the Administrator and the Health Officer, and after deliberation, the Board decided to terminate Dr. Lutz.

Administrator Clark did meet with Dr. Lutz on Thursday, October 29. She gave Dr. Lutz until Friday, October 30 at 4:00 to resign or she would seek his termination. She did take SRHD property from him. Because Dr. Lutz did not resign, he was placed on paid administrative leave pending meeting and decision of the SRHD Board of Health.

#### **I. Additional Documents**

There are other documents and records relevant to the allegations that were also considered as part of this Preliminary Investigation that are not quoted in this Report for the sake of brevity. The documents are briefly described in Appendix 1.

#### **IV. FINDINGS REGARDING RELEVANT STATUTES, RULES, POLICIES, AND PROCEDURES**

Based on the information obtained in this preliminary investigation, the following statutes, rules, policies and procedures are relevant: Chapter 70.05 RCW, particularly RCW 70.05.050 and RCW 70.05.120; Chapter 42.30 RCW, particularly RCW 42.30.080 and RCW 42.30.110; the Bylaws of the Spokane Regional Health District Board of Health (“SRHD Bylaws”); and the Washington State Board of Health Policy & Procedure Draft Policy Number: 2015-001, Subject: Responding to Complaints Against a Local Health

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<sup>39</sup> Online at <https://sboh.wa.gov/Portals/7/Doc/Meetings/2020/11-09/WSBOH-Minutes-2020-11-09-Final.pdf>.

<sup>40</sup> Letter from Michelle Fossum to Michelle Davis, Executive Director Washington State Department of Health [sic] dated November 9, 2020, Re: *Administrator Amelia Clark Spokane Regional Health District*. Doc 2331903.

Officer or Administrative Officer, Approved Date: January 14, 2015 (“BOH Policy”). These documents are summarized in Appendix 2, attached hereto.

## V. PRELIMINARY INVESTIGATION FINDINGS

### A. Burden of Proof and Credibility Determinations

The findings of this preliminary investigation are based on a preponderance of the evidence. Where the statements of witnesses were inconsistent, the findings are based substantially on the credibility of evidence or demeanor of witnesses. The factors used to decide credibility are: the opportunity of the witnesses to observe or know the things they spoke about; their ability to observe accurately; the quality of their memory while speaking; their manner while speaking; any personal interest they might have in the outcome or the issues; any bias or prejudice they may have shown; the reasonableness of their statements in the context of all of the other evidence; and any other factors that affect the evaluation or belief of the witnesses or of their statements. For the sake of brevity, the totality of the evidence relating to credibility, the demeanor of the witnesses, and the details of how each of these factors affected each credibility determination are not included in this Report.

In evaluating these preliminary investigation findings, it should be kept in mind that the lack of a preponderance of evidence 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 that is required to make an affirmative finding that the action or event did occur.

### B. Preliminary Findings Regarding Whether Any Action was Taken to Discharge or Discipline Dr. Lutz during the September 29, 2020 Executive Session

1. RCW 42.30.110(1)(g) states, in part, as follows with respect to the purposes of executive sessions:

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public; ...

2. It is undisputed that SRHD issued a press release on October 30, 2020 that stated, in part: “Yesterday, the Spokane County Board of Health asked Spokane County Health Officer Dr. Bob Lutz to resign, effective Oct. 30, 2020. The decision was made during the executive session of the Board's regular monthly meeting.” In her investigation interview, Ms. Clark stated that she was aware that the press release was sent, but she did not recall if she reviewed it before it went out. Ms. Clark stated that there was an internal misunderstanding about the verbiage that they corrected in the following press release (the October 31st SRHD press release).

3. It is undisputed that in a press conference on October 30, 2020, Ms. Clark made the following statements:

Reporter: This is Sam Wohlfeil with the Inlander. Um, can you please clarify, you said effective yesterday, was that effective yesterday that you were asking Dr. Lutz to resign or his actual termination was effective with the Board of Health vote at that time?

Ms. Clark: Um, so again, the Board of Health did not vote on that. Um, it was from a discussion had during the uh, executive session.

Reporter: So is he officially no longer an employee or what is the official status of him today?

Ms. Clark: So again, um, you know this is a personnel issue, so I cannot go into detail.

4. It is undisputed that in the press conference on October 30, 2020, Ms. Clark made the following statements:

Reporter: Isn't it procedural? How is that a personnel matter?

Ms. Clark: So, um, the proce... eh, if you're asking about the process I can, I can talk about that. Um, so, our bylaws do indicate that, um, you know in this case so for example of the Health Officer, the Supervisor, who is me, the Administrative Officer, um, I have to um, to seek, uh, the Board's support in this, and um, that is what I did yester... yesterday.

5. It is undisputed that in a press conference on October 30, 2020, Ms. Clark made the following statements:

Reporter: Uh, so from my understanding, to remove him from his role there would have had to been a vote taken place by the Board in a public session, not executive. Is that wrong?

Ms. Clark: I'm going to have Ben Wick, um, assist with that.

Mayor Wick: Um, our, our bylaws actually say that it, um, if the Board of Health has to, um, um, app... approve or concur with the, the executive director or administrative officer's decision.

Reporter: So the board and the administrator Amelia Clark all approved the, resignation of Dr. Bob Lutz?

Ms. Clark: Yes, I you know I took my action um, yesterday with the full support of the Board. ...

Reporter: And so they did this, sorry this is Rebecca with The Spokesman again, so this decision which is an action, did happen in a meeting that was not open to the public, so an executive session?

Ms. Clark: No, no. During the executive session I brought forth my concerns, and again, like as, uh, Chair Wick was si... stating um, I don't, it doesn't take a vote in this situation.

6. It is undisputed that on October 30, 2020, Mr. Beggs issued a press release that stated, in part:

Yesterday evening I received the unexpected news that the Spokane County Public Health Officer had been terminated from his position at the Spokane County Health District.

The Spokane County Health District By-Laws provide at Article IV, Section 3 that: “The Board of Health shall approve the appointment and termination of a District Health Officer.” (emphasis added.) [sic] To my knowledge, the Spokane County Health District Board has not taken any action to approve the termination of Dr. Lutz. In order to do so, the Board would have to vote at a meeting that was properly noticed and open to the public, subject to the Governor’s orders on open public meetings.

7. Mr. Beggs’ statement that to his knowledge, the SRHD Board had not taken any action to approve the termination of Dr. Lutz was supported by a press release issued by the SRHD on October 31, 2020 stating, in part, “No decisions were made or votes taken by the Board during the executive session.” It was also supported by a statement from SRHD Board Member Karen Stratton issued by the City of Spokane on November 2, 2020 stating, in part: “As a member of the board, I can confirm that no formal vote was taken on any matter. In fact, any vote would have violated state law, as the board was in executive session, and formal actions or votes are not permitted in executive session under the Open Meetings Act.”
8. In the SRHD BOH hearing held on November 5, 2020, Ms. Clark was asked by Mr. Beggs about “how did we not get the corrective action plan and instead got a termination?” Ms. Clark responded, in part: “Um, so I can address that by saying that I did have a corrective action plan written out that I was going to give to Dr. Lutz last Thursday October 29th ...” However, in her investigation interview, Ms. Clark stated that she didn’t recall if she had a corrective action plan ready to give to Dr. Lutz at the meeting on October 29, 2020. The records that were provided in this investigation establish that Ms. Clark had prepared a draft performance improvement plan and circulated it to Ben Wick and Mary Kuney on June 23, 2020 and updated it on June 25, 2020, but it was never finalized.<sup>41</sup>
9. On the advice of the attorney for SRHD, Ms. Clark and the Board members who were interviewed did not answer certain questions about whether the SRHD Board authorized, agreed, or directed removing Dr. Lutz from his position on the 29th of October. Therefore, these findings are based on a preponderance of the evidence that was available during the investigation, which was limited by the assertions of privilege and confidentiality.<sup>42</sup>

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<sup>41</sup> See email from Ms. Clark to Mr. Wick and Ms. Kuney dated June 23, 2020, Subject: “Confidential – Perf Eval” and email from Ms. Clark to Mr. Wick and Ms. Kuney dated June 25, 2020, Subject: “Confidential: 20200625 BLutz Letter – Wick.” The City of Spokane Valley withheld production of the performance improvement plan on the grounds that it was a draft that was never finalized or provided to the employee. Doc 2377071/Confidential-Perf Eval-REDACTED.pdf and Doc 2377071/Confidential: 20200625 BLutz Letter – Wick REDACTED.pdf.

<sup>42</sup> As noted in Section III.B above, Mr. Beggs wants to be on the record that the emails that say they are attorney/client privileged aren't necessarily attorney/client privileged just because they say it, or that executive session is privileged based on discussions about it. Ms. Yakely stated that Mr. Beggs doesn't have the ability to waive the privilege. One of the emails Mr. Beggs was referring to was his own email to Michelle Fossum and Amelia Clark,

10. Based on the information obtained in this investigation, as summarized in the above findings, there is not a preponderance of evidence to support a finding that in the executive session on October 29, 2020, the SRHD Board elected “to take final action ... discharging or disciplining an employee,” which has to take place “in a meeting open to the public.” RCW 42.30.110(1)(g).

**C. Preliminary Findings Regarding Whether Dr. Lutz was Removed from the Local Health Officer Position by Ms. Clark on September 29, 2020**

1. RCW 70.05.050 states, in pertinent part, as follows:

... No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. ...

2. It is undisputed that there was an executive session of the SRHD Board on October 29, 2020 that was conducted in private under an exception to the Open Public Meetings Act that applies to reviewing the performance of a public employee.<sup>43</sup>
3. It is undisputed that after the executive session on October 29, 2020, Ms. Clark, who is the Administrative Officer of SRHD and Dr. Lutz’s supervisor; and Mr. Wick, who is the SRHD Board Chair, met with Dr. Lutz.
4. It is undisputed that during the October 29, 2020 meeting, Ms. Clark gave Dr. Lutz a severance package titled, “Separation Agreement” prepared by SRHD’s legal counsel that stated, in part: “Employee was separated from employment effective October 29, 2020.”
5. It is undisputed that during the October 29, 2020 meeting Ms. Clark asked Dr. Lutz to resign and to let her know by 4:00 p.m. on Friday (October 30th) whether or not he would resign.
6. It is undisputed that during the October 29, 2020 meeting with Dr. Lutz, Ms. Clark took Dr. Lutz’s SRHD identification, keys, cellphone, and laptop and told him that he would have to contact HR to get the rest of his belongings.
7. It is undisputed that at the end of the meeting, Mr. Wick escorted Dr. Lutz out of the building.

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cc Ben Wick and Mary Kuney dated October 30, 2020 at 10:34 AM, Subject: “Confidential attorney client communication,” which is available online at <https://www.kxly.com/emails-show-clark-promised-to-correct-inaccurate-statement-on-lutzs-dismissal-but-she-never-did/>. It is also online at another news website, <https://www.5newsonline.com/article/news/investigations/lutz-expected-to-be-disciplined-not-fired/293-bde1b51c-3cf0-4f80-80fb-5c4adee61753>. Doc 2350790. In an email to Ms. Sutherland dated January 6, 2021, Subject: “RE: SRHD,” Ms. Fossum stated, in part: “KREM did a PRR to Spokane County. Within that response was an email that should have been redacted based on attorney client privilege. ... The Board has not waived the attorney client privilege as to that inadvertent disclosure by the County.” However, the email was still posted on the KREM website as of January 12, 2021 and the KXLY website as of January 15, 2021.

<sup>43</sup> RCW 42.30.110(1)(g). The reasons for the executive session listed in the meeting minutes also include RCW 42.30.110(1)(i), which includes certain discussions with legal counsel.

8. It is undisputed that after the meeting, Ms. Clark called SRHD Program Manager Todd Miller and requested he begin the termination procedure on Dr. Lutz's account.
9. It is undisputed that the next morning (October 30th) Ms. Clark sent an email to Team SRHD that stated, in part: "Yesterday, October 29 was Bob Lutz's last day at the Health District. ELT is currently working with our community partners and our Medical Director of Treatment Services, Dr. Mary Bergum to assist us with orders and other duties as needed."
10. It is undisputed that after Ms. Clark sent the email to Team SRHD announcing that October 29th was Dr. Lutz's last day at the Health District, Sue Winters sent an email to Ms. Clark and Ann Pitsnogle that stated, in part, as follows; the highlighted "ok" is Ms. Clark's response:

HR will begin the termination process in the system. I want to confirm that his last day of pay and employment was yesterday and that he is not eligible for rehire.

In case he contacts one of you here's some general information on benefits:

- His hire date with us was 5/16/2017 so he does not qualify for sick leave payout.
- His medical and dental benefits will continue through November 30, 2020. **Ok**

11. It is undisputed that in a press conference held on October 30, 2020, Ms. Clark stated as follows:

Reporter: ... So, you guys didn't actually say it, is Dr. Lutz officially resigned?

Ms. Clark: Um, hi. Thank you for that question. Um. The date was ef... effective yesterday.

Off-screen whisperer: I thought it was today.

Reporter: Ok, I heard the reporter from the Inlander ask for clarification on what point did he actually step down, or was he terminated, and, um, I'm, I'm still looking for clarification on that as well.

Ms. Clark: Oh ok, um. My apologies, I thought that you meant from the last question. So, um, yeah it was effective yesterday. ...

Reporter: Hi this is Sam from the Inlander again. What was effective yesterday?

Ms. Clark: That Dr. Lutz is no longer the Health Officer at the Health District.

Off-camera whisperer: Starting today.

Ms. Clark: ... starting today.

12. It is undisputed that in the hearing held on November 5, 2020, Ms. Clark stated as follows:

Mr. Beggs: I guess my question was, he, Dr. Lutz was no longer acting as the health officer after your meeting with him Thursday. Is that fair to say?

Ms. Clark: Yes. Um, I, I would say that.

13. It is undisputed that Dr. Lutz was not given notice and an opportunity for a hearing before the board or official responsible for his appointment as to the reason for his removal prior to or during Ms. Clark's and Mr. Wick's October 29th meeting with him.
14. There is an inconsistency in the statements of Dr. Lutz, Ms. Clark, and Mr. Wick regarding whether, during the October 29, 2020 meeting, Ms. Clark told Dr. Lutz that he was terminated effective October 29, 2020 if he did not resign. To summarize, Dr. Lutz stated that Ms. Clark told him that he was terminated, effective immediately, and that she gave him until 4:00 p.m. the next day (October 30th) to resign. To summarize, Ms. Clark and Mr. Wick stated that Ms. Clark gave Dr. Clark until 4:00 p.m. October 30 to let her know if he would resign and that if he didn't resign, she would go forward and request approval of his termination (Ms. Clark's statement) or that she would be seeking his termination (Mr. Wick's statement).
15. Ms. Clark's and Mr. Wick's statements are supported by a press release issued by SRHD on October 31, 2020, which was released after issues regarding the legality of Ms. Clark's actions were raised.
16. Dr. Lutz's statement that he was told by Ms. Clark that he was terminated effective immediately is supported by Mr. Beggs, who stated that Ms. Clark told him on the night of October 29, 2020 that Dr. Lutz has been terminated, and that she gave Dr. Lutz the right to convert his termination to resignation in lieu of termination if he gave her notice of that the next day.
17. Additionally, Dr. Lutz's statement that he was told by Ms. Clark that he was terminated effective immediately is supported by Ms. Wilson, who stated that when Ms. Clark talked to her after Ms. Clark met with Dr. Lutz on October 29th, Ms. Clark told Ms. Wilson that she had decided to let Dr. Lutz go because she couldn't work with him any longer and there were trust issues. Ms. Wilson's understanding was that letting Dr. Lutz go was effective immediately and he was escorted out of the building. Ms. Wilson's understanding of Dr. Lutz's employment status after he left was that he was done.
18. Dr. Lutz's statement that Ms. Clark told him that he was terminated effective immediately is also supported by the events described in Finding V.C.4 and Findings V.C.6 through V.C.10. Findings V.C.6 through V.C.8 could also be consistent with placing Dr. Lutz on administrative leave; however, it is undisputed that Ms. Clark did not tell Dr. Lutz he was being placed on administrative leave, nor did she request that he be placed on administrative leave, until November 2, 2020.
19. After weighing the evidence, the facts set forth above support a preliminary finding that on October 29, 2020, Dr. Lutz was told by Ms. Clark that he was terminated effective immediately, and that he was given until 4:00 p.m. on October 30th to let Ms. Clark know if he wanted to convert his termination to a resignation. The actions of Ms. Clark, Mr. Wick, and Dr. Lutz and their statements to others that were made before the issues regarding the legality of terminating Dr. Lutz were raised were given greater weight because they are closer in time to the October 29, 2020 meeting, and because the factors in weighing credibility include, among others, the reasonableness of the statements in the context of all the other evidence and any personal interest the individuals might have in the outcome or the issues.

**D. Preliminary Findings Regarding the Significance of Ms. Clark Retroactively Placing Dr. Lutz on Paid Administrative Leave**

1. There is a preponderance of evidence to support a finding that Ms. Clark placed Dr. Lutz on paid administrative leave on November 2, 2020, retroactive to October 30, 2020, including Ms. Clark's communications with Ms. Winters on November 2, 2020 placing Dr. Lutz on paid administrative leave. There is also a preponderance of evidence that, prior to November 2, 2020, Dr. Lutz was not told he was going to be placed on paid administrative leave, including Dr. Lutz's statement that he did not find out prior to November 2, 2020 that he was placed on paid administrative leave, and Ms. Clark's statement that she did not tell Dr. Lutz that he would be placed on paid administrative leave.
2. Dr. Lutz remained on paid administrative leave until the SRHD Board voted to terminate Dr. Lutz's employment at an SRHD special Board meeting held on November 5, 2020.<sup>44</sup>
3. Dr. Lutz's Local Health Officer duties, which were removed by Ms. Clark on October 29, 2020, were not restored to him after he was retroactively placed on paid administrative leave. Additionally, the phone, laptop, email account, voicemail account, and access to his office and electronic files that Dr. Lutz had used when he was the Local Health Officer were not restored to him at any point after he was removed from his position on October 29, 2020. Therefore, Ms. Clark's retroactive placement of Dr. Lutz on paid administrative leave until his employment was terminated by the SRHD Board on November 5, 2020 did not change the fact that she removed him from his position as Local Health Officer on October 29, 2020.

**VI. PRELIMINARY INVESTIGATION RECOMMENDATIONS**

The scope of this investigation includes recommendations as to whether the Administrative Officer refused or neglected to obey or enforce the provisions of chapter 70.05 RCW. RCW 70.05.120 states, in part: "(1) Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health."

The preliminary investigation recommendation as to whether the Administrative Officer refused or neglected to obey or enforce the provisions of chapter 70.05 RCW is that, regardless of whether the SRHD Board authorized her to do so, there are facts to support a finding that Ms. Clark removed Dr. Lutz after the SRHD Board meeting on October 29, 2020. As set forth in the preliminary findings in Section V.C above, Ms. Clark met with Dr. Lutz on October 29, 2020 and told him that he was terminated, effective immediately, and she gave him until 4:00 p.m. on October 30th to let her know if he wanted to convert his termination to a resignation. At the October 29, 2020 meeting with Dr. Lutz, Ms. Clark took Dr. Lutz's SRHD identification, keys, work cellphone, and work laptop, and then Mr. Wick escorted Dr. Lutz out of

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<sup>44</sup> Since the scope of this preliminary investigation was to investigate the two complaints against Ms. Clark on November 3, 2020, the issues raised by Dr. Lutz and his attorney regarding the process by which the SRHD Board conducted the special meeting on November 5, 2020 and are not addressed in this Preliminary Report.

the building. Ms. Clark also arranged to have Dr. Lutz's access to his SRHD email and voicemail accounts cut off, and she arranged for Dr. Bergum "to assist us with other orders and duties as needed."<sup>45</sup> These facts support a preliminary finding that Ms. Clark removed Dr. Lutz as the Local Health Officer. Further, since Dr. Lutz was not given notice and an opportunity to be heard before the SRHD Board prior to his removal, the facts support a preliminary finding that Ms. Clark refused or neglected to obey or enforce RCW 70.05.050's requirement that "the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal."

Based on the above preliminary findings, the preliminary investigation recommendations are to hold a State Board of Health meeting where the findings of this preliminary investigation are presented<sup>46</sup> and then undertake one of the following:<sup>47</sup>

- Request further information if the State Board of Health cannot reach a conclusion based on the results of the preliminary investigation;<sup>48</sup> or
- Close the complaint if the State Board of Health concludes that Ms. Clark did not fail to obey or enforce the provisions of chapter 70.05 RCW;<sup>49</sup> or
- If the State Board of Health determines that the preliminary investigation so warrants, call a hearing to determine whether Ms. Clark is guilty of the alleged acts.<sup>50</sup> The hearing will need to be conducted pursuant to the provisions of chapter 34.05 RCW.<sup>51</sup>
  - If the State Board of Health finds that Ms. Clark did "refuse or neglect to obey or enforce the provisions of chapters 70.05 ... ," then the State Board of Health may (but is not required to) remove Ms. Clark as the SRHD Administrative Officer, in which case Ms. Clark could not be reappointed, except with the State Board of Health's consent.<sup>52</sup>
- The State Board of Health Procedure also states that the Board can "direct the officer to remedy the failure" if it finds that the officer did "refuse or neglect to obey or enforce the provisions of

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<sup>45</sup> See Section V.B above.

<sup>46</sup> See Procedure, Section 3, Findings, in the Washington State Board of Health Policy & Procedure 2015-001, Responding to Complaints Against a Local Health Officer or Administrative Officer.

<sup>47</sup> See Procedure, Section 4, Determination, in the Washington State Board of Health Policy & Procedure 2015-001, Responding to Complaints Against a Local Health Officer or Administrative Officer. These examples do not preclude the State Board of Health from making a different determination that is not included in the examples.

<sup>48</sup> See Procedure, Section 4, Determination, in the Washington State Board of Health Policy & Procedure 2015-001, Responding to Complaints Against a Local Health Officer or Administrative Officer.

<sup>49</sup> See Procedure, Section 4, Determination, in the Washington State Board of Health Policy & Procedure 2015-001, Responding to Complaints Against a Local Health Officer or Administrative Officer.

<sup>50</sup> RCW 70.05.120(1).

<sup>51</sup> See Section 4, Procedure, and Section 5, Hearing, in the Washington State Board of Health Policy & Procedure 2015-001, Responding to Complaints Against a Local Health Officer or Administrative Officer; *see also* RCW 70.05.120(1).

<sup>52</sup> RCW 70.05.120(1).

chapters 70.05 ..."<sup>53</sup> However Ms. Clark does not have the authority to re-appoint Dr. Lutz without the approval of the SRHD Board.<sup>54</sup>

The options outlined above are examples from the Procedure, Section 4, Determination, in the Washington State Board of Health Policy & Procedure 2015-001, Responding to Complaints Against a Local Health Officer or Administrative Officer. These examples do not preclude the State Board of Health from making a different determination that is not included in the above examples, such as but not limited to a different form of corrective or remedial action.

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<sup>53</sup> See Procedure, Section 4, Determination, in the Washington State Board of Health Policy & Procedure 2015-001, Responding to Complaints Against a Local Health Officer or Administrative Officer.

<sup>54</sup> The appointment of a District Health Officer requires approval of the SRHD Board. See SRBH Bylaws, Art. IV, Section 3.

## APPENDIX 1 RECORDS REVIEWED

The documents reviewed for this investigation are summarized below. They are not all listed individually due to their volume:

- Recording of SRHD press conference from KREM2 on October 30, 2020 obtained from: <https://www.youtube.com/watch?v=bNd6kWnTQic&t=659s>
- Recording of SRHD Board of Health meeting on November 5, 2020 obtained from: <https://www.youtube.com/watch?v=3oXLBUGp46A>
- Email from Michelle Davis, Executive Director, to the investigator titled, “Preliminary Investigation Materials—Background” dated December 14, 2020 attaching the following:
  - Tab14a-Complaint-CoverMemo.pdf
  - Tab14b-Complaint-SRHD.pdf
  - Tab14c-Complaint-SRHD.pdf
  - Tab14d-ComplainttoStateBOH.pdf
  - Tab14e-FormalComplaint.pdf
  - Tab14f-Complaint-StatutoryAuthority.pdf
  - Tab14g-RCW70.05.050.pdf
  - Tab14h-001RespondingtoComplaintsAgainstLocalHealthOfficials.pdf
- Email from Michelle Davis, Executive Director, to the investigator titled, “Administrative Officer Response and links to comments” dated December 15, 2020 attaching the following:
  - Administrative Officer Amelia Clark Response to Complaints.pdf
- Email from Michelle Davis, Executive Director, to the investigator titled, “Spokane Regional Health District Administrator Complaint miscellaneous items” dated December 15, 2020 attaching the following:
  - RE: Dr. Bob Lutz.msg
  - 18-07-Resolution-FormationSHACBylaws1.pdf
  - FW: SRHD Provides Further Information Regarding Spokane County Health Officer.msg
- Email from Michelle Davis, Executive Director, to the investigator titled, “Additional complaints” dated December 15, 2020 attaching the following:
  - Former Complaint.msg
  - Spokane Regional Health District complaint.msg
  - Filing a complaint against the Spokane Regional Health District Board of Health.msg
  - A request to open an investigation into Amelica [sic] Clark
  - Formal Complaint.msg
  - Official Complaint\_Rumsey.pdf
  - Spokane Regional Health District complaint\_Weimar.pdf
  - Tab05d-SRHD-LHOComments 146.pdf
  - Tab05d-SRHD-LHOComments 165.pdf
  - Tab05d-SRHD-LHOComments 187.pdf
  - Tab05d-SRHD-LHOComments 203.pdf

- Tab05d-SRHD-LHOComments 327.pdf
- Tab05d-SRHD-LHOComments 328.pdf
- Tab05d-SRHD-LHOComments 395.pdf
- Tab05d-SRHD-LHOComments213-214.pdf
- Tab05d-SRHD-LHOComments325-326.pdf
- Tab05d-SRHD-LHOComments392-393.pdf
- Tab05d-SRHD-LHOComments404-405.pdf
- Tab05d-SRHD-LHOComments406-407.pdf
- WSBOH-PublicComments-SRHD-LHO-Batch1.a80-82.pdf
- WSBOH-PublicComments-SRHD-LHO-Batch1.a.83-85.pdf
- WSBOH-PublicComments-SRHD-LHO-Batch1.a86-87.pdf
- WSBOH-PublicComments-SRHD-LHO-Batch1.a97-99.pdf
- WSBOH-PublicComments-SRHD-LHO-Batch1.a101-102.pdf
- WSBOH-PublicComments-SRHD-LHO-Batch1.a107-108.pdf
- WSBOH-PublicComments-SRHD-LHO-Batch1.a112.pdf
- WSBOH-PublicComments-SRHD-LHO-Batch1.a131-132.pdf
- Formal complaint against SRHD and Amelia Clark\_Codd.pdf
- Complaint Against Administrator Amelia Clark & ...\_Carro.pdf
- Complaint against Spokane Regional Health Distr...\_DelRosario.pdf
- Email from Bryce Wilcox, Attorney, to the investigator titled, "RE: Preliminary investigation for Board of Health" dated December 23, 2020 attaching the following:
  - 2020.11.05 Wilcox to Yakely re Lutz Response.pdf
- ShareFile upload from Shelly Gleason, Paralegal, to the investigator dated December 29, 2020 uploading the following:
  - \_\_Combined Emails & Attachments.pdf
  - Additional Documents (1) 11.5.2020.pdf
  - Additional Documents (1).msg
  - Bob Lutz – Table documentation 11.11.2020.pdf
  - Bob Lutz – Table documentation.msg
  - Dr\_Bob Lutz – employment file 11.2.2020.pdf
  - Dr\_Bob Lutz – employment file.msg
  - Dr\_Lutz and SRHD 11.2.2020.pdf
  - Dr\_Lutz and SRHD.msg
  - Dr\_Lutz time card 11.2.2020.pdf
  - Dr\_Lutz time card.msg
  - FW\_Attorney Client Privilege – Docs to submit 11.5.2020.pdf
  - FW\_Attorney Client Privilege – Docs to submit.msg
  - FW\_Atty Client – BL HR File 11.3.2020.pdf
  - FW\_Atty Client – BL HR File.msg
  - FW\_Scanned documents 11.4.2020.pdf
  - FW\_Scanned documents.msg
  - Hay\_ et al v\_ Asotin County\_ et al - Eastern District Court of Washington #20-cv-00155-RMP 11.16.20.pdf
  - Hay\_ et al v\_ Asotin County\_ et al - Eastern District Court of Washington #20-cv-00155-RMP.msg
  - Lutz – Notice Letter 11.3.2020.pdf
  - Lutz – Notice Letter.msg
  - Lutz entry 11.6.2020.pdf

- Lutz entry.msg
- Lutz personnel file (2) 11.3.2020.pdf
- Lutz personnel file.msg
- RE\_ Additional Documents (2).msg
- Re\_ Additional Documents (3).msg
- RE\_ Additional Documents (4) 11.5.2020.pdf
- RE\_ Additional Documents (4).msg
- RE\_ Additional Documents (5) 11.5.2020.pdf
- RE\_ Additional Documents (5).msg
- RE\_ Additional Documents (6) 11.5.2020.pdf
- RE\_ Additional Documents (6).msg
- RE\_ Bob Lutz and Asotin County (1).msg
- RE\_ Bob Lutz and Asotin County (2).msg
- RE\_ Bob Lutz and Asotin County (3).msg
- RE\_ Bob Lutz and Asotin County (4).msg
- RE\_ Bob Lutz and Asotin County (5) 11.16.20.pdf
- RE\_ Bob Lutz and Asotin County (5).msg
- RE\_ Bob Lutz (1).msg
- RE\_ Bob Lutz (2).msg
- RE\_ Bob Lutz (3) 11.11.2020.pdf
- RE\_ Bob Lutz (3).msg
- RE\_ Bob Lutz\_SRHD (1).msg
- RE\_ Bob Lutz\_SRHD (2).msg
- RE\_ Bob Lutz\_SRHD (3).msg
- RE\_ Bob Lutz\_SRHD (4).msg
- RE\_ Bob Lutz\_SRHD (5).msg
- RE\_ Bob Lutz\_SRHD (6) 11.3.2020.pdf
- RE\_ Bob Lutz\_SRHD (6).msg
- RE\_ Dr\_ Lutz – personnel file (1).msg
- RE\_ Dr\_ Lutz – personnel file (2) 11.3.2020.pdf
- RE\_ Dr\_ Lutz – personnel file (2).msg
- RE\_ Dr\_ Lutz – timing update (1).msg
- RE\_ Dr\_ Lutz – timing update (2).msg
- RE\_ Dr\_ Lutz – timing update (3).msg
- RE\_ Dr\_ Lutz – timing update (4) 11.4.20.pdf
- RE\_ Dr\_ Lutz – timing update (4).msg
- RE\_ Dr\_ Lutz aquarium (1).msg
- RE\_ Dr\_ Lutz aquarium (2) 11.9.2020.pdf
- RE\_ Dr\_ Lutz aquarium (2).msg
- RE\_ For the hearing tomorrow (1).msg
- RE\_ For the hearing tomorrow (2).msg
- RE\_ For the hearing tomorrow (2).pdf
- RE\_ Lutz – property removal (1).msg
- RE\_ Lutz – property removal (2).msg
- RE\_ Lutz – property removal (3).msg
- Re\_ Lutz – property removal (4) 11.17.2020.pdf
- Re\_ Lutz – property removal (4).msg
- RE\_ Personnel file (0).msg

- RE\_Personnel file (1).msg
- RE\_Personnel file (2).msg
- RE\_Personnel file (3).msg
- RE\_Personnel file (4).msg
- RE\_Personnel file (5) 11.4.2020.pdf
- RE\_Personnel file (5).msg
- RE\_Property Return (1).msg
- RE\_Property Return (2).msg
- RE\_Property Return (3).msg
- RE\_Property Return (4).msg
- RE\_Property Return (5) 12.1.2020.pdf
- RE\_Property Return (5).msg
- Re\_Return of Dr Lutz property (0).msg
- Re\_Return of Dr Lutz property (1).msg
- Re\_Return of Dr Lutz property (2).msg
- Re\_Return of Dr Lutz property (3).msg
- Re\_Return of Dr Lutz property (4) 11.6.2020.pdf
- Re\_Return of Dr Lutz property (4).msg
- Email from Bryce Wilcox, Attorney, to the investigator titled, "RE: Preliminary investigation for Board of Health" dated January 7, 2021 attaching the following:
  - SRHD Hearing – 11.5.20.pdf
  - RE: Statement from Dr. Bob Lutz on his employment at the health district.msg
  - Dr. Bob Lutz.msg
  - Dr. Bob Lutz Response and Union Vote
- Email from Michelle Davis, Executive Director, to the investigator titled, "SRHD related Comments received as of COB 1/8." dated January 11, 2021 attaching the following:
  - WSBOH-PublicComments.pdf
- Email from John Wiesman to the investigator titled, "Re: Confirming interview RE: Request for interview for preliminary investigation" dated January 12, 2021
- Email from Michelle Davis, Executive Director, to the investigator titled, "November SBOH Final Meeting Minutes" dated January 14, 2021 attaching the following:
  - WSBOH-Minutes-2020-11-09-Final.pdf
- Email from Michelle Davis, Executive Director, to the investigator titled, "RE: Media coverage" dated January 15, 2021 including the following:
  - <https://www.kxly.com/exclusive-health-dist-administrator-amelia-clark-finally-answers-questions-about-lutz-firing/>
- Email from Michelle Davis, Executive Director, to the investigator titled, "FW: Notice of Screening of Dr. Lutz re: SRHD Investigation" dated January 15, 2021 attaching the following:
  - LutzScreeningSRHDInvestigationFinal.pdf
- Email from Patricia K. Rhodes, HIPAA and Records Management, to the investigator titled, "RE: Public Records Request 2020BL069" dated February 16, 2021 attaching the following:
  - 2020BL069FirstInstallment.pdf
  - Draft BL Separation Agreement.102520.docx
- Cloud file storage application download from City of Spokane Valley to the investigator dated February 26, 2021 containing the following:

- 0972\_001.pdf
- 0994\_001.pdf
- Confidential – Perf Eval – REDACTED.pdf
- Confidential 20200625 BLutz Letter – Wick – REDACTED.pdf
- Josh Kerns Emails – REDACTED.pdf
- Josh Kerns Emails- Gmail.pdf
- Letter from Commissioners regarding Phase 3 request.msg
- Op-eds.msg
- R002955-103020 Attorney-Client Emails\_Redacted.pdf
- Re other businesses and front racing government .msg
- Redacted Emails\_Redactions Applied.pdf
- Resolution 2020-0422.pdf
- Screenshot 2020-11-10 at 4.35.15 PM.png
- Screenshot 2020-11-10 at 4.36.23 PM.png
- Screenshot 2020-11-10 at 4.37.03 PM.png
- Screenshot 2020-11-10 at 4.37.33 PM.png
- Screenshot 2020-11-10 at 4.38.00 PM.png
- Public Records Center download from Spokane County to the investigator dated February 26, 2021 containing the following:
  - 21-003 – Sutherland file folder
    - Copy of 20-353 Thompson screenshots
    - Copy of 20-353 Wick disclosures
    - Redacted Documents with Bates Numbering 2-23-21.pdf
    - Redaction Log 2-24-21.pdf
    - Thompson Delcaration [sic] of Search.pdf
  - Spokane\_County\_Exemption\_Log.pdf
  - Spokane\_County\_Public\_Records\_Fee\_Schedule\_.pdf
- Public records request response link from Patricia Rhoades, Spokane Regional Health District to the investigator dated February 26, 2021 containing the following:
  - Access
    - 20201029545BLDisabledAccount.pdf
    - 20201030714.pdf
    - 20201030843.pdf
    - 20201030953DisabledAccount.pdf
    - 202010301203DisabledAccount.pdf
    - 202011021040.pdf
  - Complaints
    - External
      - ProtestPhaseComplaints
      - 20200817.pdf
      - 20200828.pdf
    - Internal
      - 20181126REDACTED.pdf
      - 20190206.pdf
      - 20191212.pdf
      - 20200225(2).pdf
      - 20200225.pdf

- 20200326.pdf
  - Duties
    - 20201030interim standing orders-COVIDspecimen collection .docx
    - 20201030404.pdf
    - 20201030431.pdf
    - EmergencyMedicalProtocol.docx
    - Epi Rx fax form final.pdf
    - Request for Voluntary Isolation 05-27-20.docx
    - Request for Voluntary Isolation-English-Marshallese.pdf
    - Signed StandingOrders-COVIDIsolationFacility-AnnexA\_9.3.20.docx
    - StandingOrders-Appendix A - VaccinatingDuringPandemic\_Final.docx
    - StandingOrdersForSRHDclinics-2020.docx
  - PropertyExpenses
    - ExpenseReimbursement.pdf
    - HOTable.pdf
  - RedactionLog.docx
- Email from Christina Janssen, City Clerk, City of Millwood, to the investigator titled, "Public Records Request (PRR-01-2021)" dated March 4, 2021 attaching the following:
  - Responsive Documents.pdf
- Public records request center download from the City of Spokane to the investigator containing the following:
  - Combined.zip (uploaded April 12, 2021)
    - Screenshot 2021-01-01 at 6.56.36 PM.pdf
    - Screenshot 2021-01-01 at 6.57.12 PM.pdf
    - Screenshot 2021-01-01 at 6.58.06 PM.pdf
    - Screenshot 2021-01-01 at 6.58.46 PM.pdf
    - Screenshot 2021-01-01 at 6.59.41 PM.pdf
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  - Screenshot 2021-01-01 at 9.04.51 PM.pdf
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  - Screenshot 2021-01-01 at 9.06.36 PM.pdf
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- Calendar\_Entry.xlsx (uploaded March 30, 2021)
- Email\_response.Lutz.docx (uploaded March 30, 2021)
- Emails\_-\_Redacted.pdf (uploaded March 30, 2021)
- SRHD.docx (uploaded March 30, 2021)
- SRHD.pdf (uploaded March 30, 2021)
- Wilkerson\_Records\_-\_texts\_-\_Redacted.pdf (uploaded March 30, 2021)
- 2021\_01\_Sutherland\_PRR\_C000036-011121.pst (uploaded March 12, 2021)
- Redacted\_Emails.pdf (uploaded March 12, 2021)
- Cloud file storage application download from City of Spokane Valley to the investigator dated March 22, 2021 containing the following:
  - P210003-02261

**APPENDIX 2**  
**RELEVANT STATUTES, RULES, REGULATIONS AND BYLAWS**

Based on the information obtained in this preliminary investigation, the following statutes, rules, policies and procedures are relevant: Chapter 70.05 RCW, particularly RCW 70.05.050 and RCW 70.05.120; Chapter 42.30 RCW, particularly RCW 42.30.080 and RCW 42.30.110; Bylaws of the Spokane Regional Health District Board of Health (“SRHD Bylaws”); and the Washington State Board of Health Policy & Procedure Draft Policy Number: 2015-001, Subject: Responding to Complaints Against a Local Health Officer or Administrative Officer, Approved Date: January 14, 2015 (“BOH Policy”). These documents are summarized below.

**A. RCW 70.05.050 and RCW 70.05.120**

RCW 70.05.050 states, in pertinent part, as follows:

... No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. The local health officer shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. ...

There are no reported case decisions interpreting the removal provisions of RCW 70.05.010.

RCW 70.05.120 states, in pertinent part, as follows:

(1) Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.05 RCW, and the rules and regulations of the state board of health adopted thereunder.

**B. Requirements of Chapter 42.30 RCW**

Under RCW 70.05.010, the Local Health Officer (Dr. Lutz) could not be removed until after he was given notice and an opportunity for a hearing before the board responsible for his appointment (the SRHD Board

of Health). Since the SRHD Board of Health is the governing body of a public agency and the removal of the Local Health Officer is an action of the agency, the hearing must be conducted consistent with the requirements of the Open Public Meetings Act, Chapter 42.30 RCW ("OPMA"). Relevant provisions of the OPMA state as follows:

**RCW 42.30.060**

**Ordinances, rules, resolutions, regulations, etc., adopted at public meetings—Notice—Secret voting prohibited.**

(1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

**RCW 42.30.080**

**Special meetings.**

(1) A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering written notice personally, by mail, by fax, or by electronic mail to each member of the governing body. Written notice shall be deemed waived in the following circumstances:

(a) A member submits a written waiver of notice with the clerk or secretary of the governing body at or prior to the time the meeting convenes. A written waiver may be given by telegram, fax, or electronic mail; or

(b) A member is actually present at the time the meeting convenes.

(2) Notice of a special meeting called under subsection (1) of this section shall be:

(a) Delivered to each local newspaper of general circulation and local radio or television station that has on file with the governing body a written request to be notified of such special meeting or of all special meetings;

(b) Posted on the agency's web site. An agency is not required to post a special meeting notice on its web site if it (i) does not have a web site; (ii) employs fewer than ten full-time equivalent employees; or (iii) does not employ personnel whose duty, as defined by a job description or existing contract, is to maintain or update the web site; and

(c) Prominently displayed at the main entrance of the agency's principal location and the meeting site if it is not held at the agency's principal location.

Such notice must be delivered or posted, as applicable, at least twenty-four hours before the time of such meeting as specified in the notice.

(3) The call and notices required under subsections (1) and (2) of this section shall specify the time and place of the special meeting and the business to be transacted. Final

disposition shall not be taken on any other matter at such meetings by the governing body.

(4) The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage.

**RCW 42.30.110**

**Executive sessions.**

(1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting: ...

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public; ...

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency; ...

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer.

### **C. SRHD BOH Bylaws Regarding Notice and Hearings**

The SRHD BOH Bylaws also contain requirements for notice and hearings. They state, in pertinent part, as follows:<sup>55</sup>

#### ARTICLE IV - LEGISLATIVE POWERS, DUTIES AND FUNCTIONS (RCW 70.05)

...2. The Board of Health shall appoint an Administrator who shall serve at the pleasure of the Board. The Administrator shall be the Director of the Health District, and shall report directly to the Board. ...

3. The Board of Health shall approve the appointment and termination of a District Health Officer. The District Health Officer shall be a qualified physician trained and experienced in public health. The Health Officer shall report to the Administrator. ...

#### ARTICLE VI - DISTRICT HEALTH OFFICER (RCW 70.05.070)

The District Health Officer shall perform such duties as are provided by law and directed by the Administrator. He/she shall be responsible to the Administrator for his/her official actions.

#### ARTICLE VII - MEETINGS AND QUORUM

...2. Special meetings may be called by the Chair at his/her discretion, at the request of the Executive Secretary, or on the written request of a majority of the members, provided that written notice is given each member and the media at least twenty-four hours prior to the proposed meeting concerning the time, place and subject, except in an emergency, as provided by RCW 42.30.080.

3. Six (6) voting members of the Board shall constitute a quorum for the dispatch of business.

4. Approval of all actions taken by the Board shall be by a majority of the votes cast.

5. In accordance with RCW 42.30.110, the Board shall call executive sessions as necessary. ...

### **D. Washington State Board of Health Policy & Procedure 2015-001**

Washington State Board of Health Policy & Procedure 2015-001, *Responding to Complaints Against a Local Health Officer or Administrative Officer* states in part as follows:

#### **Policy Statement**

RCW 70.05.120 allows any person to file a complaint with the Washington State Board of Health (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 board shall 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 rules or orders. The board will review a complaint to

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<sup>55</sup> <https://srhd.org/media/documents/BylawsBOH20180222.pdf>. Doc 2336241.

determine whether it merits a preliminary investigation. 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. If the board determines a preliminary investigation is warranted, the board shall assign members and/or staff to conduct a preliminary investigation and to report their findings to the board. The board will then review the findings of the investigation and make a final determination regarding the complaint.

### **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 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 board meeting for the purpose of reviewing the complaint. The Executive Director also shall notify the subject local health official and will provide a copy of the complaint for his or her information and review, and inform the official that he or she may provide a written response to the complaint if he or she so chooses. The Executive Director shall 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.
- 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 a sponsor to oversee staff activities. The preliminary investigation will 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 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, and other state or local entities involved in the complaint. Board staff may interview witnesses, any parties named or implicated in the complaint, 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 staff assigned to conduct the investigation shall present the findings of the preliminary investigation and a recommendation for Board consideration at a regular board meeting. As described above, board staff shall notify the complainant and subject local health official of the date and time

of the board meeting at which the Board will review findings, and may request that they provide comment.

- 4) **Determination:** Based on the findings of the preliminary investigation, the board will make a determination regarding the complaint. 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 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; 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 chapter 34.05 RCW regarding the officer's removal.
- 5) **Hearing:** If the Board determines that a hearing is necessary, it will be held pursuant to the provisions of chapter 34.05 RCW.

KMS: