



**PUBLIC HEALTH**  
**COMMUNICABLE DISEASE**  
**BENCH BOOK**

**JUNE 2021**

## **ACKNOWLEDGEMENTS AND ENDORSEMENTS**

### **Original Version (2006)**

The first version of this Bench Book, published in December 2006, was prepared under the leadership of the Hon. Julie Spector of the King County Superior Court and Sally Bagshaw, who was at the time Chief Civil Deputy, King County Prosecuting Attorney's Office. The Bench Book was drafted by a team from the Civil Division of the King County Prosecuting Attorney's Office: Amy Eiden, Jane Ann McKenzie, Janine Joly, and Steve Hobbs, with production assistance from Lisa Boggess and Megan Vogel.

The authors extend sincere thanks to the Hon. Michael Trickey for his support for the original project. The authors also appreciate and thank a team of reviewers of an early draft of the first version: Hon. Laura Inveen, Hon. Dean Lum, and Hon. Jeffrey Ramsdell.

Coordinating support for the project was provided by David Reynolds, King County Superior Court, and Shirley Bondon, Washington State Administrative Office of the Courts. Comments and editing were provided by Joyce Roper and Kristen Mitchell, Washington State Office of the Attorney General, and Ellen Miyasato, U.S. Department of Health and Human Services.

The authors also acknowledge Linda L. Chezem and the "Public Health Law Bench Book for Indiana Courts."

The Bench Book was endorsed by the Washington State Board for Judicial Administration and the Washington State Office of the Attorney General.

### **Updated Version (2017)**

The 2017 updated version of the Bench Book was prepared under the continued leadership of Hon. Julie Spector of the King County Superior Court. The updates for the 2017 book were added by Amy Eiden and Mari Isaacson from the King County Prosecuting Attorney's Office and Carolyn Auchter while an intern with the King County Superior Court. Coordinating support was provided by David Reynolds, King County Superior Court, and Shannon Hinchcliffe from the Washington State Administrative Office of the Courts.

### **Updated Version (2021)**

This updated version of the Bench Book was prepared under the continued leadership of the Hon. Julie Spector of the King County Superior Court.

*"This bench book has been updated multiple times since its initial concept in 2005. As one of my last duties as a sitting judge, we now have the most recent version (June 2021). I want to acknowledge the research and edits made by Matt Nawrocki, who is a 2<sup>nd</sup> year law student at the University of Washington. I would also like to acknowledge Beth Taylor, who is a wizard with all things technical and making this bench book as user-friendly as possible for those who will utilize this as we progress through one of the worst pandemics in modern history."*

Judge Julie A. Spector

## **PREFACE**

The original version of the Bench Book (titled “Public Health Emergency Bench Book”) was prepared in 2006, after the outbreak of Severe Acute Respiratory Syndrome (SARS), the emerging threat of pandemic influenza, and the risk of bioterrorism had heightened awareness of the need for legal preparedness for public health emergencies. In this context, the original version focused on isolation and quarantine and other emergency authority of State and local officials.

The 2017 updated version titled “Public Health Communicable Disease Bench Book” expanded the original version to include new chapters related to tuberculosis and sexually transmitted diseases.

This updated version titled “Public Health Communicable Disease Bench Book” includes updates to the previous version. These updates reflect changes in various sections, particularly Chapters 9 and 10 regarding sexually transmitted diseases and Chapters 10 and 11 regarding substantial exposure to bodily fluids. All changes reflect updates to the referenced RCW and WAC provisions.

Sexually Transmitted Diseases: There are updates to Chapters 9 and 10 regarding sexually transmitted diseases. These chapters describe the WAC and updated RCW provisions that apply when a person with a sexually transmitted disease is engaging in conduct that endangers public health. The 2020 update to RCW 70.24.024 changes the procedures governing health officer investigations and judicial hearings related to people who are reasonably believed to be infected with or exposed to a sexually transmitted disease.

Substantial Exposure to Bodily Fluids: There are updates to Chapters 11 and 12 regarding substantial exposure to bodily fluids. These chapters describe the WAC and updated RCW provisions that apply when a certain type of employee is exposed to bodily fluids in the course of work duties in a manner that could put the employee at risk. The 2020 update to RCW 70.24.340 replaces references to “HIV” with “blood-borne pathogens.” It also replaces “substantial exposure” with “exposure” in several references.

We hope that this Bench Book is a useful educational tool for the Court to use for proceedings related to the spread of communicable disease.

June 2021

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## SUMMARY

### **JURISDICTION, VENUE, AND RELEVANT CIVIL ACTIONS** ([Chapter 1.00](#))

#### **The U.S. Constitution** ([1.11](#))

- Federal government's public health powers limited to those that fall within its jurisdiction (defense, interstate commerce, tax powers).
- Responsibility for safeguarding public health in other areas falls largely to the states.
- Federal government has responsibility for public health in some discrete geographic areas such as military bases.
- Pursuant to its itemized powers, federal government may exercise some public health functions such as those granted to the U.S. Department of Health and Human Services or those related to public health emergencies precipitated by acts of war or terrorism.

#### **States as Primary Actors** ([1.12](#))

- The state's public health authority comes from its police powers.
- The Washington Constitution established the State Board of Health with powers set forth by the legislature.
- The Washington Constitution gives local governments power to make and enforce police, sanitary and other regulations not in conflict with general laws.

#### **Jurisdiction Over Public Health Matters** ([1.21](#))

- Superior courts have original jurisdiction.
- The Court of Appeals and the Supreme Court have appellate jurisdiction.

#### **Venue for Public Health Matters** ([1.22](#))

- Proper venue is in the superior court of the county at issue or Thurston County Superior Court.
- Venue may be changed as provided in statute and court rule.

#### **Petitions for Writs of Habeas Corpus** ([1.30.A](#))

- Governed by [chapter 7.36 RCW](#).
- May be granted by the Supreme Court, Court of Appeals, or Superior Court.
- Any person "restrained of his liberty under any pretense whatever, may prosecute a writ of habeas corpus."
- Writ must be signed, verified and contain information set out in statute.
- Writ requires officer restraining individual to produce the individual without delay at the time and place directed by the judge.
- To prevail, habeas petitioner must show actual prejudice resulting from constitutional error.

#### **Personal Restraint Petitions** ([1.30.B](#))

- Governed by [chapter 10.73 RCW](#) and [RAP 16.3](#) to [16.15](#), [16.24](#) to [16.27](#).
- Court of Appeals and Supreme Court have concurrent jurisdiction. Cases filed in Superior Court should be transferred to the Court of



Appeals for lack of Superior Court jurisdiction.

- Mandatory elements for petition set out in [RAP 16.7](#).
- If responding party is the government, the petition should be captioned only with the name of the petitioner, and the governmental agency or person responsible for the proceeding claimed to be improper shall respond.
- To prevail, petitioner must show either (1) constitutional error that caused substantial actual prejudice, or (2) nonconstitutional error that resulted in a fundamental defect constituting a complete miscarriage of justice.

**Statutory Writs of Mandamus and Prohibition (1.40)**

- Writ of mandamus compels the performance of an act.
- Writ of prohibition arrests the proceedings of any tribunal, corporation, board, or person.

**Applicability of King County Rules of Court to Public Health Cases (1.50)**

- As a general rule, public health cases are conducted in same manner as other proceedings.

**EMERGENCY AND EMERGENCY MANAGEMENT (Chapter 2.00)**

**Emergency Defined (2.20)**

- "Emergency" defined in [RCW 38.52.010\(9\)\(a\)](#).

**State Organization (2.31)**

- State Military Department shall administer emergency management program of the state.
- Adjutant General is the Director of the Military Department and is responsible to Governor for carrying out program for emergency management.

**Authority of the Governor (2.32)**

- Governor may find existence of emergency pursuant to [RCW 43.06.010\(12\)](#).
- Emergency powers only effective within area described in Governor's proclamation.
- Procedural requirements for proclamation set out in [RCW 43.06.210](#).
- Governor issues proclamation to terminate state of emergency and must do so when order has been restored in the area affected.
- After proclaiming state of emergency, Governor may issue orders as provided in [RCW 43.06.220](#).
- In the event of a disaster beyond local control, the Governor may assume control over all or any part of emergency functions of the state.
- Governor authorized to:
  - Make, amend, and rescind necessary orders, rules and regulations
  - Enter into mutual aid agreements
  - Coordinate mutual aid interlocal arrangements
  - Delegate administrative authority

- Cooperate with federal officials and officers and agencies from other states
- Duty of every organization for emergency management to enforce Governor's orders.
- Criminal sanctions as provided in [chapter 43.06 RCW](#) apply during an emergency.
- In case of removal, resignation, death, or disability of the Governor, duties devolve upon the following, in order: Lieutenant Governor, Secretary of State, Treasurer, Auditor, Attorney General, Superintendent of Public Instruction, Commissioner of Public Lands.
- Case law involving actions by the Governor during an emergency:
  - Clear intent by the Legislature to delegate requisite police power to the Governor in times of emergency
  - Governor has discretion to determine both the start and end of an emergency

**Local Organization** ([2.41](#))

- Each local organization for emergency management shall: (1) perform emergency management functions within its jurisdiction, and (2) conduct such functions outside as may be required.
- Emergency management director shall have direct responsibility for the local organization, subject to direction and control of the executive officer.

**Local Authority** ([2.42](#))

- May exercise statutory emergency management powers in light of the exigencies of an extreme emergency situation without regard to procedures and formalities.
- Will have the power to enter into contracts and incur obligations necessary to combat disaster, protect health and safety of persons and property, and provide emergency assistance.
- Directed to use existing services, equipment, supplies, and facilities. Officers and personnel required to cooperate notwithstanding other provisions of law.
- Services and equipment may be commandeered by Governor, executive, and emergency management director after proclamation by Governor of emergency.

**HEALTH AGENCIES AND BOARDS** ([Chapter 3.00](#))

**Washington State Board of Health** ([3.20](#))

- Powers and Duties Related to Communicable Disease Control
  - Rulemaking
  - Enforcement of State Board of Health Rules

**Washington State Department of Health** ([3.30](#))

- Powers and Duties Related to Communicable Disease Control
  - Enforcement of laws and rules
  - Investigation of outbreaks of disease
  - Investigation of conditions that threaten public health

### **Local Health Boards, Departments, and Officers (3.40)**

- Structure
  - Local Board of Health
    - Membership
    - Jurisdiction coextensive with county boundaries
  - Local Health Departments
    - County or district
    - Combined city-county health department
  - Local Health Officer
- Powers and Duties Related to Communicable Disease Control
  - Local Boards of Health
    - Rulemaking for the public health
    - Enforcement of state public health statutes and rules Supervision of health and sanitary measures
    - Provide for control and prevention of contagious disease
  - Local Health Officers
    - Enforce state and local laws, including filing of civil actions  
Maintain health and sanitation supervision
    - Control and prevent spread of contagious disease  
Investigate diseases and institute control measures Control disease at schools and day care centers, including shut down, in certain circumstances, and after appropriate notification
    - Report and track communicable diseases  
Implement isolation and quarantine
  - Case law involving authority of local board of health and health officers
    - Law and actions are to be liberally construed
    - Local regulations may not conflict with state or federal law

### **Violations and Penalties (3.50)**

- Misdemeanor for person to violate rule or order of local health officer or local or State Board of health.
- Public officers and employees can be fined for failing to enforce rules adopted by State Board of Health.
- Members of local boards of health can be fined for failing to enforce rules adopted by State Board of Health for the control of dangerous infectious disease.
- Local health officer who refuses or neglects to enforce the provisions of [chapters 70.05](#) or [70.24 RCW](#), or rules of State Board of Health can be removed.

### **Health Districts (3.60)**

- Establishment
  - Is all the territory consisting of one or more counties.
  - If two or more counties, created by the county commissioners.

- If one county, created by county legislative authority.
- District Boards of Health
  - At least five members for districts of two counties, and seven members for districts of more than two counties
  - County commissioners provide for membership on the boards
  - If health district is one county, county legislative authority specifies membership.

**Relationship between State and Local Health Departments (3.70)**

- State Board of Health rules to be enforced by local boards of health and local health officers
- Secretary of Health can enforce state public health laws and regulations in local matters when an emergency exists or the local board of health has failed to act with sufficient promptness, or no local board of health has been established.
- Secretary of Health can exercise authority of local health officer when needed due to an emergency, the local health officer has failed to act, or pursuant to agreement.

**COMMUNICABLE DISEASE TRACKING (Chapter 4.00)**

**Communicable Disease Reporting (4.21)**

- Reportable Diseases
  - State regulations require certain persons to report “notifiable conditions” that are those diseases or conditions of public health importance.
  - Diseases of suspected bioterrorism origin are to be reported immediately. Examples: Anthrax and smallpox.
  - Other rare diseases of public health significance are to be reported immediately.
  - Unexplained critical illness or death is to be reported immediately.
  - Local health officer can require notification of additional conditions of public health importance.
  - Outbreaks or suspected outbreaks are reportable, even if the disease is not identified as a notifiable condition.
- Persons and entities having a duty to report: health care providers; laboratories; health care facilities.
- Records and specimens containing or accompanied by patient identifying information are confidential. Local health officers and State Department of Health to maintain confidentiality. (Permissible disclosures discussed at § 4.32.)
- Other persons and entities with responsibilities related to reporting: veterinarians (to State Department of Health and to State Department of Agriculture); food service establishments; child day care facilities; schools.
- Federal regulations identify select agents and toxins that have the potential to pose a severe threat to public health and safety and establish requirements for security, training, biosafety, and incident response.

### **Communicable Disease Investigation (4.22)**

- Duties of local health officer
  - Review and determine appropriate action.
  - Conduct investigations and institute control measures.
  - Notify state Department of Health of notifiable condition upon completion of case investigation.
- Authority of local health officer
  - Carry out additional steps to verify diagnosis reported by health care provider.
  - Require person suspected of having reportable disease to be examined.
  - Investigate case or suspected case of reportable disease, if necessary.
  - Require notification of additional conditions of public health importance.
- Duties of state Department of Health related to investigation.
  - Provide consultation and technical assistance to local health departments when requested.
  - Conduct investigations and institute control measures as necessary.

### **Confidentiality (4.30)**

- Federal and State Law Protecting Health Care Information
  - Federal: HIPAA ([45 CFR pts. 160, 164](#)). General Rule: Covered entity (health plan, health care clearinghouse, and health care providers who transmit certain transactions electronically) may not use or disclose protected health care information except as permitted by HIPAA. If a covered entity is a public health authority, it may use protected health information for certain public health activities. Preempts less stringent state laws.
  - State: HCIA ([chapter 70.02 RCW](#)). General rule: Health care providers and health care facilities may not disclose health care information without a patient's written authorization, except as authorized by [RCW 70.02.050](#). State and local agencies obtaining information pursuant to [RCW 70.02.050](#) are to establish record acquisition, retention, destruction, and security policies consistent with HCIA.
- Disclosures Related to Communicable Disease Control
  - Disclosures permitted by HIPAA
    - Disclosures otherwise authorized by law.
    - Disclosures for public health activities.
    - Disclosures to avert a threat to health and safety.
  - Disclosures permitted by HCIA
    - To federal, state, or local public health authorities to the extent required by law.
    - To federal, state, or local public health authorities when needed to protect the public health.
    - To avoid or minimize an imminent danger.

- Disclosures by local and state health departments
  - Local and state Health Department not to disclose report information identifying an individual case or suspected case except to:
    - Employees or other officials needing to know for administering public health laws and regulations in chapter [246-101 WAC](#);
    - Health care providers and others for the purpose of collecting additional information about a case or suspected case, as required for disease control.
- Public Records Act
  - PRA provides that HCIA applies to inspection and copying of health care information of patients.
  - PRA permits third parties affected by requests to be notified.

## **COMMUNICABLE DISEASE CONTROL** ([Chapter 5.00](#))

### **Social Distancing Measures** ([5.20](#))

- Intended to decrease spread of disease of decreasing opportunities for close contact among individuals. Examples:
  - Closing schools and large child care centers.
  - Limiting social interaction at various facilities.
  - Closing churches, theaters, and other places where crowds gather.
  - Suspending large gatherings, such as sports events and concerts.
  - Suspending non-essential government activity.
- Implementation may be voluntary or compulsory.
- Authorities:
  - Heads of political subdivisions in response to emergency. (See [§ 2.42.](#))
  - Local health officer to prevent spread of disease. (See [§ 3.42.B.](#))
  - Governor in response to an emergency. (See [§ 2.32.B.](#))

### **Isolation and Quarantine** ([5.30](#); [5.31](#))

- Form of social distancing
- Under rules adopted by State Board of Health, local health officer has authority to implement isolation and quarantine. Applies to person or group of persons.
- Local health officer can initiate emergency detention by issuing emergency detention order or by petitioning the superior court ex parte.
- Local health officer may initiate emergency detention when (s)he:
  - Has made reasonable efforts to gain voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities, or has determined that seeking voluntary compliance would create a risk of serious harm; and
  - Has reason to believe that the person or group of persons is, or is

suspected to be, infected with, exposed to, or contaminated with a communicable disease or chemical, biological, or radiological agent that could spread to or contaminate others if remedial action is not taken; and

- Has reason to believe that the person or group of persons would pose a serious and imminent risk to the health and safety of others if not detained for purposes of isolation or quarantine.

#### **Local Health Officer Emergency Detention Order**

- Local health officer shall issue written emergency detention order as soon as reasonably possible and always within twelve hours of detention, with copies to persons, by posting in some cases.
- An order issued by a local health officer shall constitute the duly authorized application of lawful rules adopted by the State Board of Health and must be enforced by all police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department in accordance with [RCW 43.20.050](#).
- No explicit authority for arrest by law enforcement, though see [RCW 10.31.100\(1\)](#).

#### **Court proceedings for emergency detention**

(see [Isolation and Quarantine Checklist](#))

- The local health officer may petition the superior court *ex parte* for an order authorizing involuntary detention of a person or group of persons for up to ten (10) days.
- The court shall issue the order if there is a reasonable basis to find that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.

#### **Court proceedings for continued detention**

(see [Isolation and Quarantine Checklist](#))

- The local health officer may petition the superior court for an order authorizing continued detention of a person or group of persons for up to thirty (30) days.
- The court shall grant the petition if it finds that there is clear, cogent, and convincing evidence that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.

#### **Court proceedings for an additional period of continued detention**

(see [Isolation and Quarantine Checklist](#))

- Prior to the expiration of a court order for continued detention, the local health officer may petition the superior court for an order to continue isolation or quarantine for up to an additional thirty (30) days.
- Isolation or quarantine may be continued when the court finds that there is a reasonable basis to require continued isolation or quarantine to prevent a serious and imminent risk to the health and safety of others.

#### **Statutes and rules that supersede**

- The provisions of [WAC 246-100-040](#) shall be superseded by state statutes and rules, and state and federal emergency declarations that contain procedures for detention, examination, counseling, testing, treatment, vaccination, isolation, or quarantine for:

- Specified health emergencies; or
- Specified communicable diseases, including, but not limited to, tuberculosis and HIV.

#### **Right to representation**

- A person or group of persons isolated or quarantined has a right to be represented by counsel.
  - If a person or group requests counsel and cannot afford counsel, the court shall appoint counsel consistent with the provisions of [chapter 10.101 RCW](#).
  - The local health officer must provide adequate means of communication between persons or groups and their counsel.

#### **Relief from isolation or quarantine**

- A person or group of persons detained by order of the local health officer may apply to the court for an order to show cause why the individual or group should not be released. The court shall rule on the application to show cause within forty-eight (48) hours of its filing. If the court grants the application, the court shall schedule a hearing on the order to show cause as soon as practicable. The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order.
- A person or group isolated or quarantined may request a hearing for remedies regarding breaches to the conditions required by [WAC 246-100-045](#). A request for a hearing shall not stay or enjoin an isolation or quarantine order. Upon receipt of a request alleging extraordinary circumstances justifying the immediate granting of relief, the court shall fix a date for a hearing as soon as practicable. Upon receipt of a request, the court shall fix a date for a hearing within five (5) days from receipt of the request. In extraordinary circumstances and for good cause shown, the local health authority may move the court to extend the time for a hearing.

#### **Infection control and consolidation of hearings**

- Any hearings for relief involving a petitioner or petitioners judged to be contagious will be conducted in a manner that utilizes appropriate infection control and minimizes the risk of disease transmission.

#### **Consular notification**

- Article 36(1)(b) of the Vienna Convention on Consular Relations provides that a non-U.S. citizen who is arrested or detained must be informed that consular officials may be notified about the detention. In addition, some bilateral consular agreements require notification.

#### **Isolation and quarantine conditions and principles (5.32)**

- The local health officer must adhere to conditions and principles described in [WAC 246-100-045](#) when isolating or quarantining a person or group.

#### **Federal Authority to Control Communicable Disease (5.34)**

- Federal government has authority to control spread of communicable disease from foreign countries into the U.S. and from one state or possession into another state or possession.
- Authorities include isolation and quarantine for diseases listed in Executive Orders of the President



### **Animal Health (5.40)**

- The Washington Department of Agriculture has authority to prevent the spread of diseases affecting animals.
- Veterinarians are required to report certain diseases.
- The Director of Agriculture has the authority to enter property at any reasonable time to conduct tests, examinations, or inspections, to take samples, and to examine and copy records when there is reasonable cause to investigate whether the animals are infected or have been exposed to a disease or to determine if the livestock have been imported in violation of [RCW 16.36](#).
- The Director of Agriculture may order animal quarantine, hold, treatment, and destruction.
- The Secretary of Health may take action if an emergency arises out of an outbreak of diseases communicable to humans caused by pet animals.
- The Secretary of the U.S. Department of Agriculture and the Director of the Centers for Disease Control have certain authorities related to importation of animals, movement in interstate commerce, and risk of interstate spread of disease.

## **TUBERCULOSIS CONTROL (Chapter 7.00)**

### **Involuntary Detention Procedures (7.21)**

- Health officers have the authority to inspect, examine, treat, and quarantine or isolate all persons known to be infected with tuberculosis.
  - Orders shall be made in writing including the name of the person, the time and place of the examination, treatment, quarantine, or isolation, the treatment, and other conditions as necessary to protect the public health.
  - The person so ordered retains their rights to choose a physician and to rely on spiritual means.
  - A violation of an order is a misdemeanor.
- Reasonable efforts shall be made to obtain voluntary compliance prior to initiating procedure for involuntary detention, and the State Board of Health shall establish requirements for due process standards for the involuntary detention of persons with suspected or confirmed tuberculosis and procedures to initiate involuntary detention.
- Emergency detention may be initiated if a person with a suspected or confirmed case of tuberculosis has failed to comply with an order.
  - The person shall be given notice of their rights to a hearing and counsel.
- To continue detention, the health officer shall file a petition within one (1) judicial day of the initial detention.
  - The petition shall specify the basis for belief in a suspected or confirmed case, specific actions taken to obtain voluntary compliance, nature and duration necessary to assure appropriate testing and treatment, basis of belief in necessity to protect the public health, and other pertinent information.
  - A hearing shall occur within seventy-two (72) hours of initial detention in which the health officer bears the burden of proof by a

preponderance of the evidence.

- If the court finds a suspected or confirmed case, it shall make the least restrictive orders regarding testing, treatment, and/or detention sufficient to protect the public health with any order for detention not to exceed forty-five (45) days.
- The court may extend court-ordered detention following a hearing for a period not to exceed one hundred eighty (180) days.
- A person may be released prior to the expiration of detention when less restrictive measures are sufficient to protect the public health.
- A person who fails to complete treatment after release from detention may be detained for additional periods not to exceed one hundred eighty (180) days.
- For a person detained in another county, the venue may remain in the original county or may be transferred to the county of detention.
- Respondent is accorded their right to counsel and presentation of their case at all hearings.
- Notice of the infectious TB status (to remain otherwise confidential) of a person being transported shall be provided to the transporting law enforcement agency and the receiving facility prior to the transport.
- Testing or treatment may begin with informed consent or pursuant to a court order for those persons detained.
- These provisions do not apply to persons detained to the custody of a penal institution, a mental health facility, or another public or private institution.

## **STDs – CONDUCT ENDANGERING PUBLIC HEALTH** ([Chapter 9.00](#))

### **Health Officer Authority** ([9.10](#))

- Health officers may examine and counsel persons reasonably believed to be infected with or exposed to a sexually transmitted disease.
  - If a health officer knows or has reason to believe due to direct medical knowledge or reliable testimony that a person has a sexually transmitted disease and is endangering the public health, he or she shall conduct an investigation.
- Health officers shall use the least restrictive measures first when issuing orders for medical examination or testing, counseling, medical treatment, or to cease and desist from specified conduct.
  - Orders for medical examination or testing, counseling, or medical treatment must be reasonably related to the purpose of the restriction, up to a maximum period of twelve (12) months.
  - Orders to cease and desist from specified conduct are not to exceed three (3) months and may be renewed for periods of time not to exceed three (3) months.

### **Judicial Hearings** ([9.20](#))

- If a person contests an order, he or she may file an appeal and appear at a judicial hearing on the enforceability of the order. The hearing shall be held within seventy-two (72) hours of receipt of the notice, and no invasive medical procedures shall be carried out prior to the hearing.

- If a person does not comply with an order within the time limit, the health officer may apply to the superior court for a court order requiring the person to comply with the order.
- The burden of proof shall be by clear and convincing evidence and rest upon the health officer.

## **SUBSTANTIAL EXPOSURE TO BODILY FLUIDS** ([Chapter 11.00](#))

### **Definitions** ([11.10](#))

- Those who may experience exposure during the course of employment include those employed or acting as an authorized volunteer as a law enforcement officer, firefighter, health care provider, healthcare facility staff person, department of corrections' staff person, jail staff person, funeral director, or embalmer.
- A substantial exposure is limited to:
  - A physical assault upon the exposed person involving blood or semen.
  - Intentional, unauthorized, nonconsensual use of needles or sharp implements to inject or mutilate the exposed person.
  - An accidental parenteral or mucous membrane or nonintact skin exposure to blood, semen, or vaginal fluids.

### **Procedures** ([11.20](#))

- A person who has experienced exposure in the course of employment may request a health officer to order testing for bloodborne pathogens.
- If the health officer refuses to issue an order, the person who made the request may petition the superior court for a hearing.
- If the person subject to the order refuses to comply, the health officer may petition the superior court for a hearing.
- Notice shall be given to the subject of the order stating its grounds and provisions.
- Testing shall be completed as soon as possible and not later than seventy-two (72) hours after the substantial exposure or court order.
- This section does not apply to department of corrections or to inmates in its custody or subject to its jurisdiction.

## **OPERATION OF THE COURTS AMID PUBLIC HEALTH THREATS** ([Chapter 13.00](#))

### **Appearance by Means Other Than in Person** ([13.11](#))

- [CR 43\(a\)](#) provides that for good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.
- Additional considerations include: provision for confidential communication between the individual and his or her attorney; logistics for interpretation services if necessary; and arrangements for transmission of documents and exhibits.

### **Closure of Hearings or Sealing of Records** ([13.20](#))

- The likely basis for closing a hearing or sealing certain records would be to protect the individual's privacy interest in information about his or her health.

- The court must weigh the five Ishikawa/Bone-Club criteria: compelling interest, opportunity to object, least restrictive means of protection, competing public interest, and that the order is no broader than necessary in application or duration to serve its purpose.
- An order to seal records must satisfy [GR 15](#).

**Relocation of Court** ([13.31](#))

- Conduct of hearings without a clerk
- Conduct of hearings within or without the county
- Relocation of the Court by agreement of the Court and Council

**Additional Judicial Personnel** ([13.41](#))

- Judges from other courts of the state
- Visiting superior court judges from other counties
- Pro tempore judges
- Commissioners
- Appointment of other officers

**Consolidation of Cases** ([13.42](#))

- Criteria for consolidation of isolation and quarantine cases at [WAC 246-100-065](#)

**Emergency Court Closure** ([13.50](#))

- Emergency court closure governed by [GR 21](#)

**Presiding Judge in Superior Court District and Limited Jurisdiction Court District** ([13.60](#))

- Provisions for presiding judge in each superior court district and each limited jurisdiction court district contained in [GR 29](#)

**Selected King County Code and Seattle Municipal Code Provisions** ([Appendix A](#))

## ISOLATION AND QUARANTINE CHECKLIST

### **Petition Ex Parte for Involuntary Isolation or Quarantine**

- Petition *ex parte* for involuntary isolation or quarantine shall specify:
  - The identity of all persons or groups to be subject to isolation or quarantine;
  - The premises where isolation or quarantine will take place;
  - The date and time at which isolation or quarantine will commence;
  - The suspected communicable disease or infectious agent if known;
  - The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious disease if known;
  - The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would create a risk of serious harm;
  - The medical basis on which isolation or quarantine is justified.
- Petition to be accompanied by declaration of the local health officer attesting to the facts asserted in the petition, together with any further information that may be relevant to the court's consideration.
- Notice to the persons or groups identified in the petition to be in accordance with the rules of civil procedure.
- Hearing to occur within seventy-two (72) hours of filing, excluding Saturdays, Sundays, and holidays.
- Petitioner may file a motion for an order to close hearings or seal records.

### **Court Order Authorizing Isolation or Quarantine**

- Test for granting petition: reasonable basis to find that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.
- Court order authorizing isolation or quarantine as a result of an *ex parte* hearing shall:
  - Specify a maximum duration of isolation or quarantine not to exceed ten (10) days.
  - Identify the isolated or quarantined persons or groups identified by name or shared or similar characteristics or circumstances.
  - Specify factual findings warranting isolation or quarantine pursuant to [WAC 246-100-040](#).
  - Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of [WAC 246-100-040](#).
  - Specify the premises where isolation or quarantine will take place.
  - Be served on all affected persons or groups in accordance with the rules of civil procedure.
- Court order closing hearings or sealing records, if granted.

**NOTE:** [WAC 246-100-040](#) provides that the local health officer may petition the superior court *ex parte* or may issue an emergency detention order causing persons to be immediately detained for purposes of isolation and quarantine for up to ten (10) days. If the local health officer initiates emergency detention and does not petition the court *ex parte*, then the court's involvement would not begin until and unless the health officer petitioned the court for an order authorizing continued isolation or quarantine for up to thirty (30) days. (See below.)

**Petition for Continued Isolation or Quarantine**

- Petition for continued isolation or quarantine shall specify:
  - The identity of all persons or groups subject to isolation or quarantine.
  - The premises where isolation or quarantine is taking place.
  - The communicable disease or infectious agent if known.
  - The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious disease if known.
  - The medical basis on which continued isolation or quarantine is justified.
- Petition to be accompanied by declaration of the local health officer attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.
- Petition to be accompanied by a statement of compliance with the conditions and principles contained in [WAC 246-100-045](#).
- Notice to the persons or groups identified in the petition to be in accordance with the rules of civil procedure.
- Persons isolated and quarantined have a right to counsel, including court-appointed.
- Hearing to occur within seventy-two (72) hours of filing, excluding Saturdays, Sundays, and holidays, unless health officer applies for continuance based on extraordinary circumstances and for good cause shown. Continuance granted at court's discretion, giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the public threat, and the availability of necessary witnesses and evidence.

**Court Order Authorizing Continued Isolation or Quarantine**

- Test for granting petition for continued isolation or quarantine: Clear, cogent, and convincing evidence that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.
- Court order granting petition for continued isolation or quarantine shall:
  - Specify a maximum duration of isolation or quarantine not to exceed thirty (30) days.
  - Identify the isolated or quarantined persons or groups by name or shared or similar characteristics or circumstances.
  - Specify factual findings warranting isolation or quarantine pursuant to [WAC 246-100-040](#).
  - Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of [WAC 246-100-040](#).
  - Specify the premises where isolation or quarantine will take place.
  - Be served on all affected persons or groups in accordance with the rules of civil procedure.

**Petition to Extend Court-Ordered Continued Isolation or Quarantine**

- Must be filed prior to the expiration of the court order for continued detention.
- Petition requirements same as Petition for Continued isolation & Quarantine (above).
- Test for granting petition: reasonable basis to require continued isolation or quarantine to prevent a serious and imminent threat to the health and safety of others.
- Order shall be for a period not to exceed thirty (30) days.

## 1.00 **JURISDICTION, VENUE, AND RELEVANT CIVIL ACTIONS**

### 1.10 **FEDERAL v. STATE**

#### 1.11 The United States Constitution and Public Health

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.* U.S. CONST. pmb1.

- A. *Federal Constitution Generally Silent.*** Though the preamble of the United States Constitution does refer to promotion of the “general Welfare”, the remainder of the Constitution, including the Amendments, provides no specific role for the federal government in matters of public health. Viewed in conjunction with the Tenth Amendment’s reservation of undelegated powers to the states, this indicates that the federal government’s public health powers are limited to those subjects that fall within its jurisdiction (defense, interstate commerce, and tax powers) and that responsibility for safeguarding public health in other areas falls largely to the states. *See, e.g., Carolene Products Co. v. Evaporated Milk Ass’n*, 93 F.2d 202, 204 (7th Cir. 1937) (“While the police power is ordinarily said to be reserved by the states, it is obvious that it extends fully likewise to the federal government in so far as that government acts within its constitutional jurisdiction...The police power referred to extends to all the great public needs...Its dimensions are identical with the dimensions of the government’s duty to protect and promote the public welfare.”)

In addition, the federal government is responsible for protecting the public health in discrete geographic areas directly under its control (e.g., military bases).

- B. *Federal Public Health Statutory Powers.*** Pursuant to its enumerated powers, the federal government may exercise some public health functions. For example, as defined by statute, the Secretary of the U.S. Department of Health and Human Services may declare and respond to public health emergencies, restrict the movement of, or quarantine, persons arriving from foreign countries or in interstate travel to prevent the spread of specified communicable diseases, cooperate with and assist states in the enforcement of quarantine, maintain a national pharmaceutical stockpile of drugs, vaccines and supplies to provide for the emergency health security of the United States, and regulate biological products. *See* [42 U.S.C. §§ 262-272, 300hh-10-17](#); *infra* § [5.34](#). The federal government may also assume responsibility for public health emergencies precipitated by acts of war or terrorism.

## 1.12 States as Primary Actors

In all other cases, the states bear the primary responsibility for preventing and responding to threats to the public's health. See, e.g., *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905) ("The safety and health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect. They are matters that do not ordinarily concern the national government."); *Compagnie Francaise v. Louisiana Bd. of Health*, 186 U.S. 380, 387 (1902) ("That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress is beyond question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question.").

Moreover, states will almost certainly be required to provide significant assistance and resources during public health emergencies falling within the federal government's jurisdiction.

- A. *The Source of the State's Public Health Authority.*** The power of the state to protect the public's health is derived from the police power.
- 1. The police power.** The "police power" is the power to promote the public safety, health, and morals by restraining and regulating the use of liberty and property. See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) ("Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, matters of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." (Internal citations omitted.)).
  - 2. Police power purposes and limitations as described in Washington case law.** "However difficult it may be to give a precise or satisfactory definition of 'police power,' there is no doubt that the state, in the exercise of such power, may prescribe laws tending to promote the health, peace, morals, education, good order and welfare of the people. Police power is an attribute of sovereignty, an essential element of the power to govern, and a function that cannot be surrendered. It exists without express declaration, and the only limitation upon it is that it must reasonably tend to correct some evil or promote some interest of the state, and not violate any direct or positive mandate of the constitution." *Snohomish County Builders Ass'n v. Snohomish Health Dist.*, 8 Wn. App. 589, 598, 508 P.2d 617 (1973) (quoting *Shea v. Olson*, 185 Wash. 143, 153, 53 P.2d 615 (1936)).



**B. The Washington State Constitution.**

- 1. The State Board of Health established.** "There shall be established by law a state board of health . . . with such powers as the legislature may direct." WASH. CONST. art. XX, § 1. See *infra* § [3.20](#).
- 2. Local governments may pass rules and regulations concerning public health.** Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws. WASH. CONST. art. XI, §11. [RCW 70.05.060](#) provides that local boards of health shall have supervision over all matters pertaining to the preservation of life and health of the people within its jurisdiction. See *infra* § [3.40](#).

**1.20 STATE AND LOCAL VENUE DETERMINATIONS**

**1.21 Courts of Jurisdiction**

**A. Jurisdiction Over Public Health Matters.**

- 1. Superior Courts have original jurisdiction.** The superior courts have original jurisdiction in all cases of law and equity as provided in [RCW 2.08.010](#), including all proceedings in which jurisdiction shall not have been vested exclusively in some other court.

The superior court has jurisdiction over actions to enjoin violations or threatened violations of public health laws, rules, or regulations. [RCW 43.70.190](#). Superior Court judges also have the power to issue writs of mandamus and prohibition, and writs of habeas corpus on petition by or on behalf of persons in actual custody in their respective counties. [RCW 2.08.010](#); see *infra* § [1.30](#).

**B. Courts of Appellate Jurisdiction over Public Health Matters.**

- 1. Court of Appeals.** The Washington Court of Appeals is vested with appellate jurisdiction over cases (except as provided in subsection [B.3](#) below) in which a final judgment has been entered by a trial court of record and all interlocutory appeals. This jurisdiction extends to actions brought under [RCW 43.70.190](#) to enjoin violations or threatened violations of public health laws.
- 2. Supreme Court.** The Supreme Court is vested with appellate jurisdiction over all actions and proceedings (except as provided in subsection [B.3](#) below). The method of seeking review by the Supreme Court of a decision of the Court of Appeals or the superior court is by discretionary review. This appellate jurisdiction extends to actions brought under [RCW 43.70.190](#) to enjoin violations or threatened violations of public health laws.

3. **Limitation on appellate jurisdiction.** The appellate jurisdiction of the Court of Appeals and the Supreme Court does not extend to civil actions at law for the recovery of money or personal property where the original amount in controversy does not exceed two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. [RCW 2.06.030](#); [RCW 2.04.010](#).

## 1.22 Venue

### A. *Proper Venue.*

1. **Superior court of county at issue or Thurston County Superior Court.** Actions to enjoin violations or threatened violations of any public health laws of the state or of any rules or regulations made by the State Board of Health or the Department of Health may be brought in the superior court in the county in which the violation occurred or is about to occur, or in the superior court of Thurston County. [RCW 43.70.190](#).
2. **Waiver of venue.** If an action is brought in the wrong county, it may nevertheless be tried in that county, unless the defendant properly requests that the action be held in the proper county. [CR 82](#).

- ### B. *Change of Venue.*
- Venue may be changed as set forth in [chapter 4.12 RCW](#) and [CR 82](#). Each party is limited to one (1) change of venue except for causes not in existence when the first change was allowed. [RCW 4.12.060](#).

## 1.30 WRITS OF HABEAS CORPUS AND PERSONAL RESTRAINT PETITIONS

Isolation and quarantine orders are civil (not criminal) actions that impose a civil “restraint” upon an individual by the state. [WAC 246-100-055](#) establishes procedures for relief from isolation and quarantine in some circumstances. An individual might, however, choose to seek relief via normal appellate review, or under two related mechanisms: a petition for a writ of habeas corpus or a personal restraint petition. This section provides a procedural overview of these mechanisms; it does not provide a substantive discussion of the habeas corpus or personal restraint petition law, which will necessarily be highly fact dependent.

### A. *Petition for Writ of Habeas Corpus*

1. **Controlling law.** Petitions for a writ of habeas corpus are governed by [chapter 7.36 RCW](#).
2. **Jurisdiction.** Writs of habeas corpus may be granted by the Supreme Court, the Court of Appeals, or Superior Court. [RCW 7.36.040](#).

When a writ of habeas corpus is filed in either the Court of Appeals or the Supreme Court, it will be considered as a personal restraint petition pursuant to the rules of appellate procedure. “[These [rules] establish a

single procedure for proceedings in the appellate court to obtain relief from restraint.” [RAP 16.3\(a\)](#).

When a writ of habeas corpus is filed in Superior Court, it should probably be considered by the trial court and not transferred to an appellate court. (*Dictum* by the Supreme Court in a criminal case allows a habeas petition to be transferred to the appellate courts as a personal restraint petition. See *Toliver v. Olsen*, 109 Wn.2d 607, 746 P.2d 809 (1987). It is unclear whether this rule applies in the civil context of an isolation or quarantine order.)

The personal restraint petition rules set forth in RAP Title 16 do not apply to habeas corpus proceedings in Superior Court.

3. **Who may file writ of habeas corpus.** Any person “restrained of his or her liberty under any pretense whatever, may prosecute a writ of habeas corpus.” [RCW 7.36.010](#). Parents, guardians, limited guardians where appropriate, spouses or domestic partners, and next of kin may file on behalf of the restrained individual. [RCW 7.36.020](#).
4. **Contents and writ.** The writ of habeas corpus must be signed and verified and specify:
  - a. By whom the petitioner is restrained of his liberty, and the place where, (naming the parties if they are known, or describing them if they are not known).
  - b. The cause or pretense of the restraint according to the best of the knowledge and belief of the applicant.
  - c. If the restraint be alleged to be illegal, in what the illegality consists. [RCW 7.36.030](#).
5. **Effect of writ.** The writ of habeas corpus requires the officer or party restraining the individual to bring the restrained person before the court “at such time and place as the court or judge shall direct to do and receive what shall be ordered” by the court. [RCW 7.36.050](#).

In the case of an individual isolated or quarantined for public health reasons, the court may exercise its discretion under this provision (“at such time and place as the court or judge shall direct”) and, if necessary, direct the person to appear by telephone conference call (or other reasonable limitation). See *infra* § [7.00](#).

6. **Duty of court to act “without delay.”** Writs of habeas corpus must be acted upon – that is, the individual brought before the court – “without delay.” [RCW 7.36.040](#).

In the public health context, this may result in writs of habeas corpus being filed in Superior Court in an effort to obtain a quick decision. As discussed below, writs of habeas corpus filed in the Court of Appeals or Supreme Court are considered as personal restraint petitions and subject to an established briefing schedule.

7. **Standard of review.** Generally, a habeas petitioner must show actual prejudice resulting from constitutional error. *In re Hagler*, 97 Wn.2d 818, 825-26, 650 P.2d 1103 (1982). An individual seeking habeas relief who relies on bare allegations unsupported by citation to authority, facts, or persuasive reasoning cannot sustain his or her burden of proof. *In re Cook*, 114 Wn.2d 802, 813-14, 792 P.2d 506 (1990).

**B. Personal Restraint Petitions**

1. **Controlling law.** Personal restraint petitions are governed by [RAP 16.3](#) to [16.15](#), [RAP 16.24](#) to [16.27](#), and [chapter 10.73 RCW](#).
2. **Jurisdiction.** The Court of Appeals and Supreme Court have concurrent jurisdiction over personal restraint petitions in which the death penalty has not been decreed. However, the Supreme Court will usually exercise its jurisdiction by transferring the petition to the Court of Appeals. [RAP 16.3\(c\)](#).

A personal restraint petition filed in Superior Court should be transferred to the Court of Appeals for lack of Superior Court jurisdiction. See *State v. Mott*, 49 Wn. App. 115, 119 742 P.2d 158 (1987); [RAP 16.3](#).

(The case only states that the superior court has no jurisdiction except for cases that have been properly filed with court of appeals and transferred to superior court, there is no procedural discussion of whether the petitions filed originally filed with superior court should be transferred.)

The appellate courts may transfer a personal restraint petition to Superior Court for a reference hearing or for a decision on the merits. [RAP 16.11](#), [16.12](#), [16.14](#).

3. **Elements of a personal restraint petition.** [RAP 16.7](#) sets forth the mandatory elements of a personal restraint petition, which include:
  - a. Status of Petitioner
  - b. Grounds for Relief
  - c. Citations to Court Documents
  - d. Statement of Finances
  - e. Request for Relief
  - f. Oath
  - g. Verification (criminal proceedings only)
4. **Government parties.** When the responding party is the government, the petition should be captioned only with the name of the petitioner. The governmental agency or person responsible for the proceeding at the time petitioner claims the proceeding was improper shall respond to the petition. Two or more agencies may file separate or joint responses. [RAP 16.6](#).

In the public health context, the agency responsible for requesting the isolation or quarantine order would be the responding party.

**5. Standard of Review.** To prevail on a personal restraint petition, an individual must show that he or she is unlawfully restrained. *In re Cashaw*, 123 Wn.2d 138, 148-49, 866 P.2d 8 (1994); [RAP 16.4](#). To establish unlawful restraint, the petitioner must show either a constitutional violation or a violation of the laws of the State of Washington. [RAP 16.4\(c\)](#). Specifically, petitioner must show either: (1) constitutional error that caused substantial actual prejudice, or (2) a nonconstitutional error that resulted in a fundamental defect constituting a complete miscarriage of justice. *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 409, 114 P.3d 607 (2005).

(Both this case and the case that it cites are flagged red on Westlaw for severe negative treatment. The negative treatment appears to be on unrelated issues, so there is likely no problem. An alternative case without severe negative treatment of other issues and that is cited for the same proposition: *In re Pers. Restraint of Grasso*, 151 Wash.2d 1, 10-11, 84 P.3d 859 (2004).

Finally, in order to prevail in a personal restraint petition, a petitioner must set out the facts underlying the challenge and the evidence available to support the factual allegations. *In re Rice*, 118 Wn.2d 876, 885-86, 828 P.2d 1086 (1992). Bare assertions and conclusory allegations are insufficient to gain consideration of a personal restraint petition. *Id.* at 886.

## 1.40 STATUTORY WRITS OF MANDAMUS AND PROHIBITION

A party affected by governmental action or inaction in response to a public health emergency may choose to challenge the action or inaction in court by means of a writ of prohibition or a writ of mandamus. The writs may be issued by any court, except district or municipal courts, to an inferior tribunal, or to a corporation, board or person. There must be an absence of an adequate remedy at law, and the application for the writ must be based on affidavit of a person beneficially interested. [RCW 7.16.170](#), [.300](#). Except as otherwise provided in [chapter 7.16 RCW](#), the rules of civil procedure apply to the writ proceedings. [RCW 7.16.340](#).

### 1.41 Writ of Mandamus

A writ of mandamus may be issued by the court to compel the performance of an act which the law enjoins as a duty resulting from an office, trust, or station. [RCW 7.16.160](#). The writ of mandamus may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party immediately to do the act required to be performed or to show cause before the court at a specified time why the party has not done the act as commanded. The peremptory writ is in similar form, except the words requiring the party to show cause why (s)he has not done the act as commanded are omitted and a return date inserted. [RCW 7.16.180](#). The writ is served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. [RCW 7.16.270](#). Where the writ presents questions of fact that are essential to the

determination of the motion, the court, in its discretion, may order the question tried before a jury, and postpone the argument until after the trial. The question to be tried must be distinctly stated in the order for trial. [RCW 7.16.210](#).

## 1.42 Writ of Prohibition

A writ of prohibition is the counterpart of the writ of mandamus. It arrests the proceedings of any tribunal, corporation, board, or person, when such proceedings are without or in excess of the body's jurisdiction. [RCW 7.16.290](#). The writ of prohibition must be either alternative or peremptory. The alternative writ must state generally the allegations against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified until further order of the court, and to show cause before the court at a specified time why the party should not be absolutely restrained from further proceedings in such action or matter. The peremptory writ is in similar form, except that the words requiring the party to show cause why (s)he should not be absolutely restrained, etc., must be omitted and a return date inserted. [RCW 7.16.310](#). The provisions of [chapter 7.16 RCW](#) relating to a writ of mandamus apply to the proceedings for a writ of prohibition. [RCW 7.16.320](#).

## 1.50 APPLICABILITY OF LOCAL RULES OF COURT TO PUBLIC HEALTH CASES

As a general rule, public health cases are conducted in the same manner as other proceedings in superior court. That is, all court rules, including those of administration, evidence, trial procedure, and appellate procedure, apply to public health cases.

While some public health cases will present unique factual scenarios and practical exigencies, the court rules make no specific procedural exceptions for cases involving public health emergencies. In such cases, the court should utilize routine procedures for resolving and/or expediting urgent matters on their dockets subject to any statutes or rules specific to public health cases. For example, pursuant to [WAC 246-100-040](#), the court may enter an order authorizing isolation or quarantine as a result of an *ex parte* hearing if specified requirements are met. See *infra* § [5.31.B.1.d](#).

## 2.00 EMERGENCIES AND EMERGENCY MANAGEMENT

### 2.10 OVERVIEW

The Washington Emergency Management Act, [chapter 38.52 RCW](#), provides authority for the state and political subdivisions to respond to emergencies.

The Emergency Management Division of the state Military Department,

under the direction of the Adjutant General, is responsible for state coordination during an emergency. Political subdivisions are required to establish local emergency organizations, and the heads of political subdivisions are authorized to respond to emergencies. See *generally* [chapter 38.52 RCW](#). The Governor may assume direct operational control if there is a disaster beyond local control. [RCW 38.52.050\(1\)](#). Furthermore, the Governor is authorized to proclaim an emergency and issue emergency orders. See [chapter 43 06 RCW](#). The municipal codes of political subdivisions also may contain authorities for local proclamations of emergency and the issuance of emergency orders. See, e.g., [chapter 12.52 KCC](#); chapter [10.02 SMC](#). The Emergency Management Act defines political subdivisions as any county, city, or town. [RCW 38.52.010\(20\)](#).

The statutory definition of "emergency" encompasses emergencies that threaten public health. [RCW 38.52.010\(9\)\(a\)\(i\)](#). State and local boards of health, the Secretary of Health, and local health officers also have broad authority to protect the public health. See *infra* § [3.00](#). The exercise of their authority is independent of a proclamation of an emergency by the Governor or the head of a political subdivision. Therefore, during a communicable disease emergency, the authorities for emergency management and protection of public health could overlap. Overlapping authorities could include:

- (1) The authority of heads of political subdivisions to proclaim emergencies and issue emergency orders;
- (2) The authority of the Governor to proclaim an emergency and issue emergency orders; and
- (3) The authority of local boards of health, local health officers, and the Secretary of Health to protect the public health, which is not dependent on a proclamation of emergency.

## 2.20 CONDITIONS OF EMERGENCY

### A. *Emergency Defined.*

1. **Definition.** "Emergency or disaster" means an event or set of circumstances which:
  - a. Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or
  - b. Reaches such a dimension or degree of destructiveness as to warrant the Governor declaring a state of emergency pursuant to [RCW 43.06.010](#). [RCW 38.52.010\(9\)\(a\)\(ii\)](#).

## 2.30 STATE ORGANIZATION AND AUTHORITY

### 2.31 State Organization

#### A. *State Military Department, Emergency Management Division.*

1. **Administration of state emergency management program.** The state Military Department shall administer the comprehensive

emergency management program of the state of Washington. [RCW 38.52.005](#) and [010\(6\)](#).

**2. Adjutant General.**

- a. **Director of Military Department.** The Adjutant General is the Director of the Military Department. [RCW 38.52.010\(7\)](#). Provisions regarding the appointment and duties of the Adjutant General are contained in [chapter 38.12 RCW](#).
- b. **Responsibilities.** The Adjutant General shall be responsible to the Governor for carrying out the program for emergency management of the state. [RCW 38.52.030\(2\), \(3\)](#).

2.32 Authority of the Governor

**A. Proclamation of Emergency.**

1. **Finding the existence of an emergency.** The Governor, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, may proclaim a state of emergency in the area affected. [RCW 43.06.010\(12\)](#).
2. **Area where emergency powers effective.** The powers granted the Governor during a state of emergency shall be effective only within the area described in the proclamation. *Id.*
3. **Procedural requirements.**
  - a. The proclamation shall be:
    - i. In writing;
    - ii. Signed by the Governor;
    - iii. Filed with the Secretary of State. [RCW 43.06.210](#).
  - b. The Governor shall give as much public notice as practical through the news media regarding the issuance of the proclamation. *Id.*
4. **Termination.** The state of emergency shall cease to exist upon the issuance of a proclamation of the Governor declaring its termination. *Id.*
  - a. **When termination must occur.** The Governor must terminate the state of emergency when order has been restored in the area affected. *Id.*

**B. Powers and Duties.**

1. **Powers pursuant to proclamation of emergency.** After proclaiming a state of emergency, and prior to its termination, the Governor may, in the area described by the proclamation, issue orders that include:
  - a. Prohibiting:
    - i. Persons from being on public streets, in public parks, or at public places during curfew;
    - ii. Persons from assembling;
    - iii. Use of streets, highways or public ways;
    - iv. Such other activities as the Governor reasonably believes should



- be prohibited to help preserve and maintain life, health, property or the public peace. [RCW 43.06.220\(1\)](#).
- b. Waiver or suspension of statutory obligations or limitations in any or all of the following areas as further specified and limited by [chapter 181, Laws of 2008](#):
- i.* Liability for participation in interlocal agreements;
  - ii.* Inspection fees owed to the department of labor and industries;
  - iii.* Application of the family emergency assistance program;
  - iv.* Regulations, tariffs, and notice requirements under the jurisdiction of the utilities and transportation commission;
  - v.* Application of tax due dates and penalties relating to collection of taxes; and
  - vi.* Permits for industrial, business, or medical uses of alcohol. [RCW 43.06.220\(2\)](#).
- c. Notice of orders shall be provided in the same manner as notice of a proclamation. [RCW 43.06.210](#).
- 2. General supervision of emergency management functions.** The Governor, through the Adjutant General, shall have general supervision and control of the emergency management functions in the Military Department. [RCW 38.52.050\(1\)](#).
- a. **Conditions for direct operational control.** In the event of a disaster beyond local control, the Governor may assume direct operational control over all or any part of the emergency functions within this state. *Id.*
- b. **Exercise of powers without regard to procedures and formalities required by law.** If the Governor has assumed direct operational control, the Governor may exercise the powers vested in [RCW 38.52.070\(2\)](#) in light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to:
- i.* Budget law limitations;
  - ii.* Requirements of competitive bidding and publication of notices;
  - iii.* Provisions pertaining to the performance of public work;
  - iv.* Entering into contracts;
  - v.* Incurring of obligations;
  - vi.* Employment of temporary workers;
  - vii.* Rental of equipment;
  - viii.* Purchase of supplies and materials
  - ix.* Levying of taxes;
  - x.* Appropriation and expenditures of public funds. *Id.*
- c. **Power to enter into contracts and incur obligations.** The Governor may enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. *Id.*
- 3. Authority.** The Governor is authorized and empowered to:
- a. **Make, amend, and rescind the necessary orders, rules, and regulations** to carry out the provisions of [chapter 38.52 RCW](#) within the limits of the authority conferred upon him or her therein and with due consideration of the plans of the federal government.

- b. **Enter into mutual aid arrangements** with other states or territories, or provinces of the Dominion of Canada.
  - c. **Coordinate mutual aid interlocal arrangements between political subdivisions** of the state.
  - d. **Delegate any administrative authority** vested under [chapter 38.52 RCW](#) and provide for subdelegation of such authority.
  - e. **Appoint metropolitan or regional area coordinators** when practicable.
  - f. **Cooperate with federal officials, and with officers and agencies of other states.** [RCW 38.52.050\(3\)\(e\)](#).
4. **Utilization of existing services, equipment, supplies, and facilities.** In carrying out the provisions of [chapter 38.52 RCW](#), the Governor is directed to utilize the services, equipment, supplies and facilities of:
- a. **Existing public departments, offices, and agencies of the state, political subdivisions, and all other municipal corporations thereof** including but not limited to districts and quasi municipal corporations organized under the laws of the state of Washington. [RCW 38.52.110\(1\)](#).
  - b. **Officers and personnel required to cooperate.** Officers and personnel are directed to cooperate notwithstanding any other provision of law. *Id.*
5. **Commandeering of service and equipment after emergency proclamation by Governor.** The service and equipment of as many citizens as considered necessary may be commandeered after proclamation by the Governor of the existence of a disaster. [RCW 38.52.110\(2\)](#).
- a. **Persons authorized to command service and equipment.**
    - i. The Governor;
    - ii. The chief executive of counties, cities, and towns; and
    - iii. The emergency management directors of local political subdivisions. *Id.*
6. **Enforcement by organizations for emergency management.** It shall be the duty of every organization for emergency management and the officers thereof to execute and enforce orders, rules, and regulations made by the Governor. [RCW 38.52.150\(1\)](#).
7. **Violations and Penalties.** Criminal sanctions apply to several types of conduct during an emergency:
- a. Willfully violating any provision of an order issued by the Governor. [RCW 43.06.220\(5\)](#).
  - b. Maliciously destroying or damaging any real or personal property or maliciously injuring another. [RCW 43.06.230](#).
  - c. Disorderly conduct. [RCW 43.06.240](#).
  - d. Refusing to leave public way or property when ordered. [RCW 43.06.250](#).
  - e. Violating a rule, regulation, or order issued under [chapter 38.52 RCW](#). [RCW 38.52.150\(2\)](#).
8. **Continuity of Government.** “In case of the removal, resignation, death or disability of the governor,” duties automatically devolve

upon the following officers, and in the following order:

- a. Lieutenant Governor
- b. Secretary of State
- c. Treasurer
- d. Auditor
- e. Attorney General
- f. Superintendent of Public Instruction
- g. Commissioner of Public Lands. WASH. CONST. art. III, §10.

**C. Case Law Involving Actions by the Governor During an Emergency.**

**1. Delegation of police power to Governor in times of emergency.**

The statutory powers in [chapters 43.06 RCW](#) and [38.52 RCW](#) evidence a clear intent by the Legislature to delegate requisite police power to the Governor in times of emergency. *Cougar Business Owners Ass'n v. State*, 97 Wn.2d 466, 474, 647 P.2d 481 (1982).

(Overturned on due process grounds by 2019 case, *Chong Yim v. City of Seattle*, 194 Wash.2d 682, 451 P.3d 694 (2019)). The new case does not challenge the above claim that there is a clear intent to delegate requisite police power to governor.)

- 2. Discretion to determine start and end of emergencies.** The Governor has discretion to determine both the start and end of an emergency. Emergency powers are not limited to clean-up operations; actions of a preventative nature may be taken. *Id.* at 475-76.

**2.40 LOCAL ORGANIZATION AND AUTHORITY**

**2.41 Local Organization**

**A. Political Subdivisions.**

- 1. Local emergency management organizations authorized.** Each political subdivision of this state is authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan. [RCW 38.52.070\(1\)](#).

- a. **Political subdivision defined.** "Political subdivision" means any county, city, or town. [RCW 38.52.010\(20\)](#).

**2. Responsibilities of local organizations for emergency management.**

Each local organization or joint local organization shall:

- a. Perform emergency management functions within the territorial limits of the political subdivision within which it is organized;
- b. Conduct such functions outside of such territorial limits as may be required. [RCW 38.52.070\(1\)](#).

**3. Director of emergency management.**

- a. **Appointment.** Each local organization shall have a director who shall be appointed by the executive head of the political

- subdivision. *Id.*
- b. **Responsibilities.** The director shall have direct responsibility for the organization, administration, and operation of the local organization, subject to the direction and control of the executive officer. *Id.*
  - c. **Executive head defined.** “Executive head” means:
    - i. In charter counties with an elective office of county executive, the county executive;
    - ii. In other counties, the county legislative authority;
    - iii. In cities and towns where the mayor is directly elected, the mayor;
    - iv. In cities and towns with council manager forms of government, the city manager. [RCW 38.52.010\(12\)](#).

## 2.42 Local Authority

### A. **Statutory Powers During Emergencies.**

1. **Exercise of powers without regard to procedures and formalities required by law.** Each political subdivision is authorized to exercise the powers vested under [RCW 38.52.070\(2\)](#) in light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to:
  - a. Budget law limitations;
  - b. Requirements of competitive bidding and publication of notices;
  - c. Provisions pertaining to the performance of public work;
  - d. Entering into contracts;
  - e. Incurring of obligations;
  - f. Employment of temporary workers;
  - g. Rental of equipment;
  - h. Purchase of supplies and materials
  - i. Levying of taxes;
  - j. Appropriation and expenditures of public funds. *Id.*
2. **Power to enter into contracts and incur obligations.** Each political subdivision in which a disaster occurs shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. *Id.*
3. **Utilization of existing services, equipment, supplies, and facilities.** In carrying out the provisions of [chapter 38.52 RCW](#), the Governor and the executive heads of political subdivisions are directed to utilize the services, equipment, supplies and facilities of:
  - a. **Existing public departments, offices, and agencies of the state, political subdivisions, and all other municipal corporations thereof** including but not limited to districts and quasi municipal corporations organized under the laws of the state of Washington. [RCW 38.52.110\(1\)](#).
  - b. **Officers and personnel required to cooperate.** Officers and personnel are directed to cooperate notwithstanding any other

provision of law. *Id.*

4. **Commandeering of service and equipment after emergency proclamation by Governor.** The service and equipment of as many citizens as considered necessary may be commandeered after proclamation by the Governor of the existence of a disaster. [RCW 38.52.110\(2\)](#).
  - a. **Persons authorized to command service and equipment.**
    - i. The Governor;
    - ii. The chief executive of counties, cities, and towns; and
    - iii. The emergency management directors of local political subdivisions. *Id.*

## 3.00 HEALTH AGENCIES AND BOARDS

### 3.10 OVERVIEW

Responsibility for public health is shared among the Washington State Board of Health, the Washington State Department of Health, and local health jurisdictions. The State Board of Health develops public health policy and adopts rules, including rules for communicable disease control. See generally [chapter 43.20 RCW](#). The Department of Health provides leadership and coordination for public health programs, and in certain situations the Secretary of Health may exercise the powers of a local health officer. See generally [chapter 43.70 RCW](#).

At the local level, public health is primarily the responsibility of local boards of health and local health officers. The local board of health supervises matters relating to public health. See [RCW 70.05.060](#). The local health officer has a variety of powers and duties, including control and prevention of the spread of dangerous, contagious, or infectious diseases. See [RCW 70.05.070](#). The Governor and heads of political subdivisions have authority to proclaim emergencies and issue emergency orders. See *supra* § [2.00](#). Therefore, during a communicable disease emergency, the authorities for emergency management and protection of public health could overlap. See discussion *supra* § [2.10](#).

### 3.20 WASHINGTON STATE BOARD OF HEALTH

#### A. *Establishment.*

1. **Membership.** The State Board of Health consists of ten (10) members: the Secretary of Health or the Secretary's designee and nine (9) persons appointed by the Governor. [RCW 43.20.030](#).
2. **Chairman selected by Governor.** The Governor shall select the chairman from among the appointed members. *Id.*

#### B. *Powers and Duties Related to Communicable Disease Control.*

1. **Rulemaking.** In order to protect the public health, the State Board of Health shall adopt rules related to, among other topics:

- a. Imposition and use of isolation and quarantine;
- b. Prevention and control of infectious and noninfectious diseases, and the receipt and conveyance of remains of deceased persons; and other sanitary matters best controlled by universal rule. [RCW 43.20.050\(2\)\(e\) and \(f\)](#).

2. **Delegation of rulemaking authority.** The State Board of Health may delegate any of its rulemaking authority to the Secretary of Health and rescind such authority. [RCW 43.20.050\(4\)](#).

**C. Enforcement of State Board of Health Rules.**

1. **Enforcement by public officers and employees.** All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township, shall enforce all rules adopted by the State Board of Health. [RCW 43.20.050\(5\)](#).

2. **Enforcement by local boards of health.** Each local board of health shall enforce through the local health officer or the administrative officer, if any, the public health statutes of the state and rules promulgated by the State Board of Health and the Secretary of Health. [RCW 70.05.060\(1\)](#).

3. **Enforcement by local health officers.** Each local health officer, acting under the direction of the local board of health or of the administrative officer, if any, shall enforce the public health statutes of the state, rules of the State Board of Health and Secretary of Health, and all local health rules, regulations and ordinances within his or her jurisdiction. [RCW 70.05.070\(1\)](#).

**3.30 WASHINGTON STATE DEPARTMENT OF HEALTH**

**A. Establishment.**

1. **Department of state government.** The Department of Health is a department of state government. [RCW 43.70.020](#).

2. **Secretary of Health.** The Secretary shall be appointed by and serve at the pleasure of the Governor in accordance with [RCW 43.17.020](#). [RCW 43.70.030](#).

**B. Powers and Duties Related to Communicable Disease Control.**

1. **Enforcement of laws and rules.** The Secretary shall strictly enforce all laws for the protection of the public health and all rules, regulations, and orders of the State Board of Health. [RCW 43.70.130\(3\)](#).

2. **Investigation of outbreaks of disease and advice to local health officers.** The Secretary shall investigate outbreaks and

epidemics of disease and advise local health officers as to measures to be taken. [RCW 43.70.130\(5\)](#).

3. **Investigation of conditions constituting a threat to the public health.** The Secretary may investigate, examine, sample or inspect any article or condition constituting a threat to the public health, including but not limited to outbreaks of communicable diseases. [RCW 43.70.170](#). The investigation may include:
  - a. **Examination of ledgers, books, accounts, memorandums.** *Id.*
  - b. **Free and unimpeded access.** *Id.*
  - c. **Subpoenas.** *Id.*
  - d. **Order prohibiting sale or disposition pending results of investigation.** The Secretary may issue an order prohibiting the disposition or sale of any food or other item involved in the investigation. [RCW 43.70.180](#). The order shall not be effective for more than fifteen (15) days without the commencement of legal action as provided for under [RCW 43.70.190](#). *Id.*
4. **General supervision over work of local health departments.** The Secretary shall exercise general supervision over the work of all local health departments and establish uniform reporting systems by local health officers to the state Department of Health. [RCW 43.70.130\(6\)](#).
5. **Determination of character of disease.** If the question arises whether a person is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state Department of Health is notified, and then the opinion of the executive officer of the state Department of Health or any physician he or she may appoint shall be final. [RCW 70.05.100](#).

**C. Enforcement Powers.**

1. **Enforcement at request of local health officer.** Upon the request of a local health officer, the Secretary is authorized to take legal action to enforce the public health laws, regulations of the State Board of Health, or local regulations within the jurisdiction served by the local health department, and may institute any civil legal proceeding including a proceeding under [Title 7 RCW](#) (Special proceedings and actions). [RCW 43.70.200](#).
2. **Duty of Assistant Attorney General, Prosecuting Attorney, or City Attorney.** It shall be the duty of each assistant attorney general, prosecuting attorney, or city attorney to whom the Secretary reports any violation of any provision of [chapter 43.20](#) or [43.70 RCW](#), or regulations promulgated under them, to cause appropriate proceedings to be instituted. [RCW 43.70.100](#).

**D. Authority to Act in Local Matters.**

1. **Action in lieu of local boards of health.** The Secretary shall enforce the public health laws of the state and the regulations of the Department of Health or the State Board of Health in local matters when:
  - a. An emergency exists; and

- b. The local board of health has failed to act with sufficient promptness or efficiency, or is unable to act, or when no local board has been established. [RCW 43.70.130\(4\)](#).
2. **Action in lieu of local health officers.** The Secretary may exercise the same authority as a local health officer when:
    - a. The safety of the public health demands it in an emergency; or
    - b. The local health officer fails or is unable to act; or
    - c. By agreement. [RCW 43.70.130\(7\)](#).

### 3.40 LOCAL HEALTH BOARDS, DEPARTMENTS, AND OFFICERS

#### 3.41 Structure

##### A. *Local Boards of Health.*

1. **County or district.** A local board of health is the county or district board of health. [RCW 70.05.010\(3\)](#).
2. **Membership.**
  - a. **Counties with a home rule charter.** In counties with a home rule charter, the county legislative authority shall establish the local board of health. [RCW 70.05.035](#). The county legislative authority:
    - i. May appoint elected officials from cities and towns. *Id.*
    - ii. May appoint persons other than elected officials so long as they do not constitute a majority. *Id.*
  - b. **Counties without a home rule charter.** In counties without a home rule charter, the board of county commissioners shall constitute the local board of health, unless the county is part of a health district pursuant to [chapter 70.46 RCW](#). [RCW 70.05.030](#). The board of county commissioners:
    - i. May expand the board of health to include elected officials from cities and towns. *Id.*
    - ii. May expand the board of health to include persons other than elected officials so long as they do not constitute a majority. *Id.*
3. **Coextensive with boundaries of the county.** The jurisdiction of the local board of health is coextensive with the boundaries of the county. [RCW 70.05.030](#), [.035](#).

##### B. *Local Health Departments.*

1. **County or district.** A local health department is a county or district which provides public health services to persons within the area. [RCW 70.05.010\(1\)](#). See discussion *infra* § [3.60](#).
2. **Combined city-county health department.** Any city of one hundred thousand (100,000) or more population and the county in which it is located are authorized to establish and operate a combined city and county health department. [RCW 70.08.010](#).



- a. **Director of public health.** A city and county that agree to operate a combined city-county health department shall appoint a director of public health. *Id.*
- b. **Powers and duties of local health officer.** A director of public health shall exercise all powers and perform all duties by law vested in the local health officer. [RCW 70.08.020](#).

**C. Local Health Officers.**

**1. Appointment.**

- a. **Counties with a home rule charter, except combined city-county departments.** In counties with a home rule charter, the local health officer shall be appointed by the official designated in the county charter. [RCW 70.05.035](#).
  - i. **Exception for health districts.** In home rule counties that are part of a health district, the local health officer shall be appointed by the local board of health. [RCW 70.05.050](#).
- b. **Counties without a home rule charter, except combined city-county departments.** In counties without a home rule charter, a local health officer shall be appointed pursuant to [RCW 70.05.050](#). [RCW 70.05.040](#).
- c. **Combined city-county departments.** Where a combined department is established, the director of public health shall be appointed by the county executive of the county and the mayor of the city with majority vote confirmation by the legislative authorities of the county and the city. [RCW 70.08.040](#).

**2. Qualifications.**

- a. **Local health officer.** The local health officer shall have the qualifications specified in [RCW 70.05.050](#), [.051](#).
- b. **Director of public health.** A director of public health shall meet the standards specified in [RCW 70.08.030](#).

**3. Relationship to local board of health.**

- a. **Administrative officer unless administrative officer appointed.** The local health officer shall act as the administrative officer for the local board of health except where the board has appointed an administrative officer. [RCW 70.05.050](#).
- b. **Acts under direction.** The local health officer acts under the direction of the local board of health or the direction of the administrative officer, if any. [RCW 70.05.070](#).

3.42 Powers and Duties Related to Communicable Disease Control

**A. Powers and Duties of Local Boards of Health.**

1. **Rulemaking.** The local board of health shall enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof. [RCW 70.05.060\(3\)](#).
2. **Enforcement of state public health statutes and rules.** The local board of health shall enforce through the local health officer or the

administrative officer, if any, the public health statutes of the state and rules promulgated by the State Board of Health and the Secretary of Health. [RCW 70.05.060\(1\)](#).

3. **Supervision of health and sanitary measures.** The local board of health shall supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction. [RCW 70.05.060\(2\)](#).
4. **Control and prevention of disease.** The local board of health shall provide for the control and prevention of any dangerous, contagious or infectious disease within its jurisdiction. [RCW 70.05.060\(4\)](#).

**B. Powers and Duties of Local Health Officers.**

1. **Enforcement of state public health statutes and rules and local health rules, regulations, and ordinances.** A local health officer shall enforce the public health statutes of the state, rules of the State Board of Health and Secretary of Health, and all local health rules, regulations and ordinances within his or her jurisdiction, including filing of actions authorized by [RCW 43.70.190](#). [RCW 70.05.070\(1\)](#).
2. **Maintenance of health and sanitation supervision.** The local health officer shall take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction. [RCW 70.05.070\(2\)](#).
3. **Control and prevention of disease.** The local health officer shall control and prevent the spread of any dangerous, contagious or infectious disease within his or her jurisdiction. [RCW 70.05.070\(3\)](#).
4. **Determination of character of disease until state Department of Health makes determination.** If the question arises whether a person is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state Department of Health is notified, and then the opinion of the executive officer of the state Department of Health or any physician he or she may appoint shall be final. [RCW 70.05.100](#).
5. **Investigation and disease control measures.** Local health officers shall, when necessary, conduct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated in the *Control of Communicable Disease Manual*, 20th edition, published by the American Public Health Association, or other measures as he or she deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information. [WAC 246-100-036\(3\)](#).
6. **Control of communicable disease in schools or day care centers.** When there is an outbreak of a contagious disease, as defined in

[WAC 246-110-010](#), and there is the potential for a case or cases within a school or childcare center, the local health officer, after consultation with the Secretary of Health or designee if appropriate, shall take all appropriate actions deemed to be necessary to control or eliminate the spread of disease within their local health jurisdiction, including, but not limited to closing part or all of the affected schools or childcare centers, closing other schools or childcare centers, canceling activities or functions, or excluding students, staff, or volunteers who are infectious, or exposed or susceptible to the disease. [WAC 246-110-020\(2\)](#).

7. **Actions related to communicable disease tracking.** Local health officers have specific powers and duties related to the reporting and investigation of communicable diseases. See *infra* § [4.20](#).
8. **Implementation of isolation or quarantine.** Local health officers have specific powers and duties to implement isolation and quarantine. See *infra* § [5.30](#).

**C. Case Law Involving Actions by Local Health Boards and Officers.**

1. **Actions liberally construed.** Public health statutes and the actions of local boards of health and health officers are to be liberally construed. *Spokane County Health Dist. v. Brockett*, 120 Wn.2d 140, 148-49, 839 P.2d 324 (1992).
2. **Local regulations may not conflict with state or federal law.** "While the statutory delegation under [RCW 70.05.060](#) is broad, such delegation does not include any power to enact regulations that conflict with state legislation." *Entm't Indus. Coal. v. Tacoma-Pierce County Health Dep't*, 153 Wn.2d 657, 663, 105 P.3d 985 (2005). See also *Lindsey v. Tacoma- Pierce County Health Dep't*, 195 F.3d 1065 (9th Cir. 1999) (holding that resolution of county board of health banning outdoor tobacco advertising was preempted by Federal Cigarette Labeling and Advertising Act).

## 3.50 VIOLATIONS AND PENALTIES

**A. Any Person.**

1. **Violation of rules and orders for control of disease.** It is a misdemeanor for any person to violate or refuse or neglect to obey any rules, regulations or orders made for the prevention and control of dangerous contagious or infectious diseases by a local board of health, a local health officer or administrative officer, if any; or the State Board of Health. [RCW 70.05.120\(4\)](#).
2. **Penalty.** Upon conviction:
  - a. A fine of not less than twenty-five (25) dollars nor more than one hundred (100) dollars; or
  - b. Imprisonment in the county jail not to exceed ninety (90) days; or
  - c. Both. *Id.*

**B. Public Officers and Employees.**

- 1. Failure to enforce state rules.** All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township, shall enforce all rules adopted by the State Board of Health. [RCW 43.20.050\(5\)](#). A person mentioned in this section who fails to so act is subject to a fine. *Id.*
- 2. Penalty.** Upon first conviction, a fine of not less than fifty (50) dollars and, upon second conviction, a fine of not less than one hundred (100) dollars. *Id.*

**C. Members of Local Boards of Health.**

- 1. Violation of state statutes or failure to obey or enforce state rules.** It is a misdemeanor for a member of a local board of health to violate any provisions of [chapters 70.05, 70.24, and 70.46 RCW](#) or to refuse or neglect to obey or enforce the rules, regulations or orders of the State Board of Health made for the control of any dangerous infectious disease or for the protection of the health of the people of the state. [RCW 70.05.120\(2\)](#).
- 2. Penalty.** Upon conviction, a fine of not less than ten (10) dollars nor more than two hundred (200) dollars. *Id.*

**D. Local Health Officers.**

- 1. Failure to obey or enforce state statutes or rules.** A local health officer or administrative officer, if any, who refuses or neglects 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 refuses or neglects to make prompt and accurate reports to the State Board of Health may be removed from office. [RCW 70.05.120\(1\)](#).
- 2. Complaint and hearing.** Any person may complain to the State Board of Health. The State Board of Health may call a hearing to be held pursuant to the provisions of [chapter 34.05 RCW](#) and the rules of the State Board of Health adopted thereunder. *Id.*

**3.60 HEALTH DISTRICTS**

**A. Establishment.**

- 1. Definition.** A health district means all the territory consisting of one or more counties organized pursuant to the provisions of [chapters 70.05 and 70.46 RCW](#). [RCW 70.05.010\(4\)](#).
- 2. Two or more counties.** Health districts of two or more counties may be created by two or more boards of county commissioners. [RCW 70.46.020](#).

3. **One county.** A health district of one county may be created by the county legislative authority. [RCW 70.46.031](#).

**B. District Boards of Health.**

1. **District of two or more counties.**
  - a. The district board of health shall consist of not less than five members for districts of two counties and seven members for districts of more than two counties, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners. [RCW 70.46.020](#).
  - b. The boards of county commissioners for membership on the board:
    - i. May provide for elected officials from cities and towns;
    - ii. May provide for persons other than elected officials so long as they do not constitute a majority;
    - iii. Shall provide for appointment, term, and compensation or reimbursement of expenses. *Id.*
2. **District of one county.** The county legislative authority may specify membership and representation on the district board of health and:
  - a. May appoint elected officials from cities and towns;
  - b. May appoint persons other than elected officials so long as they do not constitute a majority. [RCW 70.46.031](#).

**C. Jurisdiction.**

1. **Territory included in the district.** The district board of health shall constitute the local board of health for all territory included in the district. [RCW 70.46.060](#).

**D. Powers and Duties.**

1. **All powers and duties.** The district board of health shall exercise all the powers and perform all the duties vested in the county board of health of any county included in the district. [RCW 70.46.060](#).

**3.70 RELATIONSHIP BETWEEN STATE AND LOCAL HEALTH DEPARTMENTS**

**A. State Board of Health Rules.**

1. **Local boards of health and local health officers shall enforce.**
  - a. Each local board of health shall enforce through the local health officer or administrative officer, if any, the rules promulgated by the State Board of Health and the Secretary of Health. [RCW 70.05.060\(1\)](#).
  - b. Each local health officer, acting under the direction of the local board of health or under direction of the administrative officer, if any, shall enforce the rules of the State Board of Health and the Secretary of Health. [RCW 70.05.070\(1\)](#).

**B. Authority of Secretary to Act in Local Matters.**

1. **Action in lieu of local boards of health.** The Secretary shall enforce the public health laws of the state and the regulations of the Department of Health or the State Board of Health in local matters when:
  - a. An emergency exists; and
  - b. The local board of health has failed to act, or is unable to act with sufficient promptness or efficiency, or when no local board has been established. [RCW 43.70.130\(4\)](#).
2. **Action in lieu of local health officers.** The Secretary may exercise the same authority as a local health officer when:
  - a. The safety of the public health demands it in an emergency; or
  - b. The local health officer fails or is unable to act; or
  - c. By agreement. [RCW 43.70.130\(7\)](#).

**4.00 COMMUNICABLE DISEASE TRACKING**

**4.10 OVERVIEW**

Disease reporting allows public health officials to investigate communicable diseases and take steps to protect the public. The Washington Administrative Code requires health care providers, laboratories, and health care facilities to report “notifiable conditions” to local health departments or, for some conditions, to the state Department of Health. See generally [chapter 246-101 WAC](#). Health care providers and health care facilities also are required to report disease outbreaks. [WAC 246-101-105\(1\)\(c\)](#), [-305\(1\)\(a\)\(iv\)](#).

This chapter also discusses federal and state privacy laws. See discussion *infra* § [4.30](#).

**4.20 COMMUNICABLE DISEASE REPORTING AND INVESTIGATION**

**4.21 Communicable Disease Reporting**

**A. Reportable Diseases.**

1. **Notifiable conditions.** State regulations require certain persons to report “notifiable conditions”. See [WAC 246-101-101](#), [-201](#), [-301](#).
  - a. **Definition.** “Notifiable condition” means a disease or condition of public health importance, a case of which, and for certain diseases, a suspected case of which, must be brought to the attention of the local health officer or state health officer. [WAC 246-101-010\(31\)](#).
  - b. See persons and entities having a duty to report *infra* § [4.21.B](#).
2. **Disease of suspected bioterrorism origin.** A “disease of suspected bioterrorism origin” is a notifiable condition to be reported immediately to the local health department. [WAC 246-101-101](#), [-301](#).

- a. **Definition.** "Disease of suspected bioterrorism origin" means a disease caused by viruses, bacteria, fungi, or toxins from living organisms that are used to produce death or disease in humans, animals, or plants. Many of these diseases may have nonspecific presenting symptoms. The following situations could represent a possible bioterrorism event and should be reported immediately to the local health department:
    - i. A single diagnosed or strongly suspected case of disease caused by an uncommon agent or a potential agent of bioterrorism occurring in a patient with no known risk factors;
    - ii. A cluster of patients presenting with a similar syndrome that includes unusual disease characteristics or unusually high morbidity or mortality without obvious etiology; or
    - iii. Unexplained increase in a common syndrome above seasonally expected levels. [WAC 246-101-010\(11\)](#).
  - b. **Examples:** Anthrax and smallpox. [WAC 246-101-101](#), [-301](#).
- 3. Other rare diseases of public health significance.** "Other rare diseases of public health significance" are notifiable conditions to be reported immediately to the local health department. *Id.*
- a. **Definition.** "Other rare diseases of public health significance" means a disease or condition, of general or international public health concern, which is occasionally or not ordinarily seen in the state of Washington including, but not limited to, spotted fever rickettsiosis, babesiosis, tick paralysis, anaplasmosis, and other tick borne diseases. This also includes public health events of international concern and communicable diseases that would be of general public concern if detected in Washington. [WAC 246-101-010\(32\)](#).
- 4. Unexplained critical illness or death.** An "unexplained critical illness or death" is a notifiable condition to be reported immediately to the local health department. [WAC 246-101-101](#), [-301](#).
- a. **Definition.** "Unexplained critical illness or death" means cases of illness or death with infectious hallmarks but no known etiology, in previously healthy persons one (1) to forty-nine years of age excluding those with chronic medical conditions (e.g., malignancy, diabetes, AIDS, cirrhosis). [WAC 246-101-010\(44\)](#).
- 5. Additional conditions required by local health officer.** Each local health officer has the authority to require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer. [WAC 246-101-505\(3\)\(d\)](#).
- 6. Outbreaks.** Outbreaks or suspected outbreaks are reportable to the local health department, even if the disease is not a notifiable condition. [WAC 246-101-105\(1\)\(c\)](#), [-305\(1\)\(a\)\(iv\)](#).
- a. **Definition.** "Outbreak" means the occurrence of cases or suspected cases of a disease or condition in any area over a given period of time in excess of the expected number of cases. [WAC 246-101-010\(33\)](#).
  - b. **Examples.** Outbreaks or suspected outbreaks include, but are not limited to, suspected or confirmed outbreaks of varicella, influenza, viral meningitis, health care-associated infection suspected due to

contaminated food products or devices, or environmentally related disease. [WAC 246-101-105\(1\)\(c\)](#), [-305\(1\)\(a\)\(iv\)](#).

**B. Persons and Entities Having Duty to Report.**

1. **Health care providers.** Health care providers must notify public health authorities of the conditions listed in [WAC 246-101-101](#).  
**Procedures and other requirements.** See [WAC 246-101-105](#) to [-120](#).
2. **Laboratories.** Laboratories must notify public health authorities of the conditions in [WAC 246-101-201](#).  
**Procedures and other requirements.** See [WAC 246-101-205](#) to [-230](#).
3. **Health care facilities.** Health care facilities must notify public health authorities of the conditions in [WAC 246-101-301](#).  
**Procedures and other requirements.** See [WAC 246-101-305](#) to [-320](#).

**C. Confidential Treatment of Reported Information.**

1. **Confidentiality of records and specimens.** Records and specimens containing or accompanied by patient-identifying information are confidential. [WAC 246-101-120](#), [-230](#), [-320](#).
  - a. **Local health officers to maintain confidentiality.** Local health officers shall establish a system at the local health department to maintain confidentiality of notifiable conditions case reports. [WAC 246-101-505\(1\)\(b\)](#).
  - b. **State Department of Health to maintain confidentiality.** The state health officer or designee shall establish and maintain confidentiality procedures related to employee handling of all reports of cases and suspected cases. [WAC 246-101-610\(1\)](#).
2. **Permissible disclosures.** See *infra* § [4.32](#).

**D. Other Persons and Entities with Responsibilities Related to Reporting.**

1. **Veterinarians.** See [WAC 246-101-405](#).

**NOTE:** Veterinarians also are required to report certain animal diseases to the Washington State Department of Agriculture. See *infra* § [5.41.B](#). This requirement is separate from the requirement contained in [WAC 246-101-405](#) to report to health departments and involves a separate list of reportable conditions affecting animals.

2. **Food service establishments.** See [WAC 246-101-410](#).
3. **Child day care facilities.** See [WAC 246-101-415](#).
4. **Schools.** See [WAC 246-101-420](#).

- E. Select Agents and Toxins.** Federal regulations identify select agents and toxins that have the potential to pose a severe threat to public health and safety. [42 CFR pt. 73](#). The regulations establish requirements for security, training, biosafety, and incident response.



See also [9 CFR pt. 121](#) and [7 CFR pt. 331](#).

## 4.22 Communicable Disease Investigation

### A. **Communicable Disease Investigation.**

1. **Duties of the local health officer.** Local health officers or the local health department shall:
  - a. Review and determine appropriate action for:
    - i. Each reported case or suspected case of a notifiable condition;
    - ii. Any disease or condition considered a threat to public health; and
    - iii. Each reported outbreak or suspected outbreak of disease, requesting assistance from the state Department of Health in carrying out investigations when necessary. [WAC 246-101-505\(1\)](#).
  - b. Conduct investigations and institute control measures in accordance with [chapter 246-100 WAC](#). [WAC 246-101-505\(1\)\(i\)](#).
  - c. Notify the state Department of Health of cases of any condition notifiable to the local health department (except animal bites) upon completion of the case investigation. [WAC 246-101-505\(1\)\(d\)](#).
2. **Authorities of the local health officer.** Each local health officer has the authority to:
  - a. Carry out additional steps determined to be necessary to verify a diagnosis reported by a health care provider. [WAC 246-101-505\(3\)\(a\)](#).
  - b. Require any person suspected of having a notifiable condition to submit to examinations required to determine the presence of the condition. [WAC 246-101-505\(3\)\(b\)](#).
  - c. Investigate any case or suspected case of a reportable disease or condition or other illness, communicable or otherwise, if deemed necessary. [WAC 246-101-505\(3\)\(c\)](#).
  - d. Require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer. [WAC 246-101-505\(3\)\(d\)](#).
3. **Duties of the state Department of Health related to investigation.** The Department of Health shall:
  - a. Provide consultation and technical assistance to local health departments upon request. [WAC 246-101-605\(1\)\(a\)](#).
  - b. Conduct investigations and institute control measures as necessary. [WAC 246-101-605\(1\)\(g\)](#).

## 4.30 CONFIDENTIALITY

### 4.31 Federal and State Laws Protecting Health Care Information

The federal Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) was adopted to implement the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191. The Privacy Rule limits the use and disclosure of protected health information

(PHI). See generally [45 CFR pts. 160, 164, subparts A, E](#). Washington's Uniform Health Care Information Act (HCIA), [chapter 70.02 RCW](#), also protects the confidentiality of health care information. However, both federal and state law allow for disclosure to public health authorities.

**A. HIPAA Privacy Rule.**

1. **Covered entities.** The Privacy Rule applies to three types of entities, referred to as "covered entities": health plans, health care clearinghouses, and health care providers who transmit certain transactions electronically. [45 CFR § 160.102\(a\)](#).
  - a. **Hybrid entity status.** A single legal entity that performs both covered and non-covered functions may designate itself as a hybrid entity. If a covered entity is a hybrid entity, then the privacy requirements apply only to the health care components of the entity. See [45 CFR §§ 164.103, .105](#).
2. **Protected Health Information.** "Protected health information" (PHI) is defined as "individually identifiable health information . . . that is (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium."  
[45 CFR § 160.103](#).
  - a. "Individually identifiable health information" is defined as information that . . .
    - i. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
    - ii. Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
      - (A) That identifies the individual; or
      - (B) With respect to which there is a reasonable basis to believe the information can be used to identify the individual. *Id.*
3. **General rule.** A covered entity may not use or disclose PHI except as permitted or required by the Privacy Rule. [45 CFR § 164.502](#).
4. **Public health departments as covered entities.** If a covered entity also is a public health authority, the covered entity is permitted to use PHI in all cases in which it is permitted to disclose PHI for public health activities under [45 CFR § 164.512\(b\)\(1\)](#). [45 CFR § 164.512\(b\)\(2\)](#).
5. **Contrary state law preempted.** The Privacy Rule requirements preempt contrary provisions of state law, with certain exceptions. Where a state law is more stringent than the Privacy Rule, the state law is not preempted. See [45 CFR § 160.203](#).

**B. Washington HCIA.**

1. **Health care providers and facilities.** The HCIA applies to health care providers and facilities. See generally [chapter 70.02 RCW](#).
  - a. **Health care provider.** A "health care provider" means a person who

is licensed, certified, registered, or otherwise authorized by the law of Washington to provide health care in the ordinary course of business or practice of a profession. [RCW 70.02.010\(19\)](#).

- b. **Health care facility.** "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients. [RCW 70.02.010\(16\)](#).
2. **Health care information.** "Health care information" is defined as "any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care..." [RCW 70.02.010\(17\)](#).
3. **General rule.** A health care provider or health care facility may not disclose health care information without a patient's written authorization, except as authorized by [chapter 70.02 RCW](#). [RCW 70.02.020\(1\)](#).
  - a. **Exceptions.** [Chapter 70.02 RCW](#) contains a variety of exceptions under which health care providers and health care facilities are either permitted to or required to disclose health care information. See, e.g., [RCW 70.02.050](#).
4. **State or local agencies obtaining health care information.** State or local agencies obtaining patient health care information pursuant to [RCW 70.02.050](#) and [70.02.200](#) through [70.02.240](#) that are not health care facilities or providers shall adopt rules establishing their record acquisition, retention, destruction, and security policies that are consistent with [chapter 70.02 RCW](#). [RCW 70.02.290\(1\)](#). Cf. discussion *supra* §§ [4.21.C.1.a](#) (local health departments shall maintain confidentiality of notifiable conditions case reports), [4.21.C.1.b](#) (the state Department of Health shall maintain confidentiality procedures related to employee handling of reports of cases and suspected cases).

#### 4.32 Disclosures Related to Communicable Disease Control

##### A. **Disclosures Permitted by HIPAA.**

1. **Disclosures otherwise authorized by law.** A covered entity may use or disclose PHI to the extent that such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law. [45 CFR § 164.512\(a\)](#).
2. **Disclosures for public health activities.** A covered entity may disclose PHI for public health activities and purposes to:
  - a. A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
  - b. A public health authority or other government authority

- authorized by law to receive reports of child abuse or neglect;
- c. A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety, or effectiveness of such FDA- regulated product or activity;
- d. A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation;
- e. An employer, about an individual who is a member of the workforce of the employer, under specific circumstances; or
- f. A school, about an individual who is a student or prospective student of the school, if the disclosure is limited to proof of immunization, the school is required by law to have such proof of immunization, and the covered entity obtains and documents agreement to the disclosure from the parent or other person with authority to agree. [45 CFR § 164.512\(b\)\(1\)](#).

- 3. Disclosures to avert a threat to health and safety.** A covered entity may, consistent with applicable law and ethical standards of conduct, use or disclose PHI, if the covered entity, in good faith, believes the use or disclosure:
- a. Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
  - b. Is to a person or persons reasonably able to prevent or lessen the threat. [45 CFR § 164.512\(j\)\(1\)\(i\)](#).

**B. Disclosures Permitted by HCIA.**

- 1. To federal, state, or local public health authorities to the extent required by law.** A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information. [RCW 70.02.050\(2\)\(a\)](#).
- 2. To federal, state, or local public health authorities when needed to protect the public health.** A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is needed to protect the public health. [RCW 70.02.050\(2\)\(b\)](#).
- 3. To avoid or minimize an imminent danger.** A health care provider or health care facility may disclose health care information to any person if the health care provider or facility reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual. [RCW 70.02.050\(1\)\(c\)](#).
  - a. **No obligation.** There is no obligation under [chapter 70.02 RCW](#) on the part of the provider or facility to so disclose. *Id.*

**C. Disclosures by Local and State Health Departments.**

1. **Cases and suspected cases.** A case or a suspected case is information reported to local health departments under the requirements of [chapter 246-101 WAC](#). See [WAC 246-101-010\(5\), \(42\)](#).
2. **Disclosures.** Local health departments and the state Department of Health are prohibited from disclosing report information identifying an individual case or suspected case, except to:
  - a. Employees of the local health department, another local health department, or other official agencies needing to know for the purpose of administering public health laws and the regulations in [chapter 246-101 WAC](#);
  - b. Health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control. [WAC 246-101-515\(1\), -610\(1\)](#).

**NOTE:** Special rules apply to sexually transmitted diseases and mental health records. No person may disclose the identity of any person related to testing or treatment for a sexually transmitted disease, except as authorized by [RCW 70.02.220](#), [RCW 70.02.210](#), or [chapter 70.24 RCW](#). No person may disclose mental health records, including the fact of admission, except as provided in [RCW 70.02.230](#).

4.33 Public Records Act

During a communicable disease outbreak, public agencies might receive requests under the Public Records Act for records related to the outbreak. Whether an agency must release a record will depend, in part, on whether the record is health care information under the HCIA. See *infra* § [4.33.A](#). Information that identifies a person who is in isolation because of a confirmed communicable disease is health care information. However, other records about the outbreak may not clearly be health care information, for example a list of persons who may have been exposed to a communicable disease.

**A. Protection of Health Care Information.** Washington's Public Records Act provides that the HCIA applies to the inspection and copying of health care information of patients. [RCW 42.56.360\(2\)](#). See *supra* § [4.31.B](#).

**B. Responses to Requests for Public Records.**

1. **Response within five business days.** Within five (5) business days of receiving a public record request, an agency must respond by either:
  - a. Providing the record;
  - b. Providing an internet address and link on the agency's web site to the specific records requested (with exceptions if the requestor notifies the agency that he or she cannot access the records through the internet);

- c. Acknowledging that the request has been received and providing a reasonable estimate of the time the agency will require to respond to the request; or
- d. Denying the request. [RCW 42.56.520](#).

2. **Additional time to respond to request.** Additional time to respond to a request may be based upon the need to:
  - a. Clarify the intent of the request;
  - b. Locate and assemble the information requested;
  - c. Notify third persons or agencies affected by the request; or
  - d. Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. *Id.*

**C. Court Protection of Public Records.**

1. **Motion and affidavit for injunction.** A motion and affidavit to enjoin examination of any specific public record may be made by:
  - a. An agency or its representative; or
  - b. A person who is named in the record or to whom the record specifically pertains. An agency may notify such persons. [RCW 42.56.540](#).
2. **Basis for injunction.** The court may enjoin examination of the record if examination would:
  - a. Clearly not be in the public interest and would substantially and irreparably damage any person; or
  - b. Substantially and irreparably damage vital governmental functions. *Id.*

**5.00 COMMUNICABLE DISEASE CONTROL**

**5.10 OVERVIEW**

Local health officers use a variety of strategies to control communicable disease, including isolation and quarantine. See, e.g., [WAC 246-100-036\(3\)](#). Washington law authorizes involuntary detention for purposes of isolation or quarantine of person(s) who have been exposed to, or are suspected to have been exposed to, a communicable disease. See [WAC 246-100-040 to -070](#); *infra* § [5.30](#). The federal government also may detain persons arriving from foreign countries into the United States or traveling from one state or possession into another for purposes of controlling the introduction, transmission, and spread of communicable diseases listed in Executive Orders of the President. See [42 U.S.C. § 264](#); *infra* § [5.34](#).

Isolation and quarantine are forms of "social distancing." Social distancing measures are intended to decrease the spread of disease by decreasing opportunities for close contact among persons in the community. Isolation and quarantine may, however, be insufficient strategies. For example, quarantine is likely to be a viable strategy only during the first stage of an influenza pandemic because influenza

is highly infectious and can be transmitted by people who appear to be well. This chapter, therefore, also discusses other forms of social distancing. See *infra* § [5.20](#).

This chapter also discusses control of animal diseases. See *infra* § [5.40](#).

## 5.20 SOCIAL DISTANCING MEASURES

### A. *Social Distancing Measures.*

1. **Examples.** Social distancing measures, other than isolation and quarantine, may include:
  - a. Closing schools and large child care centers.
  - b. Limiting social interaction at libraries, colleges and universities.
  - c. Closing churches, theaters and other places where crowds gather.
  - d. Suspending large gatherings (sports events, concerts).
  - e. Suspending government functions not dedicated to pandemic response or critical continuity.
2. **Implementation.** Social distancing measures may be voluntary (recommended) or compulsory (ordered). The sources of authority could include:
  - a. Authority of heads of political subdivisions to respond to emergencies under [chapter 38.52 RCW](#). See *supra* § [2.42](#).
  - b. Authority of local health officers to prevent the spread of disease under [RCW 70.05.070](#). See *supra* § [3.42.B](#).
  - c. Governor's order following an emergency proclamation under [chapters 43.06](#) and [38.52 RCW](#). See *supra* § [2.32.B](#).

## 5.30 ISOLATION AND QUARANTINE

### 5.31 Isolation and Quarantine Proceedings

Isolation and quarantine are historically-recognized public health techniques used to contain the spread of infectious diseases. See, e.g., *Compagnie Francaise v. Louisiana Bd. of Health*, 186 U.S. 380 (1902) (recognizing power of states to institute quarantine to protect their citizens from infectious diseases). Isolation and quarantine require the separation of infected and potentially infected persons, respectively, from the public. This separation is achieved by confinement of the infected and/or potentially infected person(s) to treatment facilities, residences, and/or other locations, depending upon the nature of the implicated disease and the available facilities.

In many cases, individuals will voluntarily undertake isolation and quarantine procedures. However, if individuals are unwilling to undertake isolation or quarantine procedures or become noncompliant with procedures already in place, court assistance may be required.

*Communicable disease:* An illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person

by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [WAC 246-100-011\(7\)](#).

*Isolation:* The separation, for the period of communicability or contamination, of infected or contaminated persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible or may spread the agent or contaminant to others. [WAC 246-100-011\(18\)](#).

*Quarantine:* The limitation of freedom of movement of such well persons or domestic animals as have been exposed to, or are suspected to have been exposed to, an infectious agent, for a period of time not longer than the longest usual incubation period of the infectious agent, in such manner as to prevent effective contact with those not so exposed. [WAC 246-100-011\(26\)](#).

*Incubation period:* The period of time between a disease agent's entry into an organism and the organism's initial display of disease symptoms. During the incubation period, the disease is developing. Incubation periods are disease specific and may range from hours to weeks. See *STEDMAN'S MEDICAL DICTIONARY* 889 (27th ed. 2000).

**NOTE:** This chapter discusses state statutes and rules that govern isolation and quarantine for diseases that would pose a serious and imminent risk to others. Chapter 7 discusses the statutes and rules that govern control of tuberculosis. Chapter 9 discusses interventions when a person with a sexually transmitted disease engages in conduct endangering public health, and Chapter 11 discusses interventions when a person experiences substantial exposure to another person's bodily fluids.

**A. General Powers of Isolation and Quarantine.**

**1. In whom powers vested.**

- a. **State Board of Health authority to adopt rules.** The State Board of Health shall adopt rules for the imposition and use of isolation and quarantine. [RCW 43.20.050\(2\)\(e\)](#).
- b. **Local health officer authority to implement isolation and quarantine.** The State Board of Health has adopted rules governing implementation of isolation and quarantine by local health officers. See generally [WAC 246-100-040](#) to [-070](#).

**2. Implementation.**

- a. **Person or group of persons.** The State Board of Health rules governing isolation and quarantine apply to a person or group of persons. See generally *Id.*

**B. Types of Detention.**

**1. Emergency detention.**

- a. **Basis for local health officer to initiate.** The local health officer may initiate involuntary detention for purposes of isolation or quarantine



when he or she:

- i. Has made reasonable efforts to gain voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities, or has determined that seeking voluntary compliance would create a risk of serious harm; and
  - ii. Has reason to believe that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or chemical, biological, or radiological agent that could spread to or contaminate others if remedial action is not taken; and
  - iii. Has reason to believe that the person or group of persons would pose a serious and imminent risk to the health and safety of others if not detained for purposes of isolation or quarantine.  
[WAC 246-100-040\(1\)](#).
- b. **Alternative procedures for emergency detention.** The local health officer may:
- i. Issue an emergency detention order; or
  - ii. Petition the superior court *ex parte* for an order. *Id.*
- c. **Local health officer emergency detention order.**
- i. **Requirements for notice.** See [WAC 246-100-040\(3\)](#).  
(A) Sample Emergency Detention Order is included *infra* § [5.33](#).
  - ii. **Enforcement of local health officer orders.**
    - (A) **Distribution of written order.** The local health officer shall issue a written emergency detention order as soon as reasonably possible and in all cases within twelve hours of detention. [WAC 246-100-040\(3\)\(b\)](#). The local health officer shall provide copies of the written order to the person or group, or if it is impractical to provide individual copies, post copies in a conspicuous place in the premises where isolation or quarantine has been imposed. [WAC 246-100-040\(3\)\(c\)](#).
    - (B) **Existence of statutory provision for enforcement.** An order issued by a local health officer in accordance with [chapter 246-100 WAC](#) shall constitute the duly authorized application of lawful rules adopted by the State Board of Health and must be enforced by all police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department in accordance with [RCW 43.20.050](#).  
[WAC 246-100-070\(1\)](#).
    - (C) **No explicit authority for arrest by law enforcement.** Generally, police officers may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer. [RCW 10.31.100](#). However, the offense does not have to be in the presence of the officer if (s)he has probable cause to believe that the person has committed or is committing a misdemeanor or gross misdemeanor involving physical harm or threats of harm to any person or property.  
[RCW 10.31.100\(1\)](#).  
**NOTE:** It is not clear whether this provision would apply to enforcement of an emergency detention order issued by a

local health officer.

d. **Court proceedings for emergency detention.**

- i. **Petition ex parte.** The local health officer may petition the superior court *ex parte* for an order authorizing involuntary detention of a person or group of persons. [WAC 246-100-040\(3\), \(4\)](#). The petition shall specify:
  - (A) The identity of all persons or groups to be subject to isolation or quarantine;
  - (B) The premises where isolation or quarantine will take place;
  - (C) The date and time at which isolation or quarantine will commence;
  - (D) The suspected communicable disease or infectious agent if known;
  - (E) The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious disease if known;
  - (F) The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would create a risk of serious harm;
  - (G) The medical basis on which isolation or quarantine is justified. [WAC 246-100-040\(4\)\(a\)](#).
- ii. **Declaration of local health officer.** The petition shall be accompanied by the declaration of the local health officer attesting to the facts asserted in the petition, with any further information that may be relevant to the court's consideration. [WAC 246-100-040\(4\)\(b\)](#).
- iii. **Notice.** Notice to the person or groups identified in the petition shall be accomplished in accordance with the rules of civil procedure. [WAC 246-100-040\(4\)\(c\)](#).
- iv. **Hearing.** The court shall hold a hearing on a petition for emergency detention within seventy-two (72) hours of filing, exclusive of Saturdays, Sundays, and holidays. [WAC 246-100-040\(4\)\(d\)](#).
- v. **When court order proper.** The court shall issue the order if there is a reasonable basis to find that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others. [WAC 246-100-040\(4\)\(e\)](#).
- vi. **Court order.** A court order authorizing isolation or quarantine as a result of an *ex parte* hearing shall:
  - (A) Specify a maximum duration for isolation or quarantine not to exceed ten (10) days;
  - (B) Identify the isolated or quarantined persons or groups by name or shared or similar characteristics or circumstances;
  - (C) Specify factual findings warranting isolation or quarantine;
  - (D) Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of [WAC 246-100-040](#);
  - (E) Specify the premises where isolation or quarantine will take place. [WAC 246-100-040\(4\)\(f\)\(i\) to \(v\)](#).
- vii. **Service of order.** The court order shall be served on all affected persons or groups in accordance with the rules of civil procedure. [WAC 246-100-040\(4\)\(f\)\(vi\)](#).

**2. Continued detention.**

- a. **Applies when necessary to continue detention of a person or group already detained under an emergency detention order.** The local health officer may petition the superior court for an order authorizing continued isolation or quarantine of a person or group detained under [WAC 246-100-040\(3\) or \(4\)](#). [WAC 246-100-040\(5\)](#).
  - i. **Must be ordered by the superior court.** A local health officer may not order continued detention. See *Id.*
- b. **Proceedings for continued detention.**
  - i. **Petition.** The local health officer's petition to the superior court for an order authorizing continued detention shall specify:
    - (A) The identity of all persons or groups subject to isolation or quarantine;
    - (B) The premises where isolation or quarantine is taking place;
    - (C) The communicable disease or infectious agent if known;
    - (D) The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious disease if known;
    - (E) The medical basis on which continued isolation or quarantine is justified. [WAC 246-100-040\(5\)\(a\)](#).
  - ii. **Declaration of local health officer.** The petition shall be accompanied by the declaration of the local health officer attesting to the facts asserted in the petition, with any further information that may be relevant to the court's consideration. [WAC 246-100-040\(5\)\(b\)](#).
  - iii. **Statement of compliance with conditions and principles.** The petition shall be accompanied by a statement of compliance with the conditions and principles contained in [WAC 246-100-045](#). [WAC 246-100-040\(5\)\(c\)](#). See also *infra* § 5.32.
  - iv. **Notice.** Notice to the persons or groups identified in the petition shall be accomplished in accordance with the rules of civil procedure. [WAC 246-100-040\(5\)\(d\)](#).
  - v. **Hearing.** The court shall hold a hearing on a petition for continued detention within seventy-two (72) hours of filing, exclusive of Saturdays, Sundays, and holidays. [WAC 246-100-040\(5\)\(e\)](#).
    - (A) **Local health officer may apply to continue hearing in extraordinary circumstances.** In extraordinary circumstances and for good cause shown, the local health officer may apply to continue the hearing date for up to ten (10) days. *Id.*
      - (1) **Court may grant continuance at its discretion.** The court may grant the continuance at its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the public health threat, and the availability of necessary witnesses and evidence. *Id.*
  - vi. **When court order proper.** The court shall grant the petition if it finds that there is clear, cogent, and convincing evidence that isolation or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others. [WAC 246-100-040\(5\)\(f\)](#).
  - vii. **Court order.** A court order authorizing continued isolation or quarantine as a result of a hearing shall:

- (A) Specify a maximum duration for isolation or quarantine not to exceed thirty (30) days;
  - (B) Identify the isolated or quarantined persons or groups by name or shared or similar characteristics or circumstances;
  - (C) Specify factual findings warranting isolation or quarantine;
  - (D) Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of [WAC 246-100-040](#);
  - (E) Specify the premises where isolation or quarantine will take place. [WAC 246-100-040\(5\)\(g\)\(i\) to \(v\)](#).
- viii. **Service of order.** The court order shall be served on all affected persons or groups in accordance with the rules of civil procedure. [WAC 246-100-040\(5\)\(g\)\(vi\)](#).

**3. Additional period of continued detention.**

- a. **Local health officer may petition to continue isolation or quarantine.** Prior to the expiration of a court order issued pursuant to [WAC 246-100-040\(5\)](#), the local health officer may petition the superior court to continue isolation or quarantine. [WAC 246-100-040\(6\)](#). See *supra* § 5.31.B.2.b.
- b. **When court order proper.** Isolation or quarantine may be continued when the court finds that there is a reasonable basis to require continued isolation or quarantine to prevent a serious and imminent risk to the health and safety of others. [WAC 246-100-040\(6\)\(a\)](#).
- c. **Period not to exceed thirty (30) days.** The order shall be for a continued period not to exceed thirty (30) days. [WAC 246-100-040\(6\)\(b\)](#).

- 4. Authority superseded in certain situations.** The provisions of [WAC 246-100-040](#) shall be superseded by state statutes and rules, and state and federal emergency declarations that contain:
- a. Procedures for detention, examination, counseling, testing, treatment, vaccination, isolation, or quarantine for:
    - i. Specified health emergencies; or
    - ii. Specified communicable diseases, including, but not limited to, tuberculosis and HIV. [WAC 246-100-040\(7\)](#).

**C. Right to Counsel.**

- 1. Right to be represented by counsel.** A person or group of persons isolated or quarantined pursuant to [WAC 246-100-040](#) has a right to be represented by counsel if they so elect. [WAC 246-100-060](#).
- a. **Court appointed counsel.** If a person or group requests counsel and cannot afford counsel, the court shall appoint counsel consistent with the provisions of [chapter 10.101 RCW](#). *Id.*
  - b. **Local health officer to provide means of communication.** The local health officer must provide adequate means of communication between persons or groups and their counsel. *Id.*

**D. Relief from Isolation or Quarantine.**

- 1. Availability of hearings.** A person or group of persons may seek relief from the superior court for:

- a. **Detention by the local health officer.** A person or group of persons detained by order of the local health officer pursuant to [WAC 246-100-040\(3\)](#) may apply to the court for an order to show cause why the individual or group should not be released. [WAC 246-100-055\(1\)](#).
    - i. **Ruling on application to show cause.** The court shall rule on the application to show cause within forty-eight (48) hours of its filing. [WAC 246-100-055\(1\)\(a\)](#).
    - ii. **Hearing on order to show cause.** If the court grants the application, the court shall schedule a hearing on the order to show cause as soon as practicable. [WAC 246-100-055\(1\)\(b\)](#).
    - iii. **Isolation or quarantine order not stayed or enjoined.** The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order. [WAC 246-100-055\(1\)\(c\)](#).
  - b. **Remedies regarding breach of conditions.** A person or group isolated or quarantined may request a hearing for remedies regarding breaches to the conditions required by [WAC 246-100-045](#). [WAC 246-100-055\(2\)](#).
2. **Isolation or quarantine order not stayed or enjoined.** A request for a hearing shall not stay or enjoin an isolation or quarantine order. [WAC 246-100-055\(3\)](#).
  3. **Timing of hearing.**
    - a. **In extraordinary circumstances.** Upon receipt of a request alleging extraordinary circumstances justifying the immediate granting of relief, the court shall fix a date for a hearing as soon as practicable. [WAC 246-100-055\(4\)](#).
    - b. **Otherwise.** Upon receipt of a request, the court shall fix a date for a hearing within five (5) days from receipt of the request. [WAC 246-100-055\(5\)](#).
    - c. **Local health authority may apply to continue hearing in extraordinary circumstances.** In extraordinary circumstances and for good cause shown, the local health authority may move the court to extend the time for a hearing. [WAC 246-100-055\(6\)](#).
      - i. **Court may grant at its discretion.** The court may grant the extension at its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency, and the availability of necessary witnesses and evidence. *Id.*
  4. **Infection control procedures.** Any hearings for relief involving a petitioner or petitioners judged to be contagious will be conducted in a manner that utilizes appropriate infection control and minimizes the risk of disease transmission. [WAC 246-100-055\(7\)](#).

**E. Consolidation.**

1. **Court may order consolidation.** In any proceedings brought for isolation or quarantine, the court may order consolidation to promote the fair and efficient operation of justice and having given due regard to the rights of the affected persons, the severity of the threat to the public's health, and the availability of necessary witnesses and evidence. [WAC 246-100-065](#).

2. **Criteria for consolidation.** The court may order the consolidation of individual claims into group claims where:
  - a. The number of individuals involved or to be affected is so large as to render individual participation impractical;
  - b. There are questions of law or fact common to the individual claims or rights to be determined;
  - c. The group claims or rights to be determined are typical of the affected persons' claims or rights, and
  - d. The entire group will be adequately represented in the consolidation.  
*Id.*

- F. **Consular Notification for Non-U.S. Citizens.** Article 36(1)(b) of the Vienna Convention on Consular Relations provides that a non-U.S. citizen who is arrested or detained must be informed that consular officials of his or her country may be notified about the detention. If the detainee "so requests," the consular officials must be notified of the detention. Article 36(1)(c) provides for access to detainees by consular officials. In addition, some bilateral consular agreements require notification. Detailed information is available at: <http://travel.state.gov/content/travel/en/consularnotification.html>.

## 5.32 Isolation and Quarantine Conditions and Principles

- A. **Conditions and Principles.** The local health officer shall adhere to the following conditions and principles when isolating or quarantining a person or group of persons:
  1. **Least restrictive means necessary.** Isolation or quarantine must be by the least restrictive means necessary to prevent the spread of a disease to others and may include, but are not limited to, confinement to private homes or other public or private premises. [WAC 246-100-045\(1\)](#).
  2. **Separation of isolated individuals from quarantined individuals.** Isolated persons must be confined separately from quarantined persons. [WAC 246-100-045\(2\)](#).
  3. **Monitoring of health status.** The health status of isolated or quarantined individuals must be monitored regularly to determine if they require continued isolation or quarantine. [WAC 246-100-045\(3\)](#).
  4. **Placement into isolation of quarantined individuals who become infected.** If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable disease that threatens other quarantined individuals, he or she must be placed in isolation. [WAC 246-100-045\(4\)](#).
  5. **Release as soon as practicable.** Isolated or quarantined individuals must be released as soon as practicable when the local health officer determines that they pose no substantial risk of constituting a serious and imminent threat to others. [WAC 246-100-045\(5\)](#).
  6. **Addressing of needs of isolated or quarantined individuals.** The needs of a person isolated or quarantined must be addressed to the

greatest extent possible in a systematic and competent fashion, including but not limited to food, clothing, shelter, means of communication with persons in isolation or quarantine and outside these settings, medication, and competent medical care. [WAC 246-100-045\(6\)](#).

7. **Maintenance of premises used for isolation or quarantine.** Premises used for isolation or quarantine must be maintained in a safe and hygienic manner to minimize the likelihood of further transmission of infection or other harm to persons isolated or quarantined. [WAC 246-100-045\(7\)](#).
8. **Addressing of cultural and religious beliefs.** To the greatest extent possible, cultural and religious beliefs should be considered in addressing the needs of individuals and establishing and maintaining isolation or quarantine premises. [WAC 246-100-045\(8\)](#).
9. **Right of persons to rely exclusively on spiritual means to treat a disease.**
  - a. **Right not abridged by isolation or quarantine.** Isolation or quarantine shall not abridge the right of a person to rely exclusively on spiritual means to treat a communicable disease in accordance with religious tenets and practices. [WAC 246-100-045\(9\)](#).
    - i. **Persons declining treatment may be isolated or quarantined.** At his or her sole discretion, the local health officer may isolate infected individuals declining treatment for the duration of their communicable infection. *Id.*
  - b. **Person may choose private place for isolation or quarantine if approved by local health officer.** A person relying on spiritual means to treat a disease is not prohibited from being isolated or quarantined in a private place of his or her choice provided it is approved by the local health officer. *Id.*

**B. Isolation or quarantine premises.** Entry into isolation or quarantine premises shall be restricted under the following conditions:

1. **Entry may be authorized by the local health officer.** The local health officer may authorize physicians, health care workers, and others access to individuals in isolation or quarantine as necessary to meet the needs of isolation or quarantined individuals. [WAC 246-100-050\(1\)\(a\)](#).
  - a. **Person not authorized may not enter.** No person, other than a person authorized by the local health officer, shall enter isolation or quarantine premises. [WAC 246-100-050\(1\)\(b\)](#).
  - b. **Infection control precautions.** Any person entering isolation or quarantine premises shall be provided with infection control training and may be required to wear personal protective equipment or receive vaccination. [WAC 246-100-050\(1\)\(c\)](#).
  - c. **Persons entering premises may be isolated or quarantined.** Any person entering isolation or quarantine premises with or without the authorization of the local health officer may be isolated or quarantined. [WAC 246-100-050\(1\)\(d\)](#).

2. **Applicability of rules of State Board of Health and orders of local health officer.** Persons subject to isolation or quarantine and persons entering isolation or quarantine premises shall obey rules of the State Board of Health and orders of the local health officer.

[WAC 246-100-050\(2\)](#).

- a. **Penalties.** Failure to do so shall constitute a misdemeanor consistent with the provisions of [RCW 43.20.050\(4\)](#) and [70.05.120](#). *Id.*



5.33 Sample Local Health Officer Emergency Detention Order

EMERGENCY DETENTION ORDER

\_\_\_\_\_, you are hereby ordered to detention at:  
(name of individual or group)

\_\_\_\_\_ pursuant to WAC 246-100-040.  
(premises subject to isolation or quarantine)

Your isolation or quarantine commences on \_\_\_\_\_ at \_\_\_\_\_.  
(date) (time)

This order will remain in effect until \_\_\_\_\_ at \_\_\_\_\_.  
(date) (time)  
unless otherwise rescinded, but not to exceed 10 days.

Suspected Communicable Disease or Infectious Agent if Known:

\_\_\_\_\_  
\_\_\_\_\_

Measures taken by the Local Health Officer to seek voluntary compliance OR basis on which Local Health Officer determined that seeking voluntary compliance would create risk of serious harm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Medical basis on which decision to isolate or quarantine is justified:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Special Instructions:

Failure to comply with this Emergency Detention Order is a misdemeanor pursuant to RCW 70.05.120.

It is very important for the protection of your own health and that of others that you abide by this Emergency Detention Order. If you have any questions about this order or need assistance in complying, please call \_\_\_\_\_.

If isolation or quarantine is necessary beyond the ten-day period allowed under this order, the Health Officer may petition the Superior Court for an order authorizing continued isolation or quarantine for a period up to 30 days.

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Health Officer

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**IMPORTANT NOTICE:**

You have the right to petition the Superior Court for release from isolation or quarantine in accordance with WAC 246-100-055. You have a right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

5.34 Federal Authority

**A. Federal Authority to Control Communicable Disease.**

- 1. International and interstate transmission.** The Surgeon General, with the approval of the Secretary of the U.S. Department of Health and Human Services, is authorized to make and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases:
  - a. From foreign countries into the United States or possessions; or
  - b. From one state or possession into another state or possession.  
[42 U.S.C. § 264\(a\).](#)
- 2. Detention for quarantinable diseases.** Regulations may provide for the apprehension, detention, or conditional release of individuals only for the purpose of preventing the introduction, transmission, or spread of communicable diseases specified in Executive Orders of the President, upon the recommendation of the Secretary of the U.S. Department of Health and Human Services in consultation with the Surgeon General.  
[42 U.S.C. § 264\(b\).](#)
- 3. Persons moving interstate.**
  - a. **Apprehension and examination.** Regulations may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a qualifying stage and also believed:
    - i. To be moving or about to move from a state to another state; or
    - ii. To be a probable source of infection to individuals who, while infected, will be moving from a state to another state.  
[42 U.S.C. § 264\(d\)\(1\).](#)
  - b. **Detention.** Regulations may provide that an individual who is infected may be detained as reasonably necessary. *Id.*
  - c. **Qualifying stage.** "Qualifying stage" means that a communicable disease is:
    - i. In a communicable stage; or
    - ii. In a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals. [42 U.S.C. § 264\(d\)\(2\).](#)
- 4. Federal-state cooperation.**
  - a. The Secretary of the U.S. Department of Health and Human Services is authorized to accept from state and local authorities any assistance in the enforcement of federal quarantine regulations that such authorities may be able and willing to provide. [42 U.S.C. § 243\(a\).](#)
  - b. The Secretary of the U.S. Department of Health and Human Services shall assist states and their political subdivisions in the prevention and suppression of communicable diseases and cooperate with and aid states and local authorities in the enforcement of their quarantine and other health regulations. *Id.*

5. **No preemption unless in the event of a conflict.** Nothing under [42 U.S.C. § 264](#) nor in regulations promulgated under this authority may be construed as superseding any provision under state law (including regulations and including provisions established by political subdivisions of states) except to the extent that such a provision conflicts with an exercise of federal authority under [§ 264](#) or [§ 266](#) (special quarantine powers in time of war). [42 U.S.C. § 264\(e\)](#).

**B. Disease Transmission from Foreign Countries.**

1. **Ship and aircraft notice of communicable disease.** Ship captains and airline pilots are required to notify the federal quarantine station at or nearest the port or airport of any illness or death on board. [42 CFR § 71.21](#).
2. **Control measures at United States ports.**
  - a. Whenever the Director of the Centers for Disease Control has reason to believe that any arriving person is infected with or has been exposed to any of the communicable diseases listed in an Executive Order, he or she may:
    - i. Isolate;
    - ii. Quarantine; or
    - iii. Place the person under surveillance. [42 CFR § 71.32](#). See also [42 CFR § 71.33](#).
  - b. **Diseases specified in Executive Orders of the President.** Persons with the following diseases are subject to federal quarantine: Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named); Severe Acute Respiratory Syndrome (SARS, COVID-19); and Influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic. Exec. Order No. 13295, 68 Fed. Reg. 17255 (April 4, 2003), as amended by Exec. Order No. 13375, 70 Fed. Reg. 17299 (April 1, 2005), and further amended by Exec. Order No. 13674, 79 Fed. Reg. 45671 (July 31, 2014).
3. **Application to aliens.** Aliens arriving at a port of the United States are subject to the applicable provisions of [42 CFR pt. 71](#) with respect to examination and quarantine measures. [42 CFR § 34.6](#).
  - a. **Additional requirements of Immigration and Nationality Act.** Under the Immigration and Nationality Act, aliens may be inadmissible based on health-related grounds. See [8 U.S.C. 1182\(a\)\(1\)](#); [42 CFR pt. 34](#).

**C. Interstate Disease Transmission.**

1. **Report of disease.** The master of any vessel or person in charge of any conveyance engaged in interstate traffic, on which a case or suspected case of communicable disease develops, shall notify the local health authority at the next port of call and take such measures as the local health authority directs. [42 CFR § 70.4](#).

**2. Measures in the event of inadequate local control.** If the Director of the Centers for Disease Control determines that a state's measures are insufficient to prevent the spread of any communicable disease from a state or possession to another state or possession, he or she may take measures as he or she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection. [42 CFR § 70.2](#).

a. The Commissioner of the Food and Drug Administration has similar authority. [21 CFR § 1240.30](#).

Was unable to find these specific travel restrictions for these diseases under the current version of this section or any other section. Found it in a 2000 version of the law.

**3. Apprehension and detention for certain diseases.** Individuals are subject to detention, isolation, quarantine, or conditional release for the purpose of preventing the introduction, transmission, and spread of the communicable diseases listed in an Executive Order setting out quarantinable diseases. [42 CFR § 70.6](#); *supra* § [5.34.B.2](#).

5.35 Summary of State and Federal Authority for Isolation and Quarantine

	State	Federal
<b>Diseases to which isolation/quarantine applies</b>	A communicable disease or chemical, biological, or radiological agent that would pose a "serious and imminent risk." <a href="#">WAC 246-100-040(1)</a> ; <i>supra</i> § <a href="#">5.31.B.1.a</a> .	Diseases specified in Executive Order of the President. <a href="#">42 U.S.C. § 264(b)</a> ; <i>supra</i> § <a href="#">5.34.A.2</a> .
<b>Persons who may be placed into isolation/quarantine</b>	Persons within the county or district that is served by the local health department. See <a href="#">RCW 70.05.010(1)</a> , <i>supra</i> § <a href="#">3.41.B.1</a> .	1) Persons arriving at U.S. ports from foreign countries or possessions of the U.S. <a href="#">42 CFR pt. 71</a> ; <i>supra</i> § <a href="#">5.34.B</a> . (2) Persons in interstate travel. <a href="#">42 CFR pt. 70</a> ; <i>supra</i> § <a href="#">5.34.C</a> .
<b>Person authorized to initiate isolation/quarantine</b>	Local health officer. <a href="#">WAC 246-100-040(1)</a> ; <i>supra</i> § <a href="#">5.31.B.1</a> .	Director, Centers for Disease Control. <a href="#">42 CFR § 71.32</a> ; <i>supra</i> § <a href="#">5.34.B.2</a> .
<b>Length of detention</b>	(1) Emergency detention by order of local health officer or <i>ex parte</i> court order: 10 days. <a href="#">WAC 246-100-040(3)</a> ; <i>supra</i> § <a href="#">5.31.B.1</a> . (2) Continued detention by court order: 30 days. <a href="#">WAC 246-100-040(5)</a> ; <i>supra</i> § <a href="#">5.31.B.2</a> .	Not specified.

## 5.40 ANIMAL HEALTH

### 5.41 Washington State Department of Agriculture

#### A. *Authority to Control Animal Disease.*

1. **Director of Agriculture.** The state Director of Agriculture ("Director") shall supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state. [RCW 16.36.010](#).
2. **State Veterinarian.** The state veterinarian shall exercise all the powers and perform all duties prescribed by law relating to diseases among animals and the quarantine and destruction of diseased animals. [RCW 43.23.070](#).
3. **Distinguished from Washington Department of Fish and Wildlife.** With narrow exceptions, "animal" does not mean noncaptive wildlife. See [RCW 16.36.005](#). The Washington Department of Fish and Wildlife operates programs for wild bird disease surveillance. See, e.g., Washington Department of Fish and Wildlife, Avian Influenza. [http://wdfw.wa.gov/conservation/health/avian\\_flu/index.html](http://wdfw.wa.gov/conservation/health/avian_flu/index.html). <https://wdfw.wa.gov/species-habitats/diseases/bird-flu>.
4. **Applicable Laws and Rules.**
  - a. [Chapter 16.36 RCW](#) – Animal Health Act
  - b. [Chapter 16.38 RCW](#) – Diagnostic Service Program Act
  - c. [Chapter 16.68 RCW](#) – Disposal of Dead Animals Act
  - d. [Chapter 16.70 RCW](#) – Control of Pet Animals Infected with Diseases Communicable to Humans Act
  - e. [Chapter 16-08 WAC](#) – WSDA Practice and Procedure
  - f. [Chapter 16-54 WAC](#) – Animal Importation
  - g. [Chapter 16-59 WAC](#) – Avian Diseases in Washington State
  - h. [Chapter 16-70 WAC](#) – Animal Disease Reporting
  - i. [Chapter 16-74 WAC](#) – Livestock Testing
  - j. [Title 16](#) of the Washington Administrative Code also contains various chapters related to specific animal diseases.

#### B. *Animal Disease Reporting and Investigation.*

1. **Reportable diseases.** See [chapter 16-70 WAC](#).
2. **Persons required to report.** Any person licensed to practice veterinary medicine, surgery, and dentistry in this state, veterinary laboratories, and persons using their own diagnostic services shall immediately report the existence or suspected existence of any reportable disease among animals within the state. [RCW 16.36.080\(1\), \(2\)](#).
3. **Investigation.** The Director shall investigate and/or maintain records. [RCW 16.36.080\(3\)](#).

**C. Search Warrant.**

1. **Authority to enter.** The Director has the authority to enter a property at any reasonable time to:
  - a. Conduct tests, examinations, or inspections to take samples, and to examine and copy records when there is reasonable cause to investigate whether animals on the property or that have been on the property are infected with or have been exposed to disease; and
  - b. Determine, when there is reasonable cause to investigate, whether livestock on the property have been imported into the state in violation of requirements of [chapter 16.36 RCW](#), and to conduct tests, examinations, and inspections, take samples, and examine and copy records during such investigations. [RCW 16.36.060\(1\)](#).
2. **Unlawful to interfere.** It is unlawful for any person to interfere with investigations, tests, inspections, or examinations, or to alter any segregation or identification systems made in connection with tests, inspections, or examinations. [RCW 16.36.060\(2\)](#).
3. **Application for search warrant.** If the Director is denied access to a property or animals for purposes of [chapter 16.36 RCW](#), or a person fails to comply with an order of the Director, the Director may apply to a court of competent jurisdiction for a search warrant. [RCW 16.36.060\(3\)](#).
  - a. **Showing that access is denied.** To show that access is denied, the Director shall file with the court an affidavit or declaration containing a description of all attempts to notify and locate the owner or the owner's agent and to secure consent. *Id.*
  - b. The court may issue a search warrant authorizing access to any animal or property at reasonable times to conduct investigations, tests, inspections, or examinations of any animal or property, or to take samples, and examine and copy records, and may authorize seizure or destruction of property. *Id.*

**D. Animal Quarantine, Hold, Treatment and Destruction.**

1. **Quarantine.**
  - a. **Definition.** "Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering into this state, as may be directed in an order by the Director. [RCW 16.36.005\(18\)](#).
    - i. "Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals. [RCW 16.36.005\(2\)](#).
  - b. **Basis for quarantine.** The Director may issue a quarantine order and enforce the quarantine of any animal or its reproductive products when:
    - i. Any animal or its reproductive products are affected with or have been exposed to disease; or

- ii. Reasonable cause exists to investigate whether any animal or its reproductive products are affected with or have been exposed to disease, either within or outside the state, even if overt disease or exposure to disease is not immediately obvious.  
[RCW 16.36.010\(2\)](#).
  - c. **Duration.** The quarantine shall remain in effect as long as the Director deems necessary. *Id.*
- 2. **Hold order.**
  - a. **Definition.** "Hold order" means an order by the Director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a designated holding location pending an investigation of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products. [RCW 16.36.005\(12\)](#).
  - b. **Basis for issuance.** The Director may issue a hold order when:
    - i. Reasonable cause exists to investigate whether an animal is diseased or has been exposed to disease, even if overt disease or exposure to disease is not immediately obvious;
    - ii. Import health papers, permits, or other transportation documents required by law or rule are not complete or are suspected to be fraudulent; or
    - iii. Further transport of an animal would jeopardize the well-being of the animal or other animals in Washington state.  
[RCW 16.36.010\(3\)](#).
  - c. **Duration.** A hold order is in effect for fourteen days and expires when released by the Director or no later than midnight on the fourteenth day from the date of the hold order. A successive hold order may be issued if the basis for issuance remains.
    - i. **Replacement by quarantine order.** A hold order may be replaced by a quarantine order for the purpose of animal disease control. *Id.*
- 3. **Conditions applicable during quarantine and hold orders.**
  - a. Any animal or animal reproductive product shall be kept separate and apart from other animals designated in the instructions of the order and shall not be allowed to have anything in common with other animals. [RCW 16.36.010\(4\)](#).
  - b. Expenses of handling and caring for animals or animal reproductive products are the responsibility of the owner. [RCW 16.36.010\(5\)](#).
  - c. The Director has authority over the quarantine or hold area.  
[RCW 16.36.010\(6\)](#).
  - d. Any animal or animal reproductive product may not be moved, transported, or sold without written approval from the Director.  
[RCW 16.36.010\(7\)](#).
- 4. **Treatment or Voluntary Disposal.** The Director may require appropriate treatment of any animal affected with, suspected of being affected with, or that has been exposed to any reportable disease. The owner may dispose of the animal rather than treat the animal. [RCW 16.36.080\(4\)](#).



**5. Order for destruction of animals.**

- a. **Diseased animals.** When public welfare demands, the Director may order the slaughter or destruction of any animal affected with or exposed to any contagious, infectious, or communicable disease that is affecting or may affect the health of the state's animal population. [RCW 16.36.090](#).
- b. **Quarantined animals.** The Director may order destruction of any animal held under quarantine when public welfare demands or the owner of the animal fails or refuses to follow a herd or flock plan. *Id.*
- c. **Written order.** The Director shall give a written order directing an animal be destroyed by or under the direction of the state veterinarian. *Id.*

**6.** In ordering the slaughter or destruction of any animal, the director may pay an indemnity in an amount not to exceed seventy-five percent of the appraised or salvage value of the animal. The actual indemnity amount shall be established by the director by rule.

- a. **Exceptions.** Payment of indemnity does not apply to an animal belonging to the federal government, Washington State, or any municipal corporation; or that has been brought into this state in violation of [chapter 16.36 RCW](#) or rules adopted under the chapter. [RCW 16.36.096](#).
- b. **Rules establishing indemnity amount.** Subject to the availability of funds appropriated for this specific purpose, up to seventy-five percent of the appraised or salvage value of the animal ordered slaughtered or destroyed. Indemnity payments will be paid only to an owner of sheep or goats that were born in the state of Washington or were imported into the state in compliance with Washington statutes and rules. [WAC 16-89-013](#).

**7. Agency review.**

- a. **Request for hearing.** Any person whose animal or animal reproductive products are placed under a quarantine, a hold order, or destruct order may request a hearing. The request must be in writing and filed with the Director. [RCW 16.36.098](#).
- b. **Conduct of hearing.** Any hearing will be held in conformance with [RCW 34.05.422](#) and [RCW 34.05.479](#) (Administrative procedure act - Emergency adjudicative proceedings). *Id.* Rules governing the Department of Agriculture's use of emergency adjudicative proceedings are contained in [WAC 16-08-151](#). (In practice, the Department of Agriculture conducts both regular and emergency proceedings. The proceedings may be consolidated under [WAC 16-08-022](#).)

**E. Enforcement Powers.**

- 1. Injunction.** The Director may bring an action to enjoin the violation of any provision of [chapter 16.36 RCW](#) or any rule adopted under the chapter. The Director may bring the action in the superior court of Thurston County or of the county in which the violation occurs. [RCW 16.36.110\(2\)](#).

2. **Petition for enforcement.** The Department of Agriculture may seek enforcement of an order under [RCW 34.05.578](#) (Administrative procedure act - Petition by agency for enforcement).

**F. Criminal Penalties.**

1. **Gross misdemeanor.** Any person who violates any provision of [chapter 16.36 RCW](#) or any rule adopted under the chapter is guilty of a gross misdemeanor. [RCW 16.36.110\(1\)](#).

5.42 Washington State Department of Health

- A. Secretary of Health - Pets.** If an emergency arises out of an outbreak of diseases communicable to humans caused by pet animals, the Secretary of Health is authorized to take action deemed necessary to protect the public health, including quarantine or any legal action authorized in [Title 7 RCW](#) and [RCW 43.70.170](#) to [.190](#). [RCW 16.70.030](#). See *supra* § [3.30.B.3](#). The Secretary is authorized to destroy pet animals reasonably suspected of having a communicable disease dangerous to humans as a public nuisance. *Id.*
1. **Definition of pet animals.** Pet animals means dogs (Canidae), cats (Felidae), monkeys and other similar primates, turtles, psittacine birds, skunks, or any other species of wild or domestic animals sold or retained for the purpose of being kept as a household pet. [RCW 16.70.020\(1\)](#).

5.43 Federal Authority

- A. Importation and Movement in Interstate Commerce.** The Secretary of the U.S. Department of Agriculture may hold, seize, quarantine, treat, destroy, dispose of, or take other remedial action with respect to any animal or progeny of any animal, article, or means of conveyance that:
1. is moving or has been moved in interstate commerce or has been imported and entered, and
  2. may carry, may have carried, or may have been affected with or exposed to a pest or disease of livestock at the time of movement or that is otherwise in violation of [7 U.S.C. chapter 109](#).  
The Secretary shall provide compensation for destruction, with certain exceptions. See [7 U.S.C. § 8306\(a\), \(c\), \(d\)](#).
- B. Measures in the Event of Inadequate Local Control.**
1. If the Secretary of the U.S. Department of Agriculture finds, after review and consultation with a state's governor (or the head of an Indian tribe), that the measures being taken by a state (or a tribe) are inadequate to control or eradicate a pest or disease that threatens the livestock of the United States, he or she may take action necessary to prevent dissemination of the pest or disease including:

- a. Holding, seizing, treating, applying remedial measures, destroying or otherwise disposing of, any animal, article, facility, or means of conveyance;
    - b. Prohibiting and restricting movement within a state. The Secretary shall provide compensation for destruction, with certain exceptions. [See 7 U.S.C. § 8306\(b\), \(c\), \(d\)](#).
  2. The Director of the Centers for Disease Control may take measures in the event of inadequate local control to prevent the interstate spread of communicable disease, including pest extermination and destruction of animals or articles believed to be sources of infection. See [42 CFR § 70.2](#); *supra* § [5.34.C.2](#).
    - a. The Commissioner of the Food and Drug Administration has similar authority. [21 CFR § 1240.30](#).
- C. *Regulation of International Animal Movement.*** The U.S. Department of Agriculture regulates the importation of animals across international borders. The regulations are found at [9 CFR pts. 91-99](#) (importation of animals and animal products). Other regulations include [9 CFR pts. 49-55](#) (control and eradication of livestock diseases), and [9 CFR pts. 70-89](#) (interstate transportation of animals and animal products).
- D. *Regulation of Importation of Animals for Purposes of Disease Control.***
1. The Director of the Centers for Disease Control regulates the importation of certain animals into the United States to prevent the introduction, transmission, or spread of communicable disease in humans. See to [42 CFR §§ 71.51, .54, .56](#).
  2. The Director also may take actions necessary when any arriving carrier or article or thing on board is or may be infected with a communicable disease. [42 CFR § 71.32](#). (Under this authority, the Centers for Disease Control has issued emergency orders to respond to specific threats, including importation of bird and bird products from certain countries where avian influenza has been detected in poultry and importation of civets because the animal has been linked to SARS.)

**6.00 SAMPLE PLEADINGS FOR ISOLATION AND QUARANTINE**

**6.10 PLEADINGS FOR INVOLUNTARY ISOLATION OR QUARANTINE**

**COMMUNICABLE DISEASES ([WAC 246-100-040 TO -070](#))  
SAMPLE PLEADINGS FOR INVOLUNTARY ISOLATION OR QUARANTINE**

**Initial Detention for up to 10 Days**

Pleadings for Court Order

- Petition Ex Parte for Involuntary Isolation or Quarantine
- Declaration of Disease Control Officer in Support of Petition
- Statement of Rights of Respondent and Notification of Attorney
- [Proposed] Order for Involuntary Isolation or Quarantine
- Summons
- Declaration of Service
- 
- Motion for Order to Close Hearings or Seal Records
- Sealed Data
- [Proposed] Order to Close Hearings or Seal Records

(See *infra* § [13.20](#) regarding closing of hearings and sealing of records.)

**Continued Isolation or Quarantine for up to 30 Days**

Pleadings for Court Order

- Petition for Continued Isolation or Quarantine
- Declaration of Disease Control Officer in Support of Petition for Continued Isolation or Quarantine
- Declaration of Compliance with [WAC 246-100-045](#)
- [Proposed] Order for Continued Isolation or Quarantine

**Continued Isolation or Quarantine for up to an Additional 30 Days**

Pleadings for Court Order

- Same forms as 30-day period above, updated to reflect current facts.

## 6.11 Petition Ex-Parte for Involuntary Isolation or Quarantine

The Seattle-King County Department of Public Health, by and through its attorney(s) of record, requests the Court for an Order directing and authorizing the isolation and/or quarantine of Respondent(s) (identified on Sealed Data, filed with the Court) pursuant to WAC 246-100-040.

1. JURISDICTION: This Petition is requested pursuant to the provisions of RCW 70.05.070, RCW 43.70.190, and WAC 246-100-040(4). This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 43.70.190.

2. WAC 246-100-040(4) provides that the local health officer may petition the superior court ex-parte for an order authorizing the involuntary detention of a person or group of persons for purposes of isolation or quarantine.

3. Isolation and/or quarantine is necessary for the reasons set forth in the Declaration of Disease Control Officer (attached), which attests to the facts asserted in this petition, together with any further information that may be relevant to the Court's consideration.

4. The local health officer has made reasonable efforts to obtain voluntary compliance with requests for medical examination, testing, treatment, vaccination, decontamination of persons or animals, isolation, or quarantine, or has determined in his/her professional judgment that seeking voluntary compliance would create a risk of serious harm.

5. The local health officer has reason to believe that Respondent(s) is, or is suspected to be, infected with, exposed to or contaminated with \_\_\_\_\_, which could infect or contaminate others if Respondent(s) is not detained and quarantined or isolated from others.

6. The local health officer has reason to believe that Respondent(s) would pose a serious and imminent risk to the health and safety of others if not detained for isolation and quarantine.

7. Petitioner offers the following information for the consideration of the Court:

A. The identity of all persons or groups to be subject to the isolation or quarantine: See Sealed Data, filed with the Court.

B. The premises where isolation and quarantine will take place: See Sealed Data, filed with the Court.

C. The date and time at which isolation or quarantine will commence:

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D. The suspected communicable disease or infectious agent, if known:

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E. The anticipated duration of isolation and quarantine based on the suspected communicable disease or infectious agent, if known:

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F. The measures taken by the local health officer to seek voluntary compliance or the basis on which the local health officer determined that seeking voluntary compliance would create a risk of serious harm:

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G. The medical basis on which isolation and quarantine is justified:

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8. IT IS SPECIFICALLY REQUESTED HEREIN that the Court direct Respondent(s) (see Sealed Data, filed with the Court) be isolated and/or quarantined at (see Sealed Data, filed with the Court) and be directed to remain in such isolation and/or quarantine until \_\_\_\_\_, 20 , at \_\_\_\_\_ o'clock AM/PM (Pacific Time) (not to exceed ten days).

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

6.12 Declaration of Disease Control Officer in Support of Petition

I, \_\_\_\_\_, declare as follows:

1. I am over the age of eighteen and make this declaration based upon my own personal knowledge and after personally reviewing the records of this office concerning Respondent(s).

2. I am a licensed physician in the State of Washington, and a Disease Control Officer for the Seattle-King County Department of Public Health.

3. My duties include investigation of reportable diseases, disease outbreaks, and other illnesses affecting the population, assessment of the nature and extent of health risks, and responsibility for implementing disease control and prevention measures.

4.  (Check if applicable.) Attached as Exhibit 1 is a true and accurate copy of an emergency detention order issued to Respondent(s) pursuant to WAC 246-100-040(3).

5. It is my medical judgment that the involuntary detention of Respondent(s) is necessary to prevent a serious or imminent risk to the health and safety of others. I reached that conclusion based on the following information:

6.  (Check if applicable.) I took the following measures to seek voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, or inspection and closure of facilities, and Respondent(s) has not complied or refused to comply as evidenced by:

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OR



[ ] (Check if applicable.) In my professional judgment, seeking voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, or inspection and closure of facilities would create a risk of serious harm because:

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7. In addition I offer the following information for the consideration of the Court:

A. The identity of all persons or groups to be subject to the isolation or quarantine: See Sealed Data, filed with the Court.

B. The premises where isolation or quarantine will take place: See Sealed Data, filed with the Court.

C. The suspected communicable disease or infectious agent, if known:

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D. The date and time isolation or quarantine commenced or will commence:

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E. The anticipated duration of isolation or quarantine based on the suspected communicable disease or infectious agent, if known:

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F. The medical basis on which involuntary isolation or quarantine is justified and the consequences of not imposing isolation or quarantine:

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I declare under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Washington.

6.13 Statement of Rights of Respondent and Notification of Attorney

TO: RESPONDENT(S)

NOTICE OF RIGHTS

You have the right to a Superior Court hearing within seventy-two (72) hours of detention, excluding holidays and weekends. You have the right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

\_\_\_\_\_ (name of defense attorney) of the  
\_\_\_\_\_ (name of defense agency) at  
\_\_\_\_\_ (telephone number of defense attorney)  
**is your assigned attorney at this time.**

You have the right to contest the facts alleged against you, to cross-examine witnesses, and to present evidence and witnesses on your behalf.

You have the right to appeal any decision made by the court.

Notice of Rights served on Respondent(s) this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

At \_\_\_\_\_ a.m./p.m. at \_\_\_\_\_, Seattle, WA

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

6.14 [Proposed] Order for Involuntary Isolation or Quarantine

THIS MATTER, having come before the undersigned Judge/Court Commissioner of the above-entitled Court pursuant to a Petition Ex-Parte for Involuntary Isolation or Quarantine of Respondent(s), filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Court having reviewed the Petition, the Declaration of Disease Control Officer, the pleadings filed herein, the argument of counsel, and pertinent regulatory provisions associated therewith,

THE COURT NOW, THEREFORE, FINDS:

1. Jurisdiction: This court has jurisdiction over the person and subject matter in this proceeding.

2. There is a reasonable basis to find that isolation and/or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.

3. The facts warranting isolation and quarantine are:

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4.  (Check if applicable.) The Local Health Officer made reasonable efforts to obtain voluntary compliance with less restrictive alternatives, including voluntary isolation or quarantine, but those alternatives were not followed by Respondent(s).

OR

(Check if applicable.) The Local Health Officer considered less restrictive alternatives, including voluntary isolation or quarantine, but those alternatives, given the serious and imminent risk to the public health and safety, do not provide sufficient public protection.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent(s) shall be isolated or quarantined in accordance with the ex-parte petition from \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) to \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time), a period that does not exceed ten days, unless the health officer determines, prior to the expiration of that period, that isolation and/or quarantine is no longer necessary.

2. The person(s) to be isolated or quarantined is: See Sealed Data, filed with the Court.

3.  (Check if applicable.) The following conditions are necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of WAC 246-100-040:

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4. The isolation or quarantine will take place at the following premises: See Sealed Data, filed with the Court.

5. The Court shall retain jurisdiction of this matter to ensure compliance with its terms, and for purposes of possible further action, including continuation of detention pursuant to WAC 246-100-040.

6. Petitioner shall serve this Order on all Respondent(s), in accordance with the rules of civil procedure.

7.  (Check for ex parte order.) A hearing on this matter shall be held on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time), which is less than 72 hours from the time of filing the petition, excluding Saturdays, Sundays and holidays. The hearing will be held at the following location and with the following special

arrangements to ensure protection against spread of a communicable disease or infectious agent:

8. Judge: \_\_\_\_\_

9. Location: \_\_\_\_\_

10. Special Arrangements [*state here if closed hearing*]: \_\_\_\_\_

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

6.15 Summons

TO THE RESPONDENT(S): A lawsuit has been started against you in the above-entitled court by petitioner, Seattle-King County Department of Public Health. Petitioner's claim is stated in the written petition, a copy of which is served upon you with this summons. You may be isolated or quarantined immediately if ordered by the court based on a petition ex parte. In order to defend against this lawsuit, you must appear at a hearing to be conducted within 72 hours from the time of filing of the petition, excluding Saturdays, Sundays and holidays. If you do not appear, the court may issue an order authorizing isolation or quarantine not to exceed 10 days.

If you wish to seek the advice of an attorney in this matter, you should do so promptly and in advance of the hearing.

THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington and WAC 246-100-040.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

6.16 Declaration of Service

\_\_\_\_\_ declares:  
(Printed Name)

1. Identity. I am a \_\_\_\_\_(job title) employed by \_\_\_\_\_(employer) and was so employed on \_\_\_\_\_(date of service);

2. Competency. At all times mentioned herein I was over the age of eighteen years, not a party to the above entitled public health order enforcement proceeding, and competent to be a witness in this proceeding;

3. Service. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m., I personally served Respondent(s) with the:

SUMMONS

PETITION

DECLARATION OF DISEASE CONTROL OFFICER

STATEMENT OF RIGHTS AND NOTIFICATION OF ATTORNEY, and

(Check if applicable) EX PARTE ORDER

in the above entitled public health order enforcement proceeding by delivering true/certified copies of said documents to said Respondent(s).

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_, Washington.



## 6.20 PLEADINGS FOR ORDER TO CLOSE HEARINGS AND SEAL RECORDS

### 6.21 Motion for Order to Close Hearings and Seal Records

#### I. Relief Requested.

The Seattle-King County Department of Public Health, by and through its attorney(s) of record, respectfully requests pursuant to *Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982) and GR 15 that the Court close hearings and seal the following records in this proceeding:

SEALED DATA FORM

(Check if applicable) EXHIBIT \_ TO DECLARATION OF DISEASE CONTROL OFFICER IN SUPPORT OF PETITION

#### II. Statement of Facts.

The local health officer has filed a petition for involuntary isolation or quarantine pursuant to WAC 246-100-040 because he/she has reason to believe that Respondent(s) is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or chemical, biological, or radiological agent that could spread to or contaminate others if remedial action is not taken. This action thus involves health care information regarding Respondent(s).

#### III. Statement of Issues.

Should hearings be closed and certain records in this matter sealed in order to prevent unnecessary disclosure of health care information?

#### IV. Evidence Relied Upon.

This Motion is based upon the records and documents contained in this file.

#### V. Authority.

The Washington legislature has found that “health care information is personal and sensitive information that if improperly used or released may do significant harm to a

patient's interests in privacy, health care, or other interests." RCW 70.02.005(1).

Additionally, the federal Privacy Rule implementing the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191, defines and limits the circumstances in which protected health information may be disclosed. 45 C.F.R. § 164.502(a).

This matter necessarily involves health care information about the Respondent(s). Disclosure of the identity of the Respondent(s) would reveal protected health care information. Therefore, hearings should be closed and records that identify the Respondent(s) should be sealed and treated as confidential. These measures are no broader than necessary to protect the identity of the Respondent(s). Protecting the identity of the Respondent(s) is consistent with the state and federal laws that recognize the privacy that applies to individually-identifiable health care information and is justified under *Seattle Times v. Ishikawa* and GR 15 by identified compelling privacy concerns that outweigh the public interest in access to the hearing or court records.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

6.22 Sealed Data Form (Sealed Record)

Person(s):

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Group(s)

Identifying Description:	Identity in Pleadings:

Location of Detention: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**NOTICE TO INDIVIDUALS IN RECEIPT OF THIS CONFIDENTIAL DATA:**

**THIS INFORMATION HAS BEEN DISCLOSED TO YOU FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE LAW. STATE LAW PROHIBITS YOU FROM MAKING ANY FURTHER DISCLOSURE OF IT EXCEPT AS AUTHORIZED BY STATE LAW.**

6.23 [Proposed] Order to Close Hearings and Seal Records

This Court, having reviewed the Petitioner's motion to close hearings and seal specific documents in conjunction with the Petition Ex Parte for Involuntary Isolation or Quarantine and pursuant to applicable case law and court rules finds compelling circumstances to grant the order because the subject matter of this proceedings involves protected health care information. The Court finds the following pursuant to *Seattle Times v. Ishikawa*:

1. Failure to close hearings and seal records would expose the Respondent(s) to the serious and imminent threat of loss of privacy in individual health care information about the Respondent(s);

2. There is no objection from those present at the time of the request for closing hearings or sealing records and is by agreement of the parties;

3. There is no less restrictive means to protect against the Respondent's(s') loss of privacy in individual health care information than closing hearings and sealing certain records;

4. The Court finds that the Respondent's(s') compelling interest in the privacy right of individual health care information outweighs the public's right to access hearings and records that reveal individual health care information;

5. Closure of hearings and sealing of certain records is no broader than necessary to serve the purpose of protecting the Respondent's(s') privacy interest.

Sealing of records also is justified pursuant to GR 15 by identified compelling privacy concerns that outweigh the public interest in access to the court records.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Clerk of the Court shall seal the following documents in this case:

[X] SEALED DATA FORM

[ ] (Check if applicable) EXHIBIT \_\_\_\_ TO DECLARATION OF DISEASE CONTROL OFFICER IN SUPPORT OF PETITION

2. Access to the sealed documents is limited to the respective parties to this proceeding; their counsel of record; and such other individuals as the parties to this proceeding may mutually agree, or the Court may designate to be allowed access to the same.

3. The caption of this case shall use first and last name initials to identify the person who is the subject of the detention or other measure(s).

4. Hearings in this matter shall be closed.

Access to the sealed record is available only in the Clerk's Office.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**6.30 PLEADINGS FOR CONTINUED ISOLATION OR QUARANTINE**

**6.31 Petition for Continued Isolation or Quarantine**

The Seattle-King County Department of Public Health, by and through its attorney(s) of record, requests the Court for an Order directing and authorizing the continued isolation and/or quarantine of Respondent(s) (identified on Sealed Data, filed with the Court) pursuant to WAC 246-100-040.

1. This Petition is requested pursuant to the provisions of RCW 70.05.070, RCW 43.70.190 and WAC 246-100-040(5). This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 43.70.190.

2. WAC 246-100-040(5) provides that the local health officer may petition the superior court for an order authorizing the continued isolation or quarantine of a person or group detained under WAC 246-100-040(3) or (4).

3.  (Check if applicable). On \_\_\_\_\_, 20\_\_\_\_, the local health officer issued an Emergency Detention Order immediately involuntarily detaining Respondent(s) for isolation or quarantine under the authority of RCW 70.05.070 and WAC 246-100-040(3). The Emergency Detention Order remains in effect until \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) a period that does not exceed ten days.

OR

(Check if applicable.) The Court issued an Order on \_\_\_\_\_, 20\_\_\_\_, in this cause, involuntarily detaining Respondent(s) for isolation or quarantine under the authority of WAC 246-100-040(4). The Order remains in effect until \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time), a period that does not exceed ten days.

4. Continued isolation and/or quarantine is necessary for the reasons set forth in the declaration of Disease Control Officer (attached), which attests to the facts asserted

in this petition, together with any further information that may be relevant to the Court's consideration. Petitioner offers the following information for the consideration of the Court:

A. The identity of all persons or groups to be subject to the isolation or quarantine: See Sealed Data, filed with the Court.

B. The premises where isolation and quarantine will take place: See Sealed Data, filed with the Court.

C. The communicable disease or infectious agent, if known:

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D. The anticipated duration of isolation and quarantine based on the suspected communicable disease or infectious agent if known:

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E. The medical basis on which continued isolation and quarantine is justified:

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5. In accordance with the requirements of WAC 246-100-040(5)(c), this Petition is accompanied by a declaration of compliance with the conditions and principles for isolation and quarantine set forth at WAC 246-100-045.

6. IT IS SPECIFICALLY REQUESTED HEREIN that the Court direct Respondent(s) (see Sealed Data, filed with the Court) be isolated and/or quarantined at (see Sealed Data, filed with the Court), and be directed to remain in such isolation and/or quarantine until \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) (not to exceed thirty days).

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

6.32 Declaration of Compliance with WAC 246-100-045

I, \_\_\_\_\_, declare as follows:

1. I am over the age of eighteen and make this declaration based upon my own personal knowledge.

2. I am \_\_\_\_\_ for the Seattle-King County Department of Public Health.

3. My duties include supervising the isolation or quarantine of persons detained pursuant to WAC 246-100-040, including Respondent(s).

4. Isolation or quarantine is by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others. In this case isolation or quarantine is by: \_\_\_\_\_

\_\_\_\_\_

5. Isolated individuals are confined separately from quarantined individuals.

6. The health status of isolated or quarantined individuals is monitored regularly to determine if they require continued isolation or quarantine.

7. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease that the local health officer believes poses a significant threat to the health and safety of other quarantined individuals, he or she is promptly placed in isolation.

8. Isolated or quarantined individuals are released as soon as practicable when the local health officer determines that they have been successfully decontaminated or that they pose no substantial risk of transmitting a communicable or possibly communicable disease that would constitute a serious or imminent threat to the health and safety of others.

9. The needs of a person isolated or quarantined are addressed to the greatest extent possible in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter, means of communication with those in



isolation or quarantine and outside these settings, medication, and competent medical care.

10. Premises used for isolation or quarantine are maintained in a safe and hygienic manner to minimize the likelihood of further transmission of infection or other harm to persons isolated and quarantined.

11. To the extent possible, cultural and religious beliefs are considered in addressing the needs of individuals, and establishing and maintaining isolation or quarantine premises.

12. Isolation or quarantine does not abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat a communicable or possibly communicable disease in accordance with religious tenets and practices; in addition, a person so relying who is infected with a contagious or communicable disease is not prohibited from being isolated or quarantined in a private place of his or her own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control, sanitation, isolation and quarantine are complied with. At his or her sole discretion, the local health officer may isolate infected individuals declining treatment for the duration of their communicable infection.

I declare under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Washington.

6.33 [Proposed] Order for Continued Isolation or Quarantine

THIS MATTER, having come before the undersigned Judge/Court Commissioner of the above-entitled Court pursuant to a Petition for Continued Isolation or Quarantine of Respondent(s), filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Court having held a hearing on the petition within seventy-two (72) hours of filing (exclusive of Saturdays, Sundays, and holidays), and reviewed the Petition, the Declaration of Disease Control Officer, argument and evidence presented at the hearing, and pertinent regulatory provisions associated therewith,

THE COURT NOW, THEREFORE, FINDS:

1. Jurisdiction: This court has jurisdiction over the person and subject matter in this proceeding.

2. There is clear, cogent, and convincing evidence that isolation and/or quarantine is necessary to prevent a serious and imminent risk to the health and safety of others.

3. Notice to the person(s) or group identified in the petition was accomplished in accordance with the rules of civil procedure.

4. The facts warranting continued isolation and quarantine are:

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IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent(s) shall be isolated and/or quarantined in accordance with the Petition from \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) to \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time), a period that does not

exceed thirty days, unless the health officer determines, prior to the expiration of that period, that isolation and/or quarantine is no longer necessary.

2. The person(s) or group to be isolated or quarantined is: See Sealed Data, filed with the Court.

3.  (Check if applicable.) The following conditions are necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of WAC 246-100-040: \_\_\_\_\_

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4. The isolation or quarantine will take place at the following premises: See Sealed Data, filed with the Court.

5. The Court shall retain jurisdiction of this matter to ensure compliance with its terms, and for purposes of possible further action, including continuation of detention pursuant to WAC 246-100-040.

6. Petitioner shall serve this Order on all Respondent(s), in accordance with the rules of civil procedure.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

## 7.00 TUBERCULOSIS CONTROL

### 7.10 OVERVIEW

A local health officer's powers and duties related to tuberculosis control are set forth in chapter [70.28 RCW](#) and chapter 246-170 WAC. The specific procedures for detention, examination, counseling, testing, treatment, vaccination, isolation, or quarantine for purposes of tuberculosis control supersede the procedures in [WAC 246-100-040](#) to [-070](#).

### 7.20 INVOLUNTARY DETENTION FOR EXAMINATION, TESTING AND TREATMENT

#### 7.21 Involuntary Detention Procedures

##### A. *Health Officer Authority and Orders.*

1. **Health officer authority.** Each health officer is invested with full powers of inspection, examination, treatment, and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for treatment or periodic follow-up examinations and is hereby directed:
  - a. To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and isolate and treat or isolate, treat, and quarantine such persons whenever deemed necessary for the protection of the public health. [RCW 70.28.031\(a\)](#).
  - b. To make such examinations as are deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations. [RCW 70.28.031\(b\)](#).
  - c. To follow local rules and regulations regarding examinations, treatment, quarantine, or isolation, and all rules, regulations, and orders of the state board of health and of the state department of health in carrying out examination, treatment, quarantine, or isolation. [RCW 70.28.031\(c\)](#).
2. **Orders.**
  - a. **Examination or treatment.** Whenever the health officer determines on reasonable grounds that an examination or treatment of any person is necessary for the protection of the public health, he or she shall make an examination order in writing, setting forth:
    - i. The name of the person to be examined;
    - ii. The time and place of the examination;
    - iii. The treatment; and
    - iv. Such other terms and conditions as necessary to protect the public health. [RCW 70.28.031\(d\)](#).

- b. **Treatment, isolation, or quarantine.** Whenever the health officer determines that treatment, isolation, or quarantine, is necessary for the protection of the public health, he or she shall make an order in writing, setting forth:
  - i. The name of the person;
  - ii. The period of time during which the order shall remain effective;
  - iii. The place of treatment, isolation, or quarantine; and
  - iv. Such other terms and conditions as necessary to protect the public health. [RCW 70.28.031\(e\)](#).
- c. **Service of orders.** A copy of the order shall be served upon the person named in the order. [RCW 70.28.031\(f\)](#).
- d. **Right to choose physician.** A person is not prevented from receiving examination or treatment from a physician of his or her choice under terms and conditions that the health office shall determine on reasonable grounds to be necessary to protect the public health. [RCW 70.28.031\(d\)](#).
- e. **Right to rely on spiritual means.** The right of any person to rely exclusively on spiritual means is not abridged, nor may a person be prohibited from isolation or quarantine in a private place of choice provided it is approved by the local health officer. [RCW 70.28.031\(i\)](#).
- f. **Violation of orders.**
  - i. **Notice to prosecuting attorney.** Upon receipt of information that an order has been violated, the health officer shall advise the prosecuting attorney of the county in which the violation occurred, in writing, and shall submit to the prosecuting attorney information relating to the order and violations thereof. [RCW 70.28.031\(g\)](#).
  - ii. **Misdemeanor.** A violation of an order of a health officer directing treatment, isolation, or examination, is a misdemeanor. A person convicted may be ordered confined until the order of the health officer is complied with but not to exceed six months. Alternatively, the court may place the person upon probation for a period not to exceed two years. [RCW 70.28.033](#).

## **B. Involuntary Detention.**

### **1. In whom powers vested.**

- a. **State Board of Health authority to adopt rules.** The State Board of Health shall adopt rules establishing requirements for due process standards for health officers exercising their authority to involuntarily detain, test, treat, or isolate persons with suspected or confirmed tuberculosis under [RCW 70.28.031](#) and [70.05.070](#). The standards are to provide for release from involuntary detention, testing, treatment, or isolation as soon as the health officer determines that the patient no longer represents a risk to the public's health. [RCW 70.28.032](#).
- b. **Local health officer authority to implement isolation and quarantine.** The State Board of Health has adopted rules containing procedures for local health officers to initiate involuntary detention. See generally [WAC 246-170-051](#) to [-065](#).

- 2. **Reasonable efforts to obtain voluntary compliance.** The local health officer shall make reasonable efforts to obtain voluntary compliance with

requests for examination, testing, and treatment prior to initiating the procedures for involuntary detention. [WAC 246-170-051\(1\)](#).

## C. **Types of Detention.**

### 1. **Emergency detention.**

- a. **Basis for local health officer to initiate.** The local health officer may initiate detention if he or she has reason to believe that:
  - i. A person is a suspected case and has failed to comply with a documented request from a health care practitioner or the local health officer to submit to examination and testing;
  - ii. A person with confirmed tuberculosis is failing to comply with an individual treatment plan approved by the local health officer;
  - iii. A person is either a suspected or confirmed case and is failing to comply with infection control directives issued by the local health officer; or
  - iv. A person is a suspected or confirmed case based upon generally accepted standards of medical and public health science. [WAC 246-170-051\(2\)](#).
- b. **Alternative procedures for emergency detention.** The local health officer may:
  - i. Detain the person;
  - ii. Cause the person to be detained by written order; or
  - iii. Petition the superior court *ex parte* for an order to take the person into emergency detention. *Id.*
- c. **Notice at time of detention.** At the time of detention the person detained shall be given the following written notice.

NOTICE: You have the right to a superior court hearing within seventy-two hours of detention, excluding holidays and weekends. You have the right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

You have the right to contest the facts alleged against you, to cross-examine witnesses, and to present evidence and witnesses on your behalf.

You have a right to appeal any decision made by the court.

You may be given appropriate TB medications only on your informed consent, or pursuant to a court order. [WAC 246-170-051\(3\)](#).

### 2. **Continued detention.**

- a. **Petition.**
  - i. **Timing.** Within one (1) judicial day of initial detention, the local health officer shall file with the superior court in the county of detention a petition for detention. [WAC 246-170-051\(4\)](#).
  - ii. **Contents.** The petition shall specify:
    - (A) The basis for the local health officer's belief that the respondent

- is either a suspected or confirmed case; including the name, address and phone numbers of the persons whom the health officer expects to testify and the medical tests and records relied upon by the local health officer;
- (B) The specific actions taken by the local health officer to obtain voluntary compliance with recommended examination and testing or treatment;
  - (C) The nature and duration of further detention or other court-ordered action that the local health officer believes is necessary in order to assure that the respondent is appropriately tested or treated;
  - (D) The basis for believing that further detention or other court-ordered action is necessary to protect the public health; and
  - (E) Other information the local health officer believes is pertinent to the proper resolution of the petition. *Id.*
- iii. Service.* The health officer shall serve a copy of the petition on the individual named therein at the time of the detention. If the person informs the health officer that he or she is represented by legal counsel, service on such counsel shall be made by delivering a copy of the petition to the attorney's office no later than the time of filing the petition. [WAC 246-170-051\(5\)](#).
- b. Hearing.**
- i. Timing.* The superior court shall hold a hearing on a petition for detention within seventy-two (72) hours of initial detention, excluding weekends and holidays. [WAC 246-170-055\(1\)](#).
  - ii. Burden of proof.* The local health officer shall have the burden of proving the allegations in the petition by a preponderance of the evidence. *Id.*
  - iii. Rights of respondent.* The person named in the petition shall have the right to cross-examine witnesses, present evidence, and be represented by an attorney. If the person is indigent and requests appointment of legal counsel, legal counsel shall be appointed at public expense at least twenty-four (24) hours prior to the superior court hearing. *Id.*
  - iv. Court action at conclusion of hearing.* At the conclusion of the hearing, the court shall consider the evidence, the action taken by the health officer to secure voluntary compliance by the patient, and the purpose and intent of the public health laws, and may take one of the following actions:
    - (A) **Suspected case.** If the court finds that the respondent is a suspected case, the court may enter an order requiring further examination, testing, and treatment. If the court finds that further detention is necessary in order to assure that the examination, testing, and treatment occurs, or to protect the public health, the court may order detention for an additional period not to exceed forty-five (45) days. The results of testing shall be provided to the court and the person detained as soon as they are available. The court may conduct an additional hearing. [WAC 246-170-055\(2\)\(a\)](#).
    - (B) **Confirmed case / less restrictive measures.** If the court finds that a person is a confirmed case, that further measures less restrictive than detention are necessary to assure appropriate treatment, and that less restrictive measures will be sufficient to

protect the public health, the court may enter an order setting forth such measures.

[WAC 246-170-055\(2\)\(b\)](#).

- (C) **Confirmed case / detention.** If the court finds that a person is a confirmed case, that further detention is necessary to protect the public health, and that less restrictive measures will not be sufficient to protect the public health, the court may enter an order for detention for an additional period not to exceed forty- five (45) days. [WAC 246-170-055\(2\)\(c\)](#).
- (D) **Insufficient evidence.** If the court finds that there is insufficient evidence to support the petition for detention, the court shall immediately release the person detained. [WAC 246-170-055\(2\)\(d\)](#).

3. **Additional period(s) of continued detention.** The court may extend a period of court-ordered detention for additional periods not to exceed one hundred eighty (180) days each following a hearing. As an alternative to extending the period of detention, the court may order less restrictive measures if they are sufficient to protect the public health. [WAC 246-170-055\(4\)](#).
4. **Release from detention.** A person detained may be released prior to the expiration of court-ordered detention if less restrictive measures are sufficient to protect the public health. The court may impose conditions on the release as the court finds necessary to protect the public health. A person detained may petition the court for release based upon new evidence or a change in circumstances. [WAC 246-170-055\(3\)](#).
5. **Failure to complete treatment after release from detention.** If a person has been released from detention and fails to comply with the prescribed course of treatment, the health officer where the individual is found may detain the person, and any court having jurisdiction of the person may order the person detained for an additional period or periods, not to exceed one hundred eighty (180) days each, as the court finds necessary to protect the public health. [WAC 246-170-055\(5\)](#).
6. **Detention in other county.** If a person has been detained in a county other than the county in which the court that originally ordered the detention is located, venue may remain in the original county, or may be transferred to the county of detention. Change in venue may be sought either by the local health officer in the original county or in the county of detention, or by the person detained. Except as otherwise agreed between the original health officer and the health officer in the county of detention, the original health officer retains jurisdiction over the detained person, including financial responsibility for costs incurred in implementing and continuing the detention. [WAC 246-170-055\(6\)](#).
7. **Rights of respondent at hearings.** Court orders shall be entered only after a hearing at which the respondent is accorded the same rights as at the initial hearing on the petition for detention. [WAC 246-170-055\(7\)](#).
8. **Notice to transporting law enforcement agency and receiving facility.** When a court order for detention is issued, the transporting law enforcement



agency and the receiving facility shall be informed of the infectious TB status of the person prior to the transport. Disclosure shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it except as authorized by state law." [WAC 246-170-055\(8\)](#).

**9. Initiation of testing or treatment of detained persons.** If a person has been detained, the health officer may begin testing or treatment, with informed consent, or pursuant to a court order as appropriate, pending the required hearing. [WAC 246-170-061](#).

**10. Not applicable to persons already detained.** The provisions for involuntary testing, treatment, and detention do not apply to persons who have been detained to the custody of a penal institution, a mental health facility, or another public or private institution. [WAC 246-170-065](#).

7.22 Sample Local Health Officer Emergency Detention Order

EMERGENCY DETENTION ORDER

\_\_\_\_\_, you are hereby ordered to detention at:  
(name of individual or group)

\_\_\_\_\_ pursuant to WAC 246-170-051(2).  
(premises for detention)

Your detention commences on \_\_\_\_\_ at \_\_\_\_\_.  
(date) (time)

This order will remain in effect until \_\_\_\_\_ at \_\_\_\_\_.  
(date) (time)

unless otherwise rescinded, but not to exceed 72 hours, excluding weekends and holidays.

You are being detained because:

(Check if applicable.) You are suspected of having tuberculosis and have failed to comply with a documented request from a health care practitioner or the local health officer to submit to examination and testing.

(Check if applicable.) You have been confirmed as having tuberculosis and have failed to comply with an individual treatment plan approved by the local health officer.

(Check if applicable.) You are suspected of or have been confirmed as having tuberculosis and have failed to comply with infection control directives issued by the local health officer.

The following measures were taken to obtain voluntary compliance with requests for examination, testing, treatment, and/or infection control directives:

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Special Instructions:

Failure to comply with this Emergency Detention Order is a misdemeanor pursuant to RCW 70.28.033.

It is very important for the protection of your own health and that of others that you abide by this Emergency Detention Order. If you have any questions about this order or need assistance in complying, please call \_\_\_\_\_

If detention is necessary beyond the 72-hour period, excluding weekends and holidays, allowed under this order, the Health Officer may petition the Superior Court for an order authorizing continued detention for a period up to 45 days.

\_\_\_\_\_  
Health Officer

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**IMPORTANT NOTICE:**

You have the right to a superior court hearing within seventy-two hours of detention, excluding holidays and weekends. You have the right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

You have a right to contest the facts alleged against you, to cross-examine witnesses, and to present evidence and witnesses on your behalf.

You have a right to appeal any decision made by the court.

You may be given appropriate TB medications only on your informed consent, or pursuant to a court order.

## 8.00 SAMPLE PLEADINGS FOR TUBERCULOSIS CONTROL

### 8.10 PLEADINGS FOR EMERGENCY DETENTION

#### Initial Detention for up to 72 Hours (excluding weekends and holidays)

##### Pleadings for Ex Parte Court Order

- Petition Ex Parte for Emergency Detention
- Declaration of Disease Control Officer in Support of Petition
- Statement of Rights of Respondent and Notification of Attorney
- [Proposed] Order for Emergency Detention
- Summons
- Declaration of Service
  
- Motion for Order to Close Hearings or Seal Records
- Sealed Data
- [Proposed] Order to Close Hearings or Seal Records

(See *infra* § [13.20](#) regarding closing of hearings and sealing of records.)

#### Further Detention or Other Measures for up to 45 Days

##### Pleadings for Court Order

- Petition for Detention or Other Measures
- Declaration of Disease Control Officer in Support of Petition  
*(Note: Same Declaration as above. Forms assume one Declaration in support of both the 72-hour and 45-day petitions.)*
- [Proposed] Order for Detention or Other Measures

#### Further Detention or Other Measures for up to 180 Days

##### Pleadings for Court Order

- Same forms as 45-day period above, updated for new facts and to request 180-day period.

8.11 Petition Ex Parte for Emergency Detention

The Seattle-King County Department of Public Health, by and through its attorney(s) of record, requests the Court for an Order directing and authorizing the detention of Respondent (identified on Sealed Data, filed with the Court) pursuant to chapter 246-170 WAC.

1. JURISDICTION: This Petition is requested pursuant to the provisions of RCW 43.70.190 and WAC 246-170-051(2). This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 43.70.190.

2. Chapter 70.28 RCW provides broad authority to the local health officer to act as necessary to protect the public health from the spread of tuberculosis.

3. WAC 246-170-051(2) provides that the local health officer may petition the superior court ex-parte for an order authorizing detention of a person who is a suspected or confirmed case of tuberculosis.

4. Detention is necessary for the reasons set forth in the Declaration of Disease Control Officer (attached), which attests to the facts asserted in this petition, together with any further information that may be relevant to the Court's consideration.

5. The local health officer has made reasonable efforts to obtain voluntary compliance with requests for examination, testing, and treatment.

6. The local health officer has reason to believe that Respondent is:  
 (Check if applicable.) A person with suspected tuberculosis who has failed to comply with a documented request from a health care practitioner or the local health officer to submit to examination and testing.

OR

(Check if applicable.) A person with confirmed tuberculosis who is failing to comply with an individual treatment plan approved by the local health officer.

OR

[ ] (Check if applicable.) A person with suspected or confirmed tuberculosis who is failing to comply with infection control directives issued by the local health officer.

7. IT IS SPECIFICALLY REQUESTED HEREIN that the Court direct Respondent (see Sealed Data, filed with the Court) be detained at (see Sealed Data, filed with the court) and be directed to remain in such detention until \_\_\_\_\_, 20 , at \_\_\_\_\_ o'clock AM/PM (Pacific Time) (not to exceed seventy-two hours, excluding weekends and holidays).

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

## 8.12 Declaration of Disease Control Officer in Support of Petition

I, \_\_\_\_\_, declare as follows:

1. I am over the age of eighteen and make this declaration based upon my own personal knowledge and my review of the medical records about the Respondent that the Tuberculosis Clinic (“TB Clinic”) made during the course of business.

2. I am a licensed physician in the State of Washington and the Tuberculosis Control Officer and Director of the Tuberculosis Control Program for the Seattle-King County Department of Public Health. The TB Clinic is operated by the Tuberculosis Control Program. I am responsible for programs to control tuberculosis (“TB”) within King County pursuant to chapter 70.28 RCW and chapter 246-170 WAC.

3. TB is a respiratory illness. It is transmitted when an infectious person expels airborne droplets that are inhaled into the lungs of an exposed person. TB usually remains dormant and latent in an exposed person. A person with latent TB does not have symptoms and is not infectious to other people. TB can progress to active disease, however, especially when a person’s immune system weakens. A person with active infectious TB will likely develop symptoms and deteriorate if not treated.

4. The treatment for active TB depends on whether an individual is infected with a drug-sensitive strain or a drug-resistant strain. There are 10 drugs currently approved for treating TB. Of these, four first-line drugs form the core of treatment for drug-sensitive strains: isoniazid, rifampin, ethambutol, and pyrazinamide. Multi-drug resistant (MDR) TB is resistant to at least isoniazid and rifampin, the two most effective TB medications; therefore, second-line drugs that cause side effects more frequently and are less efficacious must be used.

5. Persons with active TB often are infectious during the first two to eight weeks of treatment and then non-infectious for the duration of the treatment. In a small portion of cases with severe TB, infectiousness can continue beyond eight weeks. A concern about TB transmission to the public in a community is based on results of sputum smear and culture examinations, drug-resistant pattern, whether the patient is taking effective TB medications and the environment where the patient shares the air with others.

6. Even after a person is considered non-infectious, the entire course of treatment must be completed. This is important for both drug-sensitive and drug-resistant strains. A person who has not completed treatment may become infectious again and potentially add drug-resistance if treatment is interrupted or becomes inconsistent. The TB strain that adds further resistance to the drugs the patient has taken can also be transmitted to others. It is very important to ensure the completion of treatment of TB because of these risks.

7. Treatment for drug-sensitive TB usually consists of a six- to nine-month schedule. Treatment for MDR TB requires at least 18 to 24 months. The length of the TB treatment is determined by the severity of TB disease, drug resistant pattern, the regimen that the patient can tolerate, and clinical response, such as tempo of clearance of sputum culture examination and radiographic evaluation.

8. It is the King County policy to use Directly Observed Therapy (DOT) for all infectious TB cases to ensure adherence. In DOT, a Public Health worker observes the client ingesting the medication on week days, which can mean every week day or intermittently, for example two or three times weekly. In some cases, DOT is augmented with self-administered medication on week-day evenings or on weekends. DOT is the standard approach of the Seattle-King County Department of Public Health in order to achieve the best clinical outcome for the patient as well as to protect the public's health.

9. The Respondent, \_\_\_\_\_, is a confirmed case of TB. The \_\_\_\_\_ Hospital laboratory reported a positive bacteriologic culture for mycobacterium tuberculosis on January \_\_\_\_\_, 20 .

10. The Respondent was registered with the PHSKC Tuberculosis Control Program on January \_\_\_\_\_, 20 . S/he signed the "Counseling for Directly Observed Therapy (DOT) for Tuberculosis." \_\_\_\_\_ was assigned as her Nursing Case Manager (NCM). The Respondent was discharged from \_\_\_\_\_ Hospital on January \_\_\_\_\_, 20 .

11. My designees and I have made repeated and reasonable efforts to obtain Respondent's voluntary compliance with requests for examination and treatment.



12. Beginning January\_\_\_\_\_, 20\_\_\_\_, Outreach Worker (ORW) \_\_\_\_\_administered DOT to the Respondent at her apartment. On January\_\_\_\_\_, 20\_\_\_\_, the Respondent signed the “Acknowledgement of Tuberculosis Counseling.” The Respondent received all scheduled doses through February\_\_\_\_\_, 20\_\_\_\_.

13. On February\_\_\_\_\_, 20\_\_\_\_, the ORW could not locate the Respondent at the apartment. From February\_\_\_\_\_, 20\_\_\_\_, through March\_\_\_\_\_, 20\_\_\_\_, the Respondent was not available for DOT. On March\_\_\_\_\_, 20\_\_\_\_, the Respondent told the ORW that s/he had been on a drinking binge.

14. From March\_\_\_\_\_, 20\_\_\_\_, through April\_\_\_\_\_, 20\_\_\_\_, the Respondent was generally compliant with the DOT requirement.

15. From April\_\_\_\_\_, 20\_\_\_\_, through April\_\_\_\_\_, 20\_\_\_\_, the Respondent was not available for DOT. On April\_\_\_\_\_, 20\_\_\_\_, ORW located the Respondent, but s/he refused to take the medication.

16. ORW located Respondent at the apartment on April\_\_\_\_\_, 20\_\_\_\_, and s/he was intoxicated. The Respondent then missed appointments on April\_\_\_\_\_, and\_\_\_\_\_, 20\_\_\_\_. On May\_\_\_\_\_, 20\_\_\_\_, ORW brought the Respondent to the TB Clinic. I delivered a Public Health Directive to the Respondent, directing compliance with treatment requirements and to refrain from use of alcohol. Since that date Respondent has not been available for DOT.

17. I cannot predict when the Respondent will no longer be infectious. The Respondent’s sputum smears should be tested on schedule I determine, and there must be three consecutive negative tests before the Respondent will be considered non-infectious. Until then, the Respondent must remain isolated.

18. I believe that the following detention or other measure(s) is necessary in order to ensure that Respondent is appropriately tested or treated: (1) detention for the

72-hour period permitted by WAC 246-170-051 at a location approved by PHSKC; (2) continued detention as needed and treatment for the 45-day period permitted by WAC 246-170-055 at a location approved by PHSKC; and (3) continued testing, monitoring and treatment determined necessary by myself and my designees. The Respondent may go outside if s/he wears a mask. PHSKC will provide a room at the designated motel, delivery of groceries, and DOT on weekdays.

19. I believe that detention or other measure(s) is necessary because Respondent must be considered to be infectious, and has demonstrated unwillingness to comply with voluntary measures for treatment and to prevent the spread of TB to others.

20. I request that the Court order:  
(A) Respondent's detention for the 72-hour period permitted by WAC 246-170-051, excluding weekends and holidays, to occur at: See Sealed Data, filed with the Court.  
(B) Respondent's continued detention or the imposition of less restrictive measures for the additional 45-day period permitted by WAC 246-170-055, to occur at: See Sealed Data, filed with the Court.

21. I further request that the Court order Respondent to comply with examination, testing, treatment, and infection control directives determined necessary by me and my designees. I do not request an order for compelled testing and treatment.

22. Testimony concerning this case will be received primarily from the following persons:

1. \_\_\_\_\_, Tuberculosis Control Officer and Director  
Tuberculosis Control Program  
Harborview Medical Center  
325 9<sup>th</sup> Avenue, Box 359776  
Seattle, WA 98104
2. \_\_\_\_\_, Nursing Case Manager  
Tuberculosis Control Program  
Harborview Medical Center  
325 9<sup>th</sup> Avenue, Box 359776  
Seattle, WA 98104

3. \_\_\_\_\_, ORW  
Tuberculosis Control Program  
Harborview Medical Center  
325 9<sup>th</sup> Avenue, Box 359776  
Seattle, WA 98104

I declare under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Washington.

8.13 Statement of Rights and Notification of Attorney

TO: RESPONDENT

NOTICE OF RIGHTS

You have the right to a Superior Court hearing within seventy-two (72) hours of detention, excluding holidays and weekends. You have the right to legal counsel. If you are unable to afford legal counsel, then counsel will be appointed for you at government expense and you should request the appointment of counsel at this time. If you currently have legal counsel, then you have an opportunity to contact that counsel for assistance.

\_\_\_\_\_ (name of defense attorney) of the  
\_\_\_\_\_ (name of defense agency) at  
\_\_\_\_\_ (telephone number of defense attorney)  
**is your assigned attorney at this time.**

You have the right to contest the facts alleged against you, to cross-examine witnesses, and to present evidence and witnesses on your behalf.

You have the right to appeal any decision made by the court.

You may be given appropriate TB medications only on your informed consent, or pursuant to a court order.

Notice of Rights served on Respondent this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

At \_\_\_\_\_ a.m./p.m. at \_\_\_\_\_, Seattle, WA

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

8.14 [Proposed] Order for Emergency Detention

THIS MATTER, having come before the undersigned Judge/Court Commissioner of the above-entitled Court pursuant to a Petition Ex-Parte for Emergency Detention of Respondent, filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Court having reviewed the Petition, the Declaration of Disease Control Officer, the pleadings filed herein, the argument of counsel, and pertinent regulatory provisions associated therewith, THE COURT NOW, THEREFORE, FINDS:

1. Jurisdiction: This court has jurisdiction over the person and subject matter in this proceeding.

2. Respondent is:

(Check if applicable.) A person with suspected tuberculosis and who failed to comply with a documented request from a health care practitioner or the local health officer to submit to examination and testing.

OR

(Check is applicable). A person with confirmed tuberculosis who is failing to comply with an individual treatment plan approved by the local health officer.

OR

(Check if applicable). A person with suspected or confirmed tuberculosis who is failing to comply with infection control directives issued by the local health officer.

3. The Local Health Officer made reasonable efforts to obtain voluntary compliance with requests for examination, testing, and treatment, but Respondent did not voluntarily comply with the Local Health Officer's instructions.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Respondent shall be detained in accordance with the ex-parte petition from \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) to \_\_\_\_\_,

20 , at \_\_\_\_\_ o'clock AM/PM (Pacific Time), a period that does not exceed seventy-two hours, excluding weekends and holidays, unless the health officer determines, prior to the expiration of that period, that detention is no longer necessary.

2. The person to be detained is:

See Sealed Data, filed with the Court.

3. The detention will take place at the following premises:

See Sealed Data, filed with the Court.

4. The Court shall retain jurisdiction of this matter to ensure compliance with its terms, and for purposes of possible further action, including continuation of detention pursuant to chapter 246-170 WAC.

5. A hearing on this matter shall be held on \_\_\_\_\_, 20 , at \_\_\_\_\_ o'clock AM/PM (Pacific Time), which is within 72 hours after initial detention, excluding Saturdays, Sundays and holidays.

[ ] (Check if applicable.) The hearing will be held at the following location and with the following special arrangements to ensure protection against spread of tuberculosis:

Judge: \_\_\_\_\_

Location: \_\_\_\_\_

Special Arrangements [*state here if closed hearing*]: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

8.15 Summons

TO THE RESPONDENT: A lawsuit has been started against you in the above-entitled court by petitioner, Seattle-King County Department of Public Health. Petitioner's claim is stated in the written petition, a copy of which is served upon you with this summons.

You may be detained immediately if ordered by the court based on a petition ex parte. In order to defend against this lawsuit, you must appear at a hearing to be conducted within 72 hours after initial detention, excluding Saturdays, Sundays and holidays. If you do not appear, the court may issue an order authorizing detention for an additional period not to exceed 45 days.

If you wish to seek the advice of an attorney in this matter, you should do so promptly and in advance of the hearing.

THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington and WAC 246-170-051.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

8.16 Declaration of Service

\_\_\_\_\_ declares:  
(Printed Name)

1. Identity. I am a \_\_\_\_\_(job title) employed by \_\_\_\_\_(employer) and was so employed on \_\_\_\_\_(date of service);

2. Competency. At all times mentioned herein I was over the age of eighteen years, not a party to the above entitled public health order enforcement proceeding, and competent to be a witness in this proceeding;

3. Service. On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, at \_\_\_\_\_ a.m./p.m., I personally served Respondent with the

SUMMONS

PETITION EX PARTE FOR EMERGENCY DETENTION

(Check if applicable) PETITION FOR DETENTION

DECLARATION OF DISEASE CONTROL OFFICER

STATEMENT OF RIGHTS AND NOTIFICATION OF ATTORNEY, and

(Check if applicable) EX PARTE ORDER

in the above entitled public health order enforcement proceeding by delivering true/certified copies of said documents to said Respondent.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .



**8.20 PLEADINGS FOR ORDER TO CLOSE HEARINGS AND SEAL RECORDS**

**8.21 Motion for Order to Close Hearings and Seal Records**

**I. Relief Requested.**

The Seattle-King County Department of Public Health, by and through its attorney(s) of record, respectfully requests pursuant to *Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982) and GR 15 that the Court close hearings and seal the following records in this proceeding:

SEALED DATA FORM

(Check if applicable) EXHIBIT \_ TO DECLARATION OF DISEASE CONTROL OFFICER IN SUPPORT OF PETITION

**II. Statement of Facts.**

The local health officer has filed a petition for \_\_\_\_\_ pursuant to chapter 246-170 WAC because Respondent has a suspected or confirmed case of tuberculosis and court-ordered action is necessary to protect the public health. This action thus involves health care information regarding Respondent.

**III. Statement of Issues.**

Should hearings be closed and certain records in this matter sealed in order to prevent unnecessary disclosure of health care information?

**IV. Evidence Relied Upon.**

This Motion is based upon the records and documents contained in this file.

**V. Authority.**

The Washington legislature has found that “health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient’s interests in privacy, health care, or other interests.” RCW 70.02.005(1). Additionally, the federal Privacy Rule implementing the Health Insurance Portability and

Accountability Act of 1996 (“HIPAA”), Public Law 104-191, defines and limits the circumstances in which protected health information may be disclosed. 45 C.F.R. § 164.502(a).

This matter necessarily involves health care information about the Respondent. Disclosure of the Respondent’s identity would reveal protected health care information. Therefore, hearings should be closed and records that identify the Respondent should be sealed and treated as confidential. These measures are no broader than necessary to protect the Respondent’s identity. Protecting the Respondent’s identity is consistent with the state and federal laws that recognize the privacy that applies to individually-identifiable health care information and is justified under *Seattle Times v. Ishikawa* and GR 15 by identified compelling privacy concerns that outweigh the public interest in access to the hearing or court records.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

8.22 Sealed Data

Person(s):

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Location of Detention: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**NOTICE TO INDIVIDUALS IN RECEIPT OF THIS CONFIDENTIAL DATA:**

**THIS INFORMATION HAS BEEN DISCLOSED TO YOU FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE LAW. STATE LAW PROHIBITS YOU FROM MAKING ANY FURTHER DISCLOSURE OF IT EXCEPT AS AUTHORIZED BY STATE LAW.**

8.23 [Proposed] Order to Close Hearings and Seal Records

This Court, having reviewed the Petitioner’s motion to close hearings and seal specific documents in conjunction with the Petition for \_\_\_\_\_ and pursuant to applicable case law and court rules finds compelling circumstances to grant the order because the subject matter of this proceeding involves protected health care information. The Court finds the following pursuant to *Seattle Times v. Ishikawa*:

1. Failure to close hearings and seal records would expose the Respondent to the serious and imminent threat of loss of privacy in the Respondent’s individual health care information;
2. There is no objection from those present at the time of the request for sealing and is by agreement of the parties;
3. There is no less restrictive means to protect against the Respondent’s loss of privacy in individual health care information than closing hearings and sealing certain records;
4. The Court finds that the Respondent’s compelling interest in the privacy right of individual health care information outweighs the public’s right to access hearings and records that reveal individual health care information;
5. Closure of hearings and sealing of certain records is no broader than necessary to serve the purpose of protecting the Respondent’s privacy interest.

Sealing of records also is justified pursuant to GR 15 by identified compelling privacy concerns that outweigh the public interest in access to the court records.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Clerk of the Court shall seal the following documents in this case:

[X] SEALED DATA FORM

[ ] (Check if applicable) EXHIBIT \_ TO DECLARATION OF DISEASE CONTROL  
OFFICER IN SUPPORT OF PETITION

2. Access to the sealed documents is limited to the respective parties to this proceeding; their counsel of record; and such other individuals as the parties to this proceeding may mutually agree, or the Court may designate to be allowed access to the same.

3. The caption of this case shall use first and last name initials to identify the person who is the subject of the detention or other measure(s).

4. Hearings in this matter shall be closed.

Access to the sealed record is available only in the Clerk's Office.

DATED this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**8.30 PLEADINGS FOR CONTINUED DETENTION OR OTHER MEASURES**

**8.31 Petition for Detention or Other Measures**

COMES NOW the Seattle-King County Department of Public Health, by and through its attorney(s) of record, and requests the Court for an Order directing and authorizing the detention or other measure(s) against Respondent (identified on Sealed Data, filed with the Court) pursuant to chapter 246-170 WAC.

1. JURISDICTION: This Petition is requested pursuant to the provisions of RCW 43.70.190 and WAC 246-170-051(4). This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 43.70.190.

2. Chapter 70.28 RCW provides broad authority to the local health officer to act as necessary to protect the public health from the spread of tuberculosis.

3. WAC 246-170-051(4) provides that the local health officer may petition the superior court for an order authorizing detention or other measure(s) against a person who is a suspected or confirmed case of tuberculosis.

4. Detention or other measure(s) is necessary for the reasons set forth in the Declaration of Disease Control Officer (attached), which attests to the facts asserted in this petition, together with any further information that may be relevant to the Court's consideration. Petitioner offers the following information for the consideration of the Court:

A. The basis for the local health officer's belief that Respondent is either a suspected or confirmed case of tuberculosis: See Declaration of Disease Control Officer (attached).

B. The specific actions taken by the local health officer to obtain voluntary compliance with recommended examination and testing or treatment: See Declaration of Disease Control Officer (attached).

C. The nature and duration of further detention or other measure(s) necessary in order to assure that Respondent is appropriately tested or treated:

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D. The basis for believing that further detention or other measure(s) is necessary to protect the public health: \_\_\_\_\_

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5. Petitioner offers the following information for the consideration of the Court:

A. The identity of the person subject to detention or other measure(s):  
See Sealed Data, filed with the Court.

B. The premises where detention or other measure(s) will take place:  
See Sealed Data, filed with the Court.

6.  (Check if applicable.) IT IS SPECIFICALLY REQUESTED HEREIN that the Court direct Respondent (see Sealed Data, filed with the Court) be detained at (see Sealed Data, filed with the court) and be directed to remain in such detention until \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) (not to exceed forty-five days.)

7.  (Check if applicable.) IT IS FURTHER SPECIFICALLY REQUESTED HEREIN that the Court direct Respondent (see Sealed Data, filed with the Court) to comply with the following measure(s):

(Check if applicable.) Examination, testing, treatment, and infection control directives determined necessary by the local health officer;

(Check if applicable.) Other: \_\_\_\_\_

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until \_\_\_\_\_, 200 \_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) (not to exceed forty-five days).

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ .



8.32 [Proposed] Order for Detention or Other Measures

THIS MATTER, having come before the undersigned Judge/Court Commissioner of the above-entitled Court pursuant to a Petition for Detention or Other Measure(s), filed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Court having reviewed the Petition, the Declaration of Disease Control Officer, the pleadings filed herein, the argument of counsel, and pertinent regulatory provisions associated therewith,

THE COURT NOW, THEREFORE, FINDS:

1. Jurisdiction: This court has jurisdiction over the person and subject matter in this proceeding.

2. Respondent is:

(Check if applicable.) A suspected case, and further examination, testing, and treatment of Respondent is required.

OR

(Check if applicable.) A suspected case, and further examination, testing, and treatment of Respondent is required, and further detention of Respondent is necessary in order to assure that the examination, testing, and treatment occurs or to protect the public health.

OR

(Check if applicable.) A confirmed case, and further measures less restrictive than detention of Respondent are necessary to assure that appropriate treatment is implemented, and less restrictive measures will be sufficient to protect the public health.

OR

(Check if applicable.) A confirmed case, and further detention of Respondent is necessary to protect the public health, and imposition of less restrictive measures will not be sufficient to protect the public health.

3. The Local Health Officer made reasonable efforts to obtain voluntary compliance with requests for examination, testing, and treatment, but Respondent did not voluntarily comply with the Local Health Officer's instructions.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1.  (Check if applicable.) Respondent shall be detained in accordance with the Petition from \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) to \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time), a period that does not exceed forty-five days, unless the health officer determines, prior to the expiration of that period, that detention is no longer necessary.

2.  (Check if applicable.) Respondent shall comply with the following measure(s) in accordance with the Petition:

(Check if applicable.) Examination, testing, treatment, and infection control directives issued by the local health officer;

(Check if applicable.) Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

until \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock AM/PM (Pacific Time) a period that does not exceed forty-five days, unless the health officer determines, prior to the expiration of that period, that the measure(s) is no longer necessary.

3. The person to be detained or subject to other measure(s) is:  
See Sealed Data, filed with the Court.

4. The detention or other measure(s) will take place at the following premises:  
See Sealed Data, filed with the Court.

5. The Court shall retain jurisdiction of this matter to ensure compliance with its terms, and for purposes of possible further action, including continuation of detention pursuant to chapter 246-170 WAC.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

## 9.00 SEXUALLY TRANSMITTED DISEASES – CONDUCT ENDANGERING PUBLIC HEALTH

### 9.10 HEALTH OFFICER AUTHORITY

#### A. Health Officer Investigation

1. **Health officer authority.** Subject to the provisions of [chapter 70.24 RCW](#), the state and local health officers or their authorized representatives may examine and counsel persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease. [RCW 70.24.024\(1\)](#).
2. **Health officer investigation.** The state and local health officer may conduct an investigation when he or she knows or has reason to believe that a person in his or her jurisdiction has a sexually transmitted disease and is engaging in specific behavior that endangers public health and the basis for the health officer's investigation is the officer's direct medical knowledge or reliable testimony of another in a position to have direct knowledge of the person's behavior. In conducting an investigation, the health officer shall evaluate the allegations, as well as reliability and credibility of any person who provided information related to the specific behavior that endangers the public health. [RCW 70.24.024\(2\)](#).
  - a. **“Reason to believe”** means a health officer's belief that is based on:
    - i. Laboratory test results confirming or suggestive of a STD; or
    - ii. A health care provider's direct observation of clinical signs confirming an individual has or is likely to have a STD; or
    - iii. Information obtained directly from an individual infected with a STD about the identity of his or her sexual or needle-sharing contacts when:
      - (A) Contact with the infected individual occurred during a period when the disease may have been infectious; and
      - (B) The contact was sufficient to transmit the disease; and
      - (C) The infected individual is, in the health officer's judgment, credible and believable.  
[WAC 246-100-203\(1\)\(a\)](#).
  - b. **“Conduct endangering the public health”** means:
    - i. For all sexually transmitted diseases: anal, oral, or vaginal intercourse;
    - ii. For HIV and Hepatitis B:
      - (A) Anal, oral, or vaginal intercourse; and/or
      - (B) Sharing of injection equipment; and/or
      - (C) Donating or selling blood, blood products, body tissues, or semen; and
    - iii. Activities described in (i) and (ii) above resulting in introduction of blood, semen, and/or vaginal fluids to:
      - (A) Mucous membranes;
      - (B) Eyes;

- (C) Open cuts, wounds, lesions; or
  - (D) Interruption of epidermis.
- [WAC 246-100-203\(1\)\(b\)](#).

**B. Health Officer Orders.**

- 1. Measures to be taken.** If a state or local health officer determines that the allegations are true and that the person continues to engage in behavior that endangers the public health, the health officer shall document measures taken to protect the public health, including reasonable efforts to obtain the person's voluntary cooperation. [RCW 70.24.024\(3\)](#).
- 2. Issuing a health order.** If measures under [RCW 70.24.024\(3\)](#) fail to protect public health, the state or local health officer may issue a health order requiring the person to:
  - a. Submit to a medical examination or testing, receive counseling, or receive medical treatment; or
  - b. Immediately cease and desist from specified behavior that endangers the public health by imposing such restrictions upon the person as are necessary to prevent the specified behavior that endangers the public health.

[RCW 70.24.024\(4\)\(a\)](#).
- 3. Requirements for orders for examination, testing, and counseling.** A health officer has authority to issue an order for medical examination, testing, and/or counseling under [chapter 70.24 RCW](#) only after:
  - a. All other efforts to protect public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person to be affected by the order; and
  - b. They have sufficient evidence to "reasonably believe" the individual to be affected by the order:
    - i. Has a sexually transmitted disease; and
    - ii. Is engaging in "conduct endangering public health;" and
  - c. The health officer has investigated and confirmed the existence of "conduct endangering the public health" by:
    - i. Interviewing sources to assess their credibility and accuracy; and
    - ii. Interviewing the person to be affected by the order; and
  - d. The health officer has incorporated all information required in [RCW 70.24.024](#) in a written order.

[WAC 246-100-203\(1\)\(c\)](#).
- 4. Requirements for orders for medical treatment.** A health officer has authority to issue written orders for treatment under [RCW 70.24.022](#) only after laboratory test results or direct observation of clinical signs or assessment of clinical data by a physician confirm the individual has, or is likely to have, a sexually transmitted disease. [WAC 246-100-203\(1\)\(d\)](#).

5. **Requirements for cease and desist orders.** A health officer shall have authority to issue written orders to cease and desist from specified activities under [RCW 70.24.024](#) only after:
  - a. The health officer has determined the person to be affected by the order is engaging in “conduct endangering public health;” and
  - b. Laboratory test results, or direct observation of clinical signs or assessment of clinical data by a physician, confirm the individual has, or is likely to have, a sexually transmitted disease; and
  - c. They have exhausted procedures described in subsection 8(a) of this section; and
  - d. They have enlisted, if appropriate, court enforcement of the orders described in (c) and (d) of this subsection.  
[WAC 246-100-203\(1\)\(e\)](#).
  
6. **Cease and desist order not to exceed three months and renewal.** Written orders to cease and desist from specified activities shall be for an initial period of time not to exceed three months and may be renewed by the health officer for periods of time not to exceed three months provided all requirements of [RCW 70.24.024](#) regarding notification, confidentiality, right to a judicial hearing, and right to counsel are met again at the time of renewal.  
[WAC 246-100-203\(f\)](#).
  
7. **Form of restrictions.** Restrictions shall be imposed in the least-restrictive manner to protect the public health. The period of time during which the health order is effective must be reasonably related to the purpose of the restriction contained in the order, up to a maximum period of twelve months. Any restriction shall be in writing, setting forth: the name of the persons to be restricted, the initial period of time during which the health order shall remain effective, the terms of the restrictions, and any other conditions as may be necessary to protect the public health. [RCW 70.24.024\(4\)\(b\)](#).
  
8. **Written notice.** Upon issuance of a health order under [RCW 70.24.024\(4\)](#), the state or local health officer shall give written notice promptly, personally, and confidentially to the person who is the subject of the order. The notice will state the grounds and provisions of the order, including the factual bases, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order. [RCW 70.24.024\(5\)](#).
  
9. **Contesting the health order.** The written notice of the health order must inform the person who is the subject of the order that, if he or she contests the order, he or she may file an appeal and appear at a judicial hearing on the enforceability of the order, to be held in superior court. [RCW 70.24.024\(5\)](#).

## 9.20 JUDICIAL HEARINGS

- A. *Hearing contesting the health order.*** If the person contests the health order, he or she may file an appeal and appear at a judicial hearing on the enforceability of the order, to be held in superior court. The hearing shall be held within 72 hours of receipt of the notice unless the person subject to the order agrees to comply. If the person contests the order, no invasive medical procedures shall be carried out prior to a hearing. [RCW 70.24.024\(5\)\(a\)](#).
- B. *Hearing if person fails to comply.*** The health officer may apply to the superior court for a court order requiring the person to comply with the health order if the person fails to comply with the health order within the specified time period. [RCW 70.24.024\(5\)\(b\)](#).
- C. *Court orders.***
1. At a hearing held pursuant to [RCW 70.24.024\(a\)](#) or [RCW 70.24.024\(b\)](#), the burden of proof shall be on the health officer to show by clear and convincing evidence that:
    - a. The specified grounds exist for the issuance of the order and the need for compliance; and
    - b. The terms and conditions imposed therein are no more restrictive than necessary to protect the public health. [RCW 70.24.024\(5\)\(c\)](#).
  2. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. [RCW 70.24.024\(5\)\(c\)](#).
  3. If the court dismisses the order of the health officer, the fact that the order was issued shall be expunged from the records of the state or local department of health. [RCW 70.24.024\(5\)\(d\)](#).

**10.00 SAMPLE PLEADINGS FOR SEXUALLY TRANSMITTED DISEASES –  
CONDUCT ENDANGERING PUBLIC HEALTH**

**10.10 PETITION FOR ORDER TO SHOW CAUSE**

\_\_\_\_\_, local health officer, Seattle-King County  
Department of Public Health, requests that the Court order the Respondent (identified  
on Sealed Data filed with the Court) appear and show cause why the Court should  
not enter an order enforcing the Cease and Desist Order dated\_, 20 , issued by  
Public Health pursuant to RCW 70.24.024(4)(a)(ii).

RCW 70.24.024(4) provides for two types of orders the local health officer  
may issue based on reason to believe that a person has a sexually transmitted  
disease and is engaging in conduct that endangers the public health. The local health  
officer must meet the following threshold determination:

The state or a local health officer may conduct an investigation when: he or she  
knows or has reason to believe that a person in his or her jurisdiction has a sexually  
transmitted disease and is engaging in specified behavior that endangers the public  
health; and the basis for the health officer's investigation is the officer's direct  
medical knowledge or reliable testimony of another who is in a position to have  
direct knowledge of the person's behavior. RCW 70.24.024(2)(a). In conducting the  
investigation, the health officer shall evaluate the allegations, as well as the  
reliability and credibility of any person or persons who provided information related  
to the specified behavior that endangers the public health. RCW 70.24.024(2)(b). If  
the state or local health officer determines upon conclusion of the investigation that  
the allegations are true and that the person continues to engage in behavior that  
endangers the public health, the health officer shall document measures taken to  
protect the public health, including reasonable efforts to obtain the person's  
voluntary cooperation. RCW 70.24.024(3). If the measures taken under subsection  
(3) of this section fail to protect the public health, the state or local health officer  
may issue a health order [under subsections 4(a)(i) and 4(a)(ii)].

RCW 70.24.024(4)(a)(i) sets forth the first type of order:

[A state or local health officer may issue a health order requiring the person to:]  
submit to a medical examination or testing, receive counseling, or receive medical  
treatment, or any combination of these. If ordering a person to receive medical  
treatment, the health officer must provide the person with at least one additional  
appropriate option to choose from in the health order;



RCW 70.24.024(4)(a)(ii) sets forth the second type of order, which is a cease and desist order:

[A state or local health officer may issue a health order requiring the person to:] immediately cease and desist from specified behavior that endangers the public health by imposing such restrictions upon the person as are necessary to prevent the specified behavior that endangers the public health. Any restriction shall be in writing, setting forth the name of the person to be restricted, the initial period of time during which the health order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least-restrictive manner necessary to protect the public health. The period of time during which the health order is effective must be reasonably related to the purpose of the restriction or restrictions contained in the order, up to a maximum period of twelve months.

Under RCW 70.24.024(5)(a), a person may contest an order by filing an appeal and appearing at a judicial hearing on the enforceability of the order. The hearing shall be held within seventy-two hours of receipt of the notice, unless the person agrees to comply. If the person does not comply with the order within the time period specified for compliance, the local health officer may apply to the superior court for a court order requiring the person to comply with the health order under RCW 70.24.024(5)(b). The local health officer has the burden of proof to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order.

Respondent was served with two orders under RCW 70.24.024(4)(a)(i) and two orders under RCW 70.24.024(4)(a)(ii). Declaration in Support of Petition for Order to Show Cause. Respondent did not contest the orders and has failed to comply.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**10.20 DECLARATION IN SUPPORT OF PETITION FOR ORDER TO SHOW CAUSE**

I, \_\_\_\_\_, declare as follows:

1. I am over the age of eighteen and make this declaration based upon my own personal knowledge.

2. I am a Senior Communicable Disease Investigator employed by the Seattle-King County Department of Public Health and have been so employed at all relevant times to this declaration.

3. On \_\_\_\_\_, 20\_\_\_\_, Respondent tested positive for HIV at the Public Health STD Clinic located at Harborview Medical Center in Seattle, King County Washington.

4. On that same date the Respondent received HIV post-test counseling which consisted of how to reduce the risk of transmission of HIV to other sex partners and disclosure of his HIV positive status to sex partners. The Respondent was also offered partner notification services at this time.

5. The Respondent received additional HIV counseling consistent with the above, on \_\_\_\_\_, 20\_\_\_\_; \_\_\_\_\_, 20\_\_\_\_; \_\_\_\_\_, 20\_\_\_\_; and \_\_\_\_\_, 20\_\_\_\_.

6. Notwithstanding this counseling, the Respondent has been named as a partner who has had unprotected sex with individuals who have presented with newly acquired infections of HIV on \_\_\_\_\_, 20\_\_\_\_; \_\_\_\_\_, 20\_\_\_\_; \_\_\_\_\_, 20\_\_\_\_; and \_\_\_\_\_, 20\_\_\_\_.

7. By \_\_\_\_\_, 20\_\_\_\_, Public Health officials determined that despite the prior counseling described above, the Respondent was engaging in unprotected sex with his sex partners and it is believed that the Respondent has infected these sex partners with HIV.

8. Based upon generally accepted standards of medical and public health science, it is believed that the Respondent's conduct continues to endanger the public health.

9. To address this behavior, Public Health has served two RCW 70.24.024 (4)(a)(ii) 90 day cease and desist orders on the patient.

10. The first Order was served on \_\_\_\_\_, 20\_\_ , and required, among other things, that the patient attend counseling consistent with the above described counseling.

11. The patient was not compliant with the \_\_\_\_\_, 20\_\_ Order.

12. A second Cease and Desist Order was served on \_\_\_\_\_, 20\_\_ . This Order required counseling consistent with that described above and also added the requirement that the patient seek HIV treatment.

13. The Patient did not contest the \_\_\_\_\_, 20\_\_ Order.

14. On \_\_\_\_\_, 20\_\_ when the Respondent was served with the second order, he received additional HIV counseling consistent with the counseling outlined above.

15. The Respondent was also told about the requirement to see a HIV medical provider.

16. Public Health Officials scheduled two appointments for the Respondent to see the HIV medical provider. One was scheduled for \_\_\_\_\_, 20\_\_ and the second was scheduled for \_\_\_\_\_, 20\_\_ .

17. The Respondent was notified of both appointments.

18. The Respondent failed to show for both of these scheduled appointments.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , at \_\_\_\_\_, Washington.

## 10.30 MOTION FOR ORDER TO CLOSE HEARINGS AND SEAL RECORDS

### I. Relief Requested.

The Seattle-King County Department of Public Health, by and through its attorney(s) of record, respectfully requests pursuant to *Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982) and GR 15 that the Court close hearings and seal the following record in this proceeding: Sealed Data.

### II. Statement of Facts.

The local health officer has filed a Petition for Order to Show Cause pursuant to RCW 70.24.024 because Respondent has a sexually transmitted disease and is engaging in conduct that endangers the public health. Court-ordered action is necessary to protect the public health. This action thus involves health care information regarding Respondent.

### III. Statement of Issues.

Should hearings be closed and certain records in this matter sealed in order to prevent unnecessary disclosure of health care information?

### IV. Evidence Relied Upon.

This Motion is based upon the records and documents contained in this file.

### V. Authority.

The Washington legislature has found that “health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient’s interests in privacy, health care, or other interests.” RCW 70.02.005(1). Additionally, the federal Privacy Rule implementing the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Public Law 104-191, defines and limits the circumstances in which protected health information may be disclosed. 45 C.F.R. § 164.502(a).

This matter necessarily involves health care information about the Respondent. Disclosure of the Respondent's identity reveals protected health care information. Therefore, hearings should be closed and records that identify the Respondent should be sealed and treated as confidential. These measures are no broader than necessary to protect the Respondent's identity. Protecting the Respondent's identity is consistent with the state and federal laws that recognize the privacy that applies to individually-identifiable health care information and is justified under *Seattle Times v. Ishikawa* and GR 15 by identified compelling privacy concerns that outweigh the public interest in access to the hearing or court records.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**10.40 SAMPLE SEALED DATA FORM**

Person(s):

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**NOTICE TO INDIVIDUALS IN RECEIPT OF THIS CONFIDENTIAL DATA:**

**THIS INFORMATION HAS BEEN DISCLOSED TO YOU FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE LAW. STATE LAW PROHIBITS YOU FROM MAKING ANY FURTHER DISCLOSURE OF IT EXCEPT AS AUTHORIZED BY STATE LAW.**

## 10.50 [PROPOSED] ORDER TO CLOSE HEARINGS AND SEAL RECORDS

This Court, having reviewed the Petitioner's motion to close hearings and seal specific documents in conjunction with the Petition for Order to Show Cause and pursuant to applicable case law and court rules finds compelling circumstances to grant the order because the subject matters of this proceedings involves protected health care information. The Court finds the following pursuant to *Seattle Times v. Ishikawa*:

1. Failure to close hearings and seal records would expose the Respondent to the serious and imminent threat of loss of privacy in the Respondent's individual health care information;

2. There is no objection from those present at the time of the request for sealing and is by agreement of the parties;

3. There is no less restrictive means to protect against the Respondent's loss of privacy in individual health care information than closing hearings and sealing certain records;

4. The Court finds that the Respondent's compelling interest in the privacy right of individual health care information outweighs the public's right to access hearings and records that reveal individual health care information;

5. Closure of hearings and sealing of certain records is no broader than necessary to serve the purpose of protecting the Respondent's privacy interest.

Sealing of records also is justified pursuant to GR 15 by identified compelling privacy concerns that outweigh the public interest in access to the court records.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Clerk of the Court shall seal the following documents in this case: Sealed Data

2. Access to the sealed documents is limited to the respective parties to this proceeding; their counsel of record; and such other individuals as the parties to this proceeding may mutually agree, or the Court may designate to be allowed access to the same.

3. The caption of this case shall use first and last name initials to identify the person who is the subject of the detention or other measure(s).

4. Hearings in this matter shall be closed.

Access to the sealed record is available only in the Clerk's Office.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .



**10.60 [PROPOSED] ORDER TO SHOW CAUSE**

THIS MATTER having come on upon the Petition for Order to Show Cause by the local public health officer, Seattle-King County Department of Public Health, and good cause appearing,

NOW THEREFORE:

It is ordered that the respondent or respondent's attorney appear before the undersigned Judge in courtroom of the King County Superior Court 516 Third Avenue Seattle WA 98104 at \_\_\_\_\_ on \_\_\_\_\_, 20 , and show cause why the Cease and Desist Order dated \_\_\_\_\_, 20 and served on the Respondent on \_\_\_\_\_, 20 should not be enforced pursuant to RCW 70.24.024(5). And, it is further ordered that the failure of the respondent or his/her attorney to appear may result in the entry of an order requiring that the Respondent see a HIV medical provider as provided for in the \_\_\_\_\_, 20 Order.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

## 11.00 SUBSTANTIAL EXPOSURE TO BODILY FLUIDS

### 11.10 DEFINITIONS

#### A. *Employees' Exposure*

1. **RCW provision.** A law enforcement officer, firefighter, health care provider, health care facility staff person, department of corrections' staff person, jail staff person, or person employed in other categories of employment to be at risk of exposure that presents a possible risk of transmission of a blood-borne pathogen and who has experienced an exposure to another person's bodily fluids in the course of his or her employment. [RCW 70.24.340](#).
  - a. **State Board of Health rule.** An individual on the job while employed or acting as an authorized volunteer in one of the following employment categories: law enforcement officer, firefighter, health care provider, staff of health care facilities, funeral director, or embalmer.  
[WAC 246-100-205\(2\)](#).

#### B. *Definition of Exposure*

1. **RCW provision.** Whether an exposure occurred and whether that exposure presents a possible risk of transmission of a blood-borne pathogen. [RCW 70.24.340](#).
  - a. **State Board of Health Rule.** Substantial exposure that presents a possible risk of transmission shall be limited to:
    - i. A physical assault upon the exposed person involving blood or semen; or
    - ii. Intentional, unauthorized, nonconsensual use of needles or sharp implements to inject or mutilate the exposed person; or
    - iii. An accidental parenteral or mucous membrane or nonintact skin exposure to blood, semen, or vaginal fluids.  
[WAC 246-100-205\(1\)](#).

## 11.20 HEALTH OFFICER AND JUDICIAL PROCEDURES

#### A. *Health Officer*

##### **Request by Exposed Person to Health Officer.**

A person who has experienced an exposure to another person's bodily fluids in the course of his or her employment may request a state or local health officer to order blood-borne pathogen testing for the person whose bodily fluid he or she has been exposed to.

[RCW 70.24.340](#).

**B. Court**

- 1. Judicial Hearing if the Health Officer Refuses to Order Counseling and Testing.** If the state or local health officer refuses to order testing, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued.

  - a. **Timing.** The hearing on the petition shall be held within seventy-two hours of filing the petition, excluding Saturdays, Sundays, and holidays.
  - b. **Standard of Review.** The standard of review to determine whether the health officer shall be required to issue the order is whether an exposure occurred and whether that exposure presents a possible risk of transmission of a blood-borne pathogen.
  - c. **Court order.** Upon conclusion of the hearing, the court shall issue the appropriate order.  
[RCW 70.24.340.](#)
  
- 2. Judicial Hearing if the Person who is the Subject of a Health Officer's Order Refuses to Comply.** If the person who is subject to the order refuses to comply, the state or local health officer may petition the superior court for a hearing.

  - a. **Timing.** The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturday, Sundays, and holidays.
  - b. **Standard of Review.** The standard of review for the order is whether an exposure occurred and whether that exposure presents a possible risk of transmission of a blood-borne pathogen.
  - c. **Court order.** Upon conclusion of the hearing, the court shall issue the appropriate order.  
[RCW 70.24.340.](#)
  
- 3. Other RCW provisions applicable to health officer.**

  - a. The state or local health officer shall perform testing if he or she finds that the exposure presents a possible risk of transmission of a blood-borne pathogen or if he or she is ordered to do so by a court.
  - b. The person who is subject to the state or local health officer's order shall be given written notice promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual basis therefore.
  - c. The testing shall be completed as soon as possible after the substantial exposure or, if ordered by the court, within seventy-two hours of the order's issuance.  
[RCW 70.24.340.](#)
  
- 4. Other WAC provisions applicable to health officer.**

  - a. The health officer shall ensure that pretest counseling of the individual to be tested, or a legal representative, occurs; and
  - b. The health officer shall arrange for testing of the person who is the source of the exposure to occur within seven days of the request from the person exposed; and
  - c. The health officer shall ensure that records on HIV testing ordered by a health officer are maintained only by the ordering health officer; and

- d. The health officer, as a precondition for ordering counseling and testing of the person who was the source of the bodily fluids, may require that the exposed individual agree to be tested for HIV if such testing is determined appropriate by the health officer.  
[WAC 246-100-205.](#)

5. **Exclusion.** [WAC 246-100-205](#) does not apply to the department of corrections or to inmates in its custody or subject to its jurisdiction.  
[WAC 246-100-205\(5\).](#)

**12.00 SAMPLE PLEADINGS FOR SUBSTANTIAL EXPOSURE TO BODILY FLUIDS**

**12.10 PETITION FOR ORDER TO SHOW CAUSE AND FOR ORDER AUTHORIZING BLOOD-BORNE PATHOGEN TESTING**

\_\_\_\_\_, local health officer, Seattle-King County Department of Public Health, requests that the Court order the Respondent (identified on Sealed Data filed with the Court) appear and show cause why the Court should not enter an order authorizing blood-borne pathogen testing of the Respondent, on the basis of the following allegations.

On \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, Communicable Disease Investigator, was contacted by a health care provider at \_\_\_\_\_ who informed her that during the course of performing her duties at \_\_\_\_\_, she was exposed to the blood of Respondent when she was accidentally scratched by a needle containing respondent's blood. Declaration of Exposed Person.

On \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, Disease Intervention Specialist, served the Respondent with the Health Officer's ORDER TO TEST FOR BLOOD-BORNE PATHOGENS. On \_\_\_\_\_, 20\_\_\_\_, the Respondent refused to comply with the ORDER TO TEST FOR BLOOD-BORNE PATHOGENS. Declaration of Disease Intervention Specialist. As of \_\_\_\_\_, 20\_\_\_\_, the Respondent has not complied with the Health Officer's order to test for BLOOD-BORNE PATHOGENS. *Id.*

RCW 70.24.340 provides that persons of certain professions, including law enforcement officers, who experienced an exposure to another person's bodily fluid in the course of his or her employment, may request a local public health officer "to order blood-borne pathogen testing for the person whose bodily fluids he or she has been exposed to." If the person refuses to comply with the order, the local public health officer may petition the superior court for a hearing, which shall be held within seventy-two hours of filing the

petition. “The standard of review for the order is whether an exposure occurred and whether that exposure presents a possible risk of transmission of a blood-borne pathogen.”

WAC 246-100-205(1) defines “substantial exposure that presents a possible risk of transmission” as follows:

(1) Substantial exposure that presents a possible risk of transmission shall be limited to:

- (a) A physical assault upon the exposed person involving blood or semen;
- (b) Intentional, unauthorized, nonconsensual use of needles or sharp implements to inject or mutilate the exposed person; or
- (c) An accidental parenteral or mucous membrane or nonintact skin exposure to blood, semen, or vaginal fluids.

In this case, a law enforcement officer in the course of performing duties sustained a substantial exposure as defined at WAC 246-100-205(1)(a). Accordingly, the Court should order the Respondent to show cause why s/he should not be ordered to submit to a blood test for blood-borne pathogens. The hearing on the petition should be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays, as required by RCW 70.24.340.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**12.20 DECLARATION OF EXPOSED PERSON**

I, \_\_\_\_\_, declare as follows:

1. I am over the age of eighteen and make this declaration based upon my own personal knowledge.

2. I am a health care provider employed at \_\_\_\_\_ and have been employed there at all relevant times to this declaration.

3. My duties include delivering injections to patients.

4. On \_\_\_\_\_, 20\_\_\_\_, I delivered an injection into the Respondent. While pulling back on the safety syringe feature of the needle, it scratched the side of my left index finger, causing bleeding at the site of the wound.

5. I made a request to a nurse who is employed by Seattle-King County Department of Public Health that respondent be counseled and tested for the presence of blood-borne pathogens.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, Washington.

**12.30 DECLARATION OF DISEASE INTERVENTION SPECIALIST**

I, \_\_\_\_\_, declare as follows:

1. I am over the age of eighteen and make this declaration based upon my own personal knowledge.

2. Identity. I am a Disease Intervention Specialist employed by the Seattle-King County Department of Public Health, STD Clinic, and have been so employed at all relevant times to this declaration.

3. Substantial Exposure. On \_\_\_\_\_, 20\_\_\_\_, I was contacted by a health care provider at \_\_\_\_\_ who informed me that during the course of performing her duties at \_\_\_\_\_ she was exposed to the blood of respondent when she was accidentally scratched by a needle containing respondent's blood. She requested that the respondent be tested for the presence of blood-borne pathogens.

4. I served an Order to Test for blood-borne pathogens on Respondent, and Respondent refused to comply with the Order or to accept a copy of the Order.

5. To this date Respondent has not complied with the Order to Test for blood-borne pathogens.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, Washington.



## 12.40 MOTION FOR ORDER TO CLOSE HEARINGS AND SEAL RECORDS

### I. Relief Requested.

The Seattle-King County Department of Public Health, by and through its attorney(s) of record, respectfully requests pursuant to *Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982) and GR 15 that the Court close hearings and seal the following record in this proceeding: Sealed Data.

### II. Statement of Facts.

The local health officer has filed a Petition for Order to Show Cause pursuant to RCW 70.24.340 because a health care provider, during the course of performing job duties, has experienced a substantial exposure to bodily fluids that presents a possible risk of transmission of blood-borne pathogens. Respondent is the source of the exposure. This action thus involves health care information regarding Respondent.

### III. Statement of Issues.

Should hearings be closed and certain records in this matter sealed in order to prevent unnecessary disclosure of health care information?

### IV. Evidence Relied Upon.

This Motion is based upon the records and documents contained in this file.

### V. Authority.

The Washington legislature has found that “health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient’s interests in privacy, health care, or other interests.” RCW 70.02.005(1). Additionally, the federal Privacy Rule implementing the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Public Law 104-191, defines and limits the circumstances in which protected health information may be disclosed. 45 C.F.R. § 164.502(a).

This matter necessarily involves health care information about the Respondent. Disclosure of the Respondent's identity reveals protected health care information. Therefore, hearings should be closed and records that identify the Respondent(s) should be sealed and treated as confidential. These measures are no broader than necessary to protect the Respondent's identity. Protecting the Respondent's identity is consistent with the state and federal laws that recognize the privacy that applies to individually-identifiable health care information and is justified under *Seattle Times v. Ishikawa* and GR 15 by identified compelling privacy concerns that outweigh the public interest in access to the hearing or court records.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**12.50 SEALED DATA FORM**

Person(s):

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_ Identity in Pleadings: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**NOTICE TO INDIVIDUALS IN RECEIPT OF THIS CONFIDENTIAL DATA:**

**THIS INFORMATION HAS BEEN DISCLOSED TO YOU FROM RECORDS WHOSE CONFIDENTIALITY IS PROTECTED BY STATE LAW. STATE LAW PROHIBITS YOU FROM MAKING ANY FURTHER DISCLOSURE OF IT EXCEPT AS AUTHORIZED BY STATE LAW.**

**12.60 [PROPOSED] ORDER TO CLOSE HEARINGS AND SEAL RECORDS**

This Court, having reviewed the Petitioner's motion to close hearings and seal specific documents in conjunction with the Petition for Order to Show Cause and pursuant to applicable case law and court rules finds compelling circumstances to grant the order because the subject matters of this proceedings involves protected health care information. The Court finds the following pursuant to *Seattle Times v. Ishikawa*:

1. Failure to close hearings and seal records would expose the Respondent to the serious and imminent threat of loss of privacy in the Respondent's individual health care information;
2. There is no objection from those present at the time of the request for sealing and is by agreement of the parties;
3. There is no less restrictive means to protect against the Respondent's loss of privacy in individual health care information than closing hearings and sealing certain records;
4. The Court finds that the Respondent's compelling interest in the privacy right of individual health care information outweighs the public's right to access hearings and records that reveal individual health care information;
5. Closure of hearings and sealing of certain records is no broader than necessary to serve the purpose of protecting the Respondent's privacy interest.

Sealing of records also is justified pursuant to GR 15 by identified compelling privacy concerns that outweigh the public interest in access to the court records.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Clerk of the Court shall seal the following documents in this case: Sealed Data

2. Access to the sealed documents is limited to the respective parties to this proceeding; their counsel of record; and such other individuals as the parties to this proceeding may mutually agree, or the Court may designate to be allowed access to the same.

3. The caption of this case shall use first and last name initials to identify the person who is the subject of the detention or other measure(s).

4. Hearings in this matter shall be closed.

Access to the sealed record is available only in the Clerk's Office.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

**12.70 [PROPOSED] ORDER TO SHOW CAUSE**

THIS MATTER having come on upon the petition of the King County Local Health Officer and good cause appearing,

NOW THEREFORE:

It is ordered that the respondent and/or respondent's attorney appear before the undersigned Judge in room \_\_\_\_\_, King County Courthouse at \_\_\_\_\_ on \_\_\_\_\_ and show cause why an order should not be entered ordering respondent to submit to having a blood test for blood-borne pathogens. And, it is further ordered that the failure of the respondent or his/her attorney to appear may result in the entry of an order requiring respondent to submit to a having her blood tested by a nurse employed by Seattle-King County Department of Public Health for the taking of the blood in order for it to be tested.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 .

## **13.00 OPERATION OF THE COURTS AMID PUBLIC HEALTH THREATS**

The conduct of judicial proceedings involving persons infected or suspected of being infected with a communicable disease may require the court to alter some of its standard procedures in order to assure the safety of court personnel and persons participating in the proceedings. For example, the court might consider whether an individual suspected of being infected with a contagious disease should be permitted to physically appear in the courtroom and, if not, how the proceedings will be conducted to ensure the individual's adequate participation. Additional issues, including the adequacy of the individual's access to and consultation with counsel, might also arise.

In the event of a public health emergency, such as the widespread outbreak of an infectious disease within a community, the challenges facing the courts may increase. Court personnel, including judges and security officers, may themselves become ill. The court may be forced to relocate to safer and more sanitary premises. Each of these scenarios will strain the resources of the courts and require innovative solutions that ensure the continued operation of the judicial system while respecting constitutional due process guarantees.

### **13.10 APPEARANCE OF INDIVIDUALS POSING A POTENTIAL THREAT TO PUBLIC HEALTH**

#### **13.11 Appearance by Means Other Than in Person**

Although isolation and quarantine orders may, under certain circumstances, be issued following *ex parte* hearings, an individual affected by such an order is subsequently entitled to a hearing on the subject. [WAC 246-100-040](#); see also U.S. CONST. amend. V; WASH. CONST. art. 1, § 3 (No person shall be deprived of life, liberty, or property without due process of law.); see also WASH. CONST. art. I, § 10 ("Justice in all cases shall be administered openly, and without unnecessary delay."). However, an individual who is the subject of an isolation or quarantine order may be physically unable to appear in court due to illness or quarantine. Alternatively, the court may be unwilling to permit an infected or potentially infected individual to appear in person because of the health threat such an individual poses to court personnel, counsel, and the attending public (if the hearing is not closed). Indeed, [WAC 246-100-055](#), regarding relief from isolation and quarantine, provides that "[a]ny hearings for relief under this section involving a petitioner or petitioners judged to be contagious for a communicable disease will be conducted in a manner that utilizes appropriate infection control precautions and minimizes the risk of disease transmission." [WAC 246-100-055\(7\)](#).

In the event an individual should not be permitted to attend proceedings in person, the court may wish to consider an alternative procedure.

[CR 43\(a\)](#) provides for alternatives as follows: "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute. For good cause in compelling circumstances and with appropriate safeguards, the court may permit

testimony in open court by contemporaneous transmission from a different location.” The second sentence was added in 2010 and modeled after an identical provision in FRCP 43(a). Division Two stated in *In re Marriage of Swaka*, 179 Wash. App. 549, 553, 319 P.3d 69 (2014), that the rule is by its plain terms discretionary, and a trial court’s ruling on the issue is reviewed for abuse of discretion.

Division Two quoted the federal advisory committee note as follows:

The importance of presenting live testimony in court cannot be forgotten. The very ceremony of trial and the presence of the factfinder may exert a powerful force for truth-telling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition. Transmission cannot be justified merely by showing that it is inconvenient for the witness to attend the trial.

The most persuasive showings of good cause and compelling circumstances are likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness, but remains able to testify from a different place. Contemporaneous transmission may be better than an attempt to reschedule the trial, particularly if there is a risk that other—and perhaps more important—witnesses might not be available at a later time. *Id.* at 554.

Additional considerations include: provision for confidential communication between the individual and his or her attorney; logistics for interpretation services if necessary; and arrangements for transmission of documents and exhibits.

## 13.20 CLOSURE OF HEARINGS OR SEALING OF RECORDS

Separate from the question of whether a person who is infected or potentially infected will be in the courtroom, the Court may need to decide whether a hearing should be closed to the public. Additionally, the Court may need to decide whether to order that certain records be sealed.

The likely basis for closing a hearing or sealing certain records would be to protect the individual’s privacy interest in information about his or her health condition. Under the *Ishikawa/Bone-Club* analysis, the court must weigh the following five criteria:

1. The proponent of closure or sealing must make some showing of a compelling interest, and where that need is based on a right other than an accused’s right to a fair trial, the proponent must show a “serious and imminent threat” to that right.
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.



3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.
4. The court must weigh the competing interests of the proponent of closure and the public.
5. The order must be no broader in its application or duration than necessary to serve its purpose. *State v. Bone-Club*, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995).

An order to seal records must also satisfy [GR 15](#), which requires that the court make and enter written findings that the specific sealing is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. GR 15(c)(2). Agreement of the parties alone does not constitute a sufficient basis for the sealing of court records. *Id.* A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court. GR 15(c)(3).

The sample pleadings in this Bench Book reflect a presumption that an individual's privacy interest in his or her health condition is a basis to close a hearing or seal records that identify the individual. The Court is required to evaluate this interest in each case. The individual may, of course, waive his or her privacy interest.

### 13.30 PROTECTION OF COURT PERSONNEL

In the event of an outbreak of infectious disease in a community, the court may find it necessary to adopt the procedures discussed *supra* § [13.11](#) to ensure that an individual subject to an isolation or quarantine order does not expose court personnel to the disease. In certain circumstances, such as when the outbreak has affected large numbers of persons in the community or the infectious disease is easily transmitted through airborne droplets, the court may need to limit public access to the courtroom. In extreme circumstances, the court itself may need to relocate to a non-affected area to ensure its continued operation.

### 13.31 Relocation of Court

- A. *Relocation of Hearings at Judicial Discretion.*** Trials upon the merits must be conducted in open court and so far as convenient in a regular courtroom. [CR 77\(j\)](#). However, all other acts or proceedings may be conducted without the attendance of the clerk or other court officials and at any place either within or without the county. *Id.* No hearing, except an *ex parte* hearing, may be conducted outside the county without the consent of all affected parties. *Id.*
- B. *Relocation by Mutual Agreement of County Council and Judges.*** Local rules or ordinances may also apply. For example, regular and special sessions of the King County Superior Court may be held at such places

within the county other than the county seat as may be mutually agreed upon by the council and the judges of the superior court. [KCC 2.69.010](#). Approval of an alternate location must be by motion of the county council endorsing a memorandum proposal submitted to the chair of the county council by the presiding judge. [KCC 2.69.030](#).

## 13.40 PROCEEDINGS INVOLVING NUMEROUS PERSONS

In the event of an infectious disease outbreak, the courts may be called upon to issue numerous isolation and quarantine orders. Judicial surge capacity may be obtained through several logistical and procedural measures.

### 13.41 Additional Judicial Personnel

- A. *Additional Judges.*** The number of judges available to hear matters in the superior court may be augmented through several mechanisms.

**NOTE:** The appointment of additional personnel to hear cases may also be necessary if the judges themselves are unable to sit due to illness.

1. **Use of elected sitting judges from other courts in the state.** The presiding judge of any superior court may assign an elected sitting judge from the Supreme Court, Court of Appeals, District Court, or Municipal Court to serve as an elected judge pro tempore. See WASH. CONST. art. IV, § 7; [RCW 2.08.180](#); [AR 6\(b\)](#). Consent of the elected judge pro tempore is required, but consent of the parties or attorneys is not. [AR 6\(b\)](#).
2. **Use of visiting superior court judges from other counties.** The majority of superior court judges may request a visiting superior court judge from another county by:
  - a. Directing the request to the Governor who shall then request and direct a judge of a superior court of another county to hold a session in the requesting county, [RCW 2.08.140](#); or
  - b. Directing the request to a superior court of another county which judge shall then be empowered to if he or she deems it consistent with the judicial business in his or her county, to hold a session of the requesting superior court in the requesting county. [RCW 2.08.150](#).
3. **Appointment of other pro tempore judges.** A case in superior court may also be tried by a pro tempore judge who is a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the case. [RCW 2.08.180](#). The judge pro tempore must take the oath prescribed by [RCW 2.08.180](#) before entering upon his or her duties. The judge pro tempore must be a member of the bar.
4. **Appointment of commissioners.** The judges of the superior court may appoint commissioners who will have the powers prescribed by statute.

See generally [chapter 2.24 RCW](#). Commissioners may be authorized to preside over some aspects of public health matters and they may handle other matters within their authority to help account for the absence of judges who are handling the public health matters or who are unable to sit due to illness.

- a. **Qualification criteria.** Court commissioners must be citizens of the United States and take the oath prescribed by law. [RCW 2.24.010, .020](#).
- b. **Powers.** The statutory powers granted to court commissioners are listed in [RCW 2.24.040](#). As related to public health hearings, a court commissioner may:
  - i. Grant and enter defaults and judgments thereon;
  - ii. Issue temporary restraining orders and temporary injunctions, and fix and approve bonds thereon;
  - iii. Act as a referee in matters referred to it by the superior court;
  - iv. Hear and determine all *ex parte* and uncontested civil matters of any nature;
  - v. Administer oaths; and
  - vi. Compel the attendance of witnesses.

5. **Appointment of other officers.** A superior court judge may appoint other officers as necessary to conduct the court's business. See [RCW 2.32.180](#) (appointment of court reporters).

#### 13.42 Consolidation of Cases

- A. **Consolidation.** In any proceedings brought for isolation or quarantine, the court may order consolidation to promote the fair and efficient operation of justice and having given due regard to the rights of the affected persons, the severity of the threat to the public's health, and the availability of witnesses and evidence. [WAC 246-100-065](#); *supra* § [5.31.E.1](#).
- B. **Criteria for Consolidation.** The court may order the consolidation of individual claims into group claims where:
  1. The number of individuals involved or to be affected is so large as to render individual participation impractical;
  2. There are questions of law or fact common to the individual claims or rights to be determined;
  3. The group claims or rights to be determined are typical of the affected persons' claims or rights; and
  4. The entire group will be adequately represented in the consolidation. *Id.*; *supra* § [5.31.E.2](#).

### 13.50 EMERGENCY COURT CLOSURE

- A. *Emergency Court Closure - Generally.*** A court may be closed if weather, technological failure or other hazardous or emergency conditions or events are or become such that the safety and welfare of the employees are threatened or the court is unable to operate or demands immediate action to protect the court, its employees or property. [GR 21\(a\)](#).
- B. *Emergency Court Closure - Implementation.***
- 1. *Administrative Order.*** Closure of a court may be ordered by the chief justice, the presiding chief judge, presiding judge, or other judge so designated by the affected court who signs an administrative order which shall be filed with the clerk of the affected court. [GR 21\(a\), \(b\)](#).
  - 2. *Notification to Administrative Office of the Courts.*** The judge who directs the closure or his or her designee shall notify the Administrative Office of the Courts of any decision to close a court. Oral notifications shall be followed as soon as practicable with a written statement outlining the condition or event necessitating the closure and the length of the closure. [GR 21\(b\)](#).

### 13.60 PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED JURISDICTION COURT DISTRICT

Each superior court district and each limited jurisdiction court district having more than one judge shall establish a procedure, by local rule, for election, by the judges of the district, of a presiding judge. [GR 29\(a\)](#). The presiding judge is responsible for leading the management and administration of the court's business, recommending policies and procedures that improve the court's effectiveness, and allocating resources to maximize the court's ability to resolve disputes fairly and expeditiously. [GR 29\(e\)](#).

## APPENDIX

### KING COUNTY AND SEATTLE MUNICIPAL CODE PROVISIONS

#### King County Code Provisions

##### **A. Emergency Management Organization.**

1. **Office of emergency management.** [KCC 2.16.035\(F\)](#). The Department of Executive Services includes the administrative office of emergency management. The duties of the office include:
  - a. Planning for and providing effective direction, control and coordinated response to emergencies;
  - b. Being responsible for the emergency management functions defined in [KCC 2.56](#);
  - c. Managing the E911 emergency telephone program.

##### **B. Emergency Defined.**

1. **Definition.** [KCC 12.52.010.A](#). “Emergency” or “disaster” means an event or set of circumstances such as fire, flood, explosion, storm, earthquake, epidemic, riot or insurrection, which:
  - a. Demands the immediate preservation of order or of public health or the restoration to a condition of usefulness of any public property, the usefulness of which has been destroyed, or where delay will result in financial loss to the county or for the relief of a stricken community overtaken by such occurrences or which reaches such a dimension or degree of destructiveness as to warrant the Executive proclaiming a state of emergency pursuant to [KCC 12.52.030](#). “Emergency” or “disaster” also includes the potential for flooding arising out of the diminished capacity of the Howard Hanson dam.

##### **C. Proclamation of Emergency.**

1. **Existence of emergency.** Whenever an emergency or disaster occurs or is at imminent risk of occurring in King County and, in the judgement of the executive, extraordinary measures are necessary to protect the public peace, safety and welfare, the Executive may proclaim in writing the existence of such an emergency. [KCC 12.52.030.B](#).
2. **Notification.**
  - a. The proclamation shall be delivered to all news media within King County, and shall utilize other available means as are necessary, in the Executive’s judgment, to give notice of the proclamation to the public. [KCC 12.52.030.E](#).

**D. Powers and Duties of Executive.**

- 1. Orders pursuant to proclamation of emergency. [KCC 12.52.030.C.](#)**

Upon the proclamation of an emergency, and during the existence of the emergency, the Executive may make orders that include:

  - a. Recalling King County employees from vacation, canceling days off, authorizing overtime, or recalling selected retired employees.
  - b. Waiving the public advertising and competitive procurement requirements of state law and [KCC chapter 2.93](#) and the requirements of [KCC chapter 2.93](#) relating to county contracts for the following purchases or leases: tangible personal property, public works as defined by [RCW 39.04.010](#), and services, including professional or technical services.
  - c. Imposing a general curfew applicable to King County as a whole, or to such geographical area(s) of King County and during such hours, as the Executive deems necessary. The executive may modify the hours curfew will be in effect and the area or areas to which it will apply at any time.
  - d. Requiring any or all business establishments to close and remain closed until further order.
  - e. Closing to the public any or all public places including streets, alleys, public ways, schools, parks, beaches, amusement areas and public buildings.
  - f. Such other orders as are imminently necessary for the protection of life and property.
- 2. Procedural requirements for orders. [KCC 12.52.030.D.](#)**
  - a. **Filing with the clerk of the council.** Any executive order shall be forwarded to the clerk of the council not later than 10:00 a.m. of the second business day after it is issued.
    - i. **Exception.** Except that a contract may not be entered into by the county under [KCC 12.52.030.C.2](#) until the declaration, proclamation or order including the waiver is delivered to the clerk of the council or sent to the clerk of the council and each councilmember by email.
  - b. **Termination.** Executive orders shall continue in force and effect until terminated by order of the Executive or action by the council by ordinance.
    - i. **Exception.** Orders authorized under [KCC 12.52.030.C.2](#) shall terminate as provided for in [KCC 2.93.080](#) unless extended.
- 3. Supervision and control.** The Executive shall have general supervision and control of the emergency management organization and shall be responsible for implementing the provisions of [KCC 2.56](#) in the event of a disaster. [KCC 2.56.040.A.](#)
- 4. Make, amend, and rescind the necessary orders, rules, and regulations.** The Executive is authorized and empowered to make, amend and rescind the necessary orders, rules, and regulations to implement the provisions of [KCC 2.56](#) and [KCC 12.52](#), consistent with the provisions of state law and the plans of the state and federal government. [KCC 2.56.040.B.1.](#)

5. **Use of existing resources.** The Executive is directed to use the services, equipment, supplies, and facilities of existing departments, offices and agencies of the county to the maximum extent possible. [KCC 2.56.050.A.](#)
6. **Commandeering of service and equipment after emergency proclamation by Governor.** The Executive, in the event of a disaster, after proclamation by the Governor of the existence of a disaster, shall have the power to command the service and equipment of as many citizens as considered necessary in the light of the disaster proclaimed. Provided that: Citizens so commandeered shall be entitled during the period of such service to all privileges, benefits and immunities as are provided by law for registered emergency workers. [KCC 2.56.050.B.](#)

**E. Emergency Purchasing.**

1. **Waiver of certain requirements.** [KCC 2.93.080.A.](#)
  - a. Upon issuance of a proclamation of emergency, the Executive may waive certain requirements related to procurement and contracting.
  - b. The waivers may refer to:
    - i. Any contract relating to the county's lease or purchase of tangible personal property or services;
    - ii. Contracts for public works as defined in [RCW 39.04.010](#); or
    - iii. The selection and award of professional and/or technical services consultant contracts.
2. **Procedural requirements.**
  - a. **Waivers to be forwarded to the clerk of the council.** [KCC 2.93.080.B.](#) Waivers under [KCC 2.93.080](#) shall be forwarded to the clerk of the council no later than 10:00 a.m. on the second business day after issuance:
    - i. **Duration of waivers.** [KCC 2.93.080.A & B.](#) A waiver shall continue to have force and effect until it expires, which shall be twenty-one calendar days after issuance, unless terminated sooner by order of the executive or action of the council by motion. The council, by motion, may extend a waiver beyond the twenty-one day period.
3. **Expenditures in excess of appropriations.** The executive is authorized to expend or contract to expend money or make purchases in excess of existing appropriations to respond to an emergency. If the responsible department director determines that the expenditures were made in excess of an appropriation, the executive shall transmit a proposed appropriation ordinance to the council, specifying the reason for the expenditure, the appropriation amount and the source of the funds. [KCC 2.93.080.D.](#)

**F. Continuity of Government.**

1. **Office of the Executive.** In the event of a vacancy in the office of the Executive during or immediately following the occurrence of a disaster requiring the execution of the county's emergency management operations plan, the powers and duties of the office of the Executive, subject to the provisions of the King County Charter, shall be exercised by a temporary

interim successor designated pursuant to executive order. [KCC 2.56.060.A.](#)

2. **Council business during emergency.** Council business during an emergency or disaster shall be conducted as follows:
  - a. **Conduct of business.** Whenever, due to an emergency, it becomes imprudent, inexpedient, or impossible to conduct affairs at the regular and usual place, the legislative body may meet at any place within or without the territorial limits of King County on the call of the chairman or any two members of the council. After an emergency relocation, the affairs of the council shall be lawfully conducted at the emergency location for the duration of the emergency. [KCC 1.24.035](#), [2.56.060.B.](#)
  - b. **Continuity of government.** In the event that a disaster reduces the number of councilmembers, then those councilmembers available and present shall have full authority to act in all matters as the county council. Quorum requirements for the council shall be suspended for the period of the emergency, and where the affirmative vote of a specified proportion of the council is required for approval of an ordinance or other action, the same proportion of those members available shall be sufficient. [KCC 1.24.145](#), [2.56.060.B.](#)
  - c. **Council vacancies.** As soon as practicable, the available councilmembers shall act in accordance with the charter and state law to fill existing vacancies on the council. *Id.*
3. **Other elected officials.** Elected officers of the county, other than the Executive and county councilmembers, are authorized and directed to designate temporary interim successors to the office of such officer in the event a vacancy occurs during an emergency caused by a disaster. [KCC 2.56.060.C.](#)
4. **Appointed officers.** The Executive shall, subject to rules and regulations that the executive may adopt, permit each appointed officer of the county to designate temporary interim successors in the event a vacancy occurs during an emergency caused by a disaster. [KCC 2.56.060.D.](#)
5. **Termination of succession.**
  - a. **Temporary interim basis until regularly appointed successor designated.** Any county officer succeeding to office on a temporary interim basis shall exercise and discharge the duties and powers of the office as prescribed by charter or by ordinance only until a regularly appointed successor is designated by the customary means. [KCC 2.56.060.E.](#)
    - i. **Successors to elected offices.** Successors to fill vacancies in elective offices shall be appointed by the council pursuant to Section 680 of the King County Charter and the state constitution until a permanent successor is duly elected and qualified. [KCC 2.56.060.E.1.](#)
    - ii. **Successors to appointed offices.** Successors to fill vacancies in appointed offices shall be made by the Executive or other authorized official, subject to the confirmation process where applicable. [KCC 2.56.060.E.2.](#)



- G. Violations and Penalties.** Criminal sanctions apply to conduct during an emergency:
1. Failure or refusal to obey an order proclaimed by the Executive. [KCC 12.52.030.F.](#)
- H. Seattle-King County Department of Public Health.**
1. **Combined city-county department.** The city of Seattle and King County operate a combined city-county health department under [chapters 70.05](#) and [70.08 RCW](#). [KCC 2.35A.010.](#)
  2. **Duties of the department.** The King County Code establishes the duties of the divisions of the department. [KCC 2.35A.020. to .090 and .120.](#)
- I. King County Board of Health.**
1. **Membership.** The King County Code establishes the membership of the King County Board of Health. [KCC 2.35.021.](#)

#### Seattle Municipal Code Provisions

- A. Proclamation of Emergency.**
1. **Existence of emergency.** Whenever riot, unlawful assembly, insurrection, other disturbance, the imminent threat thereof, or any fire, flood, storm, earthquake or other catastrophe or disaster occurs in the city and results in or threatens to result in the death or injury of persons or the destruction of property or the disruption of local government to such extent as to require, in the judgment of the Mayor, extraordinary measures to prevent the death or injury of persons and to protect the public peace, safety and welfare, and alleviate damage, loss, hardship or suffering, the Mayor shall forthwith proclaim in writing of the existence of a civil emergency. [SMC 10.02.010.A.](#)
  2. **Procedural requirements.**
    - a. **Filing with the clerk of the city council.** Any such proclamation by the Mayor shall be filed immediately after issuance of the proclamation, or as soon as practical, with the City Clerk for presentation to the City Council for ratification and confirmation, modification, or rejection. [SMC 10.02.010.C.](#)
    - b. **Action by the city council.** The city council may, by resolution, modify or reject the proclamation.
      - i. If rejected, it shall be void.
      - ii. Modification or rejection shall be prospective only and shall not affect actions taken prior to the modification or rejection.
      - iii. The council shall endeavor to act on any proclamation within forth- eight (48) hours of its presentation. *Id.*
  3. **Notification.** The proclamation shall be delivered to the Governor, and to the extent practicable, to all news media within the city, and shall utilize as many other available means, including, but not limited to, posting on

public facilities and public address systems, as may be practical to use, in order to give the widest dissemination of the proclamations and orders to the public. [SMC 10.02.100](#).

**4. Termination.**

- a. The emergency shall cease to exist upon the issuance of a proclamation by the Mayor or by a resolution passed by not less than two-thirds (2/3) of all members of the city council. [SMC 10.02.010.B](#).
- b. Before a civil emergency is declared terminated, the Mayor or Council will consult with the City's Police Chief, Fire Chief, Director of Public Health—Seattle & King County and the Director of Emergency Management to determine if there are any fiscal, public safety response or disaster recovery imperatives that require the continuation of emergency measures. *Id.*
- c. A proclamation to terminate the emergency shall be issued when extraordinary measures are no longer required for the protection of the public peace, safety and welfare. *Id.*

**B. Powers and Duties of Mayor.**

1. **Orders pursuant to a proclamation of emergency.** Upon the proclamation of a civil emergency, and during the existence of the emergency, the Mayor, in a form that meets the requirements of [SMC 10.02.025](#), may make orders that include:
  - a. Imposing a general curfew applicable to the city as a whole, or to such geographical area(s) of the city and during such hours, as the Mayor deems necessary, which effective hours and affected area or areas may be modified from time to time.
  - b. Requiring any or all business establishments to close and remain closed until further order.
  - c. Closing to the public any or all public places including streets, alleys, public ways, schools, parks, beaches, amusement areas and public buildings.
  - d. Directing the use of all public and private health, medical, and convalescent facilities and equipment to provide emergency health and medical care for injured persons.
  - e. Such other orders as are imminently necessary for the protection of life and property. [SMC 10.02.020](#).
2. **Procedural requirements for orders.** Requirements for filing with the city clerk and presentation to the city council are contained in [SMC 10.02.020](#).
3. **Authority to enter into contracts and incur obligations.** See [SMC 10.02.030](#).
4. **Use of existing resources.** The Mayor shall utilize to the maximum extent practicable the services, equipment, supplies, and facilities of existing departments, offices and agencies of the city, state and other municipal corporations organized under the laws of the state. [SMC 10.02.040.A](#).

5. **Commandeering of service and equipment after emergency proclamation by Governor.** The Mayor, in the event of a disaster, after proclamation by the Governor of the existence of a disaster, shall commandeer the service and equipment of as many citizens as considered necessary in the light of the disaster proclaimed; provided, that citizens so commandeered shall be entitled during the period of such service to all privileges, benefits and immunities as are provided by [RCW Chapter 38.52](#) and federal and state civil defense regulations for registered civil defense or emergency services workers. [SMC 10.02.040.B.](#)

- C. **Violations and Penalties.** It is unlawful for anyone to:
  1. Fail or refuse to obey an order proclaimed by the Mayor. [SMC 10.02.110.](#)