

From: [Dan Sutton](#)
To: [Barry Kling](#)
Subject: Re: Declaration re lawsuit
Date: Friday, May 29, 2020 7:42:24 AM

Good morning Barry,

As always, you, Dr. Butler and staff have my deepest respect.

Dan

Sent from my iPhone

On May 29, 2020, at 6:56 AM, Barry Kling <barry.kling@cdhd.wa.gov> wrote:

[EXTERNAL MESSAGE]

I am writing to inform the Board about events I was involved in yesterday regarding the current lawsuit against the Governor.

Around 4:30PM Sheriff Burnett called me to urge that I immediately provide a statement regarding the BOH resolution of 5/26, providing an official copy since the one provided with the lawsuit was labelled a draft. He insisted that I do this immediately and report back to him when this was done. Here is the main content of the declaration he wanted me to sign:

I, Barry Kling, testify under penalty of perjury as follows:

1. I am the Chelan-Douglas Health District Administrator.
2. The Board of the Chelan-Douglas Health District met on May 26, 2020.
3. During that meeting, the Board passed a resolution that would institute precautionary measures for reopening business in either County in the event that a court decision overturns the Governor's emergency Proclamations.
4. Attached hereto as Exhibit A is a true and correct copy of that resolution.

Signed this 28 of May, 2020, at Wenatchee, Washington.

I had no problem providing a pdf of the signed resolution (and did so in my response, attached), but I have read the lawsuit and #3 above is part of the attorney's attempt to minimize the effects of overturning the Governor's proclamations by suggesting it would merely result in similar measures by the Board. Yet the whole point of overturning the proclamation was to result in different measures. I understand the way attorneys attempt to get people to say things that are literally true so far as they go but are then twisted to suggest the respondent supports the attorney's position even when the respondent does not actually agree. I was not able to go along with that. So I added a sentence to #3 stating "These measures would not necessarily be the same as those ordered by the Governor." It was a mistake to attempt to involve me in the substance of the lawsuit's arguments when all they really needed was an official copy of the resolution, but they demanded a statement from me related to the substance of the lawsuit and that is what they got.

In addition, the lawsuit (mainly in pages 23 ff.) included selective quotes from Dr. Butler which misleadingly

suggest that he is in support of the lawsuit when that is not the case. Misrepresenting our Health Officer's views on an important public health matter is a problem CDHD should attempt to correct when possible, and in this case Dr. Butler's effectiveness and credibility among the rest of the physicians in the community would be significantly undermined if he was thought to support the unscientific and inaccurate allegations contained in the lawsuit. It is unfortunate that the lawsuit included so many scientifically inaccurate statements, since the case could have been made without them, but having chosen to do that it was a mistake for the attorney to believe local health officials could be bullied into agreeing with them. Therefore I added the following statement: "The lawsuit includes selective quotes from Dr. Malcolm Butler, Chelan-Douglas Health District Health Officer, which give the false impression that he supports this lawsuit and its various allegations." That statement is the truth.

In addition, I learned from Dr. Rutherford that Dr. Stu Freed was told yesterday that he must immediately provide a letter stating that CWH is not currently overwhelmed with COVID-19 cases, which goes to some of the lawsuit's key arguments. Dr. Freed was told that if he did not comply immediately he would be subpoenaed instead. According to Dr. Rutherford when I spoke to him last evening, Freed did intend to provide a letter accurately describing the current situation in the hospital, but also making the point that even a moderate surge in COVID-19 cases would threaten to overwhelm the hospital. This is not a merely theoretical matter, since our Health District is now one of the state's COVID hotspots, with case rates second in the State only to Yakima County. Again, the plaintiffs' attorney apparently did not see fit to inquire about Dr. Freed's views but attempted to bully him into saying what they wanted to hear.

The Board can depend on me to do many things to execute its policies, but I cannot in good conscience provide a sworn statement to Superior Court under penalty of perjury containing statements on matters of public health which are being used in a misleading way to support allegations I know to be untrue. I did not volunteer to comment on the lawsuit and the plaintiffs' attorney might have checked with me before asking me to do this, but having been asked to submit a sworn statement I could not submit a false one. Had the attorney simply asked for a copy of the resolution I would simply have sent it, but the ill-advised attempt to draw me into the lawsuit by asking for a sworn statement on one of the suit's core issues went well beyond a document request. I know they were not pleased by the result because the Sheriff responded by emailing that I would be "hearing from" him about it. But I know the Sheriff was simply doing what the plaintiffs' attorney had asked him to do.

I am much happier when I agree completely with board members, yet we have been able to work together on the basis of mutual respect, including my respect for the Board's authority, even when we do not agree on everything. That is as it should be. But I do not believe the Board expects me to perjure myself. I deeply regret that the matter has taken this unnecessary turn and hope that the Board understands the difficult position in which the plaintiffs' attorney has put local health officials in demanding instant sworn statements having implications which those health officials believe are untrue. That does not mean we disagree with everything in the lawsuit or that we no longer respect the Board's authority. I am not naïve about the way attorneys argue their client's cases, but those attorneys, if they are smart, are careful not to ask experts for sworn statements (or quote them selectively) until they know what those experts will say. That due diligence did not occur in this case. I could not accept the statement they wanted in the form they provided and I regret very much the possibility that the unnecessary attempt to involve me in the substance of this private lawsuit could undermine a working relationship with the Board which I believe has been very constructive.

Respectfully –

Barry

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