

COLORADO INDEPENDENT ETHICS COMMISSION 1300 Broadway, Suite 240 Denver, CO 80203	▲ COURT USE ONLY ▲ <hr/> Complaint No. 23-23
<b>In Re the Matter of:</b>  Liane Jollon, Former Executive Director of San Juan Basin Public Health	
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<b>RESPONSE AND MOTION TO DISMISS COMPLAINT</b>	

Pursuant to the Orders of the Colorado Independent Ethics Commission (“IEC” or “Commission”) dated October 23 and November 17, 2023, Liane Jollon, through counsel, hereby responds to the meritless Complaint of Todd Weaver (“Complaint”) filed on August 29, 2023, requests the Commission reconsider its finding of non-frivolity, dismiss the Complaint based on its substantive deficiencies and lack of subject matter jurisdiction.<sup>1</sup>

### INTRODUCTION

Liane Jollon served honorably and ethically as the Executive Director of the multi-county San Juan Basin Public Health District (“SJBPH” or the “district”) for the decade between 2013

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<sup>1</sup> Because the October 23 and November 17, 2023 Orders directed Ms. Jollon to “address the issue of [subject] matter jurisdiction in her response to the complaint,” she has not separately set forth the motion to dismiss in a standalone document as generally required by Rule 6(A).

and 2023, including through extraordinary round-the-clock efforts during the Covid pandemic to control the spread of the virus and to minimize illness and deaths in La Plata and Archuleta Counties. Her efforts paid off: the district was one of the only jurisdictions in the state to consistently meet contact-tracing standards. The district's schools and higher-education institutions offered in-person options earlier and more safely than many others. The district's rural healthcare facilities, while extraordinarily strained, kept up with community needs. And the business community partners in the district saw increased sales and lodging taxes as early as 2020 because visitors flocked to the district based on its relative safety and lower infection rates.

Unfortunately, not everyone in the district supported Ms. Jollon or the Covid health-related mandates she was charged with implementing. During the pandemic, widespread protests flared in the district by those who opposed mask-mandates or limits on business operations and socialization. Numerous protesters harassed Ms. Jollon at her residence.<sup>2</sup> She, and SJBPH generally, suffered vile public commentary.

For her efforts, Ms. Jollon, together with all other exempt salaried district employees, earned and received Emergency Compensation ("EC") from a policy established prior to the

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<sup>2</sup> See, e.g., Jonathan Romeo, "Durango police dismayed after protesters show up at health director's home," Durango Herald (Jan. 15, 2021) (<https://www.durangoherald.com/articles/durango-police-dismayed-after-protesters-show-up-at-health-directors-home/>); Shannon Mullane, "Group Signals more protests in Durango over health orders," Durango Herald (Feb. 23, 2021) (<https://www.durangoherald.com/articles/group-signals-more-protests-in-durango-over-health-orders/>); Jonathon Romeo, "Protesters, counter-protesters show up at health director's home Thursday," Durango Herald (Mar. 11, 2021) (<https://www.durangoherald.com/articles/protesters-counterprotesters-show-up-at-health-directors-home-thursday/>); The Associated Press, "Another Virus Restriction protest at Durango health director's home," (Mar. 12, 2021) (<https://sentinelcolorado.com/nation-world/covid19/another-virus-restriction-protest-at-durango-health-directors-home/>).

pandemic. The EC compensated them on a straight hourly basis for hours worked beyond 40-hour weeks to address the declared pandemic emergency. SJBPH specifically authorized such EC pursuant to a policy adopted on August 27, 2015, entitled “Emergency Duty Compensation for Exempt Employees.” Contrary to the allegations in the Complaint, EC is not “overtime” compensation under the Fair Labor Standards Act (FLSA). As the EC policy clearly states:

The purpose of this policy is to recognize that (FLSA) exempt employees may be called upon from time to time to go far beyond their regular work duties during extraordinary “Declared Emergency” situations. In these defined “Declared Emergency” situations, exempt employees working more hours than customary to address community needs may earn additional compensation in accordance with this policy. At all times, exempt employees remain exempt from all Fair Labor Standards Act overtime compensation obligations, hence, **this policy is not to provide overtime compensation but to provide additional compensation for extraordinary efforts in defined emergency situations.**

Exhibit 1 at 2, ¶ 1 (emphasis added).

After the pandemic was declared such a qualified emergency in March 2020, SJBPH adopted the Incident Command Structure to manage the pandemic with Ms. Jollon serving as its Incident Commander. She directed and managed the entire Covid response across the district, from disease surveillance, investigation and control, to large-scale community non-pharmaceutical mitigation, community outreach and education, access to healthcare, fatality management and eventually access to vaccines. She worked far more than 40 hours every week and submitted documentation of those hours. Her Emergency Compensation exceeded others in the district because she had the highest salary in the district and because she worked more than the other eligible district employees as the Incident Commander over the entire pandemic response team.

The SJBPH Board, its Chair, and its members (including representatives of Archuleta County) were fully aware of the EC paid to all non-exempt employees, including Ms. Jollon, and approved such time. Certain Board directors and its general counsel submitted statements to the Receiver in July 2023 acknowledging the “extraordinary” efforts Ms. Jollon made, that they were aware of those efforts, that they received briefings during the pandemic of the extra costs associated with EC, and that they approved those extra costs. They also reported that they specifically intended for EC to apply to Ms. Jollon and that there was no requirement they enforced for Ms. Jollon to have her time signed off on by another individual. The current general counsel for SJBPH submitted his unequivocal view, supported by law, that EC is not the same FLSA “overtime.”

Mr. Weaver ignored all of these facts which were known to him and publicly reported in connection with the Receiver’s work. He willfully omitted them from this Complaint, even though they were contained in the attachments to the Receiver’s report or were publicly filed in response to that report.

This Complaint is premised on Mr. Weaver’s three false narratives: (1) that Ms. Jollon was not entitled to EC because her contract forbade FLSA overtime; (2) that Ms. Jollon did not work to earn the EC that she was paid; and (3) that her EC was not known to, or approved by, the SJBPH Board or its members. Each of these unsupported assertions is demonstrably false as a matter of law and of fact.

Mr. Weaver himself, for politically biased reasons stemming from his opinions about appropriate governmental responses to Covid, instigated an investigation into Ms. Jollon’s EC by the Receiver appointed to oversee SJBPH’s dissolution. When the SJBPH Board determined at a



publicly held meeting in August 2023 that no further action regarding Ms. Jollon’s EC was appropriate, Mr. Weaver decided to use this Commission as a forum to slander Ms. Jollon about her “unapproved” “emergency compensation.” When the Receiver’s report was contradicted by sworn statements of board members and its general counsel, Mr. Weaver simply ignored them and omitted them from his Complaint. Mr. Weaver made clear his perspective on Ms. Jollon’s work, claiming that she “us[ed] the authority of SJBPH to close businesses and put people out of work while at the same time essentially approving a significant pay raise for herself . . . .” Compl. ¶ B.1. A (medically uninformed) policy disagreement with a public health director is an improper basis for filing an ethics complaint such as this.

In any event, as a matter of law, the Commission should dismiss the Complaint. The Complaint is frivolous and groundless. Further the Commission has no subject matter jurisdiction over a multidistrict public health agency, and Mr. Weaver raises time-barred grievances. For the reasons stated below, Ms. Jollon respectfully requests that the Commission dismiss the Complaint in this case.

## **I. RESPONSE TO THE COMPLAINT**

### **A. San Juan Basin Public Health District**

The district now serves La Plata and Archuleta Counties, but when the San Juan Basin Health Unit formed in 1947, it additionally served the counties of Dolores, Montezuma, and San Juan. *See* Exhibit 2 at 4 (San Juan Basin Public Health, *2017 Annual Report: Celebrating 70 Years of Public Health*). As the Complaint observes, SJBPH will dissolve after December 31, 2023, Compl. ¶¶ A.4-5, but the Complaint’s allegations all concern Ms. Jollon’s tenure with this multi-county body, *see id.* ¶ A.6. And as shown below, the district’s existence as a multi-county

body means Ms. Jollon was not a “government employee” subject to the Commission’s jurisdiction.

**B. Liane Jollon’s Service as Executive Director of SJBPH**

Liane Jollon is an accomplished and nationally recognized public health professional. She graduated from Columbia University in the early 1990s and later earned a degree in Nursing from Pueblo Community College.

SJBPH initially hired Ms. Jollon in 2010 as an RN within its Family Planning Clinic. From 2010 until 2013, she rose to manage the Family Planning Clinic. Then she became the Immunizations and Family Planning Program Manager and later the head of SJBPH’s Health Services Division.

Recognizing her competency, the SJPBH Board of Directors (“BOD” or “Board”) offered Ms. Jollon the role of Executive Director in August 2013. She worked hard to transform the organization, growing it from a \$4 million to a \$6.5 million organization. She leveraged partnerships across the district and across the state to address emerging health equity issues.

Ms. Jollon’s employment contract reflected her high-level role. She reported to the Board. She prepared reports for their review, attended and participated in the Board meetings, and responded to their inquiries and direction. The Board recognized Ms. Jollon for her performance. With each annual amendment to her employment contract, the Board found that Ms. Jollon’s “performance exceeds expectations” and they voted to increase her salary. *See Exhibit A to Compl. at 9, 11, 15, 19, 22.*

In 2017, Ms. Jollon was selected as an Ascend Fellow at the Aspen Institute, a highly selective diverse community of national leaders focused on the well-being of families and

children. In 2018, Ms. Jollon was invited to the study at the federally funded Naval Post Graduate School's Center for Homeland Security and Defense Masters of Arts program for local, state and federal governmental officials with homeland security and emergency preparedness and response duties. The Board permitted Ms. Jollon to enroll in and complete both of these leadership programs at no cost to the district, which she did. *Id.* at 13-14, 17-18. By 2019, based on her performance reviews and achievements, Ms. Jollon's salary had risen to \$142,055 per year, the highest paid position within the SJBPH. *Id.* at 19.

**C. Ms. Jollon Was Entitled to Emergency Compensation under the SJBPH Policy**

The Complaint contends that Ms. Jollon was paid EC "in violation of her employment agreement, which specifically stated she was not eligible for any overtime pay." Compl. ¶ B.2. This is false.

**1. *The SJBH Board Approved the EC Policy Specifically for Exempt Employees***

In 2015, following the resource strain in the district occasioned by the Gold King Mine incident, the Board passed an Emergency Compensation ("EC") Policy. *See* Exhibit 1. The EC Policy addressed the "inadequacy in the system" created when "exempt employees" were required to work "extraordinary workload[s] in an emergency." Exhibit 3 at 1. The EC policy mirrored those of other jurisdictions, complied with federal law, and was designed to compensate exempt employees during declared disasters with pay that was distinct from FLSA overtime. *Id.* at 1 and Attachment (explaining the Board's research of Federal Emergency Management Agency (FEMA), Health and Human Services (HHS) and other agencies' methods of compensating exempt employees during declared disasters). According to FEMA Labor

Policies, an exempt employee may receive emergency compensation (and be reimbursed with federal funds) if there is a “pre-disaster written labor policy” that meets certain criteria. *Id.* at Attachment; *see also* 42 U.S.C. §§ 5121-5207 and 44 CFR pt 206. SJBPH designed the 2015 policy to meet these federal criteria so that the district would be eligible for federal and state reimbursement of Emergency Compensation expenses in future disasters.

On August 27, 2015, the Board passed the EC Policy “in a public meeting with county commissioners representing [Archuleta and La Plata] counties present and voting in approval.” *See* Exhibit 3 at 2, ¶ 2; *see also* Exhibit 4. The EC policy was thereafter implemented in 2018 during the “416 Fire” in La Plata County for smoke and public health issues. Exhibit 4 at ¶ 3; Exhibit 5 at ¶ 3. The EC Policy was re-approved at a public Board meeting on June 27, 2019. Exhibit 4 at ¶ 5.

## **2. *Emergency Compensation Not the Same as FLSA “Overtime”***

Emergency Compensation, by design, is not FLSA overtime. The EC Policy specifically addressed the differences between EC and FLSA overtime. It concluded:

The purpose of this policy is to recognize that [FLSA] exempt employees may be called upon from time to time to go far beyond their regular work duties during extraordinary “Declared Emergency” situations. In these defined “Declared Emergency” situations, exempt employees working more hours than customary to address community needs may earn additional compensation in accordance with this policy. At all times, exempt employees remain exempt from all Fair Labor Standards Act overtime compensation obligations, hence, **this policy is not to provide overtime compensation but to provide additional compensation for extraordinary efforts in defined emergency situations.**

Exhibit 1 at 1 (emphasis added). The Policy provided for an hourly wage at “straight time” for any hours worked above the forty-hour-per-week threshold. *Id.* at 2. FLSA, by contrast, is 1 ½ times the hour wage. 29 U.S.C. § 201 *et seq.* EC is only authorized during certain declared

emergencies. Exhibit 1 at 2. FLSA overtime eligibility does not turn on a declared emergency. The EC Policy provided for those hours “approved by the Executive Director (or her/his designee).” *Id.* FLSA has different documentation and approval requirements. As Michael Goldman, counsel for the district, succinctly concluded, “Emergency Compensation is not overtime.” Exhibit 6 at ¶ 3(a).

### **3.     *The Board Specifically Intended for Ms. Jollon to Receive EC***

The Board specifically intended for the EC policy to apply to all exempt employees, *including* Ms. Jollon. Ms. Shere Byrd, VP for the SJBPH and a director on the Board from 2011 until present, explained that the “Board intended for the policy to apply to all exempt employees, including the executive director, and this is why the policy does not exclude the executive director and specifically states it is not overtime pay.” Exhibit 3 at ¶ 6; *see also* Exhibit 5 at ¶ 3.

While Ms. Jollon’s employment contract barred FLSA overtime pay, it did not bar additional compensation apart from FLSA overtime pay. Apart from her annual salary, Ms. Jollon’s employment contract expressly permitted additional benefits as determined by her employer, *i.e.*, SJBPH. *See* Exhibit A to Compl. at 2, § 2.2 (“[B]enefits for employees may be amended from time to time by Employer”). EC pay to Ms. Jollon was consistent with her employment agreement and the EC policy passed by her employer, SJBPH.<sup>3</sup>

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<sup>3</sup> The Complaint also suggests impropriety in Ms. Jollon’s request for Rollover Sick Time at the time of her resignation from the SJBHD because, Mr. Weaver contends, such payment is “severance” pay which also was barred by her employment contract. *See* Compl. at ¶¶ A.9-11. This allegation too is false. Colorado law defines any rollover sick pay as wages or compensation. Rollover sick time is not considered “severance” as that term is defined by Colorado law. *See* C.R.S. § 8-4-101(14)(a) and (b) (“Wages or compensation does not include severance pay.”). Mr. Goldman, counsel for SJBPH advised the receiver of the same in his clarification to the Receiver’s Report. *See* Exhibit 6 at ¶ 1. Additionally,

Additionally, the EC Policy required approval of all EC hours *by the Executive Director*. See Exhibit 1 at 2 (“SJBHD will compensate exempt employees for all hours that are approved by the Executive Director (or his/her designee)...”). Until September 2023, there was no policy requiring approval of the Executive Director’s hours. As a matter of fact, however, Ms. Jollon’s hours were submitted to and reviewed by Ms. Lesley Marie, SJBPH’s Finance Director, from the onset of the pandemic until her sudden passing in September 2021. Ms. Jollon’s hours also were tracked by the Payroll Department. Beginning on October 1, 2021, as a result of Ms. Marie’s passing, the Board Chair was added to the approval list for payroll disbursements. Exhibit B to Compl. at 17, ¶ 37.c. The Board Chair received – and had responsibility for reviewing -- all disbursements for payroll including EC. Beginning in February 2023, the Receiver also received and signed off on payroll costs plus requested and received access to review timesheet details.

**D. Ms. Jollon Earned Her Emergency Compensation During the Pandemic**

On or about March 2020, the SJBPH Board declared a public health emergency due to the Covid-19 pandemic, which only recently expired in May 2023. Exhibit 7 at 1 ¶ 5.a. (Affidavit of Ann Bruzzese). Ms. Jollon undertook “extraordinary efforts” to respond to this public health emergency. *Id.* at ¶ 5.b.

The SJBPH Covid response team “was organized and documented using the FEMA standard Incident Command System (ICS) structure which included defined operational periods, incident action plans (IAPs) per period with incident objectives for the period, an ICS org chart

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the Rollover Sick Time was specifically included in the Receiver’s draft wind-down budget so it is incongruous for either Mr. Weaver or the Receiver to claim that it was not authorized.

and assigned duties, and incident meeting schedules.” Exhibit 3 at 1-2. Ms. Jollon served as the Incident Commander (IC). The SJBPH has more than 150 IAPs for the period of the pandemic. An example of one such exhibit for the week of December 5-11, 2020 is attached. *See* Exhibit 8. As the IAP explains, each week Ms. Jollon, as Executive Director, oversaw the SJBPH staff in carrying out the various functions that were required to monitor, contain and solve issues related to Covid and its community spread. Additionally, detailed notes were kept of the team planning meetings for each week which likewise reflect the job responsibilities for each team member during that week. A “planning meeting recap” for the same week of December 5, 2020 is also attached. *See* Exhibit 9. The IAPs and Meeting Recaps reflect details of the work that Ms. Jollon completed and supervised on a weekly basis.

Among other duties, Ms. Jollon directed and managed SJBPH’s disease surveillance, investigation and control; large-scale community-wide non-pharmaceutical mitigation; community outreach and education; access to healthcare; fatality management; and eventually access to vaccines in this isolated, under-resourced region of our State. With few resources and constantly shifting guidance and information, SJBPH comprehensively built these functions from scratch and secured the materials, personnel, finances and other logistical support to serve SJBPH’s two counties, including their four municipalities, four school districts, two higher education institutions, three hospitals, multiple healthcare providers, residential facilities, law enforcement agencies, and business sectors. As Terryl Peterson, the Treasurer of SJBPH and the Finance Committee Chair of Board, noted:

This astute use of compensation kept our local public health agency from being financially overwhelmed by the COVID response and allowed us to continue to provide the public health services needed by our most vulnerable populations, while

also responding 24 hours a day/-7 days a week to an everchanging pandemic environment *for over 3 years*. Our rural community was among the first in the state to be able to provide community-wide testing and vaccinations because of the extra work done by SJBPH staff.

Exhibit 10 at 1.

As her EC pay reflects, Ms. Jollon often worked 15-hour days during the height of the pandemic. She responded to emails at all hours of the day and night. She fielded phone calls from various constituents, like schools, hospitals, healthcare workers, businesses, staff, and elected officials until late in the night. She performed this work for her community even while she was subject to harassment at her home.

Ms. Jollon’s extraordinary work on behalf of SJBPH gained national recognition. In 2021, upon the nomination of Senator Michael Bennett, Ms. Jollon received the American Medical Association’s Nathan Davis Award for Outstanding Government Service in 2021 “in the ‘Career public servant at the local level’ category for her exemplary work as a leader in public health during pandemic response.”<sup>4</sup> In 2022, she was named as a Gates Family Foundation Harvard Fellow, which provides an opportunity for Colorado’s top civic leaders to study together along with a national cohort of elected, appointed and career senior government executives and officials at the Harvard Kennedy School of Government

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<sup>4</sup> “SJBPH executive director attends ceremony for American Medical Association Nathan Davis Award” (Feb. 16, 2023) (<https://sjbpublichealth.org/CivicAlerts.aspx?AID=55>).



**E. The Board Knew Of, and Approved, Ms. Jollon's EC**

Contrary to the bald assertions in the Complaint, the SJBPH Board knew about and approved Ms. Jollon's Emergency Compensation. *Cf.* Compl. at ¶ B.1. (Ms. Jollon "enter[ed] and approv[ed] her own time related to EC Pay" and was "essentially approving a significant pay raise for herself without the approval of the SJBPH Board of Health"); *id.* at ¶ B.2. (she "essentially paid herself an extra \$215,745.00 from March 2020 through May 2023 without approval of the SJBPH Board of Health" and "entered and approved her own time for EC Pay without any oversight or even knowledge of the SJBPH Board of Health").

Ann Bruzzese served as legal counsel for SJBPH from 2010 until 2017 and as a director on the Board from 2017 until November 2021. *See* Exhibit 7 at ¶ 1 (Bruzzese Aff.). Ms. Bruzzese reports that the "Board received information, presentations and reports about the extraordinary efforts required of SJBPH staff, and *specifically Liane Jollon*, to respond to the pandemic health emergency." *Id.* at ¶ 8(b) (emphasis added). She "knew and found it reasonable that exempt employees were paid emergency duty compensation per Board approved policy for work related to the pandemic emergency." *Id.* at ¶ 8(c). She recalls that the "Board of Health received and discussed Finance Reports in 2020 which reports highlighted the unanticipated and unbudgeted personnel costs and emergency duty compensation resulting from the pandemic." *Id.* at ¶ 8(d). Further, the "Board approved the 2021 budget which included an increase in personnel costs over prior budget years for anticipated pandemic response work, overtime and emergency duty compensation." *Id.* at ¶ 8(e).

Ms. Bruzzese's recollections of the Board mirror those of other board directors who served on the Board during the relevant time period, specifically, Shere Byrd, a director from

2011 until the present, Exhibit 7 at 2; Gwen Lachelt, an elected Commissioner on the Board of County Commissioners for La Plata County, who served from 2015 through 2020, *id.* at 4; Robert Ledger, a director from 2010 until the present, *id.* at 6; and Terryl Peterson, a director from 2016 until the present, *id.* at 8.

Additionally, Fredrick Zink and Associates conducted independent audits of SJBPH during the pandemic, including for the Coronavirus Relief Fund in 2020, and the Epidemiology and Laboratory Capacity for Infectious Diseases Program in 2021, because significant portions of the SJBPH funding for pandemic relief came from these and other federal sources. The audit sampled timekeeping entries, payroll records, accounting entries and invoicing for these two programs. According to the auditor’s opinion:

“San Juan Basin Public Health complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended December 31, 2020 [2021].”

Exhibit B to Compl. at 14, ¶ 29.d. (bracketed date in original). The above-mentioned Board directors also report that they were informed during a Board meeting in July 2021 that the auditor concluded that SJBPH “complied with the requirements of the federal Coronavirus Relief fund.” *E.g.*, Exhibit 7 at 3 ¶ 7.f.

#### **F. The Political Divergence of the Counties and Dissolution of SJBPH**

Sadly, not all constituents in Archuleta and La Plata Counties supported Ms. Jollon or the Covid health-related mandates which she was charged with implementing. Despite her success in rolling out community-wide testing and vaccinations, many objected to the state-mandated mask-mandates or the restrictions on business or school operations. These protests targeted Ms.

Jollon. Numerous protesters petitioned Ms. Jollon’s residence and harassed her there.<sup>5</sup> She had to be escorted from her home. She, and SJBPH generally, suffered vile public commentary. *See* Exhibit 11 (collection of social media posts referring to SJBPH workers as “brainwashed assholes,” “murderers,” “retards,” “criminals,” “clueless zombies,” “satanic mthfr’s,” “pedoes and hoes”). Community members endorsed opinions like PCR tests are carcinogenic, Covid shots kill children, kids who wear masks are prone to suicide, and that the SJBPH workers were “blindly following orders, just like the nazis did in Germany . . . . You’re (sic) time is coming.” *Id.* at 11.

**1. *Appointment of a Receiver to Dissolve SJBPH***

As a consequence of the divergent opinions regarding public health measures, the Archuleta and La Plata Boards of County Commissioners voted to withdraw from SJBPH effective December 31, 2023, and to thereafter operate their own respective public health agencies. *See generally* Exhibit 12 at ¶¶ 12-13. The Board then voted to institute a receiver action to manage the winding up of their affairs and dissolution of SJBPH. *Id.* ¶¶ 15-16. A receiver was appointed in February of this year. *Id.* at 6 ¶ 1.

**2. *Mr. Weaver Requests the Receiver to Investigate Ms. Jollon***

In May 2023, Mr. Weaver, acting as county attorney for Archuleta County, and others, asked the Receiver to investigate the payment of emergency compensation to exempt employees, “especially in light of the amount of compensation paid to the executive director and other top

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<sup>5</sup> *See*, n.1, *supra*.

executives at SJBPH.” Exhibit B to Compl. at 24. He claimed that two Archuleta County Commissioners who served on the Board did not “recall any decision or even discussion by the [Board] of the payment of emergency compensation to certain employees . . . during the Covid-19 declared emergency” even though “they would most definitely” have recalled any such discussions. *Id.*

### **3. Receiver’s Limited “Investigation”**

Thereafter, the Receiver undertook a limited investigation. She requested and received various documents, including reports from other Board members directly contradicting the purported recollections of the Archuleta Commissioners. These other Board members distinctly recalled having knowledge of, and approving, the Emergency Compensation at issue, as discussed *supra*. See Exhibits 4, 5, and 10. There were no statements contained in her report from Mr. Weaver’s referenced Commissioners.

The Receiver publicly filed her Report, with exhibits, on July 27, 2023. See Exhibit B to Compl. Attached to the report were exhibits demonstrating three facts: (1) Ms. Jollon was entitled to EC, which is not FLSA overtime; (2) Ms. Jollon dedicated “exceptional” efforts to earn such EC; and (3) the Board was aware of and approved of Ms. Jollon’s EC. Although Mr. Weaver attached the Receiver’s Report to the Complaint in this case and those exhibits from it which support his position, he intentionally omitted those exhibits contradicting the contentions in his Complaint.

Notably, the Receiver’s Report reflects an incomplete “review” of the facts. She never interviewed the officers of the Board who declared the public health emergency. She discounted the narratives provided by the La Plata members of the Board who recalled knowledge and

approval of the EC. She ignored the response by the Board's general counsel, Michael Goldman, which explained the differences between FLSA and EC. *See* Exhibit 6 at ¶ 1.

And she focused on the size of the payments to Ms. Jollon as being higher than other employees without accounting for the reality that EC is a function of the size of the original salary, that Ms. Jollon's was the highest in SJBPH because she was the executive director, and that Ms. Jollon as the boss worked far longer hours than many other SJBPH staff members due to her responsibilities. She never once requested to speak with Ms. Jollon herself. Significantly it is far from clear whether the Receiver even had the authority from the La Plata County District Court to undertake the review she did.

#### **4. *August Board Meeting to Consider Receiver's Report***

On August 28, 2023, the Board held a Special Meeting to consider the Receiver's Report. At that public hearing, the Board heard discussion regarding the report and the various responses to it, including from Ms. Bruzzese and others. At the conclusion of the hearing, the Board voted to make a change to the EC Policy to adopt a new plan for having the EC hours of the Board's Executive Director approved by a third party. The Board decided that no other action was appropriate, including that it did not authorize the Receiver to pursue any further investigation or action against Ms. Jollon. *See* Exhibit 13 at 2-3 (Agenda).<sup>6</sup>

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<sup>6</sup> On September 28, 2023, SJBPH considered and approved changes to the EC Policy, which added new requirements for the Executive Director's emergency compensation to be approved by an officer of the Board, among other things. *See* Exhibit 14 (Approval of the Revised SJBPH Emergency Compensation Policy).

The next day, Mr. Weaver filed this Complaint. Mr. Weaver's Complaint is based entirely on hearsay. He attached the Receiver's report and *some* of its exhibits. Importantly, Mr. Weaver omitted those exhibits which are exculpatory of Ms. Jollon and contradictory to his assertions. His Complaint then continues with his opinions that Ms. Jollon was not entitled to her EC because it is FLSA overtime, that she "paid herself a raise," and that she shut down businesses without authority.

For the same reasons the SJBPH Board rejected Mr. Weaver's claims, this Commission should do so as well.

## **II. MOTION TO DISMISS.**

For the reasons stated above, Mr. Weaver's Complaint is frivolous and groundless. Ms. Jollon respectfully requests that the Court reconsider its prior finding under Rule 5(F) and dismiss the Complaint as frivolous consistent with that Rule.

Additionally, Ms. Jollon requests this Court to dismiss the Complaint for lack of subject matter jurisdiction. Mr. Weaver has the burden of proving the IEC's jurisdiction over his complaint. *See Trinity Broad. of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 930 (Colo. 1993) ("party asserting jurisdiction that bears the burden of establishing that jurisdiction exists").

In 2006, Colorado voters created the IEC as a constitutional body with limited jurisdiction to investigate allegations of government officials' misconduct. *See Colo. Ethics Watch v. Indep. Ethics Comm'n*, 2016 CO 21, ¶ 2. As the Commission recognized, "[t]his case presents an issue of first impression." Order Finding Complaint Non-Frivolous and Directing the Parties to Brief Jurisdiction, *In the Matter of: [Liane] Jollon*, No. 23-23 (IEC Oct. 23, 2023). The Commission has never previously resolved "whether an employee of a district public health

agency involving two or more contiguous counties is a ‘government employee’ under Section 2(1) of Article XXIX” of the Colorado Constitution. *Id.* The Commission should hold Ms. Jollon is not.

As shown below, Ms. Jollon is not subject to IEC jurisdiction as a “government employee” under the Constitution’s plain language. In working for the multi-county SJBPH, she did not work for a “local government” because she did not work for a “county or municipality.” Colo. Const. art. XXIX, § 2(1)-(2). The Commission should dismiss this matter.

Even if the Commission had jurisdiction over Ms. Jollon’s position, it would still lack jurisdiction over most of this Complaint, which is largely untimely and fails to allege a cognizable constitutional violation. This case thus presents three jurisdictional problems. Under the first, the Commission should dismiss this case entirely. The second and third jurisdictional problems require, at least, temporal and legal narrowing, respectively.

**A. Ms. Jollon is not a “government employee” under Article XXIX.**

Mr. Weaver’s Complaint alleges misconduct in Ms. Jollon’s service as the Executive Director for SJBPH, a multi-county district public health agency. Compl. ¶¶ A.1.-6. He mistakenly asserts, “Ms. Jollon qualifies as a ‘government employee’ under Article XXIX, Section 5(3)(a).” Compl. ¶ C.2.

**1. Ms. Jollon does not fall within the constitutional definitions.**

Section 2 of Article XXIX provides the relevant definitions for “this article,” Colo. Const. art. XXIX, § 2, and subsection (1) defines “**Government employee**” to mean “any employee, including independent contractors, of the state executive branch, the state legislative branch, a state agency, a public institution of higher education, or any local government, except a

member of the general assembly or a public officer,” Colo. Const. art. XXIX, § 2(1). Only the “local government” term has even arguable application because Ms. Jollon was not working for the state government or a public institution of higher education. “**Local government**,” under Article XXIX, “means county or municipality.” Colo. Const. art. XXIX, § 2(2). The analysis is straightforward: because Ms. Jollon was not working for a county or municipality, she is not a “government employee” subject to the Commission’s jurisdiction.

The SJBPH is not a county or municipality. When it comes to building out the public health system, Colorado puts counties to a choice: either “maintain a county public health agency” or “participate in a district public health agency.” § 25-1-506(1), C.R.S.; *see also* § 25-1-501(1)(c), C.R.S. (legislative declaration). A district public health agency arises when “[a]ny two or more contiguous counties” decide to establish such an agency “by resolutions of the boards of county commissioners of the respective counties.” § 25-1-506(1), C.R.S. Here, the multi-county SJBPH is a district public health agency. As the Complaint notes, “Archuleta County and La Plata County were two of the original counties that formed SJBPH pursuant to C.R.S. § 25-1-506(1).” Compl. ¶ A.2. Ms. Jollon worked for SJBPH, but SJBPH is not a “local government” because SJBPH is not a “county or municipality.” Colo. Const. art. XXIX, § 2(2). For district public health agencies, each county is “part of” the larger body. § 25-1-501(1)(c), C.R.S.; *see also* Compl. ¶ C.3. (stating that “county governments . . . form a district public health agency”). SJBPH is not a “local government” because it is not a “county or municipality.”

Mr. Weaver argues that the public health statute “makes no differentiation” between the kinds of health agencies and the people who lead them, *id.* ¶ C.2., but the fact that section 25-1-506(1), C.R.S., treats each agency type as an equally valid way for counties to meet their public-



health obligations does not mean that Article XXIX’s definitions apply in the same way to both county and district public health agencies. As shown, the conclusion that Ms. Jollon is not a “government employee” under Article XXIX flows naturally from the constitutional definitions.

**2.     *The Commission’s RTD precedent confirms that SJPBH is not a “local government.”***

The Commission’s decision regarding the Regional Transportation District (“RTD”) confirms Ms. Jollon is not a “government employee.” *See* Letter Ruling 16-05 (IEC, Dec. 19, 2016). RTD sought the Commission’s view as to Article XXIX’s applicability, and the Commission clarified the status of RTD’s employees. *Id.* at 2. “The RTD is not a ‘local government,’ as that term is defined in Article XXIX,” the Commission explained, “because the RTD is neither a county nor a municipality. The RTD’s employees, directors, and officers are not ‘local government officials’ because the RTD is not a ‘local government’.” *Id.*

This application of definitional terms as written, instead of extending a law’s reach from policy arguments, is the appropriate path. *See, e.g., Sentinel Colo. v. Rodriguez*, 2023 COA 118, ¶¶ 47-51 (declining to award attorney fees to newspaper, which prevailed on its claim that City Council violated Open Meetings Law (OML), because OML’s fee-shifting provision used term “citizen” and the newspaper was not a citizen). Following the plain text of Article XXIX and its RTD precedent, the Commission should declare that it lacks jurisdiction over this Complaint because Ms. Jollon is not a “government employee.”

**3.     *Mr. Weaver’s authorities do not support his position.***

Mr. Weaver’s two supposed contrary authorities do not support his claim for jurisdiction. First, he claims that, in *Johnson v. Jefferson County Board of Health*, 662 P.2d 463, 471 (Colo.

1983), the Colorado Supreme Court “ruled that county and district boards of health are ‘a political subdivision of the state’ and therefore they are not special districts or school districts, both of which are not subject to IEC jurisdiction.” Compl. ¶ C.4. But *Johnson* concerned the authority of a *county* board of health to fire a public health officer, 662 P.2d at 466-71; it did not address *district* public health agencies.

Even if *Johnson* had expressly held what Mr. Weaver claims—that district public health agencies are “political subdivision[s] of the state”—the “political subdivision” point does not link up with the Article XXIX analysis. *Johnson* mentioned political subdivisions to make a general point about agency law: a political subdivision, like “[a] county board of health,” is subservient to the state legislature and thus “may not by rule or regulation abdicate the authority and responsibility delegated to it by the legislature.” *Id.* at 471. This is obvious, and the 1983 *Johnson* decision had nothing to say about Article XXIX, a provision added in 2006.

Mr. Weaver’s reliance on *Johnson* supposes that if something is a “political subdivision,” it must not be a special district or a school district, which he seems to assume are the only exceptions to IEC jurisdiction. Compl. ¶ C.4. He provides no legal support for these logical leaps. Moreover, the RTD case shows this is not the right analysis. Title 32 of the Colorado Revised Statutes concerns “Special Districts,” and the Commission recognized RTD as being both a special district organized under Title 32 and a “political subdivision.” See Letter Ruling 16-05 at 1. The analysis did not turn on those labels. Rather, RTD was “not a ‘local government’ . . . because [it was] neither a county nor a municipality.” *Id.* at 2.

But Mr. Weaver claims, based on his second authority, that “the IEC has already determined that it has jurisdiction to investigate the actions of a public health director.” Compl.

¶ C.5. But the case he relies on involved a *county* public health director and was dismissed for a separate jurisdictional problem. *See* Order of Dismissal, *In the Matter of: Clifford Brown*, No. 20-76, at 1-2 (IEC, Dec. 1, 2021). Whether that respondent’s work as the Custer County public health director brought him within the Commission’s “government employee” jurisdiction did not matter. The allegation there—submitting false academic credentials to secure the position—concerned an earlier period when the respondent sought employment. *Id.* at 1, 3. The forged-application claim was “outside the IEC’s jurisdiction.” *Id.* at 3; *see id.* (concluding alternative claim regarding respondent’s continuation in the position was not a cognizable ethics violation either). The Commission’s resolution of Complaint 20-76—dismissal for an independent jurisdictional defect—provides no support for Mr. Weaver’s argument that jurisdiction is proper here.

As Article XXIX’s plain terms reveal, and as the Commission’s precedent confirms, Ms. Jollon is not a “government employee” because SJBPH is not a “local government.” Based on this jurisdictional defect, the Commission should deem the Complaint frivolous and restrict access to it. *See* Colo. Const. art. XXIX, § 5(3)(b) (“Complaints dismissed as frivolous shall be maintained confidential by the commission.”); IEC Rule of Procedure 2(A)(9) (“‘Frivolous’ . . . includ[es] complaints over which the IEC lacks jurisdiction pursuant to Article XXIX.”). The Commission has no subject matter jurisdiction over Mr. Weaver’s Complaint because Ms. Jollon is not a “government employee.”

**B. The Commission has no jurisdiction over the Complaint’s allegations pre-dating August 29, 2022.**

Mr. Weaver’s earliest allegations date to March 2020, when Ms. Jollon began receiving EC for her work battling Covid. *See* Compl. ¶ A.17.i.; *see id.* p.8 (completing form field, “When did the alleged violation occur,” with “March 2020 through May 2023”). He filed his Complaint with the Commission only on August 29, 2023. *See id.* pp.7-8.

Based on this timing, the Commission lacks subject matter jurisdiction over all the allegations pre-dating August 29, 2022, because Article XXIX expressly limits the Commission to considering conduct “within the preceding twelve months.” Colo. Const. art. XXIX, § 5(3)(a). “This provision essentially sets forth the statute of limitations period for violations under the Amendment.” *Developmental Pathways v. Ritter*, 178 P.3d 524, 534 n.8 (Colo. 2008); *see* Order Regarding Motion to Dismiss, *In the Matter of Michael Coffman*, No. 08-01, at ¶ 4 (IEC Feb. 5, 2009) (“Within Colo. Const. art. XXIX there is a self executing statute of limitations in that the conduct which is alleged to be in violation of state ethics law must be within twelve months of the complaint being filed.”); *see also* Compl. ¶ C.1. (acknowledging twelve-month limitation).

Thus, even assuming Ms. Jollon is properly before the IEC as a “government employee,” the Commission has no constitutional authority to investigate Mr. Weaver’s stale allegations, and it should dismiss all allegations predating August 29, 2022. *See, e.g.*, Findings of Fact and Conclusions of Law, *In the Matter of: John Hickenlooper*, Nos. 18-22 & 18-29, at 1 (IEC Aug. 18, 2020) (“The Commission dismissed certain allegations prior to hearing because they occurred more than one year prior to the filing of the complaint.”).

The Commission must narrow this case to the twelve months before the Complaint was filed, but doing so should lead the Commission to dismiss the case entirely. The Commission must presume Ms. Jollon innocent of the stale allegations it has no power to examine. *See Nelson v. Colorado*, 581 U.S. 128, 135-36 (2017); *Brodhead v. Robinson*, 254 P.2d 857, 860 (Colo. 1953). The gist of Mr. Weaver’s allegation is that Ms. Jollon “essentially paid herself an extra \$215,745.00 from March 2020 to May 2023” because “she entered and approved her own time for EC Pay without any oversight from or even knowledge of the SJBPH Board of Health.” Compl. ¶ B.2. Attached as Exhibit B to Mr. Weaver’s Complaint is the “Receiver’s Report Re: Emergency Compensation Pay Review.”

The Report found Ms. Jollon’s supervisor “was the BOH.” Exhibit B to Compl. at 16-17, ¶ 37.c. The Receiver found that there was no supervisory review or approval of the periodic EC payments made to Ms. Jollon, apparently unaware that until September 2021, Ms. Marie was reviewing and approving all EC disbursements including Ms. Jollon’s. And the Receiver found that “[b]eginning October 1, 2021, the BOH Chair (but not the BOH itself) was added to the approval list for all SJBPH disbursements including payroll.” *Id.* at 17, ¶ 37.c. Thus, even on the facts as alleged by Mr. Weaver, Ms. Jollon’s EC payments after October 1, 2021 (and within the 12 months prior to this Complaint), received approval. Since the Constitution limits the Commission to examining the period after August 29, 2022—i.e., *after* the EC payments received approval even according to the Complaint—this case should be dismissed as frivolous.

**C. The Complaint alleges violations of Section 1 of Article XXIX, but Section 1 does not provide manageable standards for the Commission to enforce.**

Article XXIX empowers the Commission to receive written complaints inquiring whether a covered individual “has failed to comply with this article or any other standards of conduct or reporting requirements as provided by law.” Colo. Const. art. XXIX, § 5(3)(a); *see Gessler v. Smith*, 2018 CO 48, ¶ 26 (interpreting phrase “other standards of conduct . . . as provided by law” as referring “to ethical standards of conduct concerning activities that could allow covered individuals to improperly benefit financially from their public employment” (alterations in original)). The Commission’s Rules of Procedure require the complainant to specify “the section(s) of Article XXIX, statutory standards of conduct, or reporting requirements which the complainant believes were violated.” Rule 5(D)(1).

Mr. Weaver alleges statutory and constitutional violations. Compl. ¶¶ B.1.-2. The alleged statutory violation is of section 24-18-103(1), C.R.S., *id.* ¶ B.1., and the supreme court has held this law “establishes an ethical standard of conduct subject to the IEC’s jurisdiction,” *Gessler*, ¶ 5; *see id.* ¶ 33.

But Mr. Weaver’s alleged constitutional violation relies on Section 1 of Article XXIX, specifically subsections (1)(c) and (d). Compl. ¶ B.2. This section of Article XXIX, titled, “Purpose and findings,” explains why voters enacted the amendment, but it does not establish ethical standards for the Commission to enforce:

(1) The people of the state of Colorado hereby find and declare that:

(a) The conduct of public officers, members of the general assembly, local government officials, and government employees must hold the respect and confidence of the people;

(b) They shall carry out their duties for the benefit of the people of the state;

**(c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;**

**(d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust; and**

(e) To ensure propriety and to preserve public confidence, they must have the benefit of specific standards to guide their conduct, and of a penalty mechanism to enforce those standards.

Colo. Const. art. XXIX, § 1(a)–(e) (emphases added). Section 1 does not establish enforceable standards. Indeed, subsection (e)’s recognition that covered individuals “must have the benefit of specific standards to guide their conduct,” confirms that Section 1 is not the source of those standards.

“It is established law that if statutory provisions by their own text indicate they are not operative, a court should not give them such effect.” *Bear Valley Mut. Water Co. v. Salazar*, No. SACV 11-01263-JVS, 2012 WL 5353353, at \*9 (C.D. Cal. Oct. 17, 2012), *aff’d sub nom. Bear Valley Mut. Water Co. v. Jewell*, 790 F.3d 977 (9th Cir. 2015); *see id.* (noting as examples “‘whereas’ clauses, so-called ‘preambles,’ and ‘sense of congress’ statements” and concluding that statutory section titled “Congressional findings and declaration of purposes and policy” was “a non-operative statement of general policy”); *In re Universal Serv. Fund Tel. Billing Prac. Litig.*, 619 F.3d 1188, 1215 (10th Cir. 2010) (noting, in context of New York contract law, “The enforceability of prefatory language depends on whether it serves an operative purpose. In general, prefatory language merely provides context to explain the purpose of the agreement.”);

*People v. Lepik*, 629 P.2d 1080, 1083 (Colo. 1981) (declining to view legislative declaration as applicable limitation); *People In Int. of T.B.*, 2016 COA 151M, ¶ 43 (concluding prefatory language could not alter law’s elements), *aff’d*, 2019 CO 53; *People v. Komar*, 2015 COA 171M, ¶ 61 (faulting defendant for attacking legislative declaration, which had not enhanced his sentence since it was “an explanation of the General Assembly’s rationale for adopting” the law); *see also D.C. v. Heller*, 554 U.S. 570, 578 (2008) (explaining that, apart from clarifying function, “a prefatory clause does not limit or expand the scope of the operative clause”); *Yazoo & Mississippi Valley R. Co. v. Thomas*, 132 U.S. 174, 188 (1889) (similar).

Indeed, the Commission has found certain legal provisions unenforceable. *See, e.g.*, Findings of Fact and Conclusions of Law, *Giehl v. Starr, et al.*, Nos. 15-31, 15-32, 15-33, & 15-34, at 4 (IEC Sept. 13, 2016) (“The Commission finds there was no violation of C.R.S. § 24-18-105(3). This provision is for guidance only, and does not constitute prohibited conduct.”).

The Commission has also recognized that Section 1 is not part of Article XXIX’s core. Because Article XXIX does “not apply to home rule counties or home rule municipalities that have . . . address[ed] the matters covered by this article,” Colo. Const. art. XXIX, § 7, the Commission has considered what it means for a home rule entity to “address the matters covered by” Article XXIX. The Commission has said, “There are four main components of Article XXIX,” but Section 1 is not among them:

- (1) a gift ban (Colo. Const. art. XXIX, § 3);
- (2) a complaint and investigative process (*id.* at § 5(3)(a), (c));
- (3) a penalty provision or discipline process (*id.* at §§ 5(3)(d), (6)); and
- (4) an independent decisionmaker (*id.* at § 5(1), (2)).



Draft Position Statement 23-    , at 2, available at <https://iec.colorado.gov/draft-position-statement-home-rule-cities-and-counties>. This stance is not tentative or limited to the Draft Position Statement because the Commission has taken the same view in its decisional law. *See, e.g., Findings of Fact and Conclusions of Law, In the Matter of: Jule Cozad*, No. 17-28, at 8 (IEC June 18, 2021).

It does not appear that the Commission has ever found a violation of Section 1.

- In a 2017 case, an alleged Section 1 violation was scheduled for a hearing, but before the hearing the Commission dismissed the issue without explanation. *See Findings of Fact and Conclusions of Law, In the Matter of Complaint 17-18, Vicki Marble, Respondent*, No. 17-18, at 2 (IEC June 4, 2018).
- In 2019, a complaint alleged a violation of Section 1(d), *see* Complaint, No. 19-25, at 1 (IEC Nov. 20, 2019), but in the end the Commission did not adjudicate a freestanding Section 1 claim, *see* Findings of Fact and Conclusions of Law, *In the Matter of: Robbie LeValley*, No. 19-25 (IEC Aug. 6, 2021).
- More recent complaints have taken to alleging violations of Section 1, *see, e.g.,* Nos. 21-25, 21-30, 21-31, 22-07, and 23-17, but the responses do not appear to address the enforceability of Section 1, and the Commission has not resolved any of these cases.

As the Commission’s practice strongly suggests, Section 1 is not an administrable standard the IEC has jurisdiction to enforce. In particular, the Commission may not sanction covered individuals for conduct that did not violate the public trust but that nevertheless “create[d] a justifiable impression among members of the public” that such a violation occurred. Colo. Const. art. XXIX, § 1(1)(c). This would leave the Commission to draw and enforce a hazy buffer around actual violations. But “[i]n our constitutional order, a vague law is no law at all.” *United States v. Davis*, 139 S. Ct. 2319, 2323 (2019). Applying Section 1’s purpose declarations as standards would allow the Commission to imagine what is justifiable in other people’s minds

and then enforce that understanding without specific notice to respondents. “Vague laws contravene the first essential of due process of law that [the standard] must give people of common intelligence fair notice of what the law demands of them.” *Id.* at 2325 (quotations omitted); *Sessions v. Dimaya*, 138 S. Ct. 1204, 1223-24 (2018) (Gorsuch, J., concurring in part and concurring in the judgment) (explaining vague laws “invite the exercise of arbitrary power . . . by leaving the people in the dark about what the law demands and allowing prosecutors and courts to make it up”). The Complaint’s constitutional allegations should be dismissed for lack of jurisdiction, but if the Commission disagrees, Ms. Jollon contends enforcement of the vague Section 1 violates federal due process. *See* U.S. Const. amends. V, XIV. The prefatory language of Section 1 is not enforceable.

Because the Commission lacks jurisdiction over this Complaint, it should dismiss this case. Alternatively, it should narrow the timeframe to what occurred after August 29, 2022, and limit the legal issue to the statutory allegation.

### **CONCLUSION**

The Commission should dismiss this Complaint. It is frivolous on the merits, and the Commission lacks subject matter jurisdiction over Ms. Jollon. At the very least, the Commission should narrow the temporal and legal issues.

*To the best of my knowledge, information and belief, all statements set out in this Response are true.*

Dated: December 22, 2023

Respectfully submitted,

s/ Laura A. Menninger

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### **CERTIFICATE OF SERVICE**

I certify that on December 22, 2023, I served via email a copy of *Mrs. Jollon's Response* upon the following:

Todd Weaver  
Archuleta County Attorney  
tweaver@archuletacounty.org

s/ Savanna Benninger

Legal Assistant

SAN • JUAN • BASIN  
**HEALTH**  
DEPARTMENT

## AGENDA DOCUMENTATION

*Meeting Date: August 27, 2015*

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**SUBJECT:** Emergency Duty Compensation for Exempt Employees

DATE FILED: July 27, 2023 1:42 PM

FILING ID: 201E184F31411

CASE NUMBER: 2023CV30018

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**PRESENTER:**

**OUTCOME REQUESTED:**      X   Decision                             Report

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**PURPOSE/BACKGROUND**

The purpose of this policy is to recognize that exempt employees may be called upon from time to time to go far beyond their regular work duties during extraordinary “Declared Emergency” situations. In these defined “Declared Emergency” situations, exempt employees working more hours than customary to address community needs may earn additional compensation in accordance with this policy. At all times, exempt employees remain exempt from all Fair Labor Standards Act overtime compensation obligations; hence, this policy is not to provide overtime compensation but to provide additional compensation for extraordinary efforts in defined emergency situations.

*Attachments:*    Employer Policy: Emergency Duty Compensation for Exempt Employees

**FISCAL IMPACT**

Additional pay for exempt employees during a “Declared Emergency”. SJBHD will seek funding from outside sources, when available.

**STAFF RECOMMENDATION**

Adopt attached policy with the intent that it be retroactive to the beginning declaration of the current emergency “Gold King Mine Spill”.

# **SAN JUAN BASIN HEALTH**

## **EMPLOYER POLICY: EMERGENCY DUTY COMPENSATION FOR EXEMPT EMPLOYEES**

### **1. Purpose**

The purpose of this policy is to recognize that exempt employees may be called upon from time to time to go far beyond their regular work duties during extraordinary "Declared Emergency" situations. In these defined "Declared Emergency" situations, exempt employees working more hours than customary to address community needs may earn additional compensation in accordance with this policy. At all times, exempt employees remain exempt from all Fair Labor Standards Act overtime compensation obligations; hence, this policy is not to provide overtime compensation but to provide additional compensation for extraordinary efforts in defined emergency situations.

### **2. Policy Statement**

The SJBHD Board of Health (BOH) believes that it is reasonable to pay exempt staff additional compensation during "Declared Emergency" situations in accordance with this policy. For the specified duration of defined "Declared Emergencies", SJBHD will compensate exempt employees for all hours that are approved by the Executive Director (or her/his designee) and worked over the specified threshold of forty (40) hours per workweek; such additional compensation shall equal the employee's salary converted to a straight time hourly wage.

SJBHD employees shall maintain accurate records of all hours worked during the emergency. For purposes of this policy, the "Declared Emergency" will be deemed as terminated (even if there are continuing obligations or post-emergency actions) upon a determination by SJBHD BOH and/or the SJBHD Executive Director.

### **3. Definitions**

"Declared Emergency" means an emergent or emergency situation formally declared as a disaster or emergency by the SJBHD BOH, SJBHD Executive Director, or the La Plata or Archuleta County Manager and/or the Board of County Commissioners.

# 2017 ANNUAL REPORT

**Celebrating 70 years of  
public health**





From the Executive Director



Liane Jollon, RN

WELCOME TO SAN JUAN BASIN PUBLIC HEALTH’S 2017 ANNUAL REPORT

The year held many achievements and successes, some shared herein through the voices that truly matter – the individuals who use San Juan Basin Public Health (SJBPH) services. In 2017, we reflected on our history, as the agency approached its 70-year anniversary. What amazed us as we reviewed SJBPH’s history were the parallels in the services that the agency provided over the decades with those provided today. The agency has consistently adapted to the public health needs of the day and shifted the services it provides accordingly.

The examination of parallels between past and current day services provided by SJBPH reveals an agency that has been both responsive to the public health needs of local residents as well as forward-thinking in its focus on prevention. The programs and services provided by SJBPH reflect both the traditional public health needs such as immunizations and restaurant inspections, as well as those in response to the modern-day health challenges such as positive youth development and suicide prevention programs, both areas of priority for SJBPH in 2017.

The agency’s current-day mission is to protect human and environmental health and inspire well-being in the communities we serve. Interestingly, this could have served as the mission at the agency’s inception 70 years ago, and more than likely will be able to appropriately represent the work of the agency in decades to come. Much of the focus of public health work has withstood the test of time; to help all individuals reach their highest potential of health.

I invite you to learn more about our agency and how you can reach your highest potential of health by visiting our website at [sjbpublichealth.org](http://sjbpublichealth.org).

To another 70 years,  
*Liane Jollon*

**Mission**

To protect human and environmental health and inspire well-being in our community.

**Vision**

We are leaders to achieve healthy communities and health equity.



Ashley French-Holt (right), Nurse-Family Partnership Nurse, visiting with clients enrolled in the Nurse-Family Partnership program.

Our Staff

“SJBPH has been a huge asset to the community. Everybody that works at SJBPH has been amazing every time we come in.”

Nurse-Family Partnership Client

“We have peace of mind knowing that the people working with our daughter are qualified. They’ve really improved the quality of life for our family.”

Options for Long Term Care Client

“She got what she needed, and if we hadn’t had help from the insurance program, she may not be here.”

Health Insurance Client





1947

THEN

2017

NOW



In 1947, state law reorganizes the State Health Department and authorizes local public health efforts; San Juan Basin Health Unit was formed to serve Archuleta, Dolores, La Plata, Montezuma, and San Juan counties.



An early priority of the agency was food safety. The first food handler's class was offered to restaurant employees in June 1947 and safety codes for Durango restaurants were established in November 1947. In the following year, 92 restaurants, 30 dairy barns, and eight milk processing plants were inspected.



Testing at the end of the 1947-48 school year reveals that one in three local high school students test positive for tuberculosis (TB).



San Juan Basin Health Unit's first year budget was proposed at \$50,100, with around eight part-time staff hired. Most staff positions were home health nurses, as well as one sanitarian who conducted restaurant, dairy barn, and milk processing plant inspections.



Over 1,000 vaccine injections given to local schoolchildren in 1947 for diphtheria, whooping cough, tetanus, and smallpox. Polio and influenza were common and feared diseases.



By 1948, San Juan Basin Health Unit was advocating for a public central water filtration plant and sewage disposal for Durango. Plans were not set for a treatment plant in the city of Durango until 1955.

68,904  
RESIDENTS

SJBPH now serves Archuleta and La Plata counties, with services provided to other counties regionally on a contractual basis. The agency serves over 68,000 residents and covers an area over 3,000 square miles in two county-based office locations.

FIVE  
CLASSES

SJBPH no longer inspects dairy barns or milk processing plants, but over 260 retail food inspections were conducted by the agency in 2017. SJBPH also held five food handling and safety classes for local restaurant employees, and inspected the health safety of childcare centers in Archuleta, La Plata, and San Juan counties.

TWO CASES  
IN 10 YEARS

Due to the advancement of public health and medical efforts to treat and control the spread of TB, SJBPH has monitored only two cases of active TB in the last ten years - one in Archuleta County and one in La Plata County. SJBPH also monitors and treats individuals who have a non-active form of TB, preventing future infection and outbreaks. In 2017, the agency monitored an active TB case, a hantavirus case, and other communicable disease cases as part of its efforts to protect public health.

\$14  
ROI

SJBPH's current annual budget is \$5,504,683. The agency provides over 30 public health programs, and employs over 70 full- and part-time staff in two office locations in Durango and Pagosa Springs. A recent study found that for every dollar spent for public health interventions, the return on investment (ROI) was \$14, demonstrating that local and national public health interventions are highly cost-saving.

1,900  
VACCINES

Thankfully, many of the diseases experienced by schoolchildren in earlier decades have largely been eliminated through effective vaccination programs. Maintaining high vaccination levels is key to keeping children and adults healthy. SJBPH provided over 1,900 vaccines to children and adults in 2017.

254 OWTs  
INSPECTIONS

While SJBPH does not monitor municipal water or waste systems, the agency is the regulatory authority for on-site wastewater treatment system (OWTS or septic) permitting and inspections in Archuleta, La Plata, and San Juan counties. Additionally, SJBPH provides water bacteriology testing for La Plata County residents. SJBPH's Surface and Drinking Water program provides surveillance of ground water and surface water conditions in La Plata and San Juan counties.





## SJBPH ADAPTS TO THE NEEDS OF OUR LOCAL COMMUNITY

In any year we may respond to the needs of our clients by adding, discontinuing, and/or revamping the programs we offer in the interest of providing the most relevant and needed public health services. In 2017, the following changes were made:

- What was formerly known as Health, Policy, and Systems (HPS) is now Thriving Youth Programs (TYP). TYP's focus is on increasing the overall health and well-being of local youth. TYP programs focus on tobacco and substance use prevention, suicide prevention, increasing social connectedness, empowerment, and youth connectedness to their community. TYP started off 2017 with building key leader and stakeholder support for its Communities That Care (CTC) process to ensure our local leaders and providers are knowledgeable and supportive around upstream strategies used to prevent youth problem behaviors.
- TYP also saw the development of the State Innovation Model (SIM) Suicide Prevention Collaborative which uses the Collective Impact model to bring together local initiatives, agencies, and community members to engage in a unified effort to reduce suicide mortality rates across Archuleta, La Plata, and San Juan counties. SJBPH initiated this community-based suicide prevention effort in May 2017 with a Suicide Prevention Community Summit in Durango, and over 700 community members attended. From this, SJBPH launched a Collective Impact initiative with a wide range of cross-sector traditional and non-traditional partners. A number of workgroups were convened and short-term strategies were implemented to decrease mental illness stigma and to increase suicide awareness and intervention.
- SJBPH received funding from the Colorado Department of Public Health and Environment (CDPHE) to provide radon education workshops, in conjunction with Colorado State University Extension Office, for home and business owners interested in reducing their exposure to radon. Radon testing kits were provided. Additionally, SJBPH is launching a radon awareness campaign for regional distribution.
- SJBPH launched its every-five-year Community Health Assessment in 2017, which will result in a Public Health Improvement Plan to be released in 2018.

### Suicide Prevention Collaborative

We believe in supporting all individuals to thrive and live with a sense of well-being through school, family, community, faith, and beyond. Together we are striving to prevent mental health challenges, bring awareness to the issue of suicide, and connect those who are struggling to helpful resources.

For every suicide completion in Colorado, there are 25 attempts.



Kate Jones, Thriving Youth Programs Supervisor, and April McCue, Prevention Coalition Coordinator, at a youth engagement event with community partner Breeah Kinsella, Coalition Coordinator of Celebrating Healthy Communities.

### Health Protection

The Health Protection Division protects human and environmental health through regulation of on-site wastewater systems, water quality testing, inspections of retail food establishments and childcare centers, and preventing the spread of communicable diseases. The Health Protection Division also includes emergency response and preparedness programming.



### Health Prevention

The Health Prevention Division protects human and environmental health by providing services through its immunization and sexual health clinics, promoting routine health screenings for breast and cervical cancer, promoting proper nutrition and health for infants, children and adults, providing family planning services, and providing support and services for both moms and babies through pregnancy and early childhood.



### Health Promotion

The Health Promotion Division supports community members to live healthy, high-quality lives. We emphasize serving individuals through insurance enrollment, linking clients to available resources in the community, and information sharing across providers. The Health Promotion team also works with partners across our two counties to positively impact community norms and support all aspects of a person's health, including mental health.





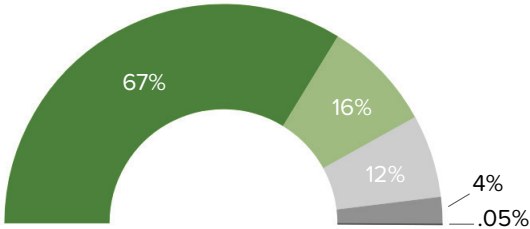
# Financial Statement

Statement of revenue, expenditures, and changes in fund balance for the year ended Dec. 31, 2017.

## REVENUES

Intergovernmental	67.24%	\$3,775,704	
Fees for services	16.47%	924,728	
Other	12.17%	683,422	
Grants	4.06%	228,229	
Interest income	0.05%	2,847	

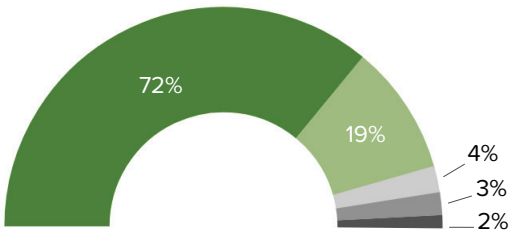
**Total revenues** **\$5,614,930**



## EXPENDITURES

Salaries and benefits	71.76%	\$3,912,871	
Operating	19.2%	1,047,069	
Contract services	4.03%	219,973	
Travel	3.11%	169,758	
Capital outlay	1.89%	103,059	

**Total expenditures** **\$5,452,730**



**Net change in fund balance** **\$162,200**

## Service Area

SJBPH is a local public health agency in southwest Colorado, serving all residents of Archuleta and La Plata counties.

In 2017, Archuleta County’s population was **13,315** and La Plata County’s population was **55,589** for a total base of **68,904** residents.



## Board of Health

Bob Ledger  
**Chair**  
Ann Bruzzese  
**Vice Chair**

Gwen Lachelt  
Karin Daniels  
Michael Whiting  
Shere Byrd  
Terry Peterson



## Office Locations

**Durango**  
281 Sawyer Drive, Suite 300  
Durango, CO 81303  
(970) 247-5702

**Pagosa Springs**  
502 S 8th Street  
Pagosa Springs, CO 81147  
(970) 264-2409



## MEMORANDUM

May 26, 2023

**To:** Thomas Plumb, Bellann Raile, Receivers for San Juan Basin Public Health

DATE FILED: July 27, 2023 1:42 PM  
FILING ID: 201E184F31411  
CASE NUMBER: 2023CV30018

**From:** Shere Byrd, Vice President, San Juan Basin Board of Health

**Re:** Emergency Compensation

In response to questions about Emergency Compensation (EC) at San Juan Basin Public Health (SJBPH) during the COVID pandemic, I offer the following history and specifically answer the questions posed by your legal counsel.

The Gold King Mine spill into the Animas River in 2015 tested the emergency resources and response of SJBPH. At that time, they had no ability to compensate exempt employees for emergency services over and above their job descriptions. To address this inadequacy in the system, SJBPH researched methods to compensate exempt staff for extraordinary workload in an emergency. SJBPH drafted its policy consistent with what is typical "Emergency Compensation" policy for a U.S. local governmental entity to comply with requirements of FEMA, HHS, or other federal agencies to compensate exempt employees for the local governmental emergency response. Consistent with federal policy, activation of EC is not contingent on a federal reimbursement and applies to all classes of employee. The Board of Health adopted this policy on August 27, 2015, and again re-approved the policy on June 27, 2019.

SJBPH's Emergency Compensation policy was tested in June 2018, during the 416 Fire, which required a weeks' long coordinated emergency response that engaged SJBPH staff time for "Emergency Work" above and beyond their normal work. As a result of the policy that was in place, SJBPH staff received EC for the work they performed during this emergency, and 100% of SJBPH costs for public health services and expertise related to the fire were reimbursed by the State through federal funds. The Board of Health was aware of the process and supportive of EC pay for staff.

At the start of the COVID pandemic, there were no state or federal funds available for the initial COVID response. In addition to the BOH adopted Emergency Compensation policy, SJBPH's Board adopted financial policies, recommending 3% of the annual operating budget to be assigned yearly into the "Emergency" fund balance line in order to cover initial response costs, including EC, in the event of an emergency. Additionally at the onset of the pandemic, Chuck Stevens, La Plata County manager, who was aware at the time of SJBPH's EC policy, contacted SJBPH and offered additional county funding to ensure that SJBPH was in a position to meet response costs including increased staffing costs. In May 2020, Congress passed the CARES act and subsequently Governor Polis used emergency powers to create the Corona Virus Relief Fund (CVRF) which allowed the state to use CARES to reimburse local governments, such as SJBPH, for response activities retroactively thru March 1, 2020. Therefore, SJBPH was able to recoup initial response costs and replenish the "emergency" fund balance, and we believe the additional support LPC provided to SJBPH early in the response was also funded through the LP County's CARES/CRVF allocation.

SJBPH's COVID response team was organized and documented using the FEMA standard Incident Command System (ICS) structure which included defined operational periods, incident action plans (IAPs) per period with incident objectives for the period, an ICS org chart and assigned duties, and

incident meeting schedules. Forms were filled out daily by the ICS staff in order to track hours and activities that aligned with the IAP. All hours spent outside of regular job duties, that addressed the emergency response plan, were accounted for. SJBPH's independent auditors specifically tested CRVF for the A133 Single Audit (2021 budget year) and therefore also tested personnel policies, record-keeping, timesheets, paystubs, and the Executive Director's contract for compliance with CRVF and had no findings related to these.

Beginning in 2022, SJBPH adopted new practices related to Pandemic Response in order to demonstrate that emergency response activities were carried out within the agency's current org chart, rather than through the ICS org chart. During the COVID pandemic, key management staff were working from 7am to 7pm and beyond, 6-7 days a week, to carry out one of the best COVID public health responses in the State of Colorado. This was done by staff working above and beyond their 40 hour per week requirements, with appropriate emergency compensation, using an approach and policy that had full approval of the Board (including Board members who were county commissioners from LaPlata and Archuleta counties). This is probably why the outcomes in LaPlata and Archuleta Counties were among the best in the State. Again, the Board of Health was fully informed of additional compensation to staff at monthly public Board meetings and was in full support. Finance committee meetings always included reporting on dollars spent in response to the COVID emergency. No one expected the emergency to last for over 3 years, and staff time, while diminished in addressing the COVID emergency response in 2023, has continued as long as the emergency has been in place.

Specific questions from the Receiver's legal counsel are from an email to Michael Goldman, legal counsel for SJBPH on May 23, 2023.

1. *We need to know the background on this "EC" policy – BACKGROUND HAS BEEN PROVIDED.,*
2. *whether formally approved by the BOH and known to the public and the Counties – FORMALLY APPROVED BY THE BOARD ON Aug. 27, 2015 IN A PUBLIC MEETING WITH COUNTY COMMISSIONERS REPRESENTING COUNTIES PRESENT AND VOTING IN APPROVAL. The BOH updated the Employment Policies on June 26, 2019 incorporating the Declared Emergencies policy.*
3. *was this "EC" program monitored, and if so, how and by whom – COSTS ASSOCIATED WITH THE EMERGENCY RESPONSE WERE REPORTED TO FINANCE COMMITTEE AND BOARD MONTHLY;*
4. *what is/was the funding source for this program – FUNDING FOR COVID EMERGENCY INITIALLY FROM SJBPH's Emergency Fund Balance, LATER FUNDING FROM FEDERAL AND STATE CARES ACT FUNDING thru Colorado's CVRF, and eventually multiple federal and federal-via-state awards from HHS and CDC for long-term emergency response;*
5. *whether there are any reporting or disclosures required – ALL REPORTING AND DISCLOSURES REQUIRED BY FEMA AND HHS POLICY ARE IN PLACE AND WERE USED. BUDGET ALLOCATIONS FOR EC WERE EXAMINED YEARLY DURING THE AUDIT AND AUDITORS HAD "NO FINDINGS"; and*
6. *whether you would agree that the extra compensation for Ms. Jollon is contrary to §2.1 of her employment agreement: "she is not entitled to overtime pay and/or compensatory time". WE DISAGREE. EMERGENCY RESPONSE PAY IS NOT OVERTIME PAY. IT IS FUNDING SPECIFICALLY FOR WORK DONE TOWARD AN IDENTIFIED AND DECLARED LOCAL/STATE/FEDERAL EMERGENCY AND IS FREQUENTLY COMPENSATED BY FEDERAL SOURCES SO LONG AS EC POLICIES ARE ADOPTED PRIOR TO AN EMERGENCY, AS WAS THE CASE FOR THE 416 FIRE AND COVID-19. THE BOARD INTENDED FOR THE POLICY TO APPLY TO ALL EXEMPT EMPLOYEES, INCLUDING THE EXECUTIVE*

DIRECTOR, AND THIS IS WHY THE POLICY DOES NOT EXCLUDE THE EXECUTIVE DIRECTOR AND SPECIFICALLY STATES IT IS NOT OVERTIME PAY.

- a. *Compensatory time is an arrangement by which eligible employees are entitled to time off in lieu of overtime pay. Per the SJBPH Employment Policies, adopted by the SJBPH BOH, "Exempt Employees do not accrue compensatory time." Neither the Executive Director nor any other SJBPH exempt employee has been granted/provided compensatory time.*
- b. *Per the SJBPH Employment Policies, "For the specified duration of defined "Declared Emergencies," SJBPH will compensate exempt employees for all hours that are approved by the Executive Director (or her/his designee) and worked over the specified threshold of forty (40) hours per workweek; such additional compensation shall equal the employee's salary converted to a straight time hourly wage. **EC is neither overtime pay nor compensatory time.** EC is paid as a straight time hourly wage.*
- c. *Additionally, per the SJBPH Employment Policies, "Exempt employees may be called upon from time to time to go far beyond their regular work duties during extraordinary "Declared Emergency" situations. Even during these times, exempt employees remain exempt from all Fair Labor Standards Act overtime compensation obligations; hence, this policy is not to provide overtime compensation but to provide additional compensation for extraordinary efforts in defined emergency situations." I think we can all agree that the Covid-19 pandemic was an extraordinary "Declared Emergency" situation with public health staff serving as the core emergency responders for the duration of the Public Health Emergency.*
- d. *Emergency compensation ended on May 11 with end of the Federal and subsequently local Public Health Emergency*

For reference on item 6:

FEMA [Labor Policies and Employee/Work-Based Eligibility](#)

## **6.II.A Labor Policies**

FEMA determines the eligibility of overtime, premium pay, and compensatory time costs based on the Applicant's pre-disaster written labor policy, provided the policy:

- Does not include a contingency clause that payment is subject to Federal funding;
- Is applied uniformly regardless of a Presidential declaration; and
- Has set non-discretionary criteria for when the Applicant activates various pay types.

If these requirements are not met, FEMA limits PA funding to the Applicant's non-discretionary, uniformly applied pay rates.

All costs must be reasonable and equitable for the type of work being performed.

## **6.II.B Eligibility Criteria Based on Type of Employee and Work Performed**

FEMA's criteria for reimbursing straight-time labor costs differ depending on the type of employee and whether that employee is performing Emergency Work or Permanent Work.

For Permanent Work, both straight-time and overtime labor costs are eligible for both budgeted and unbudgeted employee hours. For Emergency Work, only overtime labor is eligible for budgeted employee hours. For unbudgeted employees performing Emergency Work, both straight-time and overtime labor are eligible. Table 5. *Emergency Work Labor Eligibility*, indicates different types of budgeted and unbudgeted employees. Overtime is time worked beyond an employee's scheduled working hours as defined by the Applicant's pre-disaster pay policy.

### **1. Reassigned Employees**

The Applicant may assign an employee to perform work that is not part of the employee's normal job. For example, a police officer may clear debris. FEMA provides PA funding based on the reassigned employee's normal pay rate, not the pay level appropriate to the work, because the Applicant's incurred cost is the employee's normal pay rate.

### **2. Reassigned Employees Funded from an External Source**

Straight-time of a permanent employee funded from an external source (such as a grant from a Federal agency or statutorily dedicated funds) is eligible if the employee is reassigned to perform eligible Emergency Work that the external source does not fund. FEMA must confirm that no duplication of funding exists prior to approval.

## 5. Supervisors

Second-level supervisors and above (e.g., commissioners, mayors, department directors, police and fire chiefs) are usually exempt employees. Therefore, overtime costs related to these types of employees are ineligible, unless the Applicant:

- Demonstrates that the employee was directly involved with a specific project;
- Normally charges that individual's time to specific projects regardless of Federal funding; and
- Incurs overtime costs for the employee in accordance with a labor policy that meets the criteria in [Chapter 6:II.A. Labor Policies](#).

**Source: FEMA Public Assistance Program and Policy Guide Version 4 (2020).**

[https://www.fema.gov/sites/default/files/documents/pappg-v4-updated-links\\_policy\\_6-1-2020.pdf&usg=AOvVaw3js52CABzEw-vf8z0PI-t0](https://www.fema.gov/sites/default/files/documents/pappg-v4-updated-links_policy_6-1-2020.pdf&usg=AOvVaw3js52CABzEw-vf8z0PI-t0)

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A previous version of this policy guide was likely the basis for SJBPH's EDC policy. CDC award language is much less detailed, presumably because federal agencies envisioned most awards involving "premium pay" or "emergency duty compensation" to come from FEMA and not CDC. However, HHS (CDC's parent department) cost regulations do include the following:

### § 75.430 Compensation—personal services.

(a) **General.** Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in [§ 75.431](#). Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

- (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;
- (2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable;

**Source: Code of Federal Regulations.** <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75/subpart-E/subject-group-ECFR5d90ba314caea08/section-75.430>



## AFFIDAVIT

State of Colorado  
County of La Plata

I, Shere Byrd, of La Plata County, Colorado do hereby swear under oath as follows:

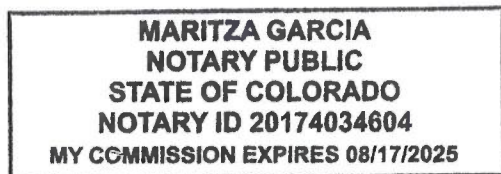
1. I have served as a director on the Board of Health for San Juan Basin Public Health ("SJBPH") from approximately 2011 to present.
2. On or about August 25, 2015, the SJBPH Board of Health held a duly noticed public meeting and I, along with other members of the Board, voted to approve the SJBPH personnel policy providing for emergency duty compensation for exempt employees during a declared emergency.
3. On or about June and July of 2018, as a member of the SJBPH Board, I had knowledge of: (a) the declared emergency in La Plata County known as the *416 Fire*; (b) that SJBPH staff provided response to the *416 Fire* for related smoke and public health issues; and (c) that SJBPH exempt staff were paid pursuant to the approved emergency duty compensation policy.
4. On or about April 25, 2019, the SJBPH Board of Health held a duly noticed public meeting and discussed all SJBPH personnel policies.
5. On or about June 27, 2019, the SJBPH Board of Health held a duly noticed public meeting and I was absent but aware the Board voted to approve/reapprove a slate of SJBPH personnel policies including SJBPH's policy providing for emergency duty compensation for exempt employees during a declared emergency.
6. On or about March of 2020, the SJBPH Board of Health declared a public health emergency due to the COVID-19 pandemic which triggered emergency duty obligations of staff and emergency duty compensation to exempt employees under the existing personnel policy approved by the SJBPH Board of Health.
7. Regarding the public health emergency for the COVID-19 pandemic, I have personal knowledge of the following:
  - a. On or about March 2020, I was on the SJBPH Board and voted to declare the public health emergency in SJBPH's district territory; in addition, other governmental entities and the U.S. government declared an emergency which U.S. declaration did not expire until May of 2023.
  - b. The SJBPH Board received information, presentations and reports about the extraordinary efforts required of SJBPH staff, and specifically of Liane Jollon, to respond to the pandemic public health emergency.
  - c. I served on the SJBPH Board during the entire declared pandemic emergency and I knew and found it reasonable that exempt employees were paid emergency duty compensation per Board approved policy for work related to the pandemic emergency.
  - d. I recall that the SJBPH Board of Health received and discussed Finance Reports in 2020 which reports highlighted the unanticipated and unbudgeted personnel costs and emergency duty compensation resulting from the pandemic.
  - e. The SJBPH Board approved the 2021 budget which included an increase in personnel costs over prior budget years for anticipated pandemic response work, overtime and emergency duty compensation.



- f. At a Board meeting on June 24, 2021, I was present via Zoom when the Board received a draft audit from Michelle Sainio of Fredrick Zink and Associates in which the auditor relayed that SJBPH complied with the requirements of the federal Coronavirus Relief Fund.
8. I have read and agree with *Plaintiff's Clarifications to Receiver's Report Re Emergency Compensation Pay Review* filed on August 4, 2023 by SJBPH attorney Michael A. Goldman of Goldman, Nicholson & Mack, P.C. which document sets forth corrections to the Receiver's report including: (a) documents that establish the Board of Health knew about the emergency duty compensation; (b) sick leave under Colorado law is not severance and generally is categorized as compensation; and (c) the Fair Labor Standards Act provides that straight time pay, such as SJBPH's emergency duty pay, does not meet the definition of overtime pay.
9. On or about August 10, 2023, I served as the chair of the current SJBPH Board at a duly noticed public meeting in which the Receiver's report was discussed and I heard statements of past Board members and provided my statement, consistent with this affidavit, that the Board knew and found reasonable the emergency duty compensation to exempt staff.
10. The above statements are true and correct.

Signature of affiant Shere Byrd, Ph.D: Shere Byrd

SWORN to subscribed before me this 10 day of November, 2023 by Shere Byrd.



Maritza Garcia  
Signature of Notary

My commission expires: 08/17/2025

**Subject:** FW: SJBPH - the policy for emergency exempt compensation includes executive director  
**Date:** Friday, May 26, 2023 at 11:43:22 AM Mountain Daylight Time  
**From:** Michael Goldman  
**To:** Sarah Taylor  
**Attachments:** image001.png

DATE FILED: July 27, 2023 1:42 PM  
FILING ID: 201E184F31411  
CASE NUMBER: 2023CV30018

Michael A. Goldman  
[goldman@gnm-law.com](mailto:goldman@gnm-law.com)

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**From:** Ann Bruzzese <annbruzzese@gmail.com>  
**Date:** Friday, May 26, 2023 at 11:41 AM  
**To:** Michael Goldman <goldman@gnm-law.com>  
**Cc:** "byrd\_s@fortlewis.edu" <byrd\_s@fortlewis.edu>, "terryl@terrylpetersoncfo.com" <terryl@terrylpetersoncfo.com>, "rledger@bresnan.net" <rledger@bresnan.net>, Liane Jollon <LJollon@sjbpublichealth.org>  
**Subject:** SJBPH - the policy for emergency exempt compensation includes executive director

Hi Michael,

Shere Byrd reached out to me this morning regarding the emergency compensation policy for SJBPH exempt employees. I have not heard from Shere so I am communicating to you. Without much detail, it is my

understanding there is a direct assertion or an implication of wrong-doing by the SJBPH Board and by the Executive Director, so I am providing an email to you, as counsel to SJBPH, as such an assertion/insinuation is absolutely wrong

The SJBPH policy titled *Emergency Duty Compensation for Exempt Employees* was approved in 2015 (and I believe reapproved in 2019) by the SJBPH Board of Directors. The SJBPH Board intended for the policy to apply to every exempt employee, without exclusions, including the Executive Director. The SJBPH Board knew about and never objected to emergency duty compensation being paid to the Executive Director – she was rightfully paid it under the policy of approved by the Board.

Other SJBPH Board members might expand on this, but here is a summary of key information:

1. In August 2015, the Gold King Mine (GKM) event was a declared an emergency. During the response, SJBPH staff learned that La Plata County and some other responding entities had emergency response policies addressing exempt employee pay during the duration of the declared emergency, but SJBPH did not.
2. On August 27, 2015, the SJBPH Board approved a policy for emergency compensation to all exempt employees even though the policy could not be retroactively applied for purposes of submitting reimbursement requests to FEMA for the GKM response. The SJBPH Board specifically intended for the Executive Director to be subject to the emergency duty compensation and did not exclude any exempt employee from the policy. Further, the recent assertion that the Executive Director should have been excluded from emergency duty compensation because her employment agreement states no “overtime” is not applicable as the policy approved by the Board specifically states, “this policy is not to provide overtime compensation but to provide additional compensation [to exempt employees] for extraordinary efforts in defined emergency situations.”
3. SJBPH applied the Emergency Compensation policy to all exempt employees, including the Executive Director, in the summer of 2018 for the response to the 416 Fire. As Board members, we were aware of the declared emergency, that employees spent extraordinary time responding to the public health aspect of the emergency, that exempt employees (including the Executive Director) were tracking time and being paid under the Emergency Compensation policy. I also believe that SJBPH staff submitted for and received a reimbursement from the State of CO for emergency response.
4. As a matter of practice starting in about 2011, the SJBPH Board approved all personnel policies. From time to time, the SJBPH Board re-examined and re-approved all personnel policies. My recollection is that the SJBPH Board reapproved all personnel policies (including the policy for Emergency Compensation to Exempt Employees) at some point in 2019.
5. The pandemic was a declared public health emergency that required extraordinary response from SJBPH exempt employees. The SJBPH Board was fully aware of the emergency (most everyone in the world was aware but SJBPH Board actually voted to declare the local emergency). Like the 416 Fire response, the SJBPH Board was aware of the extraordinary response required by all employees especially the exempt employees who we knew were generally working very long hours and often 7 days a week. It is my recollection that in the summer of 2020, the Board discussed the extraordinary expenses for COVID response and the revenue from the CARES Act / Corona-Virus Relief funds to offset the costs of the emergency response, including emergency compensation to all exempt employees.

I have included three other SJBPH Board members who were on the Board at this time (and for whom I have an email address).

My best to you,  
Ann

Ann Bruzzese, SJBPH Board member (2016-2021)

<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b>  Court Address: 1060 E. Second Avenue, Durango, CO 81301, (970) 247-2304	DATE FILED: August 4, 2023 12:48 PM FILING ID: 86C0E158E3714 CASE NUMBER: 2023CV30018  <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<b>PLAINTIFF: SAN JUAN BASIN PUBLIC HEALTH</b>  v.  <b>DEFENDANTS: ARCHULETA COUNTY, COLORADO; LA PLATA COUNTY, COLORADO</b>	
Submitting Attorney: Michael A. Goldman, #17443 Goldman, Nicholson & Mack, P.C. 679 E. 2 <sup>nd</sup> Avenue, Suite C P.O. Box 2270 Durango, CO 81302 Phone: (970) 259-8747 Fax: (970) 259-8790 E-mail: goldman@gnm-law.com	Case Number: 2023CV30018  Div:                      Ctrm:
<b>PLAINTIFF'S CLARIFICATIONS TO RECEIVER'S REPORT RE: EMERGENCY COMPENSATION PAY REVIEW</b>	

COMES NOW plaintiff San Juan Basin Public Health (hereinafter referred to as "Plaintiff" or "SJBPH") by and through its attorneys Goldman, Nicholson & Mack, P.C., by Michael A. Goldman, and without waiving any rights or defenses as to the authority or effect of the Receiver's Report filed on July 27, 2023, submits its Clarifications to Receiver's Report Re: Emergency Compensation Pay Review ("Report") as follows:

1. With regard to the Report, Paragraph 6, whereby the Executive Director contract is referenced specifically setting forth the clause that "Employee acknowledges that she will not be paid severance under any circumstances..." any Rollover sick leave payment would generally fall under wages or compensation, and is not severance as that term is defined in C.R.S. § 8-4-101 (14)(a) and (b).

2. Concerning the Report, Paragraph 12, both County Defendants suggest their respective commissioners on the BOH were unaware of the EC policy:

(a) The Emergency Compensation policy approved by the Board of Health in 2015 was incorporated into Employment Policies in 2019 and again approved by the Board of Health.

(b) Employment Policies were included in the Board Reference Book that was provided to Commissioner Porter-Norton, Commissioner Schaaf, and other Board members on February 27, 2021.

(c) Emergency duty pay for COVID 19 was referenced by name in certain Finance Committee reports as attributing to a negative variance in salaries and benefits as compared to the Adopted Budget and giving the specific dollar amount and percentage of the variance each month. The Finance Committee reports were approved by the Board of Health at the following Board meetings:

- 1) April 30, 2020
- 2) June 4, 2020
- 3) June 25, 2020
- 4) August 27, 2020
- 5) September 24, 2020
- 6) October 29, 2020
- 7) December 10, 2020

3. Paragraph 17 of the Report should be clarified that although the Emergency Compensation policy is not intended to provide overtime compensation to exempt employees, overtime compensation remained for non-exempt employees.

(a) Moreover, Emergency Compensation is not overtime. The Fair Labor Standards Act provides that overtime pay is at a rate not less than one and one-half times the regular rate. 29 U.S.C. § 201 et. seq. Emergency Compensation, as defined by SJBPH's policy, is straight pay over a 40 hour/week. See, Report, Exhibit 6.

(b) Up until 2022, SJBPH work week was 37.5 hours, thus exempt employees were uncompensated for 2.5 hours before being eligible for Emergency Compensation.

4. Paragraph 20 of the Report states that "certain exempt staff began tracking time dedicated to responding to the COVID emergency" while, in fact, all staff working on the COVID response began tracking time dedicated to the COVID emergency as required by federal Incident

Command System (ICS) principles and for documentation for FEMA and other anticipated funders.

5. Paragraph 22 suggests that only oblique references were made to the emergency duty compensation in discussions with the Board of Health or in other documentation. Finance Committee reports approved by the Board of Health (referenced in Paragraph 2 above) clearly refer to “Emergency duty pay for COVID 19”.

6. Concerning the Report at Paragraph 24 wherein it questions the Board of Health’s intention for the Emergency Compensation Policy to apply to the Executive Director, the Executive Director was, and is, an exempt staff member of SJBPH. Moreover, the Executive Director’s contract at Section 2.2 states that Employer shall provide employee with leave, benefits plan and benefits as any other full-time exempt employee of SJBPH.

7. Paragraphs 24 and 37(d) of the Report should clarify and acknowledge that Board of Health Policy # 7 (II)(A.)(iv.) provides that the Chair of the SJBPH Board is “[r]esponsible for external communications on behalf of the Board consistent with the Board’s Communication policy.” See also, Board of Health Policy #11.

8. At Paragraph 25 of the Report the receiver claims that she is unaware of any BOH agenda, minutes or meeting packet specifically referring to emergency compensation for exempt employees or the EC policy during the COVID emergency” despite Finance committee reports consistently included in each Board of Health Director packet. Emergency duty pay for COVID 19 was specifically referenced as attributing to a negative variance in Fund Balance in the:

- (a) March 2020 Finance Committee report/ April 30, 2020 BOH meeting;
- (b) April 2020 Finance Committee report / June 4, 2020 BOH special meeting;
- (c) May 2020 Finance Committee report / June 25, 2020 BOH meeting;
- (d) June 2020 and July 2020 Finance Committee reports / August 27, 2020 BOH meeting;

- (e) August 2020 Finance Committee report / September 24, 2020 BOH meeting;
- (f) September 2020 Finance Committee report / October 29, 2020 BOH meeting;
- (g) October 2020 Finance Committee report / December 10, 2020 BOH meeting.

9. At Paragraph 28 of the Report, section B, in reference to some 214 forms (notably Ms. Jollon) lacked detailed descriptions and included “non-specific and cryptic abbreviations” (e.g., “IC” meaning Incident Command), SJBPH utilized common federal Incident Command System (ICS) acronyms throughout the public health declared emergency.

10. Concerning the assertion in Paragraph 34 of the Report that “EC costs were implied” see Paragraph 8, above.

11. To clarify Paragraph 35 of the Report further, SJBPH continued its locally declared public health emergency until May 11, 2023, to support demobilization and recovery activities and to closely match the state and federally declared Public Health emergencies, which ended May 11, 2023. It is standard practice in the Incident Command System to include demobilization and recovery efforts within a declared emergency. While the locally-declared public health emergency has ended, SJBPH continues to respond to COVID-19 and to receive specific funds related to the COVID response. SJBPH applied its Emergency Compensation Policy uniformly throughout the locally-declared public health emergency per the BOH approved policy.

12. To further clarify and supplement Paragraph 37, subsection b:

- (a) Employees eligible for Emergency compensation were:
  - Documented in the Incident Action Plan (IAP)
  - Working on COVID-19 response
  - Supporting COVID-19 response (e.g. HR staff, Finance and Admin staff who supported the response but did not direct code to COVID-19 programs)

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of August, 2023.

**Goldman, Nicholson & Mack, P.C.**

*Original signature on file at the offices of  
Goldman, Nicholson & Mack, P.C.*

/s/ Michael A. Goldman

Michael A. Goldman

*Attorneys for plaintiff San Juan Basin Public Health*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of August, 2023, a true and correct copy of the foregoing document was electronically served via ICCES, addressed as follows:

Randolph S. Dement, Esq.

[rdement@dementlaw.com](mailto:rdement@dementlaw.com)

*Attorney for Receiver Cordes & Company LLC*

Sheryl Rogers, Esq.

Jessica Mitchell, Esq.

[rogers@lpcattorney.org](mailto:rogers@lpcattorney.org)

[mitchell@lpcattorney.org](mailto:mitchell@lpcattorney.org)

*Attorneys for defendant La Plata County, Colorado*

Todd Weaver, Esq.

[tweaver@archuletacounty.org](mailto:tweaver@archuletacounty.org)

*Attorneys for defendant Archuleta County, Colorado*

*Original signature on file at the offices of  
Goldman, Nicholson & Mack, P.C.*

/s/ Sarah Taylor

Sarah Taylor



## AFFIDAVIT

State of Arizona  
County of Pima

I, Ann Bruzzese, of Pima County, Arizona do hereby swear under oath as follows:

1. I served as legal counsel to San Juan Basin Public Health ("SJBPH") from approximately the summer of 2010 to the fall of 2017.
2. After I stopped serving as legal counsel for SJBPH, I served as a director on the Board of Health for SJBPH from approximately November 2017 until November of 2021.
3. On or about August 25, 2015, the SJBPH Board of Health held a duly noticed public meeting and I was present when the Board voted to approve the SJBPH personnel policy providing for emergency duty compensation for exempt employees during a declared emergency.
4. On or about June and July of 2018, as a member of the SJBPH Board, I had knowledge of: (a) the declared emergency in La Plata County known as the *416 Fire*; (b) that SJBPH staff provided response to the *416 Fire* for related smoke and public health issues; and (c) that SJBPH exempt staff were paid pursuant to the approved emergency duty compensation policy.
5. On or about April 25, 2019, the SJBPH Board of Health held a duly noticed public meeting and discussed all SJBPH personnel policies.
6. On or about June 27, 2019, the SJBPH Board of Health held a duly noticed public meeting and I voted to approve/reapprove a slate of SJBPH personnel policies including SJBPH's policy providing for emergency duty compensation for exempt employees during a declared emergency.
7. On or about March of 2020, the SJBPH Board of Health declared a public health emergency due to the COVID-19 pandemic which triggered emergency duty obligations of staff and emergency duty compensation to exempt employees under the existing personnel policy approved by the SJBPH Board of Health.
8. Regarding the public health emergency for the COVID-19 pandemic, I have personal knowledge of the following:
  - a. On or about March 2020, I was on the SJBPH Board and voted to declare the public health emergency in SJBPH's district territory; in addition, other governmental entities and the U.S. government declared an emergency which U.S. declaration did not expire until May of 2023.
  - b. The SJBPH Board received information, presentations and reports about the extraordinary efforts required of SJBPH staff, and specifically of Liane Jollon, to respond to the pandemic public health emergency.
  - c. I served on the SJBPH Board for a portion of the declared pandemic emergency (the period March 2020 until November 2021) and I knew and found it reasonable that exempt employees were paid emergency duty compensation per Board approved policy for work related to the pandemic emergency.
  - d. I recall that the SJBPH Board of Health received and discussed Finance Reports in 2020 which reports highlighted the unanticipated and unbudgeted personnel costs and emergency duty compensation resulting from the pandemic.

LJ\_EXHIBIT 7



- e. The SJBPB Board approved the 2021 budget which included an increase in personnel costs over prior budget years for anticipated pandemic response work, overtime and emergency duty compensation.
- f. At a Board meeting on June 24, 2021, I was present via Zoom when the Board received a draft audit from Michelle Sainio of Fredrick Zink and Associates in which the auditor relayed that SJBPB complied with the requirements of the federal Coronavirus Relief Fund.

9. I have read and agree with *Plaintiff's Clarifications to Receiver's Report Re Emergency Compensation Pay Review* filed on August 4, 2023 by SJBPB attorney Michael A. Goldman of Goldman, Nicholson & Mack, P.C. which document sets forth corrections to the Receiver's report including: (a) documents that establish the Board of Health knew about the emergency duty compensation; (b) sick leave under Colorado law is not severance and generally is categorized as compensation; and (c) the Fair Labor Standards Act provides that straight time pay, such as SJBPB's emergency duty pay, does not meet the definition of overtime pay.

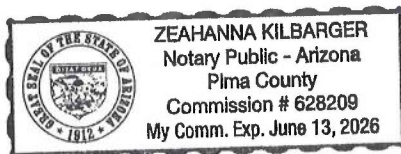
10. On or about August 10, 2023, I attended via Zoom the public meeting of the current SJBPB Board of Health in which the Receiver's report was discussed and I provided my statement, consistent with this affidavit, that the Board knew and found reasonable the emergency duty compensation to exempt staff and that the Receiver never contacted me to ascertain what I knew of the emergency duty compensation.

11. The above statements are true and correct.

Signature of affiant Ann Bruzzese:



SWORN to subscribed before me this 16 day of November, 2023 by Ann Bruzzese.



Signature of Notary

My commission expires: Jun 13 2026

## AFFIDAVIT

State of Colorado  
County of La Plata

I, Shere Byrd, of La Plata County, Colorado do hereby swear under oath as follows:

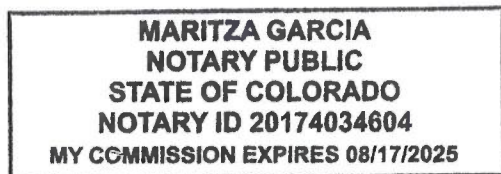
1. I have served as a director on the Board of Health for San Juan Basin Public Health ("SJBPH") from approximately 2011 to present.
2. On or about August 25, 2015, the SJBPH Board of Health held a duly noticed public meeting and I, along with other members of the Board, voted to approve the SJBPH personnel policy providing for emergency duty compensation for exempt employees during a declared emergency.
3. On or about June and July of 2018, as a member of the SJBPH Board, I had knowledge of: (a) the declared emergency in La Plata County known as the *416 Fire*; (b) that SJBPH staff provided response to the *416 Fire* for related smoke and public health issues; and (c) that SJBPH exempt staff were paid pursuant to the approved emergency duty compensation policy.
4. On or about April 25, 2019, the SJBPH Board of Health held a duly noticed public meeting and discussed all SJBPH personnel policies.
5. On or about June 27, 2019, the SJBPH Board of Health held a duly noticed public meeting and I was absent but aware the Board voted to approve/reapprove a slate of SJBPH personnel policies including SJBPH's policy providing for emergency duty compensation for exempt employees during a declared emergency.
6. On or about March of 2020, the SJBPH Board of Health declared a public health emergency due to the COVID-19 pandemic which triggered emergency duty obligations of staff and emergency duty compensation to exempt employees under the existing personnel policy approved by the SJBPH Board of Health.
7. Regarding the public health emergency for the COVID-19 pandemic, I have personal knowledge of the following:
  - a. On or about March 2020, I was on the SJBPH Board and voted to declare the public health emergency in SJBPH's district territory; in addition, other governmental entities and the U.S. government declared an emergency which U.S. declaration did not expire until May of 2023.
  - b. The SJBPH Board received information, presentations and reports about the extraordinary efforts required of SJBPH staff, and specifically of Liane Jollon, to respond to the pandemic public health emergency.
  - c. I served on the SJBPH Board during the entire declared pandemic emergency and I knew and found it reasonable that exempt employees were paid emergency duty compensation per Board approved policy for work related to the pandemic emergency.
  - d. I recall that the SJBPH Board of Health received and discussed Finance Reports in 2020 which reports highlighted the unanticipated and unbudgeted personnel costs and emergency duty compensation resulting from the pandemic.
  - e. The SJBPH Board approved the 2021 budget which included an increase in personnel costs over prior budget years for anticipated pandemic response work, overtime and emergency duty compensation.



- f. At a Board meeting on June 24, 2021, I was present via Zoom when the Board received a draft audit from Michelle Sainio of Fredrick Zink and Associates in which the auditor relayed that SJBPH complied with the requirements of the federal Coronavirus Relief Fund.
8. I have read and agree with *Plaintiff's Clarifications to Receiver's Report Re Emergency Compensation Pay Review* filed on August 4, 2023 by SJBPH attorney Michael A. Goldman of Goldman, Nicholson & Mack, P.C. which document sets forth corrections to the Receiver's report including: (a) documents that establish the Board of Health knew about the emergency duty compensation; (b) sick leave under Colorado law is not severance and generally is categorized as compensation; and (c) the Fair Labor Standards Act provides that straight time pay, such as SJBPH's emergency duty pay, does not meet the definition of overtime pay.
9. On or about August 10, 2023, I served as the chair of the current SJBPH Board at a duly noticed public meeting in which the Receiver's report was discussed and I heard statements of past Board members and provided my statement, consistent with this affidavit, that the Board knew and found reasonable the emergency duty compensation to exempt staff.
10. The above statements are true and correct.

Signature of affiant Shere Byrd, Ph.D: Shere Byrd

SWORN to subscribed before me this 10 day of November, 2023 by Shere Byrd.



Maritza Garcia  
Signature of Notary

My commission expires: 08/17/2025

## AFFIDAVIT

State of New Mexico  
County of San Juan

I, Gwen Lachelt, of San Juan County, New Mexico, do hereby swear under oath as follows:

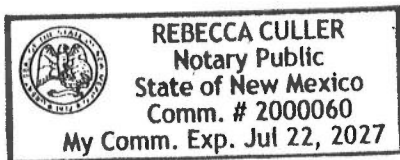
1. I served as an elected Commissioner on the Board of County Commissioners for La Plata County from approximately 2013 through 2020.
2. As part of my role as a La Plata County Commissioner, I was appointed to serve as a director on the Board of Health for San Juan Basin Public Health ("SJBPH") from approximately 2015 through 2020.
3. On or about August 25, 2015, the SJBPH Board of Health held a duly noticed public meeting, and I, along with other members of the Board, voted to approve the SJBPH personnel policy providing emergency duty compensation for exempt employees during a declared emergency.
4. On or about June and July of 2018, as a member of the SJBPH Board, I had knowledge of: (a) the declared emergency in La Plata County known as the *416 Fire*; (b) that SJBPH staff provided response to the *416 Fire* for related smoke and public health issues; and (c) that SJBPH exempt staff were paid pursuant to the approved emergency duty compensation policy.
5. On or about April 25, 2019, the SJBPH Board of Health held a duly noticed public meeting, and while I was not present, I am aware the Board discussed all SJBPH personnel policies.
6. On or about June 27, 2019, the SJBPH Board of Health held a duly noticed public meeting, and I voted to approve/reapprove a slate of SJBPH personnel policies, including SJBPH's policy providing for emergency duty compensation for exempt employees during a declared emergency.
7. On or about March of 2020, the SJBPH Board of Health declared a public health emergency due to the COVID-19 pandemic, which triggered emergency duty obligations of staff and emergency duty compensation to exempt employees under the existing personnel policy approved by the SJBPH Board of Health.
8. Regarding the public health emergency for the COVID-19 pandemic, I have personal knowledge of the following:
  - a. On or about March 2020, I was on the SJBPH Board and voted to declare the public health emergency in SJBPH's district territory; in addition, other governmental entities and the U.S. government declared an emergency, which U.S. declaration did not expire until May of 2023.
  - b. The SJBPH Board received information, presentations and reports about the extraordinary efforts required of SJBPH staff, and specifically of Liane Jollon, to respond to the pandemic public health emergency.
  - c. I served on the SJBPH Board for a portion of the declared pandemic emergency (the period March 2020 through 2020), and I knew and found it reasonable that exempt employees were paid emergency duty compensation per Board-approved policy for work related to the pandemic emergency.
  - d. I recall that the SJBPH Board of Health received and discussed Finance Reports in 2020, which highlighted the unanticipated and unbudgeted personnel costs and emergency duty compensation resulting from the pandemic.

- e. The SJBPH Board approved the 2021 budget, which included an increase in personnel costs over prior budget years for anticipated pandemic response work, overtime, and emergency duty compensation.
9. I have reviewed and agree with *Plaintiff's Clarifications to Receiver's Report Re Emergency Compensation Pay Review* filed on August 4, 2023, by SJBPH attorney Michael A. Goldman of Goldman, Nicholson & Mack, P.C. which document sets forth corrections to the Receiver's report including: (a) documents that establish the Board of Health knew about the emergency duty compensation; (b) sick leave under Colorado law is not severance and generally is categorized as compensation; and (c) the Fair Labor Standards Act provides that straight time pay, such as SJBPH's emergency duty pay, does not meet the definition of overtime pay.
10. On or about August 10, 2023, I attended via Zoom the public meeting of the current SJBPH Board of Health in which the Receiver's report was discussed, and I provided my statement, consistent with this affidavit, that the Board knew and found reasonable the emergency duty compensation to exempt staff and that the Receiver never contacted me to ascertain what I knew of the emergency duty compensation.
11. The above statements are true and correct.

Signature of affiant Gwen Lachelt:

Gwen Lachelt

SWORN to subscribed before me this 10 day of November 2023, by Gwen Lachelt.



Rebecca Culler  
Signature of Notary

My commission expires: July 22, 2027



## AFFIDAVIT

State of Colorado  
County of La Plata

I, Robert Ledger, of La Plata County, Colorado do hereby swear under oath as follows:

1. I have served as a director on the Board of Health for SJBPH from approximately 2010 to present.
2. On or about August 25, 2015, the SJBPH Board of Health held a duly noticed public meeting and I, along with other members of the Board, voted to approve the SJBPH personnel policy providing for emergency duty compensation for exempt employees during a declared emergency.
3. On or about June and July of 2018, as a member of the SJBPH Board, I had knowledge of: (a) the declared emergency in La Plata County known as the *416 Fire*; (b) that SJBPH staff provided response to the *416 Fire* for related smoke and public health issues; and (c) that SJBPH exempt staff were paid pursuant to the approved emergency duty compensation policy.
4. On or about April 25, 2019, the SJBPH Board of Health held a duly noticed public meeting and discussed all SJBPH personnel policies.
5. On or about June 27, 2019, the SJBPH Board of Health held a duly noticed public meeting and I, along with other members of the Board, voted to approve/reapprove a slate of SJBPH personnel policies including SJBPH's policy providing for emergency duty compensation for exempt employees during a declared emergency.
6. On or about March of 2020, the SJBPH Board of Health declared a public health emergency due to the COVID-19 pandemic which triggered emergency duty obligations of staff and emergency duty compensation to exempt employees under the existing personnel policy approved by the SJBPH Board of Health.
7. Regarding the public health emergency for the COVID-19 pandemic, I have personal knowledge of the following:
  - a. On or about March 2020, I was on the SJBPH Board and voted to declare the public health emergency in SJBPH's district territory; in addition, other governmental entities and the U.S. government declared an emergency which U.S. declaration did not expire until May of 2023.
  - b. The SJBPH Board received information, presentations and reports about the extraordinary efforts required of SJBPH staff, and specifically of Liane Jollon, to respond to the pandemic public health emergency.
  - c. I served on the SJBPH Board during the entire declared pandemic emergency and I knew and found it reasonable that exempt employees were paid emergency duty compensation per Board approved policy for work related to the pandemic emergency.
  - d. I recall that the SJBPH Board of Health received and discussed Finance Reports in 2020 which reports highlighted the unanticipated and unbudgeted personnel costs and emergency duty compensation resulting from the pandemic.
  - e. The SJBPH Board approved the 2021 budget which included an increase in personnel costs over prior budget years for anticipated pandemic response work, overtime and emergency duty compensation.

f. At a Board meeting on June 24, 2021, I was present via Zoom when the Board received a draft audit from Michelle Sainio of Fredrick Zink and Associates in which the auditor relayed that SJBPH complied with the requirements of the federal Coronavirus Relief Fund.

8. I have read and agree with *Plaintiff's Clarifications to Receiver's Report Re Emergency Compensation Pay Review* filed on August 4, 2023 by SJBPH attorney Michael A. Goldman of Goldman, Nicholson & Mack, P.C. which document sets forth corrections to the Receiver's report including: (a) documents that establish the Board of Health knew about the emergency duty compensation; (b) sick leave under Colorado law is not severance and generally is categorized as compensation; and (c) the Fair Labor Standards Act provides that straight time pay, such as SJBPH's emergency duty pay, does not meet the definition of overtime pay.

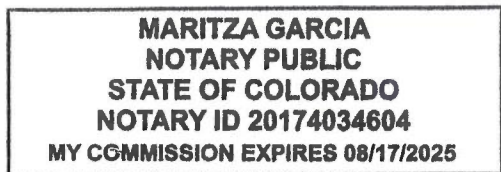
9. On or about August 10, 2023, I was present with the current SJBPH Board at a duly noticed public meeting in which the Receiver's report was discussed and I heard statements of past Board members and provided my own comments, consistent with this affidavit, that the Board knew and found reasonable the emergency duty compensation to exempt staff and that the Receiver never contacted me to ascertain what I knew of the emergency duty compensation.

10. The above statements are true and correct.

Signature of affiant Robert Ledger:

Robert Ledger

SWORN to subscribed before me this 10<sup>th</sup> day of November, 2023 by Robert Ledger.



[Signature]  
Signature of Notary

My commission expires:

08/17/2025



## AFFIDAVIT

State of Colorado  
County of La Plata

I, Terryl Peterson, of La Plata County, Colorado do hereby swear under oath as follows:

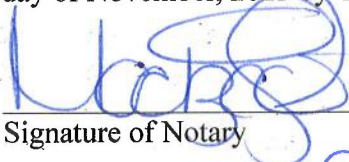
1. I have served as a director on the Board of Health for San Juan Basin Public Health ("SJBPH") from approximately 2016 to present.
2. On or about June and July of 2018, as a member of the SJBPH Board, I had knowledge of: (a) the declared emergency in La Plata County known as the *416 Fire*; (b) that SJBPH staff provided response to the *416 Fire* for related smoke and public health issues; and (c) that SJBPH exempt staff were paid pursuant to the approved emergency duty compensation policy.
3. On or about April 25, 2019, the SJBPH Board of Health held a duly noticed public meeting and discussed all SJBPH personnel policies.
4. On or about June 27, 2019, the SJBPH Board of Health held a duly noticed public meeting and I, along with other members of the Board, voted to approve/reapprove a slate of SJBPH personnel policies including SJBPH's policy providing for emergency duty compensation for exempt employees during a declared emergency.
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  - c. I served on the SJBPH Board during the entire declared pandemic emergency and I knew and found it reasonable that exempt employees were paid emergency duty compensation per Board approved policy for work related to the pandemic emergency.
  - d. I recall that the SJBPH Board of Health received and discussed Finance Reports in 2020 which reports highlighted the unanticipated and unbudgeted personnel costs and emergency duty compensation resulting from the pandemic.
  - e. The SJBPH Board approved the 2021 budget which included an increase in personnel costs over prior budget years for anticipated pandemic response work, overtime and emergency duty compensation.
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7. I have read and agree with *Plaintiff's Clarifications to Receiver's Report Re Emergency Compensation Pay Review* filed on August 4, 2023 by SJBPH attorney Michael A. Goldman of Goldman, Nicholson & Mack, P.C. which document sets forth corrections to the Receiver's report including: (a) documents that establish the Board of Health knew about the emergency duty compensation; (b) sick leave under Colorado law is not severance and generally is categorized as compensation; and (c) the Fair Labor Standards Act provides that straight time pay, such as SJBPH's emergency duty pay, does not meet the definition of overtime pay.
8. On or about August 10, 2023, I was present with the current SJBPH Board at a duly noticed public meeting in which the Receiver's report was discussed and I heard statements of past Board members and provided my own comments, consistent with this affidavit, that the Board knew and found reasonable the emergency duty compensation to exempt staff and that the Receiver never contacted me to ascertain what I knew of the emergency duty compensation.
9. The above statements are true and correct.

Signature of affiant Terryl Peterson:



SWORN to subscribed before me this 10<sup>th</sup> day of November, 2023 by Terryl Peterson.



Signature of Notary

My commission expires:

08/19/2025

MARITZA GARCIA  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20174034604  
MY COMMISSION EXPIRES 08/17/2025

San Juan Basin Public Health  
COVID-19 Response

Incident Action Plan

Operational Period 84:  
12/5/2020 – 12/11/2020

Liane Jollon  
Incident Commander

## INCIDENT OBJECTIVES (ICS 202)

<b>1. Incident Name:</b>	<b>2. Operational Period:</b> Date From: _____ Date To: _____ Time From: _____ Time To: _____																
<b>3. Objective(s):</b>																	
<b>4. Operational Period Command Emphasis:</b>																	
General Situational Awareness																	
<b>5. Site Safety Plan Required?</b> Yes <input type="checkbox"/> No <input type="checkbox"/> <b>Approved Site Safety Plan(s) Located at:</b>																	
<b>6. Incident Action Plan</b> (the items checked below are included in this Incident Action Plan): <table style="width: 100%; border: none;"><tr><td style="width: 33%;"><input type="checkbox"/> ICS 203</td><td style="width: 33%;"><input type="checkbox"/> ICS 207</td><td style="width: 34%;"><u>Other Attachments:</u></td></tr><tr><td><input type="checkbox"/> ICS 204</td><td><input type="checkbox"/> ICS 208</td><td><input type="checkbox"/> _____</td></tr><tr><td><input type="checkbox"/> ICS 205</td><td><input type="checkbox"/> Map/Chart</td><td><input type="checkbox"/> _____</td></tr><tr><td><input type="checkbox"/> ICS 205A</td><td><input type="checkbox"/> Weather Forecast/Tides/Currents</td><td><input type="checkbox"/> _____</td></tr><tr><td><input type="checkbox"/> ICS 206</td><td></td><td><input type="checkbox"/> _____</td></tr></table>			<input type="checkbox"/> ICS 203	<input type="checkbox"/> ICS 207	<u>Other Attachments:</u>	<input type="checkbox"/> ICS 204	<input type="checkbox"/> ICS 208	<input type="checkbox"/> _____	<input type="checkbox"/> ICS 205	<input type="checkbox"/> Map/Chart	<input type="checkbox"/> _____	<input type="checkbox"/> ICS 205A	<input type="checkbox"/> Weather Forecast/Tides/Currents	<input type="checkbox"/> _____	<input type="checkbox"/> ICS 206		<input type="checkbox"/> _____
<input type="checkbox"/> ICS 203	<input type="checkbox"/> ICS 207	<u>Other Attachments:</u>															
<input type="checkbox"/> ICS 204	<input type="checkbox"/> ICS 208	<input type="checkbox"/> _____															
<input type="checkbox"/> ICS 205	<input type="checkbox"/> Map/Chart	<input type="checkbox"/> _____															
<input type="checkbox"/> ICS 205A	<input type="checkbox"/> Weather Forecast/Tides/Currents	<input type="checkbox"/> _____															
<input type="checkbox"/> ICS 206		<input type="checkbox"/> _____															
<b>7. Prepared by:</b> Name: _____ Position/Title: _____ Signature: <u>Lori Zazzaro</u>																	
<b>8. Approved by Incident Commander:</b> Name: _____ Signature: <u>[Signature]</u>																	
ICS 202	IAP Page _____	Date/Time: _____															

## ORGANIZATION ASSIGNMENT LIST (ICS 203)

<b>1. Incident Name:</b>		<b>2. Operational Period:</b> Date From: _____ Date To: _____ Time From: _____ Time To: _____	
<b>3. Incident Commander(s) and Command Staff:</b>		<b>7. Operations Section:</b>	
IC/UCs		Chief	
		Deputy	
Deputy		Staging Area	
Safety Officer		<b>Branch</b>	
Public Info. Officer		Branch Director	
Liaison Officer		Deputy	
<b>4. Agency/Organization Representatives:</b>		Division/Group	
Agency/Organization	Name	Division/Group	
		Division/Group	
		Division/Group	
		Division/Group	
		Division/Group	
		<b>Branch</b>	
		Branch Director	
		Deputy	
<b>5. Planning Section:</b>		Division/Group	
Chief		Division/Group	
Deputy		Division/Group	
Resources Unit		Division/Group	
Situation Unit		Division/Group	
Documentation Unit		<b>Branch</b>	
Demobilization Unit		Branch Director	
Technical Specialists		Deputy	
		Division/Group	
		Division/Group	
		Division/Group	
<b>6. Logistics Section:</b>		Division/Group	
Chief		Division/Group	
Deputy		<b>Air Operations Branch</b>	
<b>Support Branch</b>		Air Ops Branch Dir.	
Director			
Supply Unit			
Facilities Unit		<b>8. Finance/Administration Section:</b>	
Ground Support Unit		Chief	
<b>Support Branch</b>		Deputy	
		Time Unit	
		Procurement Unit	
		Comp/Claims Unit	
		Cost Unit	
<b>9. Prepared by:</b> Name: _____ Position/Title: _____ Signature: <i>Lori Fazzaro</i>			
ICS 203	IAP Page _____	Date/Time: _____	

## COMMUNICATIONS LIST (ICS 205A)

<b>1. Incident Name:</b> SJBPH COVID-19 Response		<b>2. Operational Period:</b> Date From: 12/5/2020      Date To: 12/11/2020 Time From: 0000      Time To: 2359	
<b>3. Basic Local Communications Information:</b>			
Incident Assigned Position	Name (Alphabetized)	Method(s) of Contact (phone, pager, cell, etc.)	
Operations Staff	Browning, Barb	970-335-2090; bbrowning@sjbpublichealth.org	
POD OPS/Doc Unit Leader	Casamayor, Kathleen	970-335-2069; kcasamayor@sjbpublichealth.org	
Disease Surveillance Grp Sup	Camp, Ann	970-335-2084; acamp@sjbpublichealth.org	
Operations Staff	Dawson, Lorena	970-335-2068; ldawson@sjbpublichealth.org	
Operations Staff	Deem, Christy	970-335-2077; cdeem@sjbpublichealth.org	
Deputy IC	Devine, Brian	970-317-4400; bdevine@sjbpublichealth.org	
Operations Staff	Drew, Emily	970-227-0748; edrew@sjbpublichealth.org	
Liaison Officer	Dugdale, Sherri	970-335-2059; sdugdale@sjbpublichealth.org	
Operations Staff	Else, Alexander	970-335-2055; aelse@sjbpublichealth.org	
Call Handling Grp Supervisor	Frakes, Missy	970-335-2004; mfrakes@sjbpublichealth.org	
Operations Staff	Harmon, Emma	970-335-2007; eharmon@sjbpublichealth.org	
Dep Operations Section Chief	Holcomb, Tracie	970-799-6436; tholcomb@sjbpublichealth.org	
Operations Staff	Jahnke, Kara	970-335-2060; kjahnke@sjbpublichealth.org	
Incident Commander	Jollon, Liane	970-769-0354; ljollon@sjbpublichealth.org	
Operations Staff	King, Dan	970-335-2058; dking@sjbpublichealth.org	
Operations Staff	Lewis, Van	970-264-2409; vlewis@sjbpublichealth.org	
Community Mitigation Grp Sup	Macpherson, Claire	970-749-5042; cmacpherson@sjbpublichealth.org	
Operations Staff	Maletich, Karen	970-335-2086; kmaletich@sjbpublichealth.org	
Finance/Admin Section Chief	Marie, Lesley	970-759-9915; lmarie@sjbpublichealth.org	
DIC Grp Supervisor	Martin, Jo	970-335-2093; jmartin@sjbpublichealth.org	
Operations Staff	McCormick, Tot	970-335-2080; hmccormick@sjbpublichealth.org	
Operations Staff	McDowell, Aaron	970-335-2057; amcdowell@sjbpublichealth.org	
Operations Staff	McVaugh, Sara	970-335-2019; smccvagh@sjbpublichealth.org	
Public Information Officer	Ninde, Claire	970-903-6670; cninde@sjbpublichealth.org	
Asst Liaison Officer	Oliver, Ann	970-903-9361; aoliver@sjbpublichealth.org	
Asst Public Information Officer	O'Neil, Flannery	602-317-8095; foneil@sjbpublichealth.org	
Operations Staff	Purcell, Mike	970-335-2098; mpurcell@sjbpublichealth.org	
Dep Operations Section Chief	Penney, Rosalind	970-903-8536; rpenney@sjbpublichealth.org	
Operations Staff	Pritchett, Shandi	970-335-2085; spritchett@sjbpublichealth.org	
Operations Staff	Quinlan, Danny	970-335-2037; dquinlan@sjbpublichealth.org	
POD OPS/Supply Unit Leader	Rogers, Indea	970-335-2092; irogers@sjbpublichealth.org	
Operations Staff	Sanchez, Lisa	970-335-3007; lsanchez@sjbpublichealth.org	
Operations Staff	Speece, Cody	970-769-7609; cspeece@sjbpublichealth.org	
<b>4. Prepared by:</b> Name: <u>Lori Zazzaro</u> Position/Title: <u>PSC</u> Signature: <u><i>Lori Zazzaro</i></u>			
<b>ICS 205A</b>	<b>IAP Page 4</b>	Date/Time: <u>12/5/2020 @1600</u>	

## COMMUNICATIONS LIST (ICS 205A)

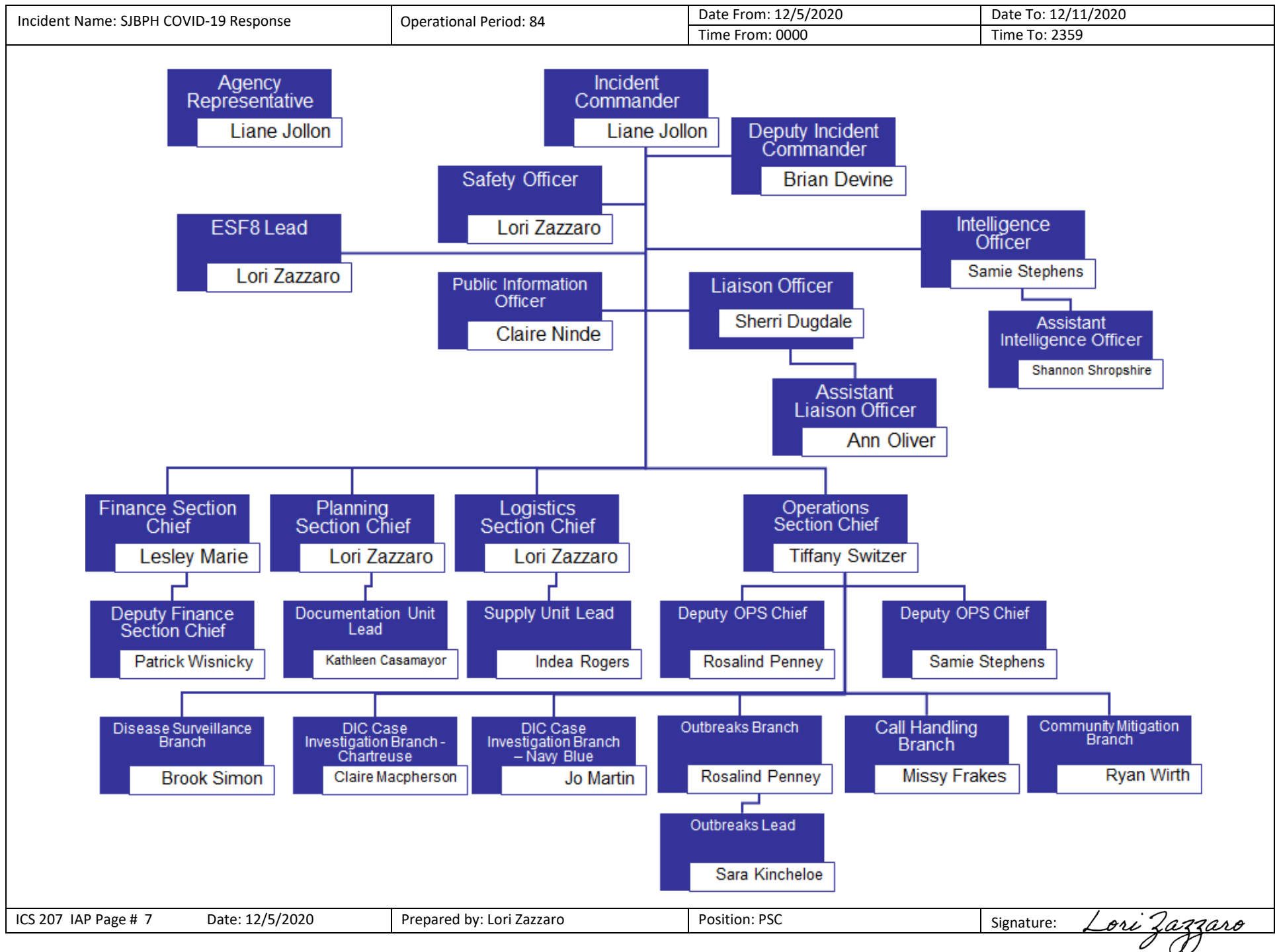
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[illegible]

## SAFETY MESSAGE/PLAN (ICS 208)

<b>1. Incident Name:</b>	<b>2. Operational Period:</b> Date From: _____ Date To: _____ Time From: _____ Time To: _____	
<b>3. Safety Message/Expanded Safety Message, Safety Plan, Site Safety Plan:</b>		
<b>4. Site Safety Plan Required?</b> Yes <input type="checkbox"/> No <input type="checkbox"/> <b>Approved Site Safety Plan(s) Located At:</b>		
<b>5. Prepared by:</b> Name: _____ Position/Title: _____ Signature: <u>Lori Zazzaro</u>		
<b>ICS 208</b>	<b>IAP Page</b> _____	Date/Time: _____





## ASSIGNMENT LIST (ICS 204)

<b>1. Incident Name:</b> _____		<b>2. Operational Period:</b> Date From: _____ Date To: _____ Time From: _____ Time To: _____		<b>3.</b>  <b>Branch:</b> _____  <b>Division:</b> _____  <b>Group:</b> _____  <b>Staging Area:</b> _____											
<b>4. Operations Personnel:</b> <u>Name</u> _____ <u>Contact Number(s)</u> _____  Operations Section Chief: _____  Branch Director: _____  Division/Group Supervisor: _____															
<b>5. Resources Assigned:</b>		# of Persons	Contact (e.g., phone, pager, radio frequency, etc.)	Reporting Location, Special Equipment and Supplies, Remarks, Notes, Information											
Resource Identifier	Leader														
<b>6. Work Assignments:</b>															
<b>7. Special Instructions:</b>															
<b>8. Communications</b> (radio and/or phone contact numbers needed for this assignment): <table style="width: 100%; border: none;"> <tr> <td style="width: 35%;">Name/Function _____</td> <td style="width: 65%;">Primary Contact: indicate cell, pager, or radio (frequency/system/channel) _____</td> </tr> <tr> <td>_____ / _____</td> <td>_____</td> </tr> <tr> <td>_____ / _____</td> <td>_____</td> </tr> <tr> <td>_____ / _____</td> <td>_____</td> </tr> <tr> <td>_____ / _____</td> <td>_____</td> </tr> </table>						Name/Function _____	Primary Contact: indicate cell, pager, or radio (frequency/system/channel) _____	_____ / _____	_____	_____ / _____	_____	_____ / _____	_____	_____ / _____	_____
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<b>9. Prepared by:</b> Name: _____ Position/Title: _____ Signature: <i>Lori Zazzaro</i>															
ICS 204	IAP Page _____	Date/Time: _____													

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_____ / _____		_____			
9. Prepared by: Name: _____ Position/Title: _____ Signature: <u>Lori Fazzaro</u>					
ICS 204		IAP Page _____		Date/Time: _____	

## Planning Meeting Recap 12/04/2020

Can we solve this quickly? If not, move to workgroup. Review IAP/Planning emphasis in the beginning of the meeting.

### IAP Emphasis:

1. Increase the numbers of individuals getting tested and fully utilize the capacity of our testing sites by continuing to share communications on testing and encourage qualified partners to participate in asymptomatic testing.
2. Continue to inform the community of COVID-19 to limit the number of illnesses and deaths.
3. Collectively use limited resources for effective disease investigation, control, and mitigation.
4. Focus on at-risk populations and maintaining critical infrastructure and services workforce.
5. Work with local partners to determine enforcement strategies for the enforcement of public health order violations.
6. Control and mitigate disease to a level that supports in-person learning at P-12 schools and higher education.
7. Improve influenza vaccination rates and develop COVID-19 vaccine distribution plan to slow overwhelming the healthcare system and support phase 1 in/outpatient healthcare worker vaccination.
8. Provide clear communications around the Dial.
9. Work with LPC and AC EOC partners to document and support surveillance, mitigation/enforcement, control, medical surge, COVID-19 vaccination and fatality management.

### PON Dashboard Updates – Standing Review on Mondays:

- Metric Changes
- Mitigation Strategies

### IC/Dep IC:

- EOC priority for documentation- Lori providing
  - o Documentation- EOC using ISP, to document tasks given from PH
    - Planning will verify that the ISP has the assigned tasks
  - o Testing still highest priority along with documentation
- Vaccine is a priority – Lori
- Tracking medical surge- ongoing Lori
  - o Sharing how we track bed avail, and hospitalization with EOC
- About 4 weeks away from December 30<sup>th</sup> – expiration of Cares Act Funds
  - o No interruption of community testing once funds expire

### OPS/Monitoring and Surveillance:

- Surveillance:
  - o Liane's 4 priorities: Community Testing in LPC; Qualified Partner Testing in AC; Qualified partner testing in AC; integrating BinaxNow
  - o Ongoing data flow issues from Cedrs to DJ- ongoing Samie
  - o BinaxNOW – Brook to follow up
  - o COVID check separate from AC EOC



- AC schools will host COVID site and work with their logistics
- AC EOC will continue working on AC testing site, including interim use for ASX on Fridays
  - Wednesday – Fridays for community testing
  - State sent BinaxNOW test to water and wastewater
- Qualified partner testing AC, lane added today - check in with AC- Sherri
- Qualified partner testing in LPC, underutilized, who is it assigned to? - Sherri
- Confidentiality for high profile patients – what is our procedure – Tiffany ongoing
- QR Codes – Lori sent information for both EOCs to implement preregistration
  - Need Brook/Tiffany to connect with LPC EOC for how pre-registration works with both Curative and ATCG tests
- Recommendations for identifying the recovery status for people who we were not able to reach out to- ongoing Samie
- Mobile testing – has not been given approval for mobile unit. For specific populations- ongoing

#### OPS/DIC – CI/CT

- Continue to push hiring of CI/CT on social media – Claire ongoing
- Claire working on quarantine letter
  - Letter will go onto DJ
- Changes to quarantine text notification- and letter that is linked- Tiffany
  - Letter will go onto DJ
- Food boxes for cases in isolation – Samie – Ongoing

#### OPS/DIC – Outbreaks:

- Standardized workplace exposure guidance – assigned to Rosalind/Sara – in progress, updating website
- Community group of medical professionals (via Jack Turner) willing to discuss infection control and post-exposure testing with list of businesses – we are supporting this effort
  - MOU is complete
  - Brian and Sarah reviewing content of presentation- ongoing should be finished today
  - First presentation scheduled for next Wednesday.
- Four corners outbreak – media has not be updated on number of cases lag with CDPHE – Claire
- Liane's Emphasis: Outbreak team to have a meeting regarding 4CHC outbreak and ongoing communications – Tiffany planning the meeting
  - Operational capacity of outbreaks – need to invite Ryan – how will we integrate new outbreak guidance

#### OPS/Mitigation:

- Streamlining measures to connect SJBPB departments together to address complaints, refine the number of calls being made to the same business by different departments – Rosalind/Ryan – ongoing
- Self-certification form
  - Needs changes to quarantine info links and legal language – Ryan getting with Sherri
  - Ryan will need final language approved
  - Will need Comms for push out – Claire

- Level Red Questions – ongoing
- Ryan working outbreaks team on SOP for business outbreaks

#### OPS/Enforcement:

- Enforcement measures – assign to EOC, no changes, better process for how assignment are made.
- Working on enforcement actions
  - o Liane's emphasis, follow up on restaurants not adhering to PHO's
  - o Sherri/Ryan- working with rumored complaints, will investigate if we have a complaint.

#### OPS/Call Handling:

- Receive calls about vaccine, and interest. Tiffany/Lori providing talking points.

#### Comms:

- MONDAYS: Community requests for presentations – is there a way to prioritize and assign out to the group AND review media appearances
  - o Ongoing radio station interviews – 4Corners Broadcast; KSUT today; AGM Thursday
- Hiring Update:
  - o Decision by mid to late next week – ongoing
- Vaccine distribution communications – Lori/Claire
  - o Higher level messaging, more details Monday, Claire meeting with Social Media to manage expectations about vaccines, no specifics.
  - o Lori sending vaccine behavioral health presentation to Claire.
  - o Comms regarding vaccines, will come from state/fed level.
    - Focus on both vaccine distribution comms and vaccine hesitancy
- Our TV ads are awesome – we see no evidence of a statewide campaign in SW Colorado
- Discuss revamping of Dashboard – Brian and Claire
- Herald media request – Claire
- Claire needs to start a PIO/JIC meeting with Terri House, Megan Graham and Claire Ninde
- FLC serial testing site, uptake, capacity has been added, talking points have been made- Brian

#### I&I Officer:

- Reporting issues – Data audit with Mercy – Samie – ongoing – automated email for daily updates
- Integrating Tableau into daily operations – Samie to coordinate with Flannery and CN – ongoing
- Automated report to send address info to Dispatch – Sherri/Samie to discuss to make sure information meets needs

#### ESF 8:

- COVID Vaccine Planning
  - o Liane's emphasis: move vaccine, up to first topic of convo in planning cycle
    - Would like team fully up to speed.
    - Logistics help for Liane (freezer) - Lori
  - o Grant to help with vaccines, can someone help- Brian

- State only has plan for metro areas not so much rural areas
  - Sending out vaccine notes, IC and staff, will receive updated documentation
  - OEPR- reaching out to all regional staff and coordinators for POD plans.
  - Prep mod should be in effect by end of December, may help with planning for phase 2
  - Updated gov memo coming out by Monday to help with Phase 1 prioritization
- CureMD – EHR – scheduling documentation and billing – purchased
- Medical Surge
  - Need to send daily end of day reports to the EOC – Lori
  - Invite EOC planning section to our Planning meetings for situational awareness – Lori
- EOC Planning
  - Situation report with EOC today at 1PM – C&GS

#### Planning/Logistics/Safety:

- Tablets – in progress
- Indea available for any onsite logistical needs next week

#### Liaison:

- Face coverings/hand sanitizer – no updates- Ann will get with ERTF members for distribution
  - Distribute to targeted populations first
  - EOC to distribute- last step, will distribute internally first
  - Hand sani here, masks still arriving (no update on that)
  - Can this be a part of Noel Night with BID?
    - Drafted pledge with Restaurant association as copy- a little lengthy Claire has something a little shorter- ongoing
- Ann - school outbreaks, not being relayed back to liaison, not reported.
- Policy group presentations – Review for Wednesday planning meetings: Develop strategic communications based on presentations – we have the standard presentation with new fun topic to add in on Mondays – modeling update on Thursdays
  - 12/7: Brian/ Sherri, might add updated quarantine guidance, instead of what was originally planned.
  - Wastewater monitoring – Brian – CDPHE presentation, never presented.
  - Reinfection/Gene sequencing vs. dormant virus. Long term recovery/disabilities – Samie/Emily
  - Jurisdictional authorities in an emergency
  - New state modeling – statewide EPI, local EPI, PON status
  - PON Mitigation Plan – Lori/Brian
  - Standing PON dashboard update
  - New research on masks - Sherri
  - New research on super spreader events (Nature paper) – Sherri
  - 12/7: COVID vaccine? – Lori

#### Finance:

- Lesley seeking preclearance for mobile unit- denied, currently working on another way to gain preclearance.

DATE FILED: July 27, 2023 1:42 PM  
FILING ID: 201E184F31411  
CASE NUMBER: 2023CV30018

Dear Ms. Raile and Mr. Plumb—SJBPH Receivers

As the BOH Finance Committee, and Vice President (Byrd) and Treasurer (Peterson) of the BOH let this memo be further factual information concerning SJBPH's policy authorizing emergency compensation ("EC") from 2020—2023. The EC policy was adopted prior to the COVID emergency being declared in spring of 2020 and additional funding was supported by LaPlata County through an IGA. Throughout the emergency, the emergency compensation policy was followed by staff and by the Executive Director and the documentation supports that compliance with policy.

We have seen the list of documents requested by the Receiver and are familiar with the documents that are being provided in response. Number 3 on the request list asks for information that explicitly describes EC costs and funding that was provided to the BOH. While SJBPH does maintain documents with this level of detail, as a BOH we do not generally review budget detail to this granular level. Please reference BOH policy number 2, attached.

As the Finance Committee we meet monthly to review high level trends for the organization, look at overall organizational health and act as a resource to staff on financial issues. We do not dig into the transactional details behind the numbers. The financial health of SJBPH has been consistently strong under the direction of the previous and current Executive Director. Staff have continuously sought grant funding to minimize the use of general funds in support of programs and operate in a manner that serves the community with excellent fiscal stewardship.

Throughout the COVID public health emergency, staff informed the BOH of when funding sources were becoming available, the status of the application process to receive the funds, and consistently briefed the BOH on the level of response required to respond to the ongoing public health emergency. Salaries and benefits were impacted by the addition of staff directly delivering pandemic services, overtime by existing hourly non-exempt staff received overtime compensation, and salaried staff received emergency compensation. As a Board we did not ask for more detail since it was clear that funding was being used to cover the added costs.

We also feel that it is important to note that during the COVID pandemic, many of our staff took on additional duties to enable the agency to respond to a constantly changing public health emergency environment. Funding was late, sporadic, and came from a variety of sources. SJBPH staff was intimately involved in the public health response, as well as in planning and organization of local and regional emergency responses. Public opinion about the role of public health was polarizing and impacted the personal and professional lives of staff – some rarely saw their families for significant stretches of time. This astute use of compensation kept our local public health agency from being financially overwhelmed by the COVID response and allowed us to continue to provide the public health services needed by our most vulnerable populations, while also responding 24 hours a day/-7 days a week to an everchanging pandemic environment *for over 3 years*. Our rural community was among the first in the state to be able to provide community-wide testing and vaccinations because of the extra work done by SJBPH staff. The

work at SJBPH is and has been transparent, effective, and directed toward the health of the community.

In summary, our Board adopted the policy, was informed about the activities and funding related to the public health emergency, and our previous Executive Director and staff followed the policies that the board established.

*Terryl Peterson*

Terryl Peterson  
Treasurer, San Juan Basin Public Health Board of Health  
Finance Committee Chair

  
Sherell Byrd (Jul 5, 2023 12:32 MDT)

Sherell Byrd  
Vice President, San Juan Basin Public Health Board of Health  
Finance Committee Member

# **SAN JUAN BASIN HEALTH**

## **Policies Governing the Directors of SJBH**

**Subject: Functions of the Board of Directors**

**Policy No.: 2**

### **I. OBJECTIVE**

To describe the major functions and responsibilities of the Board of Directors of SJBH.

### **II. POLICY**

#### **A. The Board will respect the legal entity of SJBH as follows:**

1. Comply with all applicable federal, state, and local laws and regulations.
2. Establish and comply with Board policies.
3. Comply with SJBH Bylaws and periodically review and update the same.
4. Hold well-planned and effectively conducted Board meetings monthly, or more often if required. The preliminary agenda for such meetings will be developed by the Executive Director of SJBH generally after consultation with the Chair of the Board, and the agenda will be distributed in advance of the Board meeting with appropriate supporting information.
5. Ensure that accurate minutes of the Board are prepared, approved and maintained. A person who is both agreeable to the Board and the Executive Director will serve as liaison and coordinator to the Board and shall have the obligation to prepare minutes of the Board meetings for review and approval by the Board.
6. Develop, individually and collectively, Board knowledge of SJBH's business as well as Director duties and obligations.
7. Regularly review and make recommendations to the Board regarding the Board's policies.
8. Provide oversight and direction as described in Section B of this Director Policy No. 2.

#### **B. To provide oversight and strategic direction to SJBH as set forth below.**

1. To fulfill all statutory duties of the Board as set forth in C.R.S. Section 25-1-508 and the SJBH Bylaws as such duties and other obligations Delegate to the

Executive Director the powers and duties described in Policy No. 4 (Delegation of Authority from the Board of Directors to the Executive Director).

2. Interview candidates, and select and employ a competent leader (the Executive Director). Provide a high-level of direction and advice to the Executive Director while refraining from involvement in operational matters that are within the scope and authority of the Executive Director. Facilitate Board review of the performance of the Executive Director on (approximately) an annual basis.
3. Select and appoint a medical officer, if the Executive Director is not a physician.
4. Establish, with support from the Executive Director, a vision and strategic plan for SJBH.
5. Consider and approve the goals and objectives of SJBH as developed and recommended by the Executive Director in consultation with the Board.
6. Provide financial oversight through the review and adoption of an annual budget, a capital expenditure plan, and a strategic plan.
7. Consider and approve financial policies and financial plans appropriate to maintain sound financial management of SJBH.
8. Consider and approve employee policies applying to all personnel, including the Executive Director.
9. Consider and approve policies regarding personnel benefits.
10. Consider and approve loans, real estate transactions, and/or any matters that require (pursuant to any law, approved plan, policy, resolution or contractual agreement) Board approval.
11. Review periodic reports from the Executive Director to ensure conformity to the Board's approved goals, objectives, policies, and plans. These reports should be of sufficient scope to enable the Board of Directors to:
  - a. Prevent unauthorized action;
  - b. Predict trends and forecast results;
  - c. Determine where remedial or corrective action may be required; and
  - d. Measure performance and results against plans, policies, goals and objectives.
12. Approve depositories/banks for funds and designate those authorized to sign on behalf of SJBH.
13. Review the insurance coverages of SJBH including, without limitation, insurance/bond coverage for Directors.

14. Select and engage consultants consistent with Board Policy No. 12.
15. Engage the auditor and review with the auditor the annual financial audit and the management letter and ensure that any necessary action is taken. The auditor is to provide, directly to the Board, the audit and the management letter.
16. Review any independent management audit (if such an audit is undertaken) and ensure the Board approved recommendations are carried out by receiving and reviewing regular progress reports from the Executive Director.

### III. RESPONSIBILITY

The Board shall be responsible for ensuring compliance with this policy.

May 22, 2014





Darren Farrell

Assign conversation ▼



430/



Watch ya god dam zombies

3/19/21, 5:19 PM



You brainwashed assholes need to wake the fuck up . Your paycheck makes you dumb

3/19/21, 10:09 PM

COVID-19 has killed more Americans than World War I, World War II and the Vietnam War combined. SJBPH will continue to take precautions in these still early days of understanding the medium- and long-term effects of Covid-19.

3/20/21, 7:04 AM

The pcr is not a test . Do your homework

It's not even a vaccine. It's an operating system. You are clueless like the rest .



Darren Farrell

Assign conversation ▼



Why is the death count the same as last year if as many as ww1 and Vietnam combined ya Genius ? Ffs you people with no ability to think for yourselves will be the death of all humanity . Wtfu

3/20/21, 6:13 PM



You people blow my mind . So fucking clueless. Please block me ya cunts

3/21/21, 8:41 AM



<https://www.facebook.com/100025779873636/posts/878189331503/?d=n>

Checked a box on your tax return We can help you enroll in health insurance! (1).png

3/21/21, 3:43 PM



You do realize you are murderers

3/22/21, 6:14 AM



**Darren Farrell**

Assign conversation ▼

And abusers



You will h  
doings

Checked a box on your tax return We can help  
you enroll in health insurance! (1).png

wrongful

"Disposable face masks are made directly from micro-sized plastic fibers, which release plastic particles easier and faster than bulk plastics like plastic bags. A newer generation of masks, called nanomasks, releases even smaller particles creating a new source of nanoplastic pollution, according to the University of Southern Denmark."  
<https://childrenshealthdefense.org/defender/3-million-masks-a-minute/>



Research bunker fuel ya lazy fuck . They don't care about you  
or this place wtfu retards



3/22/21, 11:03 AM



**Darren Farrell**

Assign conversation ▼



Makes me want to vomit

You criminals have fucked up most kids lives . Now you  
pricks think it's a mask and vaccines that's gonna get my kid  
back in sports . You order followers need you get your jabs  
and just just on down the road



**IT'S WILD TO ME THAT  
PEOPLE ARE SO AFRAID  
OF "GERMS" BUT WILL GLADLY  
CONSUME CARCINOGENS,  
PESTICIDES,  
TOXINS AND CHEMICALS  
IN THEIR FOOD, DRINKS**



**Darren Farrell**

Assign conversation ▼

Sick fucks



<https://www.facebook.com/chereedohmann731/videos/10224035543773228/>

Look for yourself

these are the PRC tests they want our children to take, they contain a dangerous cancer causing chemical called ETHYLENE OXIDE  
- The same chemical that's in the mask.  
(Check the comments)

I do not want this up mine or my daughters' nose, do you?



Just use the magic word "EXEMPT" - it might save your life.



**Darren Farrell**

Assign conversation ▼

Fucking sickening



<https://www.facebook.com/bekki.shaw.9/videos/10157720051307204/>

3/28/21, 10:30 AM

**Beware the poisonous ingredients goes through breast milk.**



Author

**Caitlyn RN**

Lyndsi received her second dose last Wednesday. Thursday her breastfed baby was covered in a head to toe rash. By that night he was inconsolable and declining so they went to the ER. Baby was diagnosed with thrombotic thrombocytopenic purpura

2

2 Shares

Like

Comment

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All comments ▾



Write a comment...

**Darren Ferrell**

You are effin murderers SJBH criminals will have to deal  
With what you have done all you employees <https://youtu.be/LfOGsLI0oVM>



YOUTUBE.COM

Drug Store Confronted Where "Perfectly Healthy" Woman  
Died 7 MINUTES AFTER TAKING BOOSTER!!!

Like Reply Hide 1w

Write a comment...

**Darren Ferrell**

No rabies either. I saw you effin murderers pushing that earlier  
<https://l.facebook.com/l.php.....> See more



VIROLIEGY.COM

Rabies: The "Virus" of Fear

Like Reply Hide 1w

**JJ Wilson**

i would get one but i can't identify with the lady in the picture because she  
doesn't look like me, so its hard to understand.

Like Reply Hide 1w

**Melissa Simmons**

At least they aren't killing as fast at the Covid shots. 🤔. And why are these only  
called shots not vaccines 🤔🤔🤔.

Like Reply Hide 1w Edited

**Don Lemnuaski**

Fuck off you mother fucking criminals. Rot in hell you piece of shot criminal cock  
suckers

Like Reply Hide 1w

**Darren Ferrell**

EBOLA is another BS story . Y'all have been duped. Drop your sht EGGS before  
they kill us all <https://l.facebook.com/l.php.....> See more



VIROLIEGY.COM

The Ebola "Virus" Part 1

Like Reply Hide 1w

**Darren Ferrell**

Clueless zombies  
<https://www.facebook.com/lumd3/videos/780851696254816/>

Like Reply Hide 1w

**Darren Ferrell**

There is no flu . So what kinds poison are y'all serving up in this concoction?

Like Reply Hide 1w

Write a comment...

Indian/Alaskan Natives, followed  
by non-Hispanic white people.

[nami.org/suicidepreventionmonth](https://nami.org/suicidepreventionmonth)



Reach more people with this post



You could reach up to 2,404 people daily by boosting your post for \$40.

[See insights and ads](#)

[Boost post](#)

3 Comments



Like



Comment



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All comments ▼



Write a comment...



**JJ Wilson**

kids forced to wear masks by sjbh are prone to suicide, yup you did that

Like Reply Hide 1w



**Don Lemnuaski**

Fuck you ya CUNT's

Like Reply Hide 1w

Write a comment...



YOUTUBE.COM

**30-second English-language Mammogram and Pap Video**

[See insights and ads](#)

[Boost post](#)



2



Like



Comment

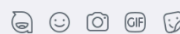


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All comments ▼



Write a comment...



**Darren Ferrell**

Stop you effin criminals. How is it you can get away with these bs lies . HPV so called vaccines are responsible fir more deaths then all the old disgusting vaccines available

Like Reply Hide 1w

Write a comment...

online communicating with them on email but i never received any thing. I know you know what that me... [See more](#)



Dr oduku herbal clinic

Like Reply Hide 2w



**Darren Ferrell**

No HIV or any other BS virus you effin criminals like to murder people with

Like Reply Hide 2w

Write a comment...

[See insights and ads](#)

[Boost](#)

Like

Comment

Share

All comments



Write a comment...

How are you? 🗨️ 😊 📷 GIF



**Hunter Ferrell**

Same as the covid vaccines. Some die within minutes of takin it

Like Reply Hide [Send Message](#) 13h



**Don Lemnuaski**

Hunter Ferrell ya no kidding . They are dropping like flies now

Like Reply Hide [Send Message](#) 10h



Reply to Hunter Ferrell...

How are you? 🗨️ 😊 📷 GIF

👍 🗨️ 2

Like

Comment

Share

All comments ▾



Write a comment...

How are you? 🗨️ 😊 📷 GIF



**Darren Ferrell**

U people for the life of you don't see wtf is going on here . Ffs look up you Effin incapable morons


Like Reply Hide 2w

Write a comment...


TO GET YOUR OMICRON AND FLU VACCINE.


View insights


53 post reach >

 1


5 Comments

 Like

 Comment

 Share

All comments ▾



Darren Ferrell


That's it you mthfr's. You are Guilty of Effen murder you are murderers and will be dealt with

Like

Reply

Share

32m



Darren Ferrell


Any parents that are given this poison to there kids for a virus that doesn't exist should burn in the hell for being so effin stupid

Like

Reply

Share

31m



Darren Ferrell


And who is the mother here ffs . You satanic mthfr's

Like

Reply

Share

28m



Hunter Ferrell


Disgusting . You people are literally zombies

Like







Reply

Share


25m



Write a public comment...



Lynne Marie reported this comment on San Juan Basin Public Health's post.



Darren Ferrell

2d

Complete bull sht u murderers

<https://www.facebook.com/liam.mulholland.50/videos/1156712515192148/>

Keep

Remove

...

Alejandro Manuel reported this comment on San Juan Basin Public Health's post.



**Darren Ferrell**

September 5



And the criminal working for SJBH who is typing the headings should be locked up for he or she's part in crimes against humanity and lack of brain power



2

Keep

Remove



Lynne Marie reported this comment on San Juan Basin Public Health's post.



**Hunter Ferrell**

August 24



In fact you are Guilty of crimes against humanity ..... you're basically murdering children with you nonsensical beliefs

Keep

Remove



Samantha Bustillos reported this comment on San Juan Basin Public Health's post.

Like Reply Share 1w



**Darren Ferrell**

No fact . In fact u don't know what you are talking about and have killed many with your misinformation

Like Reply Share 1w



**Darren Ferrell**

Whoever is typing the heading will burn in eternal hell , the fire hell

Like Reply Share 1w



**Darren Ferrell**

You don't know wtf you are saying you are stupid

Like Reply Share 1w



Like

Comment

Share

All comments ▼



Darren Ferrell

SJBH is asking you to suicide yourself. That's effin criminal

Like Reply Share 6d



Darren Ferrell

No pathetic virus has ever been found

Like Reply Share 6d

Like Reply Share 1w



Darren Ferrell

Quit injecting yourself with disgusting bullshit then acting like you're some hero for doing it. Bc no. You're on a human farm bro.

Like Reply Share 1w



Darren Ferrell

<https://youtu.be/LfOGsLIOoVM>



YOUTUBE.COM

Drug Store Confronted Where "Perfectly Healthy" Woman Died 7 MINUTES AFTER TAKING BOOSTER!!!



Like Reply Share 1w



Darren Ferrell

C

The most powerful defense  
for all the unavoidable  
environmental factors that can  
negatively affect our health is  
acknowledging the enormous  
power of your body to adapt to  
&/or heal from almost anything!  
(as well as maintaining a healthy  
diet, attitude, & overall lifestyle!)

All comments ▼



**Darren Ferrell**  
Effin tyrants

Like Reply Share 6d



**Darren Ferrell**  
Your effin so called test isn't a test at all you mthfr's

Like Reply Share 6d

All comments ▼



**Darren Ferrell**  
You are so full of sht you criminals

Normies thinking about  
what you said at the  
grocery store.



Like Reply Share 1w

All comments ▼



**Darren Ferrell**  
Eat crow u effin clueless zombie murderers

Like Reply Share 1w



**Darren Ferrell**  
Effin killers



Like Reply Share 1w



Write a public comment...





**Matthew Ralph**

Banning folks from commenting doesn't mean you're right, you have blood on your hands

...

Like Reply Share 4d



Write a public comment...



2

Horse Gulch Blog  
and 1 more...



1

Kathi MacNaughton



**San Juan Basin Public Health**

[Admin](#) · April 7 at 5:00 PM · 🌐

Local COVID-19 case updates as of 5:00 PM on Thu 4/7/20

All comments ▼



**George Patiuk**

Just keep killing tue people. Right?  
Or.. are we sure that death you've now allowed due to your misinformation is actually due to the covid? Denial of successful medicines is criminal.  
Even the cdc is now backtracking the ivermectin statements.  
  
But you don't care. It's a payday for you for towing the propaganda lines, right? That's why you're so blindly following orders, just like the nazis did in Germany that did not pass the Nuremberg trials.  
You're time is coming.

...

Like Reply Share 6h



Write a public comment...



**Sten Andersen**

Assign conversation ▼



10:56 AM



Dont hire retards

Hi, thanks for contacting us. We've received your message and appreciate you reaching out.

[https://www.youtube.com/live/g6YtAO3\\_4SA?feature=share](https://www.youtube.com/live/g6YtAO3_4SA?feature=share)

Pedoes and hoes is working in this department 😡 fire these Disgusting humans



Jessica you are a Disgusting hoe

<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b>  Court Address: 1060 E. Second Avenue, Durango, CO 81301, (970) 247-2304	DATE FILED: February 7, 2023 9:34 AM FILING ID: 8D7A114714051 CASE NUMBER: 2023CV30018
<b>PLAINTIFF: SAN JUAN BASIN PUBLIC HEALTH</b>  <b>v.</b>  <b>DEFENDANTS: ARCHULETA COUNTY, COLORADO; LA PLATA COUNTY, COLORADO</b>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> Case Number: 2023CV_____  Div:                      Ctrm:
<b>AGREED ORDER APPOINTING RECEIVER</b>	

The Court, having considered Plaintiff San Juan Basin Public Health (“SJBPH”) Complaint for Appointment of Receiver (“Complaint”) and Unopposed Motion for Sua Sponte Appointment of Receiver (“Motion”), and being advised in the premises, hereby grants the Motion and finds and concludes:

- A. The Court has jurisdiction and venue is proper pursuant to C.R.C.P. 98;
- B. The averments in the Complaint and Motion support the relief requested and establish a right to the appointment of a receiver for SJBPH, pursuant to C.R.C.P. 66 and the inherent power of the Court sitting in equity; and
- C. The appointment of a receiver for SJBPH is appropriate to preserve its assets and to manage the winding up of its affairs at this time and continuing after it is dissolved by operation of law on December 31, 2023.

**BASED ON THE COMPLAINT AND MOTION, THE COURT FURTHER FINDS:**

- 1. SJBPH is a district public health agency and political subdivision of the State of Colorado established by Archuleta and La Plata Counties (the “Counties”) pursuant to C.R.S. §25-

1-506 et seq. Its administrative and principal/home office is located in Durango, Colorado, and it has one other office within the 3,055 square mile area of the two Counties it serves.

2. SJBPH has been in existence for over 74 years. It was initially established in 1948. As required by the repealed and reenacted public health statutes in 2008 (L. 2008, p. 2039, §1), in March 2009 SJBPH was re-established as the district public health agency for Archuleta and La Plata Counties.

3. As a district public health agency, SJBPH acts principally to protect and preserve the public's health. C.R.S. §25-1-502 (6). Public health means the prevention of injury, disease, and premature mortality, the promotion of health in the community, and the response to public and environmental health needs and emergencies, with public health being accomplished through the provision of a variety of essential public health services. C.R.S. §§25-1-502 (3) & (5).

4. SJBPH is governed by its own Board of Health ("BOH"). C.R.S. §§25-1-506, 508. The director of SJBPH is its public health director (also known as executive director), currently Liane Jollon ("Public Health Director"). C.R.S. §25-1-509.

5. As of the filing of the Complaint and Motion, SJBPH had approximately 64 full-time employees, 8 part-time employees, and no temporary employees.

6. With an operating budget of \$7,857,355.00 in 2023, SJBPH consists of the following programs and services across the Counties, including: Care coordination; suicide prevention; substance abuse prevention; early childhood health promotion; vital statistics; emergency preparedness and response; disease surveillance, investigation and control; inspections of licensed daycare and retail food establishments; outdoor air quality; healthy housing; radon awareness; on-site wastewater treatment system permitting and inspections; childhood immunizations; sexual health services; child fatality prevention review; home visitation programs; health navigation special supplemental nutrition program for women, infants and children (WIC);

HIV testing and outreach; opioid risk reduction; firearm safety; and Medical Reserve Corps coordination.

7. SJBPH jurisdiction includes, 4 municipalities, 4 school districts with more than 27 public schools, 1 acute care hospital, 1 critical care hospital, 1 rural health clinic and two federally qualified healthcare centers. Currently, SJBPH operates out of 2 offices within the Counties with approximately 64 full-time employees (down from approximately 102 during the height of the COVID-19 response), 8 part-time employees, and no temporary employees.

8. SJBPH owns office equipment such as desks and other office furniture, file cabinets, and computers, along with a fleet of vehicles including automobiles, trucks, and trailers. See, C.R.S. §25-1-508 (5)(e) (agency has duty to provide, equip, and maintain suitable offices and all necessary facilities for the proper administration and provision of public health services). SJBPH's funding sources include the Counties and the Colorado Department of Public Health and Environment ("CDPHE"), and grants from federal and state agencies per C.R.S. §§25-1-508 (5)(k) and 25-1-511 (1)(2). It also collects fees from licensees such as retail food establishments, owners of onsite wastewater treatment systems, and septage applicators. Further, SJBPH bills and collects payments for Medicaid approved services.

9. SJBPH's annual budget for 2023 is approximately \$7,800,000.00. SJBPH has four (4) bank accounts in its own name, as well as bank accounts held in trust by the La Plata County Treasurer pursuant to C.R.S. §§25-1-511 (1)(2)(3) and 30-10-703. The bank accounts collectively, have a combined balance of approximately \$3.4 million.

10. SJBPH has accumulated millions of records over the past 74 years, including vital records and immunization records, some of which is in electronic form, but much of which is in hard copy form stored at its main office. SJBPH is party to approximately 40 contracts and an office-space lease. It owes money to vendors and has a variety of other actual and contingent

liabilities, including to various parties with whom SJBPH has contracted, with such contracts having monetary termination penalties.

11. The Counties are political subdivisions of the State of Colorado. Their combined population is 70,085. Each County is governed by a Board of County Commissioners.

12. Archuleta County and La Plata County have provided written notice to SJBPH, pursuant to C.R.S. §25-1-513 (2), that they are withdrawing from the agency effective December 31, 2023. SJBPH will continue to provide public health services to those Counties until December 31, 2023, at which time SJBPH will cease to exist by operation of law. See, C.R.S. §25-1-506 (1) (a district public health agency must consist of two or more contiguous counties).

13. Upon the withdrawal of Archuleta County and La Plata County from SJBPH on December 31, 2023, each County will then operate its own county public health agency, as every county in Colorado is required to maintain its own public health agency or participate in a district public health agency. C.R.S. §§25-1-506 (1) and 25-1-513 (2). In the event of dissolution of a district public health agency, local boards of health must be re-established by the constituent counties. C.R.S. §25-1-506 (2)(c). Both Counties are in the process of establishing their respective county public health agencies and appointing boards of health.

14. The public health statutes do not provide a mechanism or procedure for the dissolution and winding up of the affairs of a district public health agency such as SJBPH, nor do any other Colorado statutes. The public health statutes do, however, allow a BOH to adopt and amend bylaws in relation to the transaction of the public health agency's business. C.R.S. §25-1-508 (4)(b)(II).

15. The BOH has adopted bylaws providing that if SJBPH dissolves or otherwise ceases operations, or is in the process of winding up its affairs due to the actual or pending



withdrawal of more than one County from SJBPH, then the BOH, by resolution, may institute a court action for a court-appointed receiver to manage the winding up of the Department's affairs, including the disposition of its assets, liabilities, and records. See, Second Amended and Restated Bylaws dated December 15, 2022.

16. The BOH has issued a resolution 2022-07 authorizing and directing the Public Health Director to cause the filing of a civil action in the name of SJBPH, with the consent of the Counties as nominal defendants, to appoint a receiver under C.R.C.P. 66 to manage, protect, and preserve the assets and operations of SJBPH, and to oversee the winding up and dissolution of SJBPH and the transition from a district public health agency to two single-county public health agencies for the Counties. See, Resolution Authorizing and Directing the Public Health Director to Commence a Civil Action to Appoint a Receiver dated December 15, 2022.

17. Pursuant to Colo. Const. Art. XIV, §18 (2)(a) and C.R.S. §29-1-203, SJBPH and the Counties entered into an Intergovernmental Agreement effective November 15, 2022 ("IGA"). In order to facilitate the uninterrupted continuation of public health services for the Counties during the transition to their single-county public health departments, the IGA provides for the allocation of some of SJBPH's assets amongst the Counties for consideration based upon fair value, assumption of some office-space leases, disposition of medical and other records, and data sharing. The IGA does not, nor can it, allocate all of SJBPH's assets, or dispose of SJBPH's liabilities, since completion of the wind up of SJBPH's affairs will necessarily occur after the cessation of SJBPH. A receivership provides an appropriate mechanism for administration of those remaining assets and liabilities outside the scope of the IGA, because SJBPH will have ceased to exist. A copy of the IGA is attached to this Order and is incorporated herein by reference, and is made a part hereof for all purposes.

18. The Counties do not oppose the Motion, they consent to the appointment of a receiver for SJBPH upon the conditions set forth herein, and agree to the entry of this Order as reflected by the signatures below.

IT IS THEREFORE ORDERED THAT:

1. The Court appoints Cordes & Company LLC, as receiver (the “Receiver”) for the Receivership Estate (as defined below), and to manage the winding up of SJBPH’s affairs, including the disposition of its assets, liabilities, leases, vital records, and medical records. Bellann Raile, an individual and a member/manager of Cordes & Company, LLC, shall serve as the sole agent of the Receiver for the purposes of this Order, the Receivership Estate, and this action.

2. For this Order to become effective, the Receiver must file its oath as well as a bond in the amount of \$25,000.00. Upon filing the oath and bond, the Receiver shall be vested with all the powers and responsibilities of a receiver as provided by law and as specifically set forth herein. Immediately thereafter, the Receiver shall deliver written evidence that the required bond has been obtained, as well as email notice to the Parties’ legal counsel declaring the date and time of the commencement of the Receiver’s duties and its possession of the Receivership Estate.

3. Within five (5) business days of appointment, the Receiver shall notify the State of Colorado, the CDPHE, and municipalities within the Counties, of its appointment as Receiver. Such notice, which will include a copy of this Order, shall be provided by U.S. mail, postage prepaid and properly addressed. The Receiver shall also post such notice on the Receiver’s website at [www.cordesco.com](http://www.cordesco.com) and on SJBPH’s website at [www.SJBPH.org](http://www.SJBPH.org).

4. The Receiver shall work in conjunction with the Public Health Director to ensure Colorado’s public health standards are maintained by SJBPH through its cessation on December 31, 2023. The establishment of such standards as well as the operation, direction, or supervision

of any public health powers, duties, functions, or services provided by SJBPH pursuant to Colorado's public health statutes, namely C.R.S. §§25-1-502 (3), 25-1-502 (5), 25-1-506 et seq., and any other statute or regulation governing a district public health agency in the State of Colorado, shall remain the sole province of the Public Health Director and the BOH. The Receiver shall not unreasonably withhold consent to any funding required by SJBPH to carry out its public health powers and duties.

5. The Receiver shall not reveal, and shall take reasonable steps to ensure the security of, the following information and records relating to members of the public which SJBPH serves and/or relating to SJBPH or CDPHE: (a) personally identifiable information ("PII") including information defined as such in C.R.S. §§24-72-501 and 24-73-101; (b) protected health information ("PHI") including information defined as such in the federal Health Insurance Portability and Accountability Act ("HIPAA"); (c) State/CDPHE confidential and privileged information and records, and county and district public health agency confidential and privileged information and records, including information and records that are not subject to disclosure under the Colorado Open Records Act ("CORA"); and (d) SJBPH's personnel records.

6. The Court shall have jurisdiction over the Receiver and the Receivership Estate, which includes all tangible and intangible assets of SJBPH including: (a) all real and personal property owned, leased, or otherwise in the possession of SJBPH; (b) all funds, bank accounts, investment accounts, litigation claims, and accounts receivable; (c) all vehicles including trucks, automobiles, and trailers; (d) all furniture, furnishings, equipment, computers, and inventory; (e) all media on which information is stored electronically; and (f) all licenses, permits, books, records, and documents (excluding any privileged information as defined in paragraph 12 below), the foregoing collectively being the "Receivership Estate".

7. The Receivership Estate shall not include any asset owned or purchased by the Counties pursuant to the executed IGA or any other contract between SJBPH and a County or Counties, or any other asset that is otherwise owned by a County; provided, however, that the Receiver shall take possession of said assets and shall then turn them over to the Counties in accordance with the terms of the IGA. The Receivership Estate shall not include any asset dedicated to or owned by the State of Colorado or the CDPHE pursuant to any contract between SJBPH and the State/CDPHE, or any other asset that is otherwise owned by the State/CDPHE. The Receivership Estate shall not include any personal property, including personal computers, owned by any person employed by SJBPH or by any member of the BOH.

8. The BOH shall remain in existence until SJBPH ceases to exist on December 31, 2023. The Receiver or Ms. Raile shall attend all BOH meetings, shall regularly provide reports to the BOH as to material developments concerning the Receivership Estate, and shall timely provide documents or information reasonably requested by the BOH in writing.

9. The Receiver shall continue to maintain the employment of such personnel deemed reasonably necessary (after consultation with the Public Health Director) to perform SJBPH's public health services as required by Colorado law and any intergovernmental agreement. The Receiver shall ensure that SJBPH has adequate furniture, computers, supplies, equipment and personnel to perform public health services through December 31, 2023, as well as access to its data and technology thereafter as necessary for the wind up of SJBPH's affairs. The Receiver may engage personnel from Cordes & Company or hire contract workers to the extent reasonably necessary to perform the wind up and dissolution functions. The Receiver shall ensure that personnel are paid in the ordinary course through SJBPH payroll but with Receiver oversight. SJBPH may retain professionals, including existing General Counsel, as necessary on behalf of

SJBPH, its officers and BOH, as an expense borne by the Receivership Estate, through December 31, 2023.

10. The Receiver shall, without further Order of this Court, have the following powers and legal responsibilities:

(a) The Receivership Estate. The Receiver shall take constructive and physical custody and possession of the Receivership Estate, but shall not exclude SJBPH personnel from SJBPH's offices while they perform public health services to December 31, 2023.

(b) Management of Offices and Operations. SJBPH shall continue to manage all of the ordinary course operations of its public health services, and shall notify the Receiver regarding any matters that would vary from its current management and operations of public health services.

(c) Access. The Receiver shall have non-exclusive access to all keys, lock combinations, access cards and other means to access locked areas relating to the Receivership Estate, including all lockboxes and locked drawers and cabinets, except for keys and access cards in the possession of SJBPH personnel. The Receiver may make copies of such keys, access cards, and other means to access locked areas relating to the Receivership Estate for her use in the administration of the Receivership Estate.

(d) Books and Records. The Receiver shall have non-exclusive access to all nonprivileged communications in the books and records of SJBPH related to the Receivership Estate, whether in hard copy or electronic form, including but not limited to, all financial records, tax returns, and any and all documents under the control of, or prepared by any third party on behalf of SJBPH. The Receiver may make copies of such non-privileged communications in SJBPH's books and records for the Receiver's use in the administration of the Receivership Estate.

(e) Bank Accounts. The Receiver shall take control of SJBPH's bank accounts and may open one or more new interest-bearing bank accounts under the Receiver's control, at a bank or

other suitable financial institution (the “Receiver Account”). Ms. Raile for the Receiver, in her individual name, shall be the sole signatory on all such bank accounts. SJBPH shall provide the Receiver with all information necessary for the Receiver to take control of each of SJBPH’s bank accounts and to open and maintain the Receiver Account, including all login information necessary to access SJBPH’s bank accounts through the website(s) of the bank(s) where such accounts are maintained. As to any bank accounts held by the La Plata County Treasurer, if required by the Treasurer for the Receiver to take control of such accounts, the Public Health Director and the President of the BOH shall provide the necessary certification required by C.R.S. §25-1-511 (3).

(f) Revenues. The Receiver shall be responsible for supervising SJBPH’s cash management processes, including the processing of payments and the preparation of financial reports. The Receiver shall have the authority to demand, collect, and receive all accounts receivable, monies, funds, and payments related to the operations of SJBPH, and shall ensure that all such amounts are properly received, collected, and recorded.

(g) Liabilities. The Receiver is authorized to pay any fees, costs, expenses or other payables of SJBPH, or other amounts owing to third parties, or any liabilities incurred in the ordinary course of SJBPH’s operations. The Receiver is authorized to compromise or settle debts of the Receivership Estate.

(h) Checks. The Receiver shall have the authority to write checks and expend funds for the purposes of making any payments or distributions required or permitted to be made hereunder, including but not limited to expenses incurred in connection with the operation, preservation, and maintenance of the Receivership Estate, bank service charges, insurance, accounting, legal, and other professional services, inventory, office expenses, rent, security deposits, repairs, supplies, utilities, taxes, and renewals of the Receiver’s bond. The Receiver is expressly authorized to pay those pre-receivership expenses deemed critical in its discretion to serve the objectives set forth

herein. In particular, public health expenses connected to funding will be advanced consistent with established requirements.

(i) Insurance. SJBPH shall immediately provide the Receiver with copies of all existing insurance policies and shall name the Receiver as an additional insured and loss payee on any such policies for the period that the Receiver is in possession of the Receivership Estate. The Receiver shall determine, following consultation with SJBPH, whether in the Receiver's judgment there is sufficient insurance coverage for the Receivership Estate. If sufficient insurance coverage does not exist, the Receiver shall have 30 days to procure sufficient insurance for the Receivership Estate. The Receiver shall name herself as the insured and SJBPH as additional insured, and the Receiver shall be the loss payee for any policy she procures. No insurer may cancel, reduce the limits of, or otherwise modify its existing policy as a result of the appointment of the Receiver without further Order of this Court.

(j) Sale of Assets. The Receiver shall establish reasonable procedures for the sale of any and all assets of the Receivership Estate, and may sell such assets under terms which the Receiver, in its sole discretion, deems reasonable and appropriate; provided, however, that the Receiver shall do so following consultation with SJBPH.

(k) Contracts and Leases. Following consultation with SJBPH, the Receiver may negotiate, make, enter into, or modify contracts or agreements or leases of, or related to, the operations of SJBPH and the Receivership Estate. Following consultation with SJBPH, and upon written notice to the counterparty, the Receiver may immediately terminate any existing contract, agreement, lease or instrument of SJBPH which she determines is not beneficial to SJBPH or the Receivership Estate; except that the Receiver shall be bound by the terms and conditions of the IGA to the same extent as SJBPH and shall not modify or terminate the IGA without the express written consent of the Counties. Except for the IGA or as otherwise limited herein, the Receiver shall not be bound

by any contract between SJBPH and any third party that the Receiver does not expressly assume in writing. The Receiver shall have the authority to sign any and all contract documents on behalf of SJBPH. Provided, however, that before rescinding any of SJBPH's leases, the Receiver shall cooperate with the Counties in their assumption of one or more of the leases, and will facilitate the Parties' compliance with the IGA with respect to the assumption of any lease.

(l) Litigation. Subject to Order of this Court, following consultation with SJBPH, the Receiver shall have the authority to negotiate and settle claims of and against SJBPH. The Receiver is authorized in its discretion to commence, appear in, prosecute, and/or defend any litigation on behalf of SJBPH. All pending litigation by and against SJBPH is immediately and automatically stayed for a period of sixty (60) days from the date of entry of this Order. All new litigation by or against SJBPH, the Receiver, or the Receivership Estate shall be filed in this Court. The Receiver may request an extension of the initial sixty (60) day stay of litigation that is pending prior to its appointment, until after an orderly wind-up is completed.

(m) Receiver's Professionals and Personnel. The Receiver is authorized to employ legal counsel as may reasonably be needed to assist the Receiver in the discharge of its duties, as well as accountants, consultants, and other professionals, and may pay such professionals reasonable fees from the funds of the Receivership Estate. The Receiver is authorized to employ staff and other personnel of Cordes & Company LLC as the Receiver deems necessary to effectively manage the Receivership Estate and to assist the Receiver in the discharge of its duties. The Receiver is further authorized to employ SJBPH's General Counsel to assist with legal matters arising after December 31, 2023 relating to SJBPH, its BOH, and its officers and other personnel. In addition, the Receiver may implement key employee retention programs as needed to maintain adequate SJBPH personnel.



(n) Notice to Patients and Clients. The Counties will become custodians of SJBPH's records pursuant to the IGA. The Receiver and SJBPH shall cooperate with each other and with the Counties in providing written notice to SJBPH's patients and clients as to where they may receive public health services and where their records are located. The notice to SJBPH's patients and clients may also include posting on websites and posting on the front doors of SJBPH's offices and clinics.

11. The Receiver shall have discretion to apply for express authority from this Court for any relief consistent with this Order at any time. If the parties to such relief do not respond with a request for hearing within ten (10) business days after receipt of written notice of such application, the Court may grant the requested relief without a hearing.

12. The Receiver shall obey all privacy laws that apply to SJBPH's patients and clients, including HIPAA and any other federal and state laws relating to PII and PHI. The Receiver shall also obey all laws regarding confidential and privileged information and records that are not subject to disclosure, including CORA, the attorney-client privilege, and the attorney work product doctrine. Nothing in this Order shall constitute an explicit or implicit waiver of SJBPH's attorney-client privilege.

13. SJBPH and anyone acting on its behalf, including board members, directors, employees, attorneys, representatives, agents, and contractors, shall cooperate with the Receiver and its agents in connection with the Receiver's performance of its duties and exercise of the authority granted to the Receiver herein. Such persons shall not interfere with the Receiver carrying out its duties under this Order and any further orders of this Court.

14. Each bank and other financial institution where SJBPH maintains accounts is ordered to allow the Receiver to take over SJBPH's accounts, to transfer control to the Receiver of the funds and accounts, and to provide account statements and other account documents at the

Receiver's request. Upon the Receiver's request and presentation of this Order, each bank and other financial institution where SJBPH maintains accounts is ordered to delete all designated signatories on such accounts except for those signatories identified by the Receiver. The Receiver is authorized to execute new signature cards for such accounts to ensure the transfer of control to the Receiver.

15. No individual or entity may sue the Receiver or Bellann Raile without first obtaining permission from this Court. The Receiver and Bellann Raile are acting solely in their capacity as the Receiver and the sole agent of the Receiver and, except as provided by applicable law, no risk, obligation, liability, or expense incurred shall be the personal risk, obligation, liability, or expense of Ms. Raile or Cordes & Company LLC, but instead shall be the risk, obligation, liability, or expense of the Receivership Estate.

16. Bellann Raile's hourly rate will be \$350. Where appropriate, the Receiver will delegate tasks to Cordes & Company employees under its supervision. Hourly rates for such employees range from \$60 to \$275 per hour, depending upon their level of experience. Actual expenses incurred by the Receiver or any of its employees will be charged. The Receiver may purchase materials, supplies, and services necessary to assist the Receiver in the discharge of its duties at ordinary and usual prices and rates.

17. The Receiver shall continue in possession of the Receivership Estate pending further Order of this Court. No later than 90 days after the Receiver relinquishes control of the Receivership Estate, the Receiver shall: (a) prepare a final account and report and apply for final payment of the Receiver's fees and expenses; and (b) file a Motion for approval of the final account and exoneration of the Receiver's bond. Notice of the Motion shall be served on legal counsel for the Parties, all persons and legal counsel that enter an appearance in this action, and on all persons known by the Receiver to have potential claims against the Receivership Estate.

IT IS FURTHER ORDERED THAT:

1. The Receiver shall file with the Court and serve on the Parties quarterly reports (on dates consistent with SJBPH's quarterly financial reports) under oath, and shall request Court approval of such reports. The reports shall contain information to apprise the Court of the status of the receivership, including a narrative report of events, a financial report, and a statement of all fees paid to the Receiver and to its staff, employees, and professionals.

2. Within 30 days of the date of this Order, the Receiver shall file an inventory of all assets of the Receivership Estate, including but not limited to all real property and all tangible and intangible personal property and accounts.

3. The Receiver shall cooperate with the Parties, and participate as may be requested by the Parties, in the implementation of the IGA.

4. The Receiver is authorized to pay and to enter into employment contracts with critical SJBPH staff in its administration/finance and human resources divisions, and with SJBPH's General Counsel, as the Receiver deems necessary and appropriate to assist in the winding down of SJBPH's affairs after December 31, 2023. The Receiver may continue SJBPH's existing payroll account, health insurance, and other employment benefits for the SJBPH critical staff after December 31, 2023 for only so long as is necessary and appropriate for such staff to assist the Receiver in winding down the affairs of SJBPH.

5. The Receiver shall create a claims process designed to elicit, then evaluate, unpaid pre-receivership claims against SJBPH remaining after cessation of SJBPH. After payment in full of all expenses as set forth in paragraph 10 (i) above, and whenever sufficient funds are available for such purpose, pre-receivership unsecured claims deemed allowed by the Receiver will share in any distribution on a pro rata basis. If any funds remain after payment of expenses and claims,

such funds shall be divided, and then distributed to the Counties, based upon the proportion that the population of each County bears to the total population of all the Counties.

6. If any person or entity presenting and filing a claim has a court action pending against SJBPH at the time the claim is filed and presented, such person or entity shall voluntarily dismiss the court action as a pre-condition to consideration or approval of the claim.

7. Any person or entity that is not a party to this action is prohibited from seeking discovery from the Receiver absent an Order from this Court authorizing such discovery.

8. Any knowing interference with the Receiver's functions under this Order is punishable by contempt of court.

9. The Court vests the Receiver with any and all authority necessary or appropriate to carry out the specific intent of this Order.

10. The Receiver or the Parties may petition this Court for instructions in furtherance of this Order and any further orders the Court may make with respect to the Receivership Estate.

IT IS SO ORDERED.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.

BY THE COURT:

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District Court Judge

# Special Meeting of the Board of Health

## Minutes

Thursday, August 10, 2023 at 4:00 pm

### LOCATION OF THE MEETING

The Board of Health meeting will be held in the Larkspur Training Room at the San Juan Basin Public Health Office Building, 281 Sawyer Drive, Durango. The meeting will be held in person and virtually using an online meeting platform (Zoom) via computer and telephone. Please click on the link to join the meeting via Zoom: <https://zoom.us/j/89539364442> or call (408) 638-0968, (253) 205-0468, (386) 347-5053 Webinar ID: 895 3936 4442

### AGENDA

#### 1. Call to Order

##### Minutes:

Board Vice President Shere Byrd called the meeting to order at 4:02 p.m

#### 2. Roll Call

Shere Byrd, Vice President; Bob Ledger, Board Member; Terryl Peterson, Treasurer/Finance Committee Chair; Dr. Jon Bruss, Board Member; Isabel Vita, Board Member, Marsha Porter-Norton, La Plata County Commissioner; Warren Brown, Archuleta County Commissioner.

##### Minutes:

Shere Byrd, Vice President; Bob Ledger, Board Member; Terryl Peterson, Treasurer/Finance Committee Chair; Dr. Jon Bruss, Board Member; Isabel Vita, Board Member; Marsha Porter-Norton, La Plata County Commissioner; Warren Brown, Archuleta County Commissioner. Also in attendance: Michael Goldman, Legal Counsel; Bellann Raile; court-appointed receiver with Cordes & Co; Tiffany Switzer, Interim Executive Director; Janet Wolf; Clerk to the Board, Shandi Pritchett; Moderator.

#### 3. Identification of Potential or Perceived Conflicts of Interest

##### Minutes:

There were no potential or perceived conflicts of interest identified.

#### 4. Approval of Agenda & Content

##### Minutes:

Commissioner Porter-Norton made a motion to move consent agenda item 6a under Items to be Considered for Decision. The motion was seconded by Bob Ledger and passed with a unanimous vote.

#### 5. Public Comment

This is an opportunity to make comment and/or address the Board of Health on matters not on this agenda. Persons wishing to address the Board need to notify the Clerk prior to the start of the meeting. All public comments shall be limited to matters not on the posted agenda, under the jurisdiction of the Board, and shall be expressly limited to three (3) minutes per person. The Board

is not required to respond to or discuss public comments. No action will be taken at this meeting on public comments.

**Minutes:**

There was no public comment.

## **6. Consent Agenda**

The Consent Agenda is intended to allow the Board to approve matters that are considered routine or noncontroversial with a single motion. There will be no separate discussion of these items unless a Board member requests an item be removed from the Consent Agenda. Items removed from the Consent Agenda will be considered under Items to be Considered for Decision.

**Minutes:**

Consent agenda item 6a, Approval of Updated San Juan Basin Public Health Employment Policies to comply with Protecting Opportunities and Working Rights (POWR) Act was moved by a unanimous vote under Items to be Considered for Decision. Subsequently, the board decided to discuss this agenda item following the Section 8. Reports portion of the agenda.

### **a. Approval of Updated San Juan Basin Public Health Employment Policies to Comply with Protecting Opportunities and Workers' Rights (POWR) Act**

## **7. Items to be Considered for Decision**

**Minutes:**

Commissioner Porter-Norton would like to move the decision to approve the updated SJBPH employee policies to the next regular board meeting to allow for the La Plata County human resource staff time to review and comment on the policy. Commissioner Brown stated that he does not believe it is up for debate; the board has to approve the policies to be in compliance with the law. Ann Camp, Human Resources Director at SJBPH, advised the Board that she believes SJBPH is in compliance with the law at this time with the policy updates as presented. She said that written documentation has been provided to staff regarding the changes. After some discussion, Terryl Peterson moved to approve the policy as presented. Commissioner Brown seconded the motion. Shere Byrd, Bob Ledger, and Jon Bruss were in favor of approving the policy as presented. Commissioner Porter-Norton was against passing the motion citing a lack of time to review the content.

## **8. Reports**

### **a. Receiver's 2nd Interim Report dated July 27, 2023**

**Minutes:**

Bellann Raile, court-appointed receiver, began by noting that the report is controversial and that the pandemic was an unprecedented time. She advised the Board that the majority of staff followed policy and had proper documentation for emergency compensation (EC). She noted that the amount of EC paid was not problematic but payments being heavily weighted to certain staff and lack of documentation was. The report focuses on Former SJBPH Executive Director Jollon as she oversaw the program, and earned the highest amount of EC pay with many hours worked without proper documentation. Bellann advised the Board that further action or recourse to this report will be solely up to the Board as she cannot make any legal findings in her capacity as the receiver. Bellann stated that Interim Executive Director Tiffany Switzer has provided suggestions to update the policy and a process to provide additional details to the board when a budget variance occurs. The Board entered into a discussion about the Board's next steps in regard to EC and policies

with a focus on using this experience as a lesson learned opportunity and should move past this issue. Vice Chair Shere Byrd invited prior Board members Ann Bruzzese and Gwen Lachelt, a former LPC commissioner, to speak of their recollections of the EC policy during their time on the Board. Ann stated she felt Liane Jollon's reputation had been harmed unnecessarily and that she was aware that EC was being paid. She further stated she saw reports and was aware of the amount Liane was working at the time. Gwen agreed with Ann also stating that she was aware that Liane was working an immense amount. She stated she also was aware of the policy for EC. Both Ann and Gwen submitted affidavits about their knowledge of the policy. The Board continued the discussion including Commissioner Brown expressing his desire to have answers for the Archuleta County community. The Board generally agreed to move forward with minor changes to the current EC policy including clear language about the board's oversight. Commissioner Porter-Norton raised the issue that the receiver's report brought up a question that EC payments were not allowable under Liane's contract. Michael clarified that from a legal perspective, the EC payments did not meet the definition of overtime. Terry Peterson made a motion for staff to review the EC policy and make adjustments that could potentially be a model for the new health departments in the future. Bob Ledger seconded the motion, which passed unanimously.

#### **b. SJBPH Clarifications to Receiver's Report dated August 4, 2023**

##### **Minutes:**

Michael Goldman, Legal Counsel, prefaced his report by stating that he had a discussion with Commissioner Porter-Norton prior to the meeting. He reminded the board that in December of 2022, the Board gave authority to former SJBPH Executive Director Liane Jollon to bring a receiver into the matter of dissolution. After the receivers report was filed, SJBPH staff identified details in the receivers report that required clarification; therefore, a clarification report was filed with the court last week. The purpose of the clarification report is to expand and bring additional knowledge to the receivers report. The clarification report was not brought before the Board prior to filing because that had not been done in the past and he did not believe this instance was an exception. Michael stated that in the future if the Board wants to be a part of what is filed with the court surrounding SJBPH he will accommodate that request. Commissioner Porter-Norton stated she believed this was a Board matter but understood the decision. Shere Byrd noted that she understood that SJBPH was told they would get time to review the receivers report prior to court filing; however that did not occur. Therefore, the clarifications report was necessary.

#### **c. Executive Director/Staff Reports**

##### **Minutes:**

Tiffany Switzer Interim Executive Director began by acknowledging that SJBPH staff member Emelia Majewski won a State Tobacco Education Prevention and Partnership (STEPP) award for her program on Tobacco Prevention. The SJBPH clinic staff have been focusing on efficiency and this has resulted in a profit by the Sexual Health Clinic. Tiffany informed the Board that CDPHE has responded to a small spill at Lightner Creek; there is no other information at this time. Commissioner Porter-Norton stated that La Plata County

(LPC) had also been contacted about this spill. Tiffany continues to meet with the LPC Manager and the AC Public Health Director surrounding SJBPH dissolution. SJBPH is in communication with CDPHE to support two LPC facilities currently in a COVID-19 outbreak. Tiffany informed the Board that there is a new subvariant in circulation. Tiffany continues to work with the Receivers in order to meet all the steps of the Intergovernmental Agreement (IGA) as well as work on staff retention. Tiffany advised the Board that staff made a presentation to the LPC Board of County Commissioners on the progress of the Community Health Assessment/Public Health Improvement Plan (CHA/PHIP). Shere Byrd would like continuing updates to the Board on CHA/PHIP.

#### **d. Executive/Management/Personnel Committee Updates**

##### **Minutes:**

There were no Executive/Management/Personnel Committee updates.

### **9. Executive Session**

If requested by the Board for the purpose of receiving legal advice from counsel on specific legal questions in accordance with C.R.S. Section 24-6-402(4)(b); or for the Board to discuss personnel matters pursuant to C.R.S. Section 24-6-402(4)(f)(1).

##### **Minutes:**

There was no executive session.

### **10. Other Business**

#### **a. Election of Officers**

##### **Minutes:**

[There were three related topics discussed during this portion of the board meeting: election of officers, the formation of a dissolution committee and increasing the frequency of board meeting through 2023. While Board of Health meeting minutes are not intended to be a verbatim transcript, the summary of the discussion that occurred is organized into each topic area as the actual conversation wove the topics throughout.]

Election of officers: Shere opened the Other Business portion of the agenda item regarding election of officers by stating that after consultation with legal counsel, in order for there to be an election of new officers, the current officers would need to be removed from office.

After that motion and vote, elections could occur from the floor. The other option discussed was to keep current officers in place and discuss electing the open position of Board Chair.

Shere explained how her role as Vice Chair had evolved into assuming the duties of the Chair. Commissioner Porter-Norton explained that her desire to hold an election has to do with ensuring governance on the board, especially going into the dissolution. Shere

described what the day-to-day responsibilities of the Chair include. She stated that it is not an insignificant amount of time. The Chair and Vice Chair make up the Executive Committee of the Board. Decision-making will continue to be a role for the entire board.

Shere stated that she would be interested in staying in the Chair role. Commissioner Porter-Norton suggested that the board consider roles of the officers may change based on the upcoming dissolution. There was discussion that the bylaws may need to be altered if that type of change was desired. Isabel Vita expressed her interest in nominating Jon Bruss to serve as Chair to the Board. Discussion ensued about whether the board was ready to take



nominations from the floor or not. Terryl Peterson nominated Shere Byrd to serve as Chair due to her experience in the position and with the agency. Bob Ledger agreed with that motion. Terryl suggested that Dr. Jon Bruss may serve as Vice Chair.

Commissioner Brown wondered if nominated, would Jon Bruss accept the position of Chair. Jon replied that he likes the idea of the executive committee's involvement in a dissolution committee and would consider the nomination to be a part of the executive committee. He welcomes Shere's continued input and support and would like Shere to be part of the dissolution committee. The motion on the floor made by Terryl and seconded by Bob Ledger to nominate Shere Byrd as chair was addressed. A rollcall vote was made. Ayes: Terryl, Bob, Marsha, Jon. Nays: Warren and Isabel. The motion passed. Commissioner Porter-Norton made a motion to nominate Jon Bruss as Vice Chair. Jon agreed to serve in that capacity. Commissioner Warren Brown seconded the motion. A roll call vote was called. Ayes: Bob, Terryl, Warren, Marsha, Isabel. The motion passed.

Formation of Dissolution Committee: Jon Bruss expressed his desire for the board to focus on project management and timelines related to the dissolution; he believes the executive committee should meet on a regular basis. He expressed an interest in including the county attorneys, Michael Goldman, and the executive director in those meetings. He provided suggestions on project management tools that could be used to reach dissolution successfully by the end of the year. Discussion ensued about forming board committees. Shere reminded the board that a committee to the board does not have decision-making authority. Jon Bruss asked if the board can delegate authority to a committee. Michael Goldman read into the record from bylaws section 4.3 "From time to time, the Board may create committees to further the functions or goals of the Board. The Board may, but shall have no obligation to use committees other than the Appointments Committee referenced in C.R.S. § 25-1-508(3), and such committee shall be established, from time to time, by the Board through adoption of policy passed by majority vote of the Board. It is the intention that committees serve to address matters and report and make recommendations to the Board. Authority to take formal action remains with the Board; no committee will take formal action unless specifically directed to take such action by resolution of the Board following majority vote with a quorum present." Commissioner Porter-Norton expressed her support of the vision that Jon Bruss described regarding the make up of the committee and its goals. The goals of the dissolution committee were discussed as well as how the committee would operate. Michael suggested that a discussion about a dissolution committee be included on the next agenda.

Michael reminded the board about the authority that the receiver has which is limited to finances, and the executive director maintains authority over operations. Any committee that is formed that involves extra personnel will have limited to no authority to influence operations or finances. Tiffany recommended that current weekly communication to staff could be helpful for the board to receivers as it captures operational efforts and summarizes transitional meetings that occur between the executive team and county transition teams. Tiffany offered to provide weekly communication via email to the board of health members for better understanding what is occurring with the dissolution. Commissioner Porter-Norton expressed the need for working out some dissolution decisions as a group in some way and

would like to consult with her executive team. She brought up the need to get into the SJBPH building as soon as possible. Commissioner Brown expressed a desire of Archuleta County to pre-plan activities to prepare the Pagosa Springs building for occupancy.

Board meeting frequency: Shere offered that in order to support the counties, the board may want to consider increasing the frequency of board meetings. There was discussion about a monthly or bi-weekly cadence. A suggestion was also made that the board meet more frequently. This will give staff time to fully vet the idea of a dissolution committee and ensure that byalws are being followed. Shere suggested the board should amend the board meeting frequency and address this at the next board meeting.

This agenda item concluded with Shere Byrd requesting a board of health meeting the last of week of August 2023. Committee ideas can be further explored as well as an opportunity for the board to discuss priority issues.

#### 11. Next Regular Board Meeting

**Minutes:**

The next regular meeting of the SJBPH Board of Health is scheduled for 9 am on September 28, 2023.

#### 12. Adjourn

**Minutes:**

Meeting adjourned at 6:45 p.m.

San Juan Basin Public Health is committed to providing accommodations to enable equal access and full participation in our public meetings. To request special assistance for language or other barriers, please call 970-247-5702 or email us at [communications@sjbpublichealth.org](mailto:communications@sjbpublichealth.org).

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**SUBJECT:** Discussion Regarding Revisions to the SJBPH Emergency Compensation Policy

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**PRESENTER:** Tiffany Switzer, Interim Executive Director  
Ann Camp, Interim Deputy Director

**OUTCOME REQUESTED:** ☐ Decision ☒ Report

**COUNTIES:** ☒ Archuleta ☒ La Plata ☐ San Juan ☐ Other:

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**PURPOSE/BACKGROUND**

Per the Policies Governing the Directors of SJB(P)H, adopted on May 22, 2014, the Board has the authority to make and approve policy.

During the August 10, 2023, Special Meeting of the Board of Health, the Board directed staff to revise the current *Exempt (Salaried) Practices* for declared emergencies in the SJBPH Employment Policies.

The board requested changes to the practice/policy to include language regarding increased oversight of time billed by the Executive Director and Staff during declared emergencies. The board suggested that the edits could be limited to the addition of a few sentences and stressed that the expectation was not to spend a lot of effort to make the requested revisions.

The revised text as seen on the attachment include procedures for the review of time billed by the Executive Director by an officer of the Board of Health and additional reporting by Human Resources and approval of staff time billed during a declared emergency. There is also a provision for additional accountability by the Finance Committee.

***Attachment(s): DRAFT San Juan Basin Public Health Employment Policies page with additional text.***

The changes to the *San Juan Basin Public Health Employment Policies* shows the current practice/policy with the added language in color and underlined.

**FISCAL IMPACT**

There is no additional fiscal impact due to the updates in the *SJBPH Employment Policies*.

**STAFF RECOMMENDATION**

Staff recommend that the Board discuss the additions of the provided text and approve the updated *San Juan Basin Public Health Employment Policies*.

# SAN JUAN BASIN public health

As with all leave, compensatory time must be approved in advance by an appropriate supervisor or Director.

## EXEMPT (SALARIED) PRACTICES

### COMPENSATORY TIME FOR EXEMPT EMPLOYEES

Exempt Employees do not accrue compensatory time. Under the Fair Labor Standards Act, exempt employees are hired to get the job done and at times may need to work beyond a customary schedule. Exempt employees are given the flexibility to exercise judgment both in how and when the work is done. A greater emphasis is placed on meeting the responsibilities of the position rather than on working a specific number of hours. Exempt employees are expected to meet operational needs and are evaluated on results achieved. Based upon all of the foregoing, exempt employees neither earn nor accrue any compensatory time.

Exempt employees at San Juan Basin Public Health are required to submit a timesheet for all hours worked. Hours logged into the time clock are tracked for the sole purpose of allocating time spent to the appropriate funding sources.

### DECLARED EMERGENCIES

Exempt employees may be called upon from time to time to go far beyond their regular work duties during extraordinary “Declared Emergency” situations. Even during these times, exempt employees remain exempt from all Fair Labor Standards Act overtime compensation obligations; hence, this policy is not to provide overtime compensation but to provide additional compensation for extraordinary efforts in defined emergency situations.

For the specified duration of defined “Declared Emergencies,” SJBPH will compensate exempt employees for all hours that are approved by the Executive Director (or her/his designee) and worked over the specified threshold of forty (40) hours per workweek; such additional compensation shall equal the employee’s salary converted to a straight time hourly wage. For all hours declared by the Executive Director as emergency compensation, such shall be reviewed and approved by an officer of the San Juan Basin Board of Health. The eligible employee must promptly report time and tasks in sufficient detail. During a Declared Emergency, Human Resources will report monthly emergency compensation payments to the Executive Director. Once an exempt employee is paid for 50 hour of emergency compensation Human Resources will inform the Executive Director for further analysis and shall then be reported to the Board of Health Finance Committee for oversight and reporting of specific payment in board packets for each scheduled meeting.

Care should be taken by San Juan Basin Public Health to utilize this policy judiciously and appropriately.

SJBPH employees shall maintain accurate records of all hours worked during the emergency. For purposes of this policy, the “Declared Emergency” will be deemed as terminated (even if there are continuing obligations or post-emergency actions) upon a determination by SJBPH BOH and/or the SJBPH Executive Director.

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**SUBJECT:** Approval of the Revised SJBPH Emergency Compensation Policy

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**PRESENTER:** Michael Goldman, Legal Counsel

**OUTCOME REQUESTED:** ☒ **Decision** ☐ **Report**

**COUNTIES:** ☒ **Archuleta** ☒ **La Plata** ☐ **San Juan** ☐ **Other:**

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**PURPOSE/BACKGROUND**

Per the Policies Governing the Directors of SJB(P)H, adopted on May 22, 2014, the Board has the authority to make and approve policy.

Following the August 10, 2023, Special Meeting of the Board of Health, staff made the Board-directed changes to the Emergency Compensation (EC) Policy. Upon further discussion and review during the August 28, 2023, Special Meeting of the Board of Health, the Board directed staff to add the Colorado Revised Statue (CRS) citation to the *Exempt (Salaried) Practices* for declared emergencies in SJBPH Employment Policies.

To that end the following attachments are provided:

- Draft Resolution 2023-04 Amending Emergency Duty Compensation For Exempt Employees
- Exhibit A to the aforementioned Draft Resolution which contains the revised redline markup of the EC Policy with the CRS citation included.
- Exhibit A to the aforementioned Draft Resolution which contains the revised EC Policy with the CRS citation included – CLEAN version with no markups

For purposes of discussion and comparison, the recently adopted La Plata County Emergency Compensation Policy is also attached.

**FISCAL IMPACT**

There is no additional fiscal impact due to the updates in the SJBPH Employment Policies.

**STAFF RECOMMENDATION**

Staff recommend that the Board approve the revised text and approve the updated San Juan Basin Public Health Employment Policies and the Draft Resolution 2023-04 Amending Emergency Duty Compensation For Exempt Employees.

**San Juan Basin Public Health**

**RESOLUTION 2023-04**

**RESOLUTION AMENDING EMERGENCY DUTY COMPENSATION FOR EXEMPT EMPLOYEES**

**WHEREAS**, San Juan Basin Public Health ("SJBPH") is a district public health agency established by Archuleta and La Plata Counties pursuant to C.R.S. 25-1-506, et seq., and is a political subdivision of the State of Colorado; and

**WHEREAS**, SJBPH will cease to exist at the close of business on December 31, 2023; and

**WHEREAS**, SJBPH adopted a policy for Emergency Duty Compensation for Exempt Employees ("E.C. Policy") on August 27, 2015 and reapproved the policy on June 27, 2019; and

**WHEREAS**, the SJBPH Board of Health wishes to amend the E.C. Policy to strengthen the protocols giving rise to when, how and to whom emergency compensation is paid for greater accountability and protection of SJBPH and its employees; and

**NOW THEREFORE, BE IT RESOLVED**, that the SJBPH Board of Health amends the emergency compensation for exempt employees as set forth in the attached Exhibit A and shall become effective immediately upon adoption.

Adopted on this \_\_\_\_ day of September, 2023.

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Shere Byrd, President  
San Juan Basin Board of Health

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Attest

# SAN JUAN BASIN

## public health

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As with all leave, compensatory time must be approved in advance by an appropriate supervisor or Director.

### EXEMPT (SALARIED) PRACTICES

#### COMPENSATORY TIME FOR EXEMPT EMPLOYEES

Exempt Employees do not accrue compensatory time. Under the Fair Labor Standards Act, exempt employees are hired to get the job done and at times may need to work beyond a customary schedule. Exempt employees are given the flexibility to exercise judgment both in how and when the work is done. A greater emphasis is placed on meeting the responsibilities of the position rather than on working a specific number of hours. Exempt employees are expected to meet operational needs and are evaluated on results achieved. Based upon all of the foregoing, exempt employees neither earn nor accrue any compensatory time.

Exempt employees at San Juan Basin Public Health are required to submit a timesheet for all hours worked. Hours logged into the time clock are tracked for the sole purpose of allocating time spent to the appropriate funding sources.

#### DECLARED EMERGENCIES

Exempt employees may be called upon from time to time to go far beyond their regular work duties during extraordinary "Declared Emergency" situations. Even during these times, exempt employees remain exempt from all Fair Labor Standards Act overtime compensation obligations; hence, this policy is not to provide overtime compensation but to provide additional compensation for extraordinary efforts in defined emergency situations.

Pursuant to C.R.S. § 24-33.5-709, a local disaster "emergency" may be declared only by the Principal Executive Officer of a political subdivision. It shall not be continued or renewed for a period in excess of seven days except by or with the consent of the governing board of the political subdivision. For the specified duration of defined "Declared Emergencies," SJBPB will compensate exempt employees for all hours that are approved by the Executive Director (or her/his designee) and worked over the specified threshold of forty (40) hours per workweek; such additional compensation shall equal the employee's salary converted to a straight time hourly wage. For all hours declared by the Executive Director as emergency compensation, such shall be reviewed and approved by an officer of the San Juan Basin Board of Health. The eligible employee must promptly report time and tasks in sufficient detail. During a Declared Emergency, Human Resources will report monthly emergency compensation payments to the Executive Director. Once an exempt employee is paid for 50 hour of emergency compensation Human Resources will inform the Executive Director for further analysis and shall then be reported to the Board of Health Finance Committee for oversight and reporting of specific payment in board packets for each scheduled meeting.

Care should be taken by San Juan Basin Public Health to utilize this policy judiciously and appropriately.

SJBPB employees shall maintain accurate records of all hours worked during the emergency. For purposes of this policy, the "Declared Emergency" will be deemed as terminated (even if there



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are continuing obligations or post-emergency actions) upon a determination by SJBPH BOH and/or the SJBPH Executive Director.

### COMPENSATION PRACTICES

Wages, bonuses and other compensation are determined at the discretion of SJBPH and in accordance with Federal and State law. Wage scales are determined using a consistent method, and bonuses and incentives may be provided in accordance with Human Resources practices.

### FURLOUGH

#### INVOLUNTARY FURLOUGH

The Executive Director has the authority to mandate unpaid time off to address economic conditions, temporary reductions in workload and budgetary constraints. Mandated unpaid time off applies to all classifications of employees. Mandatory furloughs for part-time regular employees will be pro-rated.

The Fair Labor Standards Act (FLSA) permits this reduction for exempt employees. Under the FLSA, exempt employees essentially become non-exempt employees during any workweek in which they have a furlough period. For this reason, in any workweek in which a furlough is required, an exempt employee is prohibited from working more than forty (40) hours and is also prohibited from working on the furloughed day.

#### VOLUNTARY FURLOUGH

In addition, the Executive Director may authorize voluntary furloughs for designated periods of time to address specific budgetary constraints to both limited purpose employees and non-exempt regular employees. The Executive Director may grant individual and sporadic requests for voluntary furloughs in half (1/2) to full day increments at specific times. The Executive Director may also grant voluntary reduction in scheduled weekly work hours for non-exempt employees, which may be for periods of less than four (4) hours.

### BENEFITS

SJBPH offers its eligible employees working more than thirty hours per week the group health, dental insurance, vision insurance, life insurance, employee assistance program, retirement plans, and flexible spending account subject to the terms defined in the Plan documents. The Plan documents are subject to change at the discretion of SJBPH.



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As with all leave, compensatory time must be approved in advance by an appropriate supervisor or Director.

### **EXEMPT (SALARIED) PRACTICES**

#### **COMPENSATORY TIME FOR EXEMPT EMPLOYEES**

Exempt Employees do not accrue compensatory time. Under the Fair Labor Standards Act, exempt employees are hired to get the job done and at times may need to work beyond a customary schedule. Exempt employees are given the flexibility to exercise judgment both in how and when the work is done. A greater emphasis is placed on meeting the responsibilities of the position rather than on working a specific number of hours. Exempt employees are expected to meet operational needs and are evaluated on results achieved. Based upon all of the foregoing, exempt employees neither earn nor accrue any compensatory time.

Exempt employees at San Juan Basin Public Health are required to submit a timesheet for all hours worked. Hours logged into the time clock are tracked for the sole purpose of allocating time spent to the appropriate funding sources.

#### **DECLARED EMERGENCIES**

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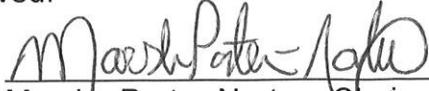


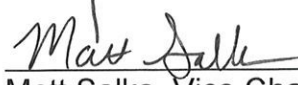
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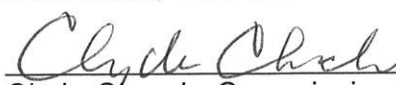
ACCOUNTABILITY · INTEGRITY · RESPECT

POLICY MANUAL

Section: IV – Employee Relations    Approved:

Policy Number: IV.11      
Marsha Porter-Norton, Chair

Originating Dept.: Human Resources      
Matt Salka, Vice Chair

Subject: Emergency Duty Compensation for Exempt Employees      
Clyde Church, Commissioner

Effective Date: September 12, 2023

Replaces: Emergency Duty Compensation for Exempt Employees, Section VI, Policy 25 dated June 25, 2023.

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**I      Purpose:**

La Plata County acknowledges that employees holding positions classified as exempt from overtime calculations may occasionally be required to exceed their regular job responsibilities during specific emergency situations. Similarly, the Stafford Act's Sections 403, 407, 420, and 502, along with FEMA Recovery Policy – RP9525.7, recognize the necessity of labor expenditures for executing emergency tasks crucial to promptly addressing immediate threats to life and property stemming from significant disasters, emergencies, or fires. Exempt employees who are engaged in such emergency work can, in these exceptional scenarios, perform extended hours beyond their customary schedules to meet community needs. This policy establishes a framework through which exempt employees can receive emergency compensation, in addition to their regular salaries, when operating during these emergency circumstances.

**II      Definitions:**

County Declaration. A declaration of disaster emergency by the La Plata County Manager or the La Plata County Board of Commissioners pursuant to C.R.S. §24-33.5-709.

Declared Emergency. The time span starting at 12:01 a.m. on the initial date of either a County Declaration, a State Declaration, or both and extending until 11:59 p.m. on the date when the last relevant County Declaration or State Declaration is lifted or expires in accordance with the Colorado Disaster Emergency Act, C.R.S. §§24-33.5-701 *et seq.*

Exempt Employee. An employee who meets certain legal requirements regarding level of responsibility as defined under the Fair Labor Standards Act. Exempt employees typically have a 40-hour workweek, however; they may work additional hours as needed to accomplish the work of the position without overtime compensation.

Hours worked. All hours actually worked in a workweek used for considering emergency compensation.

State Declaration. When such declaration directly impacts the citizens of La Plata County, a declaration of disaster emergency by the Governor of Colorado issued pursuant to C.R.S. §24-33.5-704.

Straight Time. The hourly rate earned over a standard pay period calculated from the employee's current bi-weekly salary.

#### **IV Terms and Eligibility:**

- A. Eligible exempt employees may be paid emergency compensation under this policy for hours worked starting the 8th calendar day following the initiation of the Declared Emergency. Unless the applicable employment contract specifically provides otherwise, this policy applies to contract employees who are exempt. Emergency compensation paid pursuant to this policy shall not be considered overtime.
- B. To receive compensation under this policy, the following criteria must be met:
  - 1. The Department Head/Elected Official responsible for overseeing the employee shall inform Human Resources of the employee's assignment to the Declared Emergency. By adopting and maintaining this policy, the Board of County Commissioners hereby informs Human Resources that the County Manager and County Attorney are assigned to each Declared Emergency.
  - 2. The exempt employee must work over 48 hours in the workweek for which the emergency compensation is applied.
  - 3. The hours worked must be reasonable and necessary considering the circumstances, as determined by the employee's supervisor. Care should be taken by the Department Head/Elected Official to utilize this policy judiciously and appropriately. Factors that may be considered when determining "reasonable and necessary" include, but are not limited to, the severity of the incident, the function of the exempt employee for which the hours are claimed, whether the work was performed at a time when it was necessary to work extraordinary hours based on the circumstances of the incident and the number of consecutive hours the employee worked. Hours worked are reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent employee under the circumstances prevailing at the time the hours were worked.
  - 4. The employee shall follow all guidance issued by the La Plata County



Finance Department with respect to the tracking of time and expenditures. The employee shall keep time records for all hours worked during the pay period and timekeeping related to the Declared Emergency shall contain detailed descriptions of the work performed and/or be set forth on a properly completed Incident Command System Form 214 Activity Log.

5. The exempt employee's supervisor shall review the hours worked and approve those properly claimed. Such approval shall be an indication that the supervisor finds the hours to be reasonable and necessary, in compliance with this policy and consistent with the guidance issued by the La Plata County Finance Department. An exempt employee's failure to adhere to this policy may result in a determination that the claimed hours are not eligible for emergency compensation or discipline. Where an exempt employee's hours are not ordinarily reviewed and approved by a supervisor (e.g., the County Manager and the County Attorney), the Board of County Commissioners hereby delegates the obligation and authority for approval to the Chair of the Board of County Commissioners or, in the instance of the La Plata County Public Health Director, the Chair of the La Plata County Board of Health.
- C. Any approved hours worked in excess of 48 hours in a workweek shall be paid as straight time. An eligible exempt employee might be tasked with assignments beyond their usual responsibilities or primary workplace. These assignments will not impact their pay rate.
- D. As constitutional officers, the compensation for La Plata County Elected Officials is set according to Colorado Constitution, Article 14, § 15 and C.R.S. 30-2-102. Because the compensation of elected officers cannot be raised or lowered during their current term of office, Elected Officials are ineligible for emergency compensation as outlined in this policy.