BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

BEVIN HANSELL,

Respondent.

No. 08-119

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, BEVIN HANSELL, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE de LEON, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On July 23, 2008, the Executive Ethics Board received a complaint alleging that Bevin Hansell, an employee of the State of Washington, Health Care Authority (HCA), may
have violated the Ethics in Public Service Act while applying for a position she later accepted with an entity attempting to conduct business with the state. On September 11, 2009, the Board issued a separate complaint based on evidence that Ms. Hansell may have used state resources to send and receive personal e-mail. Both complaints were consolidated into a single investigation.

1.2. On November 13, 2009 the Board found reasonable cause to believe that a violation of the Ethics in Public Service Act may have occurred and determined that the assessed penalty may be more than $500.00 for the violations and requested that the Board's Executive Director schedule a public hearing on the merits of the complaint.

1.3. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.4. Bevin Hansell recognizes that the evidence available to the Board staff is such that the Board may conclude she violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. Bevin Hansell waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the
board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge Bevin Hansell from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. Ms. Hansell in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Bevin Hansell and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if Bevin Hansell does not accept the Board’s proposed modification(s), if any, Ms. Hansell waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Ms. Hansell understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.
Section 2: FINDINGS OF FACT

2.1. Bevin Hansell was employed with HCA from October 1, 1993 through July 18, 2008. Her most recent position with HCA was as the Director of Purchasing for Basic Health. Her position description dated August 5, 2003, states in part:

The purpose of this position to lead and manage the purchasing activities (including competitive procurement) related to the Basic Health Program … The employee is responsible for developing, researching, recommending and implementing the health care purchasing strategy for the Basic Health program as well as health care policy including purchasing and related strategies for statewide implementation, in collaboration with HCA programs (Basic Health and PEBB), DSHS Medical Assistance Administration, other agencies, health plans, advocacy groups, and other entities. … The employee will work in a variety of roles within the agency – subject matter expert, project leader and project team member. He/she will be responsible for implementing health care purchasing, policy and programs resulting from legislative mandates, from the Governor’s Office and from agency executive management.

The position description also lists major decision-making responsibilities of the position. This position was responsible for recommendations for the design, development, implementation and evaluation of purchasing strategies for the Basic Health Program. Final decisions on purchasing options (benefit design, enrollment levels, and health plan contracts) were taken to Ms. Hansell’s manager for a decision.

Conflict of Interest

2.2. Columbia United Providers (CUP) is one of the health plans HCA contracts with to provide services to Basic Health members. In July 2008 Ms. Hansell left HCA to accept employment with CUP.

2.3. Ms. Hansell asserts that she was not involved in any negotiation process with any health plans at the time of her departure or when she discussed potential employment with
health plans including CUP. She had updated the timeline for the 2009 request for renewal
process, but it was not published or under way until after her departure. She did not make any
formal job application with any health plan that was involved in negotiations with HCA; she
asserts that she has no status or role in the negotiation process.

2.4. Also while still employed with HCA, Ms. Hansell sought employment with at
least two other health plans before she was offered the position with CUP. She had verbal
communication with the Kaiser Foundation about a prospective job opportunity that was
unrelated to the administration of any of the Washington State health programs. The
Community Health Plan of Washington verbally contacted her about a possible position
opening in Seattle, but no specific information was shared about the position. The negotiations
were informal and conversational.

2.5. Ms. Hansell met with HCA’s Legal Services Director, Jason Siems, at the
beginning of her job search and before she accepted any offer of employment. She did not
disclose to Mr. Siems that she was seeking employment with another health plan, but instead
asked him hypothetical questions about outside employment. Mr. Siems provided Ms. Hansell
with general information regarding the ethics statute and a copy of RCW 42.52.080.

2.6. Ms. Hansell asserts that she did not reveal her personal plans to Mr. Siems
because she was concerned that he might share this information with her direct supervisor.
Ms. Hansell states that she had reason to believe her position was at extreme risk because her
supervisor had become increasingly dissatisfied with Ms. Hansell’s performance and had
started to document her actions in what appeared to be an effort to eventually terminate
Ms. Hansell’s employment. Ms. Hansell had also recently observed her supervisor embarrass
other departing employees and felt that her job and her professional reputation were at stake, should her supervisor discover that she was seeking other employment while still employed with HCA. Ms. Hansell states that she was also concerned about her personal financial situation should she be terminated from HCA before she could find other employment.

2.7. Ms. Hansell also consulted with her former supervisor, Barney Speight. Mr. Speight was the former HCA Deputy Administrator and Ms. Hansell routinely asked him for counsel. Mr. Speight reviewed the job description and the ethics laws and did not see any cause for concern.

2.8. Ms. Hansell states that Chris Senz, a CUP employee, contacted CUP’s attorney, Jerry Coe, to confirm that CUP was not at risk of violating an ethics law if it hired Ms. Hansell. Mr. Coe told Ms. Hansell that he did not feel CUP was in any way in violation of any of the ethics laws.

2.9. Ms. Hansell did not consult with the staff of the Executive Ethics Board regarding her employment issues.

2.10. On June 26, 2008, CUP issued an offer letter to Ms. Hansell. This letter stated in part:

... Given the Health Care Authority is in the midst of their RFR process, we wish to avoid any conflict of interest concern as it relates to CUP’s renewal of our contract. Since you are integral to their RFR process, we want to ensure there is no perception of impropriety around your employment with CUP.

2.11. Ms. Hansell did not tell her immediate supervisor that she was interviewing with CUP or seeking other employment with entities that were negotiating contracts with HCA. On July 3, 2008, Ms. Hansell announced her departure from HCA for other
employment. Her emailed resignation notice stated, *Due to state ethics laws, I am unable to work any further on the RFR this year and that is why I am leaving today and taking vacation for the next two weeks.*

2.12. On July 3, 2008, Ms. Hansell’s supervisor sent her a memorandum regarding her resignation, stating:

> ... You indicated today would be your last day at work and you would be on annual leave until your separation date. I explained that this was not enough notice for me to authorize your request for vacation time. You have been working on a very important project—the Basic Health Request for Renewal (RFR) that has already been delayed. I need to ensure we allow time for you to share information with the staff who will be taking over this important assignment before your departure. ... You were agreeable to meet with the group to explain what of the process is left to complete, provide a high-level work plan of activities to date, and tentative schedule for those moving forward, answer any questions and provide detailed instructions of where any and all relevant files are located.

2.13. The Basic Health Request for Renewals dated June 25, 2008 lists the RFR Coordinator as Bevin Hansell. The document states: *HCA is initiating this Request for Renewals (RFR) to solicit responses from 2008 Basic Health CONTRACTORS interested in continuing to provide services in 2009. The RFR Coordinator is the sole point of contact in HCA for this solicitation. Communications directed to parties other than the RFR Coordinator may result in disqualification of the Bidder.*

2.14. Ms. Hansell’s new position with CUP focuses on developing a commercial line of business for CUP, namely with Southwest Medical Center and its third party administrator, Loomis. On Ms. Hansell’s hire date, the contract with Southwest was not yet signed, so she was initially assigned to oversee the Quality Improvement program for the company. She is now involved in the oversight of the quality programs for the Medicaid lines of business, in
conjunction with building the utilization management program for the Southwest Medical line
of business. Neither of these two areas have any relationship or oversight of the Basic Health
program. She is not sought out to discuss or provide insight on the Basic Health program. If
there are any discussions about the program or decisions about contracting related to Basic
Health, she abstains from making any comment or recommendation.

2.15. Robert J. Zech, an attorney representing CUP, indicates that CUP took care to
avoid any ethical issues. He indicates that Ms. Hansell did not disclose the identity of her
future employer to HCA because of mistrust and bad feelings and difficulties with her
supervisor.

2.16. CUP established a formal mechanism to screen Ms. Hansell from direct
involvement in Basic Health plan matters by modifying her formal job description at CUP
setting forth limitations with regard to her work on matters involving the Basic Health Plan.
The position description for the Health Management Supervisor for CUP states:

This position will not be involved with any specific matters pertaining to
Basic Health Subsidized members, and may not work on any matters
directly involving the Basic Health Plan, including but not limited to
financial, contractual and legal matters. The individual in this position
is prohibited from disclosing any information which may have been
obtained in working at the Health care authority and which may be
proprietary to such agency or any other company doing business with
such agency. This individual is prohibited from any involvement in
preparing a bid or contract with the Health Care Authority. This
individual shall report to the CEO if any CUP employee or contractor
requests any information from the individual regarding matters
pertaining to the Health Care Authority or Basic Health and shall not
respond to any such inquiry. If any of this individual's staff or co-
workers have a specific matter pertaining to a Basic Health member
which needs to be addressed in the normal course of business, such
matter shall be directed to this individual's manager. Any questions
regarding the foregoing shall be directed to the CEO or the Human
Resources Coordinator in the CEO's absence.
The position was signed by the CUP Manager/Director, the Human Resource Manager and acknowledged by Bevin Hansell on August 4, 2008.

**Use of State Resources**

2.17. Ms. Hansell used her state computer to send and receive personal email with Dr. Travis Fox (author, speaker, entertainer, and “mind management”) consultant, and Todd FitzGerald of Lotus of Portland regarding the purchase and delivery of a vehicle. These e-mails occurred in 2005, 2006, and 2007. There are approximately 12 emails initiated by Ms. Hansell during this period.

**Section 3: CONCLUSIONS OF LAW**

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Bevin Hansell and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

**RCW 42.52.020 – Conflict of Interest.**

3.3. The Ethics in Public Service Act, chapter 42.52 RCW, governs the conduct of state officers and employees. A state employee is restricted from having an interest or engaging in an activity or transaction where there is a conflict with the performance of official duties. RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.
3.4. Two ethics standards restrict former state officers and employees from accepting certain offers of employment. RCW 42.52.080(3) prohibits acceptance of an offer of employment or the receipt of compensation if a state officer or state employee has reason to believe that the offer or compensation was intended to influence the employee or to reward for the performance or nonperformance of an official duty while employed by the state. RCW 42.52.080(4) prohibits the offer of employment or the receipt of compensation if a reasonable person would believe that the offer or compensation was for influencing the performance or nonperformance of official duties while employed by the state.

RCW 42.52.080 states in part:

(1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration; ...

(b) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization. ...

(3) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the officer or employee knows or has reason to believe that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during the course of state employment.

(4) No former state officer or state employee may accept an offer of employment
or receive compensation from an employer if the circumstances would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of duties by the officer or employee during the course of state employment.

(5) No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment. . . .

3.5. State ethics law prohibits a former state employee from assisting any person in a "transaction" involving the state in which the employee participated during public employment. RCW 42.52.080(5). The term "transaction involving the state" is defined under state law to mean, among other things, an application, contract, or other similar matters that the former state employee in question believes, or has reason to believe (1) is the subject of a state action; (2) is one to which the state is a party; or (3) is one in which the state has a direct and substantial proprietary interest. RCW 42.52.010(23).

"Participation" is defined broadly under RCW 42.52.010(13):

'Participate' means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering or advice, investigation, or otherwise . . .

(Emphasis added.)

3.6. A state employee may pursue prospective employment; however, the state ethics law restricts prospective employment in circumstances where there is a conflict of interest. Prospective employment must not interfere with the independent and impartial exercise of judgment while performing official duties and cannot appear to induce or result in the disclosure of confidential information. An offer of employment also may not be accepted, if the state officer or state employee believes the offer is intended to influence judgment or
action in the performance of official duties, or is a reward for the performance or
nonperformance of an official duty.

3.7. In Advisory Opinion 98-11, the Board stated that “prospective employment”
begins when a state employee has accepted an interview for a position outside of state
government. “Prospective employment” ends when a state employee has accepted or declined
an offer of employment, or when the prospective employer has informed the state employee
that he or she is no longer under consideration for employment. The opinion further states
that to avoid a conflict of interest, the state employee may disclose the fact that he or she
is considering prospective employment to a supervisor and ask that he or she be removed
from participating in any matter that involves the prospective employer. In choosing to
disclose and recuse from participation, the state employee may effectively remove
concerns that his or her judgment has been affected, or that prospective employment has
influenced the performance of official duties. [Emphasis Added.]

RCW 42.52.160 Use of persons, money, or property for private gain
WAC 292-110-010 Use of State Resources

3.8. Employees are prohibited from using state resources for personal gain.

RCW 42.52.160 states:

No state officer or state employee may employ or use any persons,
money, or property under the officer’s or employee’s official control or
direction, or in his or her official custody for the private benefit or gain of
the officer, employee, or another.

3.9. The Board allows a de minimus use of state resources under certain conditions.

WAC 292-110-010 states, in part:

...a state officer or employee may make an occasional but limited use of
state resources only if each of the following conditions are met:
(a) There is little or no cost to the state,

(b) Any use is brief in duration, occurs infrequently, and is the most effective use of time or resources;

(c) The use does not interfere with the performance of the officer’s or employee’s official duties;

(d) The use does not disrupt or distract from the conduct of state business due to volume or frequency

3.10. A state officer or employee is prohibited under RCW 42.52.160 from using state property “under the officer’s or employee’s official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.”

3.11. Based on Findings of Fact 2.17, Ms. Hansell did not violate RCW 42.52.160 as her use was considered a de minimis use of state resources.

3.12. Based on Finding of Fact 2.1 through 2.16, Ms. Hansell violated RCW 42.52.020 and RCW 42.52.080 when, while pursuing and eventually accepting employment with an entity conducting business with HCA, she failed to disclose that fact to HCA with whom she was still employed at the time.

3.13. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

II. MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. It is a mitigating factor that Ms. Hansell made some attempts to avoid violating the Ethics Act. It is a mitigating factor that when Ms. Hansell kept the details of her job search secret from HCA, she did so out of fear of retaliation and repercussions adversely affecting her professional reputation and her personal financial situation. While this does not
excuse Ms. Hansell’s failure to disclose to HCA that she was seeking employment with an
entity conducting business with HCA in a subject area under her official duties, it does mitigate
the penalty imposed.

III. AGREED ORDER

Bevin Hansell will pay a civil penalty in the amount of five hundred ($500.00). If
Bevin Hansell fully pays the civil penalty of five hundred dollars ($500.00) within 45 days of
the signing of this order by the Board, and commits no further violations of chapter 42.52
RCW, Ms. Hansell will have fully satisfied her civil penalty obligations with regard to this
matter.
CERTIFICATION

I, Bevin Hansell, hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

Bevin Hansell
Respondent

2/8/10

Stipulated to and presented by:

Melanie de Leon
Executive Director
II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

- [X] ACCEPTED in its entirety;
- [ ] REJECTED in its entirety;
- [ ] MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):


DATED this 12th day of March, 2010.

Linnnea Jablonski, Chair

Mike Connelly, Vice-Chair

Martin Biegelman, Member

Matthew Williams, Member

Neil Gorrell, Member

* I, Bevin Hansell, accept/do not accept (circle one) the proposed modification(s).

Bevin Hansell, Respondent Date