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BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

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, [REDACTED] 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 [REDACTED] an employee of the State of Washington, Health Care Authority (HCA), may

1 have violated the Ethics in Public Service Act while applying for a position she later accepted
2 with an entity attempting to conduct business with the state. On September 11, 2009, the
3 Board issued a separate complaint based on evidence that [REDACTED] may have used state
4 resources to send and receive personal e-mail. Both complaints were consolidated into a single
5 investigation.
6

7 1.2. On November 13, 2009 the Board found reasonable cause to believe that a
8 violation of the Ethics in Public Service Act may have occurred and determined that the
9 assessed penalty may be more than \$500.00 for the violations and requested that the Board's
10 Executive Director schedule a public hearing on the merits of the complaint.

11 1.3. The Board is authorized under RCW 34.05.060 to establish procedures for
12 attempting and executing informal settlement of matters in lieu of more formal proceedings
13 under the Administrative Procedures Act, including adjudicative hearings. The Board has
14 established such procedures under WAC 292-100-090.
15

16 1.4. [REDACTED] recognizes that the evidence available to the Board staff is such
17 that the Board may conclude she violated the Ethics in Public Service Act. Therefore, in the
18 interest of seeking an informal and expeditious resolution of this matter, the parties agree to
19 entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.
20

21 1.5. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance
22 of this stipulation by the Board, or her acceptance of any modification(s) proposed by the
23 Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

24 The board has the option of accepting, rejecting, or modifying the proposed
25 stipulation or asking for additional facts to be presented. If the board accepts the
26 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

1 board rejects the stipulation or the respondent does not agree to the board's
2 proposed modifications to the stipulation, the normal process will continue. The
3 proposed stipulation and information obtained during formal settlement
discussions shall not be admitted into evidence at a subsequent public hearing.

4 1.6. If the Board accepts this stipulation, the Board will release and discharge
5 [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters arising
6 out of the facts contained in the complaint in this matter, subject to payment of the full amount
7 of the civil penalty due and owing, any other costs imposed, and compliance with all other
8 terms and conditions of the agreed order. [REDACTED] in turn agrees to release and discharge
9 the Board, its officers, agents and employees from all claims, damages, and causes of action
10 arising out of this complaint and this stipulation and agreed order.
11

12 1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to
13 settle any other claims between [REDACTED] and the Washington State Executive Ethics
14 Board, the State of Washington, or other third party, which may be filed in the future.
15

16 1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under
17 RCW 34.05.578 and any other applicable statutes or rules.

18 1.9. If the Board rejects this stipulation, or if [REDACTED] does not accept the
19 Board's proposed modification(s), if any, [REDACTED] waives any objection to participation at
20 any subsequent hearing by any Board member to whom this stipulation was presented for
21 approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this
22 proposed stipulation and information obtained during any formal settlement discussions held
23 between the parties shall not be admitted into evidence at a subsequent public hearing, unless
24 otherwise agreed by the parties.
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1 **Section 2: FINDINGS OF FACT**

2
3 2.1. [REDACTED] was employed with HCA from October 1, 1993 through July 18,
4 2008. Her most recent position with HCA was as the Director of Purchasing for Basic Health.

5 Her position description dated August 5, 2003, states in part:

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

19 The position description also lists major decision-making responsibilities of the position. This
20 position was responsible for recommendations for the design, development, implementation
21 and evaluation of purchasing strategies for the Basic Health Program. Final decisions on
22 purchasing options (benefit design, enrollment levels, and health plan contracts) were taken to
23 [REDACTED] manager for a decision.

24 **Conflict of Interest**

25 2.2. Columbia United Providers (CUP) is one of the health plans HCA contracts
26 with to the provide services to Basic Health members. In July 2008 [REDACTED] left HCA to
accept employment with CUP.

2.3. [REDACTED] 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

1 health plans including CUP. She had updated the timeline for the 2009 request for renewal
2 process, but it was not published or under way until after her departure. She did not make any
3 formal job application with any health plan that was involved in negotiations with HCA; she
4 asserts that she has no status or role in the negotiation process.

5
6 2.4. Also while still employed with HCA, ██████████ sought employment with at
7 least two other health plans before she was offered the position with CUP. She had verbal
8 communication with the Kaiser Foundation about a prospective job opportunity that was
9 unrelated to the administration of any of the Washington State health programs. The
10 Community Health Plan of Washington verbally contacted her about a possible position
11 opening in Seattle, but no specific information was shared about the position. The negotiations
12 were informal and conversational.

13
14 2.5. ██████████ met with HCA's Legal Services Director, Jason Siems, at the
15 beginning of her job search and before she accepted any offer of employment. She did not
16 disclose to Mr. Siems that she was seeking employment with another health plan, but instead
17 asked him hypothetical questions about outside employment. Mr. Siems provided ██████████
18 with general information regarding the ethics statute and a copy of RCW 42.52.080.

19
20 2.6. ██████████ asserts that she did not reveal her personal plans to Mr. Siems
21 because she was concerned that he might share this information with her direct supervisor.
22 ██████████ states that she had reason to believe her position was at extreme risk because her
23 supervisor had become increasingly dissatisfied with ██████████ performance and had
24 started to document her actions in what appeared to be an effort to eventually terminate
25 ██████████ employment. ██████████ had also recently observed her supervisor embarrass
26

1 other departing employees and felt that her job and her professional reputation were at stake,
2 should her supervisor discover that she was seeking other employment while still employed
3 with HCA. [REDACTED] states that she was also concerned about her personal financial
4 situation should she be terminated from HCA before she could find other employment.
5

6 2.7. [REDACTED] also consulted with her former supervisor, Barney Speight.
7 Mr. Speight was the former HCA Deputy Administrator and [REDACTED] routinely asked him
8 for counsel. Mr. Speight reviewed the job description and the ethics laws and did not see any
9 cause for concern.

10 2.8. [REDACTED] states that Chris Senz, a CUP employee, contacted CUP's attorney,
11 Jerry Coe, to confirm that CUP was not at risk of violating an ethics law if it hired [REDACTED]
12 Mr. Coe told [REDACTED] that he did not feel CUP was in any way in violation of any of the
13 ethics laws.
14

15 2.9. [REDACTED] did not consult with the staff of the Executive Ethics Board
16 regarding her employment issues.

17 2.10. On June 26, 2008, CUP issued an offer letter to [REDACTED] This letter stated
18 in part:

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

23 2.11. [REDACTED] did not tell her immediate supervisor that she was interviewing
24 with CUP or seeking other employment with entities that were negotiating contracts with
25 HCA. On July 3, 2008, [REDACTED] announced her departure from HCA for other
26

1 employment. Her emailed resignation notice stated, *Due to state ethics laws, I am unable to*
2 *work any further on the RFR this year and that is why I am leaving today and taking vacation*
3 *for the next two weeks.*

4 2.12. On July 3, 2008, [REDACTED] supervisor sent her a memorandum regarding
5 her resignation, stating:
6

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

19 2.13. The *Basic Health Request for Renewals* dated June 25, 2008 lists the RFR
20 Coordinator as [REDACTED]. The document states: *HCA is initiating this Request for*
21 *Renewals (RFR) to solicit responses from 2008 Basic Health CONTRACTORS interested in*
22 *continuing to provide services in 2009. The RFR Coordinator is the sole point of contact in*
23 *HCA for this solicitation. Communications directed to parties other than the RFR Coordinator*
24 *may result in disqualification of the Bidder.*

25 2.14. [REDACTED] new position with CUP focuses on developing a commercial line
26 of business for CUP, namely with Southwest Medical Center and its third party administrator,
Loomis. On [REDACTED] 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

1 conjunction with building the utilization management program for the Southwest Medical line
2 of business. Neither of these two areas have any relationship or oversight of the Basic Health
3 program. She is not sought out to discuss or provide insight on the Basic Health program. If
4 there are any discussions about the program or decisions about contracting related to Basic
5 Health, she abstains from making any comment or recommendation.
6

7 2.15. Robert J. Zech, an attorney representing CUP, indicates that CUP took care to
8 avoid any ethical issues. He indicates that [REDACTED] did not disclose the identity of her
9 future employer to HCA because of mistrust and bad feelings and difficulties with her
10 supervisor.

11 2.16. CUP established a formal mechanism to screen [REDACTED] from direct
12 involvement in Basic Health plan matters by modifying her formal job description at CUP
13 setting forth limitations with regard to her work on matters involving the Basic Health Plan.

14 The position description for the Health Management Supervisor for CUP states:
15

16 This position will not be involved with any specific matters pertaining to
17 Basic Health Subsidized members, and may not work on any matters
18 directly involving the Basic Health Plan, including but not limited to
19 financial, contractual and legal matters. The individual in this position
20 is prohibited from disclosing any information which may have been
21 obtained in working at the Health care authority and which may be
22 proprietary to such agency or any other company doing business with
23 such agency. This individual is prohibited from any involvement in
24 preparing a bid or contract with the Health Care Authority. This
25 individual shall report to the CEO if any CUP employee or contractor
26 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.

1 The position was signed by the CUP Manager/Director, the Human Resource Manager and
2 acknowledged by [REDACTED] on August 4, 2008.

3
4 **Use of State Resources**

5 2.17. [REDACTED] used her state computer to send and receive personal email with
6 Dr. Travis Fox (author, speaker, entertainer, and "mind management") consultant, and Todd
7 FitzGerald of Lotus of Portland regarding the purchase and delivery of a vehicle. These e-
8 mails occurred in 2005, 2006, and 2007. There are approximately 12 emails initiated by
9 [REDACTED] during this period.

10
11 **Section 3: CONCLUSIONS OF LAW**

12 3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over
13 [REDACTED] and over the subject matter of this complaint.

14
15 3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this
16 matter under the terms contained herein, subject to Board approval.

17 **RCW 42.52.020 – Conflict of Interest.**

18 3.3. The Ethics in Public Service Act, chapter 42.52 RCW, governs the conduct of
19 state officers and employees. A state employee is restricted from having an interest or
20 engaging in an activity or transaction where there is a conflict with the performance of official
21 duties. RCW 42.52.020 states:

22
23 No state officer or state employee may have an interest, financial or otherwise,
24 direct or indirect, or engage in a business or transaction or professional activity,
25 or incur an obligation of any nature, that is in conflict with the proper discharge
26 of the state officer's or state employee's official duties.

1 **RCW 42.52.080 Employment After Public Service**

2 3.4. Two ethics standards restrict former state officers and employees from
3 accepting certain offers of employment. RCW 42.52.080(3) prohibits acceptance of an offer of
4 employment or the receipt of compensation if a state officer or state employee has reason to
5 believe that the offer or compensation was intended to influence the employee or to reward for
6 the performance or nonperformance of an official duty while employed by the state.
7 RCW 42.52.080(4) prohibits the offer of employment or the receipt of compensation if a
8 reasonable person would believe that the offer or compensation was for influencing the
9 performance or nonperformance of official duties while employed by the state.
10

11 RCW 42.52.080 states in part:

- 12 (1) No former state officer or state employee may, within a period of one year
13 from the date of termination of state employment, accept employment or
14 receive compensation from an employer if:
- 15 (a) The officer or employee, during the two years immediately preceding
16 termination of state employment, was engaged in the negotiation or
17 administration on behalf of the state or agency of one or more contracts with
18 that employer and was in a position to make discretionary decisions
19 affecting the outcome of such negotiation or the nature of such
20 administration; ...
- 21 (b) The duties of the employment with the employer or the activities for which
22 the compensation would be received include fulfilling or implementing, in
23 whole or in part, the provisions of such a contract or contracts or include the
24 supervision or control of actions taken to fulfill or implement, in whole or in
25 part, the provisions of such a contract or contracts. This subsection shall
26 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

1 or receive compensation from an employer if the circumstances would lead a
2 reasonable person to believe the offer has been made, or compensation
3 given, for the purpose of influencing the performance or nonperformance of
4 duties by the officer or employee during the course of state employment.

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

10 3.5. State ethics law prohibits a former state employee from assisting any person in a
11 "transaction" involving the state in which the employee participated during public
12 employment. RCW 42.52.080(5). The term "transaction involving the state" is defined under
13 state law to mean, among other things, an application, contract, or other similar matters that the
14 former state employee in question believes, or has reason to believe (1) is the subject of a state
15 action; (2) is one to which the state is a party; or (3) is one in which the state has a direct and
16 substantial proprietary interest. RCW 42.52.010(23).

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

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

22 (Emphasis added.)

23 3.6. A state employee may pursue prospective employment; however, the state
24 ethics law restricts prospective employment in circumstances where there is a conflict of
25 interest. Prospective employment must not interfere with the independent and impartial
26 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

1 action in the performance of official duties, or is a reward for the performance or
2 nonperformance of an official duty.

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4 3.7. In Advisory Opinion 98-11, the Board stated that “prospective employment”
5 begins when a state employee has accepted an interview for a position outside of state
6 government. “Prospective employment” ends when a state employee has accepted or declined
7 an offer of employment, or when the prospective employer has informed the state employee
8 that he or she is no longer under consideration for employment. **The opinion further states**
9 **that to avoid a conflict of interest, the state employee may disclose the fact that he or she**
10 **is considering prospective employment to a supervisor and ask that he or she be removed**
11 **from participating in any matter that involves the prospective employer. In choosing to**
12 **disclose and recuse from participation, the state employee may effectively remove**
13 **concerns that his or her judgment has been affected, or that prospective employment has**
14 **influenced the performance of official duties.** [Emphasis Added.]
15

16
17 **RCW 42.52.160 Use of persons, money, or property for private gain**
18 **WAC 292-110-010 Use of State Resources**

19 3.8. Employees are prohibited from using state resources for personal gain.

20 RCW 42.52.160 states:

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

25 3.9. The Board allows a de minimus use of state resources under certain conditions.

26 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:

- 1
- 2 (a) There is little or no cost to the state,
- 3 (b) Any use is brief in duration, occurs infrequently, and is the most
- 4 effective use of time or resources;
- 5 (c) The use does not interfere with the performance of the officer's or
- 6 employee's official duties;
- 7 (d) The use does not disrupt or distract from the conduct of state business
- 8 due to volume or frequency

9 3.10. A state officer or employee is prohibited under RCW 42.52.160 from using state

10 property "under the officer's or employee's official control or direction, or in his or her official

11 custody, for the private benefit or gain of the officer, employee or another."

12 3.11. Based on Findings of Fact 2.17, [REDACTED] did not violate RCW 42.52.160 as

13 her use was considered a de minimis use of state resources.

14 3.12. Based on Finding of Fact 2.1 through 2.16, Ms. Hansell violated RCW 42.52.020

15 and RCW 42.52.080 when, while pursuing and eventually accepting employment with an

16 entity conducting business with HCA, she failed to disclose that fact to HCA with whom she

17 was still employed at the time.

18 3.13. The Board is authorized to impose sanctions for violations to the Ethics Act

19 pursuant to RCW 42.52.360.

20

21 **II. MITIGATING FACTORS**

22 In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-

23 030 has been reviewed. It is a mitigating factor that [REDACTED] made some attempts to avoid

24 violating the Ethics Act. It is a mitigating factor that when [REDACTED] kept the details of her

25 job search secret from HCA, she did so out of fear of retaliation and repercussions adversely

26 affecting her professional reputation and her personal financial situation. While this does not

1 excuse [REDACTED] failure to disclose to HCA that she was seeking employment with an
2 entity conducting business with HCA in a subject area under her official duties, it does mitigate
3 the penalty imposed.

4 **III. AGREED ORDER**

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

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CERTIFICATION

I, [REDACTED] 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.

[REDACTED] 2/8/10
Date
Respondent

Stipulated to and presented by:

Melanie de Leon
Melanie de Leon Date
Executive Director

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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.

Lina Jablonski
Lina Jablonski, , Chair

Mike Connelly, Vice-Chair

Martin Biegelman
Martin Biegelman, Member

Matthew Williams III
Matthew Williams III, Member

Neil Gorrell
Neil Gorrell, Member

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

Respondent Date