

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2010-003

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, 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 January 7, 2010, the Executive Ethics Board received a complaint alleging that Withheld a pharmacist for the Department of Social and Health Services (DSHS) at Western State Hospital (WSH), may have violated state law when he used state resources for personal business gain by sending and receiving non-work related emails, visiting non-work related websites, and using state resources for his outside real estate business.

1.2. 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.

1.3. [Withheld] understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. [Withheld] recognizes that the evidence available to the Board staff is such that the Board may conclude he 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. [Withheld] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his 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 [Withheld] [Withheld] 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. [Withheld] 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 [Withheld] 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 [Withheld] does not accept the Board's proposed modification(s), if any, [Withheld] 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, [Withheld] 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. [Withheld] was a pharmacist with DSHS WSH. He is also a licensed realtor. In January 2010, Mr. [Withheld] entered into a settlement agreement with DSHS resigning his position effective November 17, 2009 and agreeing not to seek or accept future employment with DSHS:

2.2. A review of Mr. [Withheld] state computer revealed 37 images from 40 websites, 8 emails and 152 non-work related websites that were accessed. The websites contained real estate, house pictures, tennis, hairstyles, maps, laundry mats, Wikimedia, and other non-work related sites.

2.3. Mr. [Withheld] admits going to the website *nwmls.com* to look at houses for relaxation purposes. He asserts that he was not running a business, not supporting clients or selling real estate from work and that any business was done at home, clients' homes or Kinko's.

Other websites (*piercecounty.wa.gov* and *kontera.com* were accessed when Mr. [Withheld] checked and paid his property taxes on line.

2.4. Mr. [Withheld] forwarded emails from his business/personal email account to his DSHS account. These messages pertained to real estate training, RE/MAX annual dues, a personal condominium association, and a North Tacoma Condominium Tour. Mr. [Withheld] admitted that some of these emails were related to his real estate business.

2.5. An additional 25 emails were later found on Mr. [Withheld] state computer related to working with clients for possible sales, giving advice, a property sale in the amount of \$378,000, invitations to other pharmacy co-workers for personal business, personal business to do lists, and the purchase of a condo for a co-worker.

2.6. On April 20, 2002, November 19, 2004, November 4, 2005, November 27, 2007, and May 29, 2008, Mr. [Withheld] read, signed, and acknowledged DSHS Administrative Policy 15.15 *Use of Electronic Messaging Systems and the Internet*. On June 7, 2002, Mr. [Withheld] signed and dated the Computer Account Application for WSH, which verifies the following to be true: "...I understand that I must fully comply with DSHS Administrative Policy 15.15 "Use and security of Electronic Messaging Systems and the internet ..."

2.7. DSHS Administrative Policy 15.15. states, in part:

- b. Employees may not derive personal benefit or financial gain from the use of state provided e-mail, voice mail, or Internet access.
- c. Employees may not use state-provided e-mail, voice mail, or Internet access to conduct activities that support outside employment.

2.8. Every time Mr. [Withheld] logged into his computer, the computer displayed a message stating, in part:

... DSHS employee or contractor use of the Internet and electronic messaging systems must conform to the requirements of DSHS Administrative Policy 15.15.

Department staff may use electronic message systems and Internet access to conduct business that is reasonably related to official state duties. ...

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] 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.

3.3. 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.”

3.4. Based on Findings of Fact 2.1 through 2.8, Mr. [Withheld] used state resources in violation of RCW 42.52.160, WAC 292-110-010 and agency policy.

3.5. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

Section 4: AGGRAVATING AND MITIGATING FACTORS

4.1 It is a mitigating factor that, as a result of this violation, [Withheld] resigned his position with DSHS WSH and agreed that he will not seek or accept future employment with DSHS.

Section 5. AGREED ORDER

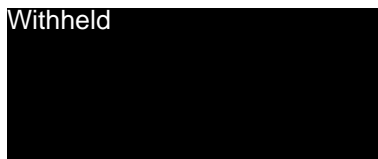
5.1. For the violation of RCW 42.52.160, [Withheld] will pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00).

5.2. The civil penalty of \$1,500.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board, or as otherwise agreed to by the parties.

CERTIFICATION

I, Michael Watkins, 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.

Withheld



2/24/11
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 3/1/11

Melanie deLeon
Executive Director

Date

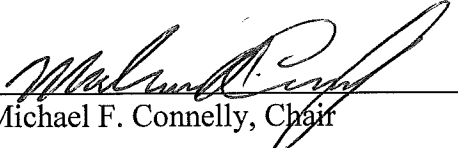
II. ORDER

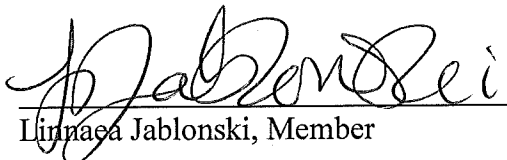
Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

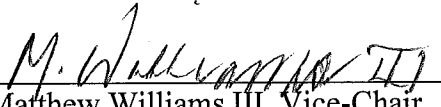
- ACCEPTED in its entirety;
- REJECTED in its entirety;
- MODIFIED. This Stipulation will become the Order of the Board if the


Respondent approves* the following modification(s):

DATED this 11th day of March, 2011.


 Michael F. Connelly, Chair


 Linnaea Jablonski, Member


 Matthew Williams III, Vice-Chair


 Neil Gorrell, Member

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

Withheld	Respondent	Date
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