

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 11-012

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 March 11, 2011, the Executive Ethics Board initiated a complaint alleging that Withheld an employee of the State of Washington, Department of Social and Health Services (DSHS), may have violated state law when she used state resources to lobby in a commercial sponsored by a local labor union.

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. [Redacted] 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. [Redacted] 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. [Redacted] 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 [Redacted] 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. [Redacted] 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, this matter will be scheduled for an administrative hearing in front of the Board and [Withheld] waives any objection to participation by any Board member at any subsequent hearing 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] is a Licensed Practical Nurse employed by DSHS at Western State Hospital.

2.2. Ms. [Withheld] participated in a television commercial sponsored by the American Federation of State, County and Municipal Employees (AFSCME)/ Washington Federation of State Employees (WFSE) Council 28 that aired on Puget Sound-area television networks on, about or between February 7, 2011 and March 6, 2011 during the 2011 legislative session.

2.3. The commercial was filmed on February 6, 2011, in a non-state facility. The set of this commercial was made to appear to be the inside of a hospital, and Ms. [Withheld] states in her very first sentence, "Within these walls at Western State Hospital." All other persons appearing in this commercial were actors. Ms. [Withheld] was not on state time while she participated in the filming of the commercial.

2.4. In the commercial, Ms. [Withheld] is wearing, what appears to be her state agency employee badge and a large banner at the bottom of the screen identifies her as [Withheld] LPN, Western State Hospital.” In the commercial Ms. [Withheld] states,

Within these walls at Western State Hospital, we deal with constant threats from very violent patients. Unfortunately, because of the state cutbacks, violence has become all too common. For the public’s sake, I’m just glad that our patients are in here instead of on the streets. Now, the politicians in Olympia are proposing even more staffing cuts. But what they really need to do is to find real solutions to the budget mess instead of putting our lives and the lives of the public at even greater risk.

2.5. The screen also requests that viewers “call your legislators” and provides a toll-free number to do so.

2.6. Dennis Eagle, registered lobbyist for WFSE, listed on his Lobbyist Monthly Expense Report (L2) for January 2011 an expense of \$500,040.00 to Media Strategies & Research for TV Ads/Public Relations sponsored by WFSE.

### 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.

3.4. A state officer or employee is prohibited under RCW 42.52.160 and WAC 292-110-010(5)(d) from using state resources for the purpose of participating in or assisting in an effort to lobby the state legislature, or a state agency head. Such a use of state resources is specifically prohibited by RCW 42.17.190, subject to the exceptions in RCW 42.17.190(3).

3.5. RCW 42.52.180 states that “facilities of an agency” include, but are not limited to stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency. In Advisory Opinion 2000-08, the Board opined that a non-elected

employee's state job title was a facility of the state and could not be used without a disclaimer that the employee was not speaking for the agency, but only for themselves.

3.6. RCW 42.17.020(31) defines "lobbying" as attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

3.7. RCW 42.17.020(30) defines "legislation" as bills, resolutions, motions, amendments, nominations, and *other matters pending or proposed in either house of the state legislature*, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor. (Emphasis added)

3.5. Based on Findings of Fact 2.1 through 2.5, Laura Smith used state resources in violation of RCW 42.52.160 and WAC 292-110-010.

3.7. 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: AGREED ORDER

4.1. Ms. [Withheld] asserts that she did not realize that the use of her job title and state badge depiction violated RCW 42.52.160. However, Ms. [Withheld] concedes that if the case went to a hearing, the Board could find that her reference to the place she was being filmed as a state facility and the use of her job title and depiction of her state badge violated RCW 42.52.160 and WAC 292-110-010(5)(d).

4.2. Ms. [Withheld] agrees to take instruction in the requirements of RCW 42.52.160. Said instruction must be approved by Board staff and must be completed no later than December 31,

2011. In addition, Ms. [Withheld] agrees to refrain from violating RCW 42.52.160 and WAC 292-110-010. Ms. [Withheld] agrees that if in the future, the Board finds her in violation of these sections in a subsequent case, this Stipulation and Order may be taken into account in setting the amount of the penalty.

CERTIFICATION

I, [Withheld] 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]

10-24-11

Respondent

Stipulated to and presented by:

Melanie deLeon 10-26-11

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 18th day of November 2011.

M. Williams III  
Matthew Williams, III, Vice Chair

Lisa Marsh  
Lisa Marsh, Member

Linnaea Jablonski  
Linnaea Jablonski, Member

Nancy Biery  
Nancy Biery, Member

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

Withheld \_\_\_\_\_ Respondent \_\_\_\_\_ Date \_\_\_\_\_