

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2011-030

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 November 19, 2011, the Executive Ethics Board (Board) received a complaint alleging that Dr. Withheld Neonatologist, Neonatology Division, of University of Washington, Medical Health Science Center, may have violated the Ethics in Public Service Act by providing a Special Privilege and engaging in Activities Incompatible with Public Duties when she participated in the hiring process of her daughter.

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

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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] [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. Dr. [Withheld] was employed by the UW Medical Center, Health Sciences Center for all times pertinent to this investigation.

2.2. On July 18, 2008, Dr. [Withheld] daughter, Kelly [Withheld] applied for the job of Research Scientist/Engineer, Professional Staff.

2.3. This position's listed desired requirements were:

- Minimum level of education: Bachelors Degree in Developmental Biology or Related Field – Experience is not a substitute for education. (Emphasis added)
- At least three months experience and ready to acquire technical expertise and knowledge.
- Knowledge of paraffin embedding of rat and mouse brains.

2.4. The position's "minimum level of education" requirement was listed incorrectly. The education requirement should have allowed applicants without a specific bachelor's degree to substitute a combination of education or experience. Neither Dr. [Withheld] nor her supervisor caught the mistake before the position was posted.

2.5. Kelly [Withheld] has a Bachelors of Arts Degree in Art History not a degree in Developmental Biology or a related field.

2.6. Thirty-two applications were accepted for this position; Human Resources screened three out as not meeting the desired requirements.

2.7. Of the 29 accepted applications, 21 had degrees related to Developmental Biology (biological or medical degrees).

2.8. Even though Kelly [Withheld] did not meet the minimum requirements for education as listed in the job posting, a requirement that could not be substituted for experience, she was one of the applicants Dr. Ronald McPherson selected to be interviewed for the position.

2.9. Dr. McPherson reported to Dr. [Withheld]

2.10. Dr. [Withheld] admitted that she was responsible for the decision to hire her daughter. Dr. [Withheld] told SAO investigators that although her daughter did not have a degree in Developmental Biology, she had taken many related courses at college and had gained substantial experience from working at the UW during the summer months and was qualified for the job.

2.11. Kelly [Withheld] was selected for the position and started work on September 1, 2008. Dr. McPherson was Kelly [Withheld] direct supervisor.

2.12. Dr. [Withheld] did not directly supervise Kelly [Withheld] but Dr. [Withheld] was in her direct chain of command. Further, Dr. [Withheld] managed the grants that funded 62 percent of Kelly's wages.

2.13. Kelly [Withheld] resigned from her position in the Department of Pediatrics effective July 11, 2009.

### Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Dr. [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. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using their position to provide a special privilege for herself or other family member. RCW 42.52.070 – Special Privileges states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself/ herself, or his/hers spouse, child, parent, or other persons.

3.4. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from engaging in acts where conflicts of interest exist. RCW 42.52.020 –Activities Incompatible with Public Duties 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.

3.5. Based on Findings of Fact 2.1 through 2.13, [Withheld] used her position to provide a special privilege to her daughter and engaged in activities incompatible with her public duties as it relates to her role in the hiring and supervising of her daughter, Kelly [Withheld]

3.6. 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**

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. It is an aggravating factor that [Withheld] is in a position of management, in the Neonatal-Perinatal Fellowship Program. It is a mitigating factor that the position's "minimum level of education" requirement was listed incorrectly and Kelly [Withheld] in fact met the educational and experience requirements as intended for the position.

#### **Section 5: AGREED ORDER**

5.1 For the violation RCW 42.52.070, [Withheld] will pay a civil penalty in the amount of, two thousand dollars (\$2,000.00). The Board agrees to suspend (\$1000.00) on the condition that [Withheld] complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

5.2 The civil penalty of \$1,000 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

**II. 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**

3/20/2012

Respondent

Stipulated to and presented by:

*Melanie deLeon 3/29/12*

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):

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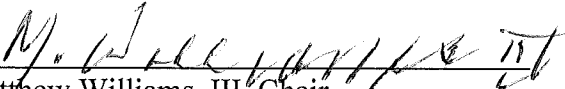


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DATED this 11<sup>th</sup> day of May, 2012.

  
 Matthew Williams, III, Chair

  
 Lisa Marsh, Vice-Chair

  
 Linnaea Jablonski, Member

  
 Anna Dudek Ross, Member

  
 Michael Bahn, Member

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

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