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7 **BEFORE THE WASHINGTON STATE**
8 **EXECUTIVE ETHICS BOARD**

9 In the Matter of:

10 [REDACTED]

11 Respondent.

OAH Docket No. 2013-EEB-0003
EEB No. 2012-054

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

12
13 **I. PROCEDURAL HISTORY**

14 1.1 On August 31, 2012, the Executive Ethics Board (Board) received an agency
15 referral from South Puget Sound Community College (SPSCC) alleging that former Welding
16 Lab Tech [REDACTED] may have violated the Ethics in Public Service Act by using state
17 resources for her personal financial gain and that she provided a special privilege to herself and
18 some students by using and allowing them the use of the SPSCC welding shop after hours and
19 on weekends to complete their personal projects. (Ex. 1 at 1)

20 1.2 The Board entered a Preliminary Investigation and Board Determination (Ex. 1)
21 dated January 11, 2013 finding reasonable cause to believe that a violation of the Ethics in
22 Public Service Act, chapter 42.52 RCW (Ethics Act), occurred, specifically alleging violations
23 of RCW 42.52.070 (special privileges) and RCW 42.52.160(1) and WAC 292-110-010 (use of
24 state resources).

25 1.3 A prehearing conference, in which all parties participated, was held on August
26 28, 2013, with Administrative Law Judge (ALJ) Alice L. Haenle from the Office of

1 Administrative Hearings presiding pursuant to RCW 42.52.500, and an Order on Prehearing
2 Conference was issued on August 29, 2013. A status conference was held on February 24,
3 2014, and an order issued on February 26, 2014. A subsequent status conference was held on
4 March 1, 2014, and an order issued on April 1, 2014. All parties participated in the status
5 conferences.

6 1.4 After due and proper notice, a hearing was held before the Board. The hearing
7 was held at the Board offices at Bristol Court in Olympia, Washington, convening on April 10,
8 2014 at 9:00 AM. ALJ Haenle conducted the proceedings, and Board Chair Lisa Marsh and
9 members Matthew Williams III, Anna Dudek Ross, and Samantha Simmons were present.
10 Also present was Bruce L. Turcott, Assistant Attorney General, legal advisor to the Board, and
11 Board clerk Ruthann Bryant.

12 1.5 Board staff was represented by Chad C. Standifer, Assistant Attorney General.
13 The Board's Executive Director Melanie C. deLeon and Board Investigator David B. Killeen
14 were also present.

15 1.6 [REDACTED] was present and represented herself *pro se*.

16 1.7 The proceedings were recorded and open to the public.

17 1.8 By written stipulation filed with the Board, the parties stipulated and agreed to
18 the following Findings of Fact: 2.1 – 2.21 and 2.24 – 2.27.

19 1.9 Board staff offered Exhibits 1 - 11. All were admitted into evidence. The
20 Board was provided copies of documents that were admitted as exhibits.

- 21 1. Preliminary Investigation and Board Determination relating to [REDACTED]
22 dated January 11, 2013 (11 pages)
- 23 2. [REDACTED] Response to Reasonable Cause Determination dated February
24 5, 2013 (14 pages)
- 25 3. Preliminary Investigation and Board Determination relating to John Goss dated
26 January 11, 2013 (7 pages)
4. John Goss's Response to Reasonable Cause Determination dated January 21,
2013 (10 pages)

- 1 5. SPSCC Narrative for [REDACTED] dated May 7, 2012 (2 pages)
- 2 6. SPSCC Narrative for John Goss dated May 21, 2012 (2 pages)
- 3 7. SPSCC Purchase Card Transaction Log for October 2011 and Alaskan Copper
- 4 and Brass Company Receipts dated October 7, 2011 (3 pages)
- 5 8. SPSCC Payment Request Form dated October 12, 2011 and Welding Work
- 6 Request Form dated October 11, 2011 (2 pages)
- 7 9. SPSCC Door Entry Log for [REDACTED] for November 13, 2011 through
- 8 April 1, 2012 (8 pages)
- 9 10. Website for Alys's Angelic Creations dated November 8, 2012 (6 pages)
- 10 11. Napa Auto Parts receipts and DNR Purchase Card Transaction Logs (September
- 11 2011 - February 2012); and Spray Paint Descriptions (14 pages)

12 1.10 [REDACTED] offered Exhibits A - E. All were admitted into evidence. The
13 Board was provided copies of documents that were admitted as exhibits.

- 14 A. [REDACTED] response to stipulated facts and employment at South Puget
- 15 Sound Community College (5 pages)
- 16 B. Statement from Mark Wagnor, MD, receipt from purchase of "Big Flame," and
- 17 photo of "Big Flame" (4 pages)
- 18 C. [REDACTED] receipts of material purchased from the welding department
- 19 (4 pages)
- 20 D. Statement from Toni Bylsma and receipt of purchased material from welding
- 21 department (6 pages)
- 22 E. Statements from former welding students (11 pages)

23 1.11 The Board heard the testimony of David Killeen, Michael Fredette, Melanie
24 deLeon, Ryan Fowler, Norman Chapman, Genevieve Cass, Larry Norris, John Goss, Toni
25 Bylsma, and [REDACTED]

26 1.12 The hearing was adjourned on April 11, 2014.

Based on the evidence presented, the Board enters the following Findings of Fact,
Conclusions of Law, and Order:

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II. FINDINGS OF FACT

2.1 [REDACTED] was enrolled in Mr. Goss's morning welding class at South Puget Sound Community College (SPSCC) in 2008. On May 15, 2008, Mr. Goss hired [REDACTED] as a Lab Tech for the welding program at SPSCC. Mr. Goss stated that there was no hiring process at that time. [REDACTED] was a Lab Tech for all times pertinent to Board Staff's investigation.

2.2 As a lab tech, [REDACTED] was allowed to work 69 hours per month.

2.3 As a lab tech, [REDACTED] would assist Mr. Goss in his class with the ordering of supplies, some one-on-one instruction, clean up and minor repair of some equipment and other duties as required.

2.4 [REDACTED] became proficient in the use and operation of the new Torchmate Computer Navigated Controlled Plasma Table, a computerized cutting machine (CNC). This new piece of welding equipment was not yet part of the welding curriculum. [REDACTED] would provide some instruction on its use to those students who showed an interest to learn the operation of the CNC. As a part of her instruction, the students would cut out names and make patterns in pieces of 16 gauge steel. The students were allowed to keep what they made.

2.5 Mr. Goss indicated that the class would use between five and ten sheets of 16 gauge steel sheets (4'X 8') on the CNC per quarter at a cost of \$55.00 per sheet. The cost of materials was not part of the student's tuition for the class. The students were supposed to pay for the steel that they used for personal projects or bring their own materials.

2.6 The proper process at the time pertinent to this investigation was, if a student wanted to make a project or use materials, e.g. steel, copper, outside of their certification, they were to fill out a work order, pay the cashier, bring the receipt to the instructor and then get the materials they paid for.

2.7 [REDACTED] was one of a few people that were proficient on the use of the CNC machine.

1 2.8 Mr. Goss told investigators that he would allow [REDACTED] to work many more
2 hours than her allotted 69 hours. Mr. Goss told investigators that she would volunteer her time to
3 help provide information about the welding program to local high schools and [REDACTED] would
4 always be available to come in the evenings and on Saturdays to assist students needing the extra
5 help.

6 2.9 One of [REDACTED] duties was to help beginning students with
7 oxygen/acetylene welding and cutting. This part of the class would include soldering, brazing,
8 silver soldering and working with other metals such as brass and copper. [REDACTED] would
9 use a copper rose as a project. The students who made the roses took them home as a
10 culmination of the class. At that time, there were no costs to the student for the copper and
11 other supplies used in the project.

12 2.10 At some point [REDACTED] became very good at making roses and she decided
13 that she would make them to sell. At first she gave them away to some of the faculty and staff
14 at the college in appreciation for their help.

15 2.11 [REDACTED] used the welding shop to make roses. [REDACTED] used the shop on
16 evenings, Fridays and weekends when there were no classes in session to use the CNC machine
17 and other equipment and supplies needed for projects, e.g. name plates and logos.

18 2.12 At first Mr. Goss would be with [REDACTED] on the Saturdays when she was
19 using the shop, but as Mr. Goss got closer to leaving the college, he allowed her to be in the
20 shop without an instructor. Mr. Goss told investigators that he was always aware when Ms.
[REDACTED] used the shop.

21 2.13 The welding shop door entry log for January 1 through April 9, 2012 indicated that
22 Ms. Rutyne use the shop when there were no scheduled classes on the following Fridays:

- 23 • Friday, January 13
- 24 • Friday, January 27
- 25 • Friday, February 10
- 26 • Friday, March 2

- Friday, March 16
- Friday March 23

2.14 Mr. Goss told investigators that he allowed [REDACTED] and two or three other students to use the welding shop on Fridays and some Saturdays to practice their welding skills required to obtain certification. For the last year and a half he would allow [REDACTED] to be there alone with the students.¹

2.15 Michael Fredette, a former student of Mr. Goss and current welding instructor, told investigators that he saw [REDACTED] making the copper roses in Mr. Goss's class.

2.16 Mr. Fredette told investigators that on May 2, 2012, [REDACTED] had a box full of copper parts to make roses. Mr. Fredette asked [REDACTED] about the box of copper parts, Ms. [REDACTED] told him that she had to make copper roses for Arts Walk and that she was going to sell them for approximately \$25 each.

2.17 Mr. Goss bought [REDACTED] bought a sheet of copper for her birthday in 2010. Ms. [REDACTED] birthday is November 12th.

2.18 Larry Norris, SPSCC, Auto Shop Professor, handles the processing of all work orders and purchases made for the welding department. He produced a Purchasing Card (P-Card) transaction log for October 2011. The P-Card log showed that on October 7, 2011, [REDACTED] used the P-Card to purchase three sheets of copper from the Alaskan Copper and Brass Company. Total cost \$807.50 before taxes.

2.19 On October 10, 2011, [REDACTED] completed a SPSCC work order form for 10 copper roses at \$20 each for a total of \$200. The work order number assigned by [REDACTED] was 1335. The work order did not indicate who the work was being completed for.

¹ A Stipulated Facts, Conclusions and Order was entered in the Matter of John Goss by the Board on March 14, 2014 (EEB No. 2012-053), in which Mr. Goss stipulated to violations of RCW 42.52.020 (conducting activities incompatible with public duty), RCW 42.52.070 (providing or receiving special privileges), and RCW 42.52.160(1) (using state resources), in connection with his supervision of [REDACTED] and other students, and a sanction of \$3,000.

1 2.20 On October 12, she sold the 10 roses to the SPSCC Foundation for \$200. The receipt
2 indicated work order #1335, 10 copper roses for the Harvest Moon and that the check was made out
3 to [REDACTED]

4 2.21 Cecelia Lovelace works for the SPSCC Foundation and processed the payment to
5 [REDACTED] for the 10 roses. She told investigators that the purchase of the copper roses from Ms.
6 [REDACTED] was not done how it was normally done when they would purchase items from the welding
7 department. She stated that normally they would transfer the funds directly to the welding
8 department, but on this purchase [REDACTED] told her that she made the roses and that she usually
9 charges a lot more for them. Ms. Lovelace stated she was not aware of a work order until [REDACTED]
10 presented one to her and requested payment to her not the welding department. The SPSCC
11 Foundation made a check out the [REDACTED] for \$200 not to the welding department.

12 2.22 [REDACTED] gave Norman Chapman, an SPSCC auto shop instructor, a copper
13 rose. He did not pay her for the rose. She also gave him two metal signs in his office and
14 asked if he would give them to Cort, one of his students. Cort told Mr. Chapman that he paid
15 only \$15 each for the signs. (Test. of Chapman) [REDACTED] testified that she made the signs
16 from steel that she bought herself and traded them to Cort for a welding book. (Test. of
17 [REDACTED])

18 2.23 [REDACTED] made a sculpture in art class and welding class at SPSCC that she
19 called the Mini Flame. She paid a scrap fee for the materials in 2008. She was told to take the
20 sculpture home and later sold it to Dr. Mark Wagner. Dr. Wagner paid [REDACTED] \$2,826.20
21 for the Mini Flame. (Test. of Rutyne and Ex. B at 2)

22 2.24 [REDACTED] created an internet website to sell the copper and steel roses. The web
23 site is Alys's Angelic Creations — <http://www.alyss-angelic-creations.com/contact.html>. The
24 website was established in 2011 and offered handmade cooper and steel roses. The price range for
25 the copper roses are \$100 to \$375. The site also describes that the stems and leaves of the
26 roses are coated with green paint.

1 3.4 The legislature declared, in enacting the Ethics in Public Service Act:

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3 State officials and employees of government hold a public trust that obligates
4 them, in a special way, to honesty and integrity in fulfilling the responsibilities to
5 which they are elected and appointed. Paramount in that trust is the principle that
6 public office, whether elected or appointed, may not be used for personal gain or
7 advantage.

8
9 RCW 42.52.900.

10 3.5 A state employee may not use his position to secure privileges for himself or
11 other persons under RCW 42.52.070, which states:

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

16 3.6 A state employee may not use state resources under his official control for his
17 own private benefit or gain, or for the private benefit or gain of another, under
18 RCW 42.52.160 and WAC 292-110-010, which state:

19 No state officer or state employee may employ or use any person, money, or
20 property under the officer's or employee's official control or direction, or in his
21 or her official custody, for the private benefit or gain of the officer, employee,
22 or another.

23 RCW 42.52.160(1).

24 (1) Statement of principles - stewardship. The proper stewardship of state
25 resources, including funds, facilities, tools, property, and employees and their
26 time, is a responsibility that all state officers and employees share. Accordingly,
27 state employees may not use state resources for personal benefit or gain or for the
28 benefit or gain of other individuals or outside organizations. Responsibility and
29 accountability for the appropriate use of state resources ultimately rests with the
30 individual state officer or state employee, or with the state officer or state
31 employee who authorizes such use. State officers and employees should ensure
32 that any personal use of state resources permitted by this section is the most
33 efficient in terms of overall time and resources.

34 (2) The following are permitted uses:

35 (a) Use of state resources that is reasonably related to the conduct of
36 official state duties, or which is otherwise allowed by statute.

37 (b) An agency head or designee may authorize a use of state resources that
38 is related to an official state purpose, but not directly related to an individual
39 employee's official duty.

40 (c) An agency may authorize a specific use that promotes organizational
41 effectiveness or enhances the job-related skills of a state officer or state employee.

42 (d) A state officer or employee may make an occasional but limited

1 personal use of state resources only if each of the following conditions are met:

2 (i) There is little or no cost to the state;

3 (ii) Any use is brief;

4 (iii) Any use occurs infrequently;

5 (iv) The use does not interfere with the performance of any officer's or
employee's official duties; and

6 (v) The use does not compromise the security or integrity of state
property, information, or software.

7 . . .
8 (5) Prohibited uses.

9 (a) Any use for the purpose of conducting an outside business, private
employment, or other activities conducted for private financial gain . . .

10 WAC 292-110-010.

11 3.7 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000
12 per violation or three times the economic value of anything received or sought in violation the
13 of the Ethics in Public Service Act, whichever is greater. The Board may also impose the cost
14 of investigating the complaint and order restitution for any damages sustained by the state.

15 3.8 RCW 42.52.070 provides that state employees may not use their position to
16 secure special privileges for themselves or others and RCW 42.52.160 and WAC 292-110-010
17 provide that state employees may not use state resources for the private benefit of themselves
18 or others.

19 Board staff argued, in summary, that [REDACTED] abused her position as a lab tech to
20 create her own projects that did not benefit the college and that she misused state resources for
21 her own gain, which included lab equipment and materials. [REDACTED] argued that there was
22 no personal benefit to herself.

23 Based on the above facts, the Board concludes that [REDACTED] violated RCW
24 42.52.070, 42.52.160, and WAC 292-110-010 when she sold copper roses to the SPSCC
25 Foundation, traded metal signs for books, and sold the Mini Flame sculpture to Dr. Wagner.

26 Creating copper roses using SPSCC welding shop equipment and facilities during work
hours and selling them constituted using special privileges for herself and use of state resources
for private gain. In addition, the evidence indicates the roses were made from copper that

1 belonged to the college. It is clear that [REDACTED] sold the roses to the SPSCC Foundation for
2 \$200 and kept the sale proceeds for herself. (Findings of Fact 18-21)

3 Creating metal signs using SPSCC welding shop equipment and facilities during work
4 hours and trading them for valuable consideration constituted using special privileges for
5 herself and use of state resources for private gain, even if the signs were made from steel that
6 [REDACTED] bought herself. [REDACTED] traded the two signs made in the SPSCC shop to
7 another student, Cort, for a welding book that he valued at \$30. (Finding of Fact 22)

8 Finally, creating the Mini Flame sculpture using SPSCC welding shop equipment and
9 facilities during work hours and selling it constituted using special privileges for herself and
10 use of state resources for private gain, even the sculpture was made from scrap metal that Ms.
11 [REDACTED] bought herself. [REDACTED] sold the sculpture to Dr. Wagner for \$2,826.20 and kept
12 the sale proceeds for herself. (Finding of Fact 2.23)

13 3.9 In determining the appropriate sanction, including the amount of any civil
14 penalty, the Board determined that the value of anything received or sought in the violation,
15 under WAC 292-120-030(1)(b), was \$3,056.20.

16 3.10 In determining the appropriate sanction, including the amount of any civil
17 penalty, the Board determined that the nature of the violation, under WAC 292-120-030(2)(a),
18 (b) and (f), was continuing in nature, was motivated by financial gain, and involved personal
19 gain or special privilege to the violator.

20 3.11 In determining the appropriate sanction, including the amount of any civil
21 penalty, the Board determined, as an aggravating circumstance under WAC 292-120-030(3)(a)
22 and (f), that [REDACTED] intentionally committed the violation with knowledge that the conduct
23 constituted a violation and that she incurred no other sanctions as a result of the violation.

24 3.12 In determining the appropriate sanction, including the amount of any civil
25 penalty, the Board determined, as a mitigating circumstance under WAC 292-120-040(4)(c)
26

1 and (e), that the unethical conduct was approved or required by [REDACTED] supervisor and
2 that she no longer works for the state because she was terminated by SPSCC.

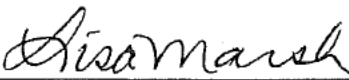
3 **IV. ORDER**

4 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
5 ordered that [REDACTED] is assessed a total monetary penalty of \$3,056.20. Of this
6 amount, for the violation related to the two metal signs traded for books the penalty is \$30 (2 x
7 \$15), for the violation related to the sale of copper roses to the SPSCC Foundation the penalty
8 is \$200, and for the violation related to the sale of the Mini Flame sculpture the penalty is
9 \$2,826.20 (the sale price of the sculpture).

10 4.2 The total amount of \$3,056.20 is payable in full within 90 days of the effective
11 date of this order.

12 DATED this 3rd day of July 2014.

13 WASHINGTON STATE EXECUTIVE ETHICS BOARD

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15 _____
16 Lisa Marsh, Chair

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APPEAL RIGHTS

RECONSIDERATION OF FINAL ORDER – BOARD

Any party may ask the Executive Ethics Board to reconsider a Final Order. The request must be in writing and must include the specific grounds or reasons for the request. The request must be delivered to Board office within 10 days after the postmark date of this order.

The Board is deemed to have denied the request for reconsideration if, within 20 days from the date the request is filed, the Board does not either dispose of the petition or serve the parties with written notice specifying the date by which it will act on the petition. RCW 34.05.470.

The Respondent is not required to ask the Board to reconsider the Final Order before seeking judicial review by a superior court. RCW 34.05.470.

FURTHER APPEAL RIGHTS – SUPERIOR COURT

A Final Order issued by the Executive Ethics Board is subject to judicial review under the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures are provided in RCW 34.05.510 - .598.

The petition for judicial review must be filed with the superior court and served on the Board and any other parties within 30 days of the date that the Board serves this Final Order on the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing or personal service.

A petition for review must set forth:

- (1) The name and mailing address of the petitioner;
- (2) The name and mailing address of the petitioner’s attorney, if any;
- (3) The name and mailing address of the agency whose action is at issue;

1 (4) Identification of the agency action at issue, together with a duplicate copy,
2 summary, or brief description of the agency action;

3 (5) Identification of persons who were parties in any adjudicative proceedings that
4 led to the agency action;

5 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

6 (7) The petitioner's reasons for believing that relief should be granted; and

7 (8) A request for relief, specifying the type and extent of relief requested.

8 RCW 34.05.545.

9 **ENFORCEMENT OF FINAL ORDERS**

10 If there is no timely request for reconsideration, this is the Final Order of the Board.
11 The Respondent is legally obligated to pay any penalty assessed.

12 The Board will seek to enforce a Final Order in superior court and recover legal costs
13 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
14 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
15 Board.