

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2014-042

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent ██████████, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

1. On July 15, 2014, the Executive Ethics Board (Board) received a complaint alleging that ██████████, Admissions Coordinator with the Washington State Department of Social and Health Services (DSHS), Western State Hospital (WSH), may have violated the Ethics in Public Service Act by taking time from work without submitting the proper leave slips.

2. ██████████ was employed as an Admissions Coordinator for the Center for Forensic Services (CFS) located at Western State Hospital for all times pertinent to this investigation. The CFS is a highly secure facility housing patients requiring mental health treatment ordered by the courts.

3. [REDACTED] assigned work schedule was 7:00 am to 3:30 pm, with a 30 minute lunch period, Monday through Friday. [REDACTED] is overtime eligible.

4. Entry into the CFS requires assigned employees to checkout their keys upon arrival using the Key Watcher System (KWS) and return keys prior to leaving the CFS grounds.

5. The Key Watcher Guidelines and Expectations are provided to all CFS employees. The Key Watcher Guidelines and Expectations state in pertinent part:

- Employees are not authorized to take your keys out of CFS.
- Employees are not authorized to take your keys off of WSH Grounds.
- Employees who fail to return their keys to the Key Watcher System will generate an alarm to the system. The employee's supervisor will be notified of any overdue key alarms generated by their employees and will be expected to take corrective action.

6. A daily staff out log is created by Denise Stewart (Ms. Stewart) to show which employees are present, employees who will be arriving late, and those that plan on leaving early

7. Ms. Stewart told Board staff that when staff members would not be coming in or would be late they would call or text her and she would complete the log and submit it to all staff by 8:00 am. If Ms. Stewart was not available to submit the staff out log, Debra Van Horn would collect the required information and submit the daily log.

8. A review of the staff out log from February 24 through August 28, 2014 was completed and used in part to determine when [REDACTED] was not at work and failed to submit the proper leave requests. The chart below shows dates and times when [REDACTED] was logged out from work and includes data from the KWS for the same period. On the days below, there is no indication that a leave slip was submitted.

Staff out log date	Time arrived/left work per KWS	Time off from work/staff out	Amount of time unaccounted for
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		log	
March 26, 2014	7:29 AM/10:50 AM	11:00 AM	4 h:39 m
March 28, 2014	N/A	All day	8 h:0 m
April 3, 2014	7:25 AM/1:58 PM	2:00 PM	1 h:57 m
April 7 - April 11, 2014	N/A	All day	40 h:0 m
April 18, 2014	7:25 AM/12:48 PM	1:00 PM	2 h:37 m
April 25, 2014	7:04 AM/12:35 PM	1:00 PM	2 h:29 m
July 1, 2014	7:42 AM/12:16 PM	12:00 PM	3 h:56 m
July 9, 2014	8:00 AM/2:05 PM	1:45 PM	2 h:25 m
		Total time	66 h: 03 m

9. Co-worker #1 told Board staff that she was aware of a time, April 7 through April 11, 2014, when she knew that [REDACTED] had been off and that she did not submit a request for leave. The above data would support this statement by this co-worker.

10. From the review of the KWS data, emails, and the staff out logs it appears that for the period of February 24 through August 28, 2014, [REDACTED] received pay for at least **129 hours of time** that she was not at work and did not submit the proper leave slip.

11. A summary of the time analysis for the period of February 24 through August 28, 2014 is shown below:

115 Total Work Days	
129 hours of pay without work	14 % of total time
52 days of the 115 > 30 minutes	45 % of the 115 days
35 days of the 115 < 30 minutes	30 % of the 115 day
37 of the 52 days > 1 hour	71 % of the 52 days
16 of the 37 day > 2 hours	43 % of the 37days
12 of the 37 days > 3 hours	32 % of the 37days
9 of the 37 days = 8 hours	24 % of the 37days
10 days worked over for a total of 447 minutes (3.85 hours) of time.	8.7% of 115 days and .80% of total time.
18 Days did not return or remove keys from KWS.	15.6 % of 115 days

11 days of leave

9.5 % of 115 days

12. Co-worker #1 also told Board staff that [REDACTED] may have taken time off near the end of December 2013 without submitting leave slips. Based on this statement, Board staff requested additional KWS data for November 2013 through January 10, 2014. Staff out logs for this period were not available for review.

13. From the review of the KWS data and emails it appears that for the period of November 2013 through January 10, 2014, [REDACTED] received pay for at least 90 hours of time that she was not at work and did not submit proper leave slips. Included in this period are seven days (56 hours) where it appears [REDACTED] was not at work and failed to submit the proper leave authorization. The chart below shows full days off work without the submission of proper leave authorization.

Date	KWS Data	Notes
November 27, 2013	None	An email sent from 11/22 indicating that she would not be in on Wednesday the 27 th .
December 19 through December 27, 2013	None	6 days – 19, 20, 23, 24, 26, and 27. 48 hours, no leave slip submitted.

14. Barry Ward (Mr. Ward), [REDACTED] direct supervisor, told Board staff that he would normally see [REDACTED] at the daily 8:15 am briefing. He further stated that he would not know if [REDACTED] arrived at her scheduled time of 7:00 am.

15. Mr. Ward told Board staff that [REDACTED] position is essential to the daily operation of the CFS and when she is not present, someone else has to perform her duties.

16. Barbara Shelman (Ms. Shelman), a registered nurse at WSH, covers for [REDACTED] when she is not at work. Ms. Shelman told Board staff that on occasion, when covering for Ms. [REDACTED], she would respond to emails sent to Ms. Shriner and, depending on the response, she may not identify herself as the author.

17. Ms. Shelman told Board staff that she talked with Mr. Ward about the amount of time [REDACTED] was taking off from work. Ms. Shelman indicated that she was spending a lot of time covering for [REDACTED], which took time away from her duties as a nurse.

18. Ms. Shelman also talked with her supervisor, Kim Saatchi (Ms. Saatchi), about the amount of time she was spending covering for [REDACTED]. Ms. Saatchi told Board staff that Ms. Shelman has double the workload when [REDACTED] misses work because there is no one to cover for [REDACTED].

19. Mr. Ward told Board staff that during 2013 and 2014, [REDACTED] was doing the job of two people. While he was not keeping track of when [REDACTED] was working, he said he knew that she would work late at night and on some weekends to get the job done and that she would take the extra time off at a later date. He further stated that at that time he believed she was banking the time over several pay periods. He has since learned that any comp time earned has to be used in the same pay period. Mr. Ward indicated there was no formal way to track when [REDACTED] worked more than 40 hours per week and no formal way to track when she took comp time.

20. Mr. Ward told Board staff that during the period of 2013 and 2014, [REDACTED] did not seem to have a problem with putting in her required hours. However, over the last year this has changed, which he attributes to a personal problem at home.

21. Mr. Ward told Board staff that when [REDACTED] came in to work, even on the weekends, she was expected to retrieve her keys from the KWS at the beginning of her shift and return them before she left the facility at the end of her shift.

22. The only Saturday it appears [REDACTED] worked, according to KWS data, was on November 2, 2013 from 8:58 am to 11:17 am, two hours and nineteen minutes. The Friday before (November 1, 2013), it appears that [REDACTED] only worked five hours and forty minutes, two hours and fifty minutes short of her scheduled eight-hour workday.

23. For the period of March 3 through August 8, 2014, the KWS data showed that Ms. [REDACTED] failed to return her keys at the end of her shift, on her last day of work for the week, on three different occasions:

Failed to Return	Date Returned
Friday, March 14, 2014	Monday, March 17, @ 4:58 pm
Friday, March 21, 2014	Monday, March 24 @ 3:48 pm
Thursday, March 27, 2014 (off on Friday)	Monday, March 31, @ 3:51 pm

By failing to return the keys, it is impossible to use the data from the KWS to establish times when Ms. [REDACTED] came and left work during the weekend.

24. Mr. Ward told Board staff that when [REDACTED] failed to return her keys he is notified by email. He indicated that he received such an email at least six times in the time period of 2013 to 2014. He stated that he would send an email reminding her to return her keys at the end of her shift and took no further action.

25. For the two different time periods looked at by Board staff (November 2013 through January 10, 2014 and February 24 through August 28, 2014), KWS data shows that [REDACTED] failed to return her key on 16 different occasions.

26. [REDACTED] indicated in a response to Board staff that she would normally get her keys and return them on a daily basis but that there were a few times that she did not return them because of a lack of time or if she had to leave early. She further indicated that there were a few times she worked without her keys due to a malfunction of the KWS kiosk.

27. Board staff asked [REDACTED] if she reported the malfunction of the KWS when she was unable to retrieve her keys. She indicated that she did not because she was too busy.

28. On January 28, 2016, Board staff contacted Christine Campbell, the KWS administrator, to request information about whether there was a malfunction of the KWS on the days the KWS showed no activity for Ms. Shriner. The requested dates are shown below:

- March 28, 2014
- April 7 through 11, 2014
- May 13, 2014
- July 17 and 22, 2014
- November 27, 2013
- December 2, 2013
- December 19 through 27, 2013

29. On February 2, 2016, Board staff received an email from Tracy Rich, Key Control Coordinator at WSH. He indicated that there were no known problems with the KWS system on the dates above and there were no loaner sets of keys checked out on those dates.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or 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.

2. WAC 292-110-010 Use of state resources states, in part:

(2) **The following are permitted uses:**

- (a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.
- (b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.
- (c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.
- (d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:
 - (i) There is little or no cost to the state;
 - (ii) Any use is brief;
 - (iii) Any use occurs infrequently;
 - (iv) The use does not interfere with the performance of any officer's or employee's official duties; and
 - (v) The use does not compromise the security or integrity of state property, information, or software.

3. Based on the stipulated facts above, [REDACTED] used state resources (time) for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

4. 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.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that, these types of violations significantly reduce the public respect and confidence in state government employees and that they were continuous in nature.

D. STIPULATION AND AGREED ORDER

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

2. Under RCW 34.05.060, the Board can 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.

3. 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.

4. [REDACTED] agrees that if any or all of the alleged violations were proven 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).

5. [REDACTED] further agrees that the evidence available to the Board 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.

6. [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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 stipulation. [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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between ██████████ and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against ██████████ at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if ██████████ does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, ██████████ waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, ██████████ understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. ██████████ agrees to pay a civil penalty in the amount of three thousand, five hundred dollars (\$3,500) associated with the improper use of public resources, RCW 42.52.160. The Board agrees to suspend one thousand, seven hundred and fifty dollars (\$1,750) on the condition that ██████████ 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.

12. The non-suspended portion of the civil penalty in the amount of one thousand, seven hundred and fifty dollars (\$1,750) is payable in full to the Washington State Executive Ethics Board

within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

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II. CERTIFICATION

I, [REDACTED] hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify 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, I understand that I will receive a signed copy.

[REDACTED]

Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

6/28/14
Date

