

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Kim Jacobs-Nicholson  
Respondent.

No. 2015-039

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, KIM JACOBS-NICHOLSON, 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 May 20, 2015, the Executive Ethics Board (Board) received a complaint regarding Kim Jacobs-Nicholson (Ms. Jacobs), Electronic Health Records Programs Eligibility Coordinator with the Washington State Health Care Authority (HCA). The complaint alleges Ms. Jacobs violated the Ethics in Public Service Act (the Act) by using state resources for her personal benefit and gain and that she was constantly on Facebook during work hours.

2. Ms. Jacobs was hired by the HCA on March 15, 2000 and for all times pertinent to this investigation Ms. Jacobs was an Electronic Health Records Programs Eligibility Coordinator for the

HCA. Ms. Jacobs was an overtime-exempt employee. Ms. Jacobs resigned from state service on April 15, 2016.

3. The complaint alleges that Ms. Jacobs was using state resources for her personal benefit and gain by spending work time on the social media site, Facebook, and that she was taking time off from work without submitting proper leave.

4. Ms. Jacobs indicated in her response that she would use her personal devices and the HCA guest Wi-Fi network to log onto Facebook. The HCA provides wireless access for all guest and employees. Ms. Jacobs further indicated that she would log on to Facebook during her breaks and lunch period but that she never used her state computer to do so.

5. As a result of this complaint, Board staff requested HCA provide Internet history and Outlook emails for the past 24 months. Due to privacy concerns related to the personal medical history of clients, the HCA conducted an internal search for emails and Internet history relevant to the complaint. The HCA identified 821 emails that did not contain protected health care information and were relevant to the complaint.

6. Board staff reviewed Ms. Jacobs' 821 state emails provided by the HCA for the period of June 3, 2013 through June 18, 2015. Of those 821 emails reviewed, 98 were identified by Board staff as personal in nature for the period of October 10, 2013 through June 8, 2015. Of the 98 personal emails, 53 were related to the settling of Ms. Jacobs' father's estate, 37 were other personal, and 8 were related to her upcoming wedding.

7. Board staff reviewed Ms. Jacobs' 821 state emails provided by the HCA for the period of June 3, 2013 through June 18, 2015. Of those 821 emails reviewed, 98 were identified by Board staff as personal in nature for the period of October 10, 2013 through June 8, 2015. Of the 98 personal

emails, 53 emails were related to the settling of Ms. Jacobs' father's estate, 37 were other personal, and eight were related to her upcoming wedding.

8. Most of the emails were related to Ms. Jacob's father's estate included attachments of documents created at work on her work computer during work time. The 53 emails occurred in the period of September 26, 2014 through June 3, 2015.

9. A summary of all personal emails sent/received by month and year are shown below:

<b>Month</b>	<b>Number</b>		<b>Month</b>	<b>Number</b>
June 2013	1		January 2015	1
October 2013	4		February 2015	7
November 2013	5		March 2015	16
August 2014	3		April 2015	11
September 2014	9		May 2015	18
October 2014	14		June 1 – 8, 2015	6
November 2014	3		<b>Total</b>	<b>98</b>

## **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. Based on the stipulated facts above, Ms. Jacobs used state resources for a personal benefit in violation of RCW 42.52.160.

3. 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.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Kim Jacobs 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. Kim Jacobs 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. Kim Jacobs 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. Kim Jacobs 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 Kim Jacobs 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. Kim Jacobs 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 Kim Jacobs 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 Kim Jacobs 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 Kim Jacobs 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, Kim Jacobs 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, Kim Jacobs 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. Kim Jacobs agrees to pay a civil penalty in the amount of two-hundred fifty dollars (\$250) for the violations associated with RCW 42.52.

12. The civil penalty in the amount of two-hundred fifty dollars (\$250) 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.

## II. CERTIFICATION

I, Kim Jacobs, 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.

 11/28/16  
\_\_\_\_\_  
KIM JACOBS Date  
Respondent  
Presented by:

 11/30/16  
\_\_\_\_\_  
KATE REYNOLDS Date  
Executive Director

