BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the matter of: OAH NO. 04-2017-AGO-00011
HUONG MAI, EEB NO. 2016-034
Respondent.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER

I. PROCEDURAL HISTORY

1.1 On February 26, 2016, the Executive Ethics Board (Board) received a referral
from the State Auditor’s Office (SAO) alleging that Huong Mai (Ms. Mai), a former Medical
Assistant Specialist with the Health Care Authority (HCA), may have violated the Ethics in
Public Service Act, chapter 42.52 RCW.

1.2 On November 18, 2016, the Board found reasonable cause to believe a violation
of the Ethics in Public Service Act occurred.

1.3 A prehearing conference, with all parties participating, was held on May 30, 2017,
with an Administrative Law Judge (ALJ) presiding pursuant to RCW 42.52.500.

1.4 After due and proper notice, a hearing was held before the Board. The hearing
was held at the Board offices at Bristol Court in Olympia, Washington. It convened on November
16, 2017. ALJ TJ Martin from the Office of Administrative Hearings conducted the proceedings,
and Board Chair Anna Dudek Ross and members Shirley Battan, Lisa Marsh, and John
Ladenburg were present. Also present was Bruce L. Turcott, Assistant Attorney General, legal
advisor to the Board.
1.5 Board staff was represented by Chad C. Standidger, Assistant Attorney General. The Board’s Executive Director Kate Reynolds and other Board staff members were present.

1.6 Ms. Mai was present and represented herself pro se.

1.7 Board staff offered Exhibits 1-9. All were admitted into evidence at hearing.

1. Preliminary Investigation and Board Determination relating to Huong Mai dated October 27, 2016 (6 pages);
2. State Auditor’s Office Whistleblower Referral relating to Huong Mai dated December 9, 2015 (3 pages);
3. State Auditor’s Office notes of interviews with Huong Mai dated December 29, 2015 and January 6, 2016 (4 pages);
4. State Auditor’s Office Whistleblower Report relating to Huong Mai dated February 18, 2016 (5 pages);
6. E-mail between Health Care Authority employees dated January 4, 2016 (1 page);
7. Health Care Authority report of trainings for Huong Mai dated January 4, 2016 (5 pages);
8. Washington Personnel Resources Board - Findings, Conclusions and Order, Case No. R-DISM-16-001, dated January 19, 2017 (10 pages); and

1.8 Ms. Mai offered Exhibit A. It was admitted into evidence at hearing.

A. Attachments to Prehearing Statement of Appellant, pp. 4-16, consisting of the following (13 pages total):

Excerpts from Cooperative Agreement between the Washington State Health Care Authority and the Washington State Department of Social and Health Services, pp. 1-2, 11, 16, 60, 62 (6 pages);

Excerpt from unidentified document with heading “George Taylor, May 4, 2016, Page 2 of 12, Basis for Discipline” (1 page);

Excerpts from DSHS HIPAA Breach Risk Assessment dated January 27, 2015, pp. 1, 3 (2 pages);

Document titled “HCA HIPAA121313 – HIPAA Overview training” (1 page)
The Board was provided with copies of documents that were admitted as exhibits.

1.9 Ms. Mai submitted a prehearing brief. Board staff did not submit a prehearing brief; instead, it submitted proposed findings of fact and conclusions of law.

1.10 The proceedings were recorded. They were open to the public.

1.11 The Board heard the testimony of Kerri Kallay, Steve Dotson, David Killeen, and Ms. Mai.

1.12 The hearing was adjourned the same day, on November 16, 2017.

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

II. FINDINGS OF FACT

2.1 Ms. Mai was employed as a Medical Assistance Specialist by HCA starting in 1994. Testimony of Huong Mai; Exhibit (Ex.) 5, p.20; Ex. 8, p.2.

2.2 Ms. Mai completed HCA Health Insurance Portability and Accountability Act (HIPAA) Online training on March 29, 2014 and March 30, 2015. Testimony of Kerri Kallay; Ex. 7, p.4.

2.3 While investigating an issue at the Department of Social and Health Services (DSHS), (SAO) found the subject of the investigation, Mr. Khoi Mai, had 57 HCA documents saved on his state computer that contained confidential provider and client information. The SAO found that these documents were sent to the DSHS employee by his sister, Ms. Mai, who worked for HCA, through the state email system. Ex. 2, p.3; Ex. 4, p.3.
2.4 As authorized by state law, RCW 42.40.040(4), the SAO self-initiated a whistleblower investigation to determine if Ms. Mai had committed an improper governmental action by disclosing confidential information. Ex. 2.

2.5 The SAO obtained Ms. Mai’s emails for the period of December 2014 through December 2015. A review of those emails revealed 80 emails with 133 attachments (Excel spreadsheets) sent to her brother at DSHS requesting some technical assistance with the spreadsheets. Ex. 4, p.3.

2.6 The information emailed by Ms. Mai included spreadsheets containing the full names, dates of birth, Social Security numbers, past and current addresses, citizen status, client ID numbers, diagnostic codes, and provider information for tens of thousands of HCA clients. In one email, Ms. Mai sent a text file that contained information for more than 44,000 clients. Ex. 4, p.3; Ex. 6.

2.7 At an interview on December 29, 2015, Ms. Mai told the SAO investigator that she sent the documents to her brother, Khoi Mai (Mr. Mai), so he could help with the Excel scripts needed to complete her job. Ms. Mai indicated that she did not believe sending the documents to her brother violated confidentiality laws because he was a state worker and that the request for help was work related. She acknowledged that she did not receive approval from her supervisor to have her brother, a DSHS employee, assist her with her work. Ex. 3.

2.8 Kerri Kallay is a Human Resources Operations Supervisor with HCA. Ms. Kallay testified regarding the internal investigation she conducted of Ms. Mai’s disclosure of confidential information. See Ex. 5. Ms. Kallay testified that Ms. Mai’s access to the agency computer system called ACES should have been turned off when she transferred to the position that she held when she made the unauthorized disclosures, because Ms. Mai had no need or authority to access the ACES database in that position. Testimony of Kerri Kallay.

2.9 Steve Dotson is a Deputy Assistant Director in the HCA Division of Legal Services. Mr. Dotson testified regarding a separate HCA investigation into the data breach
resulting from Ms. Mai’s disclosure of confidential information, notifications to affected
individuals and the U.S. Office of Civil Rights, and the financial impact of Ms. Mai’s conduct
on HCA. Mr. Dotson also testified that Khoi Mai was not an authorized recipient of confidential
client information under the Cooperative Agreement between HCA and DSHS concerning data
sharing. Ex. A; Testimony of Steve Dotson.

2.10 David Killeen is a Senior Investigator with the Board. He testified regarding
Board staff’s investigation of this matter, including his review of the investigations conducted
by the SAO and HCA.

2.11 Ms. Mai testified on her own behalf. She testified regarding her dedication to her
job, job duties, and her feeling of obligation to the public. Ms. Mai testified that she thought her
brother was an authorized recipient of client information. In her testimony, she questioned how
much harm was caused by her disclosures. Ms. Mai testified in response to a Board member’s
question that she knew clients’ Social Security numbers and addresses were confidential.
Testimony of Huong Mai.

2.12 Ms. Mai testified regarding a Cooperative Agreement between HCA and DSHS
concerning data sharing, in support of sending client information to Mr. Mai. Ms. Mai also
admitted, in response to a Board member’s question, that she obtained a copy of the Cooperative
Agreement only after she was terminated from HCA employment. Testimony of Huong Mai.

2.13 Ms. Mai’s briefing asked the Board to reinstate her employment with HCA, but
she testified in response to a Board member’s question that she did not know if the Board had
the ability to do so. Prehearing Statement of Appellant; Testimony of Huong Mai.

2.14 As a result of the SAO investigation, the HCA initiated its own internal
investigation to determine if Ms. Mai had inappropriately disclosed confidential client
information. The HCA investigation was initiated after a December 29, 2015 meeting with the
SAO Whistleblower Investigator, and it concluded with a report dated January 11, 2016. Ex. 5,
p. 2, 21. The HCA investigation revealed that on ten occasions from December 2014 through
October 2015, Ms. Mai emailed, to Mr. Mai at DSHS, Excel spreadsheets containing confidential
information for thousands of HCA clients. Ex. 5, p.15; Testimony of Kerri Kallay.

2.15 Mr. Mai was not an authorized recipient of the confidential information. He
uploaded some of the data sent by his sister, including client names, to a thumb drive that was
not recovered by HCA. The unrecovered thumb drive put confidential information and HCA at
risk and was a factor in the agency's decision to follow standard/official protocol for reporting a
data breach of confidential patient information to affected individuals and the U.S. Office of
Civil Rights. Testimony of Steve Dotson.

2.16 In total, Ms. Mai shared the confidential information of approximately 144,000
HCA clients with Mr. Mai. Testimony of Steve Dotson; Ex. 8, p.8-9.

2.17 The HCA investigation also determined that, on three occasions from January
2015 through October 2015, Ms. Mai accessed an agency computer system, ACES, to obtain
confidential information about her relatives and disclosed that information to other relatives.
She emailed confidential client information about her uncle to Mr. Mai on January 7, 2015 and
August 31, 2015. She emailed confidential client information about her cousin to her nephew at
his personal email address on October 15, 2015. Ms. Mai did not have authorization as a
representative of HCA to disclose this information – nor did she have authority to access the info
at all in her current position. Mr. Mai had a power of attorney, but the nephew did not. Ms. Mai
should have known, based on her training, that the information in ACES was confidential and
that she was not authorized to disclose it to others, under the agency ethics policy. Ex. 5, pp. 13,
15, 76-79; Testimony of Kerri Kallay.

2.18 As a result of HCA’s investigation, the agency determined that Ms. Mai’s conduct
was unauthorized and violated HCA Administrative Policy No. 1-02, Privacy and Compliance
with HIPAA and HCA Administrative Policy No. 1-06, Protecting Personal/Confidential
Information. Ex. 5, pp.17-19; Testimony of Kerri Kallay.
2.19 Because of the unauthorized use and disclosure of confidential client information, HCA was required by HIPAA to notify affected individuals and the U.S. Office of Civil Rights of the breach. HCA incurred costs of approximately $100,000 as a result of Ms. Mai’s disclosure of confidential information. These costs were associated with payment of a deductible on an insurance policy that, among other things, provided free credit monitoring for one year to affected HCA clients and a vendor to set up a call center to handle calls from HCA clients who were notified of the breach. Testimony of Steve Dotson.

2.20 Ms. Mai was terminated from employment by the HCA on January 25, 2016 because of the unauthorized disclosures of confidential client information that are the subject of this matter. Ex. 8.

2.21 The Board finds that all of the above findings of fact are supported by a preponderance of the evidence.

III. CONCLUSIONS OF LAW

3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1), which authorizes the Board to enforce the Ethics in Public Service Act with respect to employees in the executive branch of state government. The Board has jurisdiction over Huong Mai, whose actions occurred while she was a state employee. The complaint was filed in accordance with RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an adjudicative proceeding was conducted pursuant to RCW 42.52.430 and 42.52.500. All required procedural notices were provided.

3.2 The Ethics in Public Service Act governs the conduct of state officers and employees. Under RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

3.3 A state employee may not disclose confidential information under RCW 42.52.050, which states, in pertinent parts as follows:
(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer’s or employee’s official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer’s or state employee’s agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

RCW 42.52.020(5) defines “confidential information” as:

(a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

HIPAA protects “individually identifiable health information,” defined as:

demographic information collected from an individual, and:
(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
(i) That identifies the individual; or
(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

45 C.F.R. § 160.103.

HIPAA protects individually identifiable health information held or transmitted by a covered entity or its business associates, in any form or media, whether electronic, paper, or oral. Ex. 9, p.5. HIPAA identifies this information as “protected health information (PHI).” Id.

PHI is not available to the general public upon request and is deemed confidential by HIPAA. PHI therefore, is “confidential information” under RCW 42.52.050.

DISCLOSURES TO UNAUTHORIZED RECIPIENT

3.4 Based on the above findings of fact, the Board concludes that Ms. Mai repeatedly violated RCW 42.52.050(2) and (3) when, on ten occasions from December 2014 through October 2015, Ms. Mai emailed Mr. Mai, at DSHS, Excel spreadsheets containing the confidential PHI of thousands of HCA clients. Finding of Fact 2.10.
Ms. Mai does not dispute that she disclosed the confidential information discussed above. Rather, in summary, she argues that she was trying to perform her job duties more efficiently, and she was not aware that her brother, Mr. Mai, was not authorized to receive the confidential information. Prehearing Statement of Appellant. For the reasons discussed below, neither argument is a defense to her violations of RCW 42.52.050.

It may be that Ms. Mai was attempting to more efficiently perform her job duties. As a result, she sent the spreadsheets to Mr. Mai because she believed he was more capable of creating scripts in Excel that would reduce the time it would take her to process HCA data. Nevertheless, Ms. Mai had an obligation, under HIPAA and RCW 42.52.050, not to disclose confidential information except to individuals specifically authorized to receive it. Regardless of her motive, Ms. Mai repeatedly violated RCW 42.52.050 by sending the spreadsheets containing PHI to her brother. In doing so, she compromised the privacy of thousands of HCA clients. Ms. Mai’s argument that she was not aware that Mr. Mai was not an authorized recipient of the confidential information is likewise not persuasive. Ms. Mai took training relating to HIPAA and should have known that Mr. Mai was not authorized to receive the information.

ACCESSING INFORMATION ABOUT RELATIVES

Based on the above findings of fact, the Board further concludes that Ms. Mai violated RCW 42.52.050(2) and (3), when on three occasions from January 2015 through October 2015, Ms. Mai accessed the ACES computer system to obtain confidential information about her relatives and disclosed that information to other relatives without authorization to do so. Finding of Fact 2.12.

SANCTION

The Board may impose a civil penalty of up to $5,000 per violation, or three times the economic value of anything received or sought in violation of the Ethics in Public Service Act, whichever is greater. RCW 42.52.480; WAC 292-120-020. The Board does not have authority under the Ethics in Public Service Act or Board rules to reinstate a terminated
employee, as Ms. Mai requested. Instead, in appropriate cases, the Board may recommend
suspension or removal from a position. RCW 42.52.360(3)(f).

3.9 Each time Ms. Mai sent confidential information to Mr. Mai, a person not
authorized to receive the information, she violated RCW 42.52.050(2) and (3). She did so on at
least ten occasions.

3.10 Each time Ms. Mai accessed the ACES computer system to obtain confidential
information about her relatives and disclosed that information to other relatives without
authorization, she also violated RCW 42.52.050(2) and (3). She did so on three occasions.

3.11 In determining the appropriate sanction, the Board considered all of the criteria
for determining sanctions under WAC 292-120-030.

3.12 The Board determined, under WAC 292-120-030(1)(a) and (c), that the monetary
cost of the violations included significant costs to HCA, which expended a significant amount
of time and money to investigate the matter and ensure affected individuals were notified of the
breach and given the opportunity to monitor their credit for one year without any cost to the
affected individuals. HCA’s insurance policy for data breaches included a deductible of
$100,000. Approximately 144,000 individuals were affected by Ms. Mai’s disregard of their
privacy rights. These individuals were also obligated to expend their own time and energy to
ensure their credit rating was not impacted. Testimony of Steve Dotson.

3.13 The Board determined that the nature of the violations, under WAC 292-120-
030(2)(a), (d), and (e), were continuing in nature, impaired a function of the agency, and tended
to reduce public respect for or confidence in state government or state government officers or
employees. See Testimony of Steve Dotson.

3.14 In addition, the Board determined that the nature of the violations, under WAC
292-120-030(f), with respect to accessing information about relatives and disclosing it to others
without authorization, involved a special privilege to Ms. Mai. See Testimony of Huong Mai.
3.15 The Board determined, as an aggravating circumstance under WAC 292-120-030(3)(a), with respect to accessing information about relatives and disclosing it to others without authorization, that Ms. Mai intentionally committed the violation with knowledge that the conduct constituted a violation. Testimony of Kerri Kallay; Testimony of Huong Mai; Ex. 5.

3.16 The Board determined, as a mitigating circumstance under WAC 292-120-030(4)(a), that Ms. Mai’s employer took corrective action against her by terminating her employment. Ex. 8.

IV. ORDER

4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that Huong Mai is assessed a total monetary civil penalty of $50,000, calculated as follows:

4.1.1 For sending confidential information to an unauthorized recipient on at least ten occasions, the Board imposes a $35,000 penalty ($3,500 per violation x 10 violations).

4.1.2 For accessing the ACES computer system to obtain confidential information about relatives and disclosing that information to others without authorization, the Board imposes a $15,000 penalty ($5,000 per violation x 3 violations).

4.2 The total amount of $50,000 is payable in full within 90 days of the effective date of this Order.

DATED this \( \text{6th} \) day of January 2019.

WASHINGTON STATE EXECUTIVE ETHICS BOARD

Anna Dudek Ross, Chair
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;

(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;
(5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;

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

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

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

RCW 34.05.545.

ENFORCEMENT OF FINAL ORDERS

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

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