1 | BEFORE THE WASHINGTON STATE **EXECUTIVE ETHICS BOARD** 2 3 In the Matter of: EEB Case No. 2016-037 4 FINAL ORDER Kaitlin Torres, 5 Respondent 6 7 PROCEDURAL HISTORY 8 On July 14, 2017, the Executive Ethics Board (Board) found reasonable cause to 9 believe that the Respondent, Kaitlin Torres (Ms. Torres), violated the Ethics in Public Service 10 Act while employed as an Attendant Counselor at Yakima Valley School (YVS). Notice of the 11 Reasonable Cause Determination and the right to request a hearing was served upon Ms. 12 Torres by regular mail and certified mail and by email on July 14, 2017. Ms. Torres failed to 13 respond to the Reasonable Cause Determination within 30 days as required by WAC 292-100-14 060(2). 15 The Board entered an Order of Default on November 17, 2017. On November 17, 2017, 16 Board staff provided Ms. Torres with notice of the Board's Order of Default by regular and 17 certified mail. 18 Pursuant to WAC 292-100-060(4) Ms. Torres was allowed 10 days to request vacation 19 of the Order of Default. Ms. Torres has not moved to vacate the order entered on November 20 17, 2017. 21 22 II. FINDINGS OF FACT 23 1. Ms. Torres was hired on August 4, 2014 by DSHS to work as an on-call 24 Attendant Counselor (Nursing Assistant) at YVS. Prior to her hire, Ms. Torres signed an Oath 25

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of Confidentiality Form. The form explained that the fact someone was eligible for services at YVS was considered Protected Health Information (PHI).

- 2. For all times pertinent to this investigation, Ms. Torres was employed as a non-permanent on-call Attendant Counselor 1 at YVS. She was terminated on February 3, 2016 following the internal investigation, when it was determined that she had shared the PHI of two residents living at YVS.
- 3. On January 30, 2016, Tammy Winegar (Ms. Winegar), Superintendent at YVS, received a voicemail that had been left on her work cell phone the night before at approximately 11:18 pm. The caller indicated that she was a former employee at YVS and had received two Snapchat videos from Ms. Torres during the evening of January 29, 2016. Both videos were of a resident at YVS. Since video and pictures taken using Snapchat are temporary, the witness preserved the images by taking screenshots of the resident shown in the Snapchat video that had been sent to her.
- 4. After speaking with Ms. Winegar, the witness emailed the screenshots to her. Ms. Winegar recognized the individual in the photographs as SW, a current resident of YVS. Two separate Snapchat videos of SW had been sent to the witness that showed SW seated at a table in the facility, reading a magazine. Ms. Torres had captioned the first video: "Reading his magazine lol." Additionally, a binder is visible on a table in the Snapchat that displays the name of another resident at YVS, identified as RV. The second Snapchat sent to the witness, again shows SW reading with the caption: "So focused." It appears likely the second Snapchat was taken immediately following the first.
- 5. Ms. Winegar confirmed through the scheduling department that Ms. Torres had worked the graveyard shift at YVS on January 29th scheduled from 10:00 pm to 10:00 am.
- 6. YVS and the program that SW and RV are in, is covered under the federal Health Insurance Portability and Accountability Act (HIPAA). The federal HIPAA law of

1996 protects all "Individually Identifiable Health Information" held or transmitted by a covered entity or its business associates in any form or media, whether electronic, paper and oral.

- 7. The **Oath of Confidentiality** form Ms. Torres read and signed prior to her employment indicated that a resident eligible for services at YVS is considered PHI. The form asks and answers the following:
 - What is the HIPAA Privacy Rule?

The Health Insurance Portability and Accountability Act (HIPAA) is a series of federal rules governing payment, privacy, and security of healthcare treatment and information. The Privacy Rule governs our treatment of protected health information (PHI) and clients' rights to privacy and access to their PHI.

• Why is Yakima Valley School information considered PHI?

PHI is any oral, written or electronic information related to the health status, healthcare or treatment of the people we serve. The fact that someone is eligible for DDD/YVS services says something about the person's health status (i.e., disability). All services provided by Yakima Valley School are considered healthcare treatment and habilitation.

• Does this rule affect your Yakima Valley School job duties?

The privacy rules require that we change how we think about the client information we maintain and disclose. As a Yakima Valley School employee, you must understand the requirements for PHI and are responsible to respect and protect your clients' privacy at all times.

8. An interview with Ms. Torres was scheduled and took place on February 3, 2016. As a WFSE represented employee, Ms. Torres was accompanied by a Union representative, Rhonda Gottschalk (Ms. Gottschalk). Also present during the interview were Ms. Winegar, Sandra Quick (Ms. Quick), Nursing Supervisor for YVS and Mary McGehee (Ms. McGehee), DSHS Human Resources. Ms. Winegar and Ms. Quick indicated that during the interview Ms. Torres was evasive and not very cooperative at first, but after being

presented with the screen shot photos of SW, she admitted she had taken them and sent them out via Snapchat. It could not be determined how many people Ms. Torres may have sent the Snapchats to.

- 9. At the time of the incident, Ms. Torres had an active credential issued by the Department of Health (DOH) to practice as a Nursing Assistant-Certified (NAC# NC60499104). Following the internal investigation, the case was referred to the Investigation and Inspection Office of DOH and assigned to Health Care Investigator Clark Wisswell (Mr. Wisswell). Mr. Wisswell contacted Ms. Torres for an interview, however; she declined to provide a statement regarding the complaint. In August 2016, he mailed her a Letter of Cooperation requesting a written response to the allegation. Ms. Torres responded that she had not taken any pictures or video of residents and had told YVS staff that she had because "they would not take no for an answer." She said at the time she felt it was easier to say she did it, not knowing at the time what it could mean to her career as a Nursing Assistant.
- 10. Board staff contacted Ms. Torres by phone on November 9, 2016 to speak with her regarding the complaint. Ms. Torres stated that she was hoping to keep her license because she enjoyed working as a Nursing Assistant. She denied taking the photos and said she had admitted it during the YVS interview because she was worried they would take her personal phone and look through it. Board staff advised Ms. Torres that it was important to be truthful about what happened and if she had taken the Snapchats and this incident was out of character for her and not a true representation of her as a caregiver then she should say that. Ms. Torres stated "yeah could you just put that down in your report." Ms. Torres then ended the phone call.

11. On January 17, 2017, Ms. Torres signed a Stipulation of Informal Disposition with DOH. Since the stipulation was not considered formal disciplinary action, it did not result in a finding of unprofessional conduct or the inability to practice as a nursing assistant. However, the stipulation was reported to the National Practitioner Databank and elsewhere as required by law and the document was placed on the DOH website. Ms. Torres was required to complete mandatory continuing education as well as six hours of continuing education in the areas of laws/ethics and patient rights/dignity. She reimbursed the Nursing Assistant Program \$250 in investigative costs. The signed Stipulation was accepted by the Secretary of Health on February 7, 2017.

III. CONCLUSIONS OF LAW

- 1. RCW 42.52.050 Confidential Information Improperly Concealed Records, states in part:
 - (3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.
- 2. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Ms. Torres and over the subject matter of this complaint.
- 3. Based on the evidence, Ms. Torres improperly disclosed confidential information when she shared photos of a resident and the name of another resident via Snapchat in violation of RCW 42.52.050.
- 4. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

1 | 5. In determining the appropriateness of the civil penalty, the criteria in WAC 292-2 120-030 have been reviewed. 3 4 IV. FINAL ORDER 5 Based on the foregoing: 6 IT IS HEREBY ORDERED Respondent Kaitlin Torres is liable for and shall pay a civil 7 penalty of two thousand dollars (\$2,000). The payment shall be made to the Executive Ethics 8 Board within forty-five (45) days of this Order. 9 10 V. AUTHORITY AND PROCEDURE 11 Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for 12 Reconsideration stating the specific grounds upon which relief is requested. The Petition must 13 be filed with the Executive Ethics Board at 2425 Bristol Court SW, Olympia, Washington 14 98504, or by U.S. Mail at P.O. Box 40149, Olympia, Washington 98504-0149, within ten (10) 15 days of service of the Final Order upon Respondent. 16 The Petition for Reconsideration shall not stay the effectiveness of this order nor is a 17 Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely 18 Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the 19 petition is filed, the Board does not (a) dispose of the petition or (b) serve the parties with a 20 written notice specifying the date by which it will act on a petition. 21 /// 22 /// 23 /// 24 /// 25

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1	Respondent has the right to petition the superior court for judicial review of the Board's
2	action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition
3	for Judicial Review, see RCW 34.05.510 and sections following.
4	DATED this 12 th day of January, 2018
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8	John Laderburg, Chair Lisa Marsh, Member
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10	Mile Batter
11	Shirley Battan, Vice-Chair Gerri Davis, Member
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