

1 **BEFORE THE WASHINGTON STATE**  
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2016-037

4 [REDACTED]

FINAL ORDER

5 Respondent  
6

7 **I. PROCEDURAL HISTORY**

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9 On July 14, 2017, the Executive Ethics Board (Board) found reasonable cause to  
10 believe that the Respondent, [REDACTED], violated the Ethics in Public Service  
11 Act while employed as an Attendant Counselor at Yakima Valley School (YVS). Notice of the  
12 Reasonable Cause Determination and the right to request a hearing was served upon Ms.  
13 [REDACTED] by regular mail and certified mail and by email on July 14, 2017. [REDACTED] failed to  
14 respond to the Reasonable Cause Determination within 30 days as required by WAC 292-100-  
15 060(2).

16 The Board entered an Order of Default on November 17, 2017. On November 17, 2017,  
17 Board staff provided [REDACTED] with notice of the Board's Order of Default by regular and  
18 certified mail.

19 Pursuant to WAC 292-100-060(4) [REDACTED] was allowed 10 days to request vacation  
20 of the Order of Default. [REDACTED] has not moved to vacate the order entered on November  
21 17, 2017.

22 **II. FINDINGS OF FACT**

23  
24 1. [REDACTED] was hired on August 4, 2014 by DSHS to work as an on-call  
25 Attendant Counselor (Nursing Assistant) at YVS. Prior to her hire, [REDACTED] signed an Oath  
26

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

3 2. For all times pertinent to this investigation, [REDACTED] was employed as a non-  
4 permanent on-call Attendant Counselor 1 at YVS. She was terminated on February 3, 2016  
5 following the internal investigation, when it was determined that she had shared the PHI of  
6 two residents living at YVS.

7 3. On January 30, 2016, Tammy Winegar (Ms. Winegar), Superintendent at YVS,  
8 received a voicemail that had been left on her work cell phone the night before at  
9 approximately 11:18 pm. The caller indicated that she was a former employee at YVS and had  
10 received two Snapchat videos from [REDACTED] during the evening of January 29, 2016. Both  
11 videos were of a resident at YVS. Since video and pictures taken using Snapchat are  
12 temporary, the witness preserved the images by taking screenshots of the resident shown in the  
13 Snapchat video that had been sent to her.

14 4. After speaking with Ms. Winegar, the witness emailed the screenshots to her.  
15 Ms. Winegar recognized the individual in the photographs as SW, a current resident of YVS.  
16 Two separate Snapchat videos of SW had been sent to the witness that showed SW seated at a  
17 table in the facility, reading a magazine. [REDACTED] had captioned the first video: "Reading his  
18 magazine lol." Additionally, a binder is visible on a table in the Snapchat that displays the  
19 name of another resident at YVS, identified as RV. The second Snapchat sent to the witness,  
20 again shows SW reading with the caption: "So focused." It appears likely the second Snapchat  
21 was taken immediately following the first.

22 5. Ms. Winegar confirmed through the scheduling department that [REDACTED]  
23 had worked the graveyard shift at YVS on January 29<sup>th</sup> scheduled from 10:00 pm to 10:00 am.

24 6. YVS and the program that SW and RV are in, is covered under the federal  
25 Health Insurance Portability and Accountability Act (HIPAA). The federal HIPAA law of  
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1 1996 protects all “Individually Identifiable Health Information” held or transmitted by a  
2 covered entity or its business associates in any form or media, whether electronic, paper and  
3 oral.

4 7. The **Oath of Confidentiality** form [REDACTED] read and signed prior to her  
5 employment indicated that a resident eligible for services at YVS is considered PHI. The form  
6 asks and answers the following:  
7

- 8 • What is the HIPAA Privacy Rule?

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

- 12 • Why is Yakima Valley School information considered PHI?

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

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

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

23 8. An interview with [REDACTED] was scheduled and took place on February 3,  
24 2016. As a WFSE represented employee, [REDACTED] was accompanied by a Union  
25 representative, Rhonda Gottschalk (Ms. Gottschalk). Also present during the interview were  
26 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 [REDACTED] was evasive and not very cooperative at first, but after being

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

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5 9. At the time of the incident, [REDACTED] had an active credential issued by the  
6 Department of Health (DOH) to practice as a Nursing Assistant-Certified (NAC#  
7 NC60499104). Following the internal investigation, the case was referred to the Investigation  
8 and Inspection Office of DOH and assigned to Health Care Investigator Clark Wisswell (Mr.  
9 Wisswell). Mr. Wisswell contacted [REDACTED] for an interview, however; she declined to  
10 provide a statement regarding the complaint. In August 2016, he mailed her a Letter of  
11 Cooperation requesting a written response to the allegation. [REDACTED] responded that she  
12 had not taken any pictures or video of residents and had told YVS staff that she had because  
13 “they would not take no for an answer.” She said at the time she felt it was easier to say she  
14 did it, not knowing at the time what it could mean to her career as a Nursing Assistant.  
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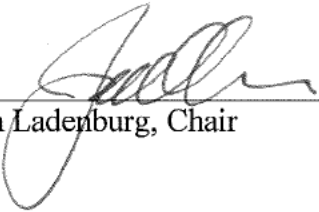
16 10. Board staff contacted [REDACTED] by phone on November 9, 2016 to speak with  
17 her regarding the complaint. [REDACTED] stated that she was hoping to keep her license because  
18 she enjoyed working as a Nursing Assistant. She denied taking the photos and said she had  
19 admitted it during the YVS interview because she was worried they would take her personal  
20 phone and look through it. Board staff advised [REDACTED] that it was important to be truthful  
21 about what happened and if she had taken the Snapchats and this incident was out of character  
22 for her and not a true representation of her as a caregiver then she should say that. [REDACTED]  
23 stated “yeah could you just put that down in your report.” [REDACTED] then ended the phone  
24 call.  
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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<sup>th</sup> day of January, 2018

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9 John Ladenburg, Chair

  
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Lisa Marsh, Member

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13 Shirley Battan, Vice-Chair

  
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Gerri Davis, Member

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16 \_\_\_\_\_  
17 Anna Dudek Ross, Member