

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-065

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 August 30, 2016, the Executive Ethics Board (Board) initiated a complaint referred by the State Auditor's Office (SAO) alleging that ██████████ Occupational Nurse Consultant with the Washington State Department of Labor and Industries (LNI), may have violated the Ethics in Public Service Act by using state resources, including state computer and phones, for his private benefit and gain in support of his outside business and a charitable organization he founded.

2. ██████████ has been employed by LNI as an Occupational Nurse Consultant in the Office of the Medical Director within the Insurance Services Division since October 16, 2013 and was so employed for all times pertinent to this investigation.

3. [REDACTED] had outside employment with Tacoma Community College (TCC) as an adjunct professor; Registered Nurse (RN) at Grays Harbor Community Hospital; and founder of the non-profit organization, Little School, Big Future.

4. [REDACTED] had outside employment approval with LNI for Grays Harbor Community Hospital only.

5. On April 27, 2016, the SAO whistleblower program received a complaint alleging that [REDACTED] was using his work phone and other state resources to conduct his private business. Based on the complaint, the SAO obtained a forensic copy of [REDACTED] work computer, SCAN phone log and work emails for the past 12 months for LNI.

6. The SAO's review of [REDACTED] SCAN call history for the period of May 1, 2015 through March 3, 2016 revealed that over the 11-month period [REDACTED] made 151 personal long distance phone calls totaling more than 13 hours. Some of these long distance calls were in support of [REDACTED]'s charitable organization Little School, Big Future.

7. As a result of the review of [REDACTED]'s SCAN call history for the period of May 1, 2015 through March 3, 2016, the SAO requested additional phone logs for the period of March 1, 2016 through May 31, 2016. This review revealed an additional 236 personal phone calls from [REDACTED]'s mother, best friend and outgoing local calls to Tacoma Community College and Grays Harbor Community Hospital conference call line. The total amount of time for the 236 calls was nearly 15 hours.

8. The SAO also reviewed [REDACTED]'s internet usage for the period of February 19 through May 17, 2016. The SAO review showed the following usage¹:

¹ Chart and data provided by the SAO.

Month 2016	Travel	Wikipedia/News	College Related	Other	Total Time
½ February	35 minutes	0	65 minutes	4 minutes	104 Minutes
March	13 minutes	0	236 minutes	26 minutes	275 Minutes
April	300 minutes	31 minutes	182 minutes	74 minutes	587 Minutes
½ May	89 minutes	41 minutes	237 minutes	24 minutes	391 Minutes
Total	437 minutes	72 minutes	720 minutes	128 minutes	1,357 Minutes

9. [REDACTED] did not deny his non-work related use of his computer, SCAN, and telephone. He told the SAO investigator that there were no set expectations regarding personal use of his work computer and he didn't realize the use of SCAN for long distance phone calls incurred a cost to the state.

10. In addition to [REDACTED] non-work related internet and phone use the SAO found the following non-work related document on [REDACTED] work computer hard drive:

- Two copies of "Little School, Big Future logo."
- A two-page document regarding Little School, Big Future.
- Various personal pictures.
- Invitation to a birthday party.
- Private medical information for [REDACTED] father.
- IRS documentation for the non-profit exemptions.
- Request for TIN from the IRS for "Help me help my hometown campaign."
- Summer party plans/list.
- Mothers' resume.
- Personal resume/job applications/Navy documents.
- 17 page college interview questions/answers for [REDACTED].
- Travel forms.

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, prior to April 1, 2016, 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 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 aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees, and they were continuing 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 he 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 his 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 [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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 [REDACTED] 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, [REDACTED] 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, [REDACTED] 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. [REDACTED] agrees to pay a civil penalty in the amount of four-thousand five-hundred dollars (\$4,500). The Board agrees to suspend two-thousand dollars (\$2,000) on the condition that [REDACTED] 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 civil penalty in the amount of two-thousand five-hundred dollars (\$2,500) 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, [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]
Respondent

6-20-17
Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

6/20/17
Date

III. ORDER

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the

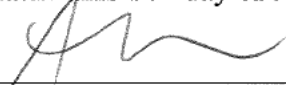
Stipulation is

ACCEPTED in its entirety;


REJECTED in its entirety;

MODIFIED. This stipulation will become the order of the Board if the Respondent approves* the following modification(s):

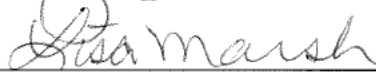
DATED this 14th day of July 2017




Anna Dudek Ross, Chair



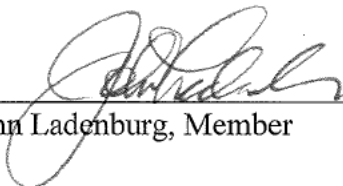
Samantha Simmons, Vice-Chair



Lisa Marsh, Member



Shirley Battan, Member



John Ladenburg, Member

* I, [REDACTED], accept/do not accept (circle one) the proposed modification(s).

[REDACTED], Respondent Date _____