

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2017-019

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 May 9, 2017, the Executive Ethics Board (Board) received a complaint alleging that ██████████ a former Medical Assistance Specialist 3 (MAS3) with the Health Care Authority (HCA) may have violated several sections of the Ethics in Public Service Act by accessing confidential information within the HCA information systems for personal use. The complaint further alleged that HCA conducted an internal investigation into the above-mentioned complaint and discovered evidence that ██████████ was using state resources, computer, printer, and time for her personal benefit.

2. On December 15, 2016, Medical Eligibility Determination Services (MEDS) Section Manager Diane Rosado (Ms. Rosado) received a voice mail message alleging that [REDACTED], whom the caller was involved with in a family law court case, had violated his rights under HIPAA by looking up his personal information in HCA computer systems for personal gain. The caller was identified by the HCA as XF¹.

3. After receiving the voicemail, Ms. Rosado notified Medical Eligibility and Community Support (MECS) Assistant Director Mary Wood (Ms. Wood) and HCA Privacy Officer Matt King (Mr. King) of the allegations made by XF. Ms. Rosado and Ms. Wood met with HR Operations Supervisor (HROS) Kerrie Kallay (Ms. Kallay) to discuss the allegations. At the conclusion of that meeting, Ms. Wood directed Ms. Kallay to initiate an internal investigation into the allegation and Ms. Rosado to obtain any system information from the benefits systems used in MEDS.

4. On December 16, 2016, Mr. King contacted XF via phone to obtain more information concerning his allegations. According to the HCA Investigative Report, XF told Mr. King that [REDACTED]. [REDACTED] sent him a text message, which XF believed was intended for someone else, asking to find out if “someone had a medical marijuana card.” XF further stated that [REDACTED] had previously contacted him and had specific information about XF’s EBT (Electronic Benefits Transfer, also known as food stamps) benefits, which he alleged she obtained through HCA’s computer systems.

5. On December 27, 2016, Ms. Wood received system information from the Department of Social and Health Services (DSHS) regarding access and changes made to XF’s case records in ACES (Automated Client Eligibility Systems) and the Barcode² systems. The information received indicated

¹ Client XF is the father of [REDACTED] children.

² ACES is the eligibility system shared between HCA and DSHS for all client assistances (cash, food, medical, etc.) Barcode is the document management/imaging system associated with ACES that stores hard copies of documents received. ACES and Barcode are managed and maintained by DSHS.

██████████ assessed XF's case records through Barcode on August 16, 2016 and viewed one document. Based on this information, Ms. Wood placed ██████████ on home assignment pending further investigation.

6. In a meeting on January 6, 2017, ██████████ told Ms. Kallay that she had accessed ACES to look up her son's social security number so she could request duplicate social security cards for her children and also said that around the same time she was applying for passports.³ XF and ██████████ oldest son have the same name.

7. ██████████ told Ms. Kallay that since she was just looking up information about her children, she "didn't think anything of it." She indicated that she did not believe there was anything wrong with using ACES to obtain information about her own children.

8. ██████████ indicated in a response to Ms. Kallay that she did not recall accessing XF's information in Barcode on August 16, 2016. She denied purposefully viewing XF's driver's license in Barcode stating that, "I have all of that information memorized."

9. In an effort to determine if ██████████ took XF's client information outside of the agency, Ms. Kallay reviewed ██████████'s emails and print logs. Ms. Kallay's review found no evidence that ██████████ had printed or emailed the document she viewed in Barcode.

10. However, Ms. Kallay discovered a few concerning emails and numerous personal documents that had been printed by Ms. Batdorf. See some examples below:

- On December 15, 2016, ██████████ forwarded a declaration from a process server about her personal court proceeding from her personal email address to her work email address.
- For the period of August 1 through December 22, 2016, ██████████ print log showed a significant amount of personal printed documents, including personal court proceedings, a personal grievance, wedding reception venues, personal emails and other unknown personal documents. See chart below:

³ ██████████ printed U.S. Passport applications using the state printer on September 12 and 13, 2016.

<u>Printed Pages</u>	<u>Aug 2016</u>	<u>Sept 2016</u>	<u>Oct 2016</u>	<u>Nov 2016</u>	<u>Dec 2016</u>	<u>Totals</u>	<u>% of Total</u>
Work-Related or Personal but Work-Authorized	46	24	66	65	65	266	23.58
Job Search or Interview-Related (Authorized)	7	0	0	15	37	59	5.23
Personal or Assumed of a Personal Nature	20	107	160	16	12	315	27.93
Personal Complaint-Related	0	16	100	0	6	122	10.82
Personal Court Related	0	0	0	0	245	245	21.72

11. Due to Ms. Kallay's concerns about the amount of state resources used by [REDACTED] regarding her personal use of the printer and emails, Ms. Kallay made the decision to review three months of [REDACTED] internet history and the production numbers for December 2016.

12. Ms. Kallay's preliminary review found what appeared to be days [REDACTED] had indicated on her Time and Attendance Record (TAR) form that she was at work but she did not take any phone calls and/or processed very little to no reportable work.

13. Ms. Kallay developed a detailed timeline of [REDACTED] work activities using production data provided by MEDS, internet history, sent emails, print logs, key card logs, and leave reports. Ms. Kallay alleged that [REDACTED] was spending a significant amount of time conducting her personal activities on state time using state resources, while producing very little work.

14. HCA IT staff discovered 16 personal documents in the cache of [REDACTED] computer related to her personal court proceedings including numerous full-page colored photographs. One of those documents was a seven page declaration (personal court related document) allegedly created by [REDACTED] using her HCA computer on December 14, 2016 at 2:05 pm and was last modified and printed. On December 15, 2016 at 8:44 am. The alleged total edit time spent on this document was 179 minutes (2.98 hours).

15. Following her analysis of [REDACTED]'s work production for August through December 2016, Ms. Kallay alleged that there were numerous dates when [REDACTED] did not appear to be at work and no leave was entered. At the request of Ms. Wood, Ms. Kallay reconciled [REDACTED]'s TAR form against the MEDS Leave Calendar, office building key logs, and MEDS call records for all of 2016 to determine if there were further discrepancies.

16. Based on the analysis of [REDACTED]'s work time, Ms. Kallay concluded that [REDACTED] failed to submit the proper leave request on 17 separate occasions in 2016 for 124.8 hours of paid time.

17. [REDACTED] indicated in a response to Ms. Kallay that she fills out her TAR's in advance and maintains a detailed record of her time. [REDACTED] further indicated that it was her supervisor's responsibility to notify her if there were any discrepancies or if she forgot to submit leave for times she was out.

18. [REDACTED] further indicated in her response to Ms. Kallay that she is human, and gets busy, which is why she feels it is her supervisor Patty Samuelson's (Ms. Samuelson) responsibility for ensuring her TAR and leave submissions are accurate.

19. [REDACTED] was terminated from employment with the HCA on March 13, 2017 following an extensive review by HCA of her workplace conduct including the allegations mentioned in this investigation.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using confidential information for their personal benefit or gain. RCW 42.52.050 states:

(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.

2. Based on the stipulated facts above, [REDACTED] accessed confidential information for a personal benefit in violation of RCW 42.52.050.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

4. Based on the stipulated facts above, [REDACTED] used her position to gain access to confidential information for a personal benefit in violation of RCW 42.52.070.

5. 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.

6. Based on the stipulated facts above, [REDACTED] used state resources, computer, printer, and state time, for a personal benefit in violation of RCW 42.52.160.

7. 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 an aggravating factor these types of violations significantly reduce the public respect and confidence in state government employees and that the

violation was continuous in nature. In the matter at hand, it is a mitigating factor that [REDACTED] was terminated from state service. It is likewise a mitigating factor that [REDACTED] has not previously been found to have committed any ethical violations.

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 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. [REDACTED] 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 [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. No other claims of alleged violations are pending against Demetria Batdorf 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 [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 two-thousand dollars (\$2,000) associated with violations of RCW 42.52.

12. The civil penalty in the amount of two-thousand dollars (\$2,000) 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]

August 2, 2019
Date

Respondent

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

8/20/19
Date

II. 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 13th day of September, 2019

Shirley Battan
Shirley Battan, Chair

Gerri Davis
Gerri Davis, Vice-Chair

Lisa Marsh
Lisa Marsh, Member

Anna Dudek Ross
Anna Dudek Ross, Member

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

[REDACTED], Respondent _____ Date