

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Michael Hobbs

Respondent.

No. 2017-026

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, MICHAEL HOBBS, 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 June 30, 2017, the Executive Ethics Board (Board) initiated a complaint referred by the State Auditor's Office (SAO), Fraud Unit alleging that Michael Hobbs (Mr. Hobbs), former Clinical Autopsy Coordinator at Harborview Medical Center (HMC), may have violated several sections of the Ethics in Public Service Act. The complaint alleged Mr. Hobbs used state resources in support of his outside business, that he secured special privileges for himself and others in using the HMC facility to conduct personal outside business activities, and that he received outside compensation for the performance of his official duties in which he was paid by the UW.

2. Harbor Medical Center is owned by King County and is managed under contract by the UW. The Anatomic Pathology Department at the Medical Center provides clinical services in

all areas of pathology, providing diagnostic procedures and analysis in more than 80,000 cases per year.

3. On December 22, 2015, HMC Human Resource Department (HR) advised UW Internal Audit (IA), that Mr. Hobbs was suspected of violating state ethics laws by receiving fee-for-service payments from Case Western University on behalf of the National Prion Disease Pathology Surveillance Center (NPDPS). At that time, Mr. Hobbs was also suspected of using state resources for conducting outside work.

4. For all times pertinent to this investigation, Mr. Hobbs was employed by UW as the Clinical Autopsy Coordinator at the Anatomic Pathology Department, located at the HMC morgue. Some of Mr. Hobbs official duties as the Clinical Autopsy Coordinator were to perform specialized research-related autopsy services, including scientific testing on brains of deceased patients suspected of having Cruetzfeldt-Jakob Disease also known as “mad cow disease.” This work was the result of a contract between HMC and the Centers for Disease Control (CDC) and its National Prion Disease Pathology Surveillance Center (NPDPS) at Case Western University (CWU).

5. Mr. Hobbs’ normal work hours were Monday through Friday, 5:30 am to 2:00 pm.

6. In March of 2004, HMC entered into a fee-for-service contract with NPDPS to perform autopsy services on patients suspected of Prion disease. The autopsy services include HMC notifying NPDPS of inquiries for autopsy of suspected Prion disease and then HMC’s Autopsy Coordinator, Mr. Hobbs, would perform the autopsy at HMC, and ship the removed brain tissue to NPDPS. The contract, which automatically renews year to year, specifies a flat payment to HMC of \$200 per case. Currently, the autopsy services are performed at the Ninth and Jefferson Building (NJB).

7. In April 2015, Jessica Malmberg (Ms. Malmberg) became the new manager of the After Death Services at HMC and Mr. Hobbs' direct supervisor. In November 2015, Ms. Malmberg became aware that Mr. Hobbs had entered the morgue on a Saturday, November 7, 2015, a day in which he was not scheduled to work. Ms. Malmberg counseled Mr. Hobbs about the unreported work time. During that meeting, Mr. Hobbs told Ms. Malmberg that he was conducting his own work and that it was of no business to the hospital.

8. In November 2015, Ms. Malmberg, received a check in the mail addressed to Mr. Hobbs from CWU for \$1,500. Unsure of where the check should be deposited, Ms. Malmberg contacted the associate director of Anatomic Pathology. The associate director learned that the check was to pay Mr. Hobbs for the removal of human brain tissue suspected of Creutzfeldt-Jacobs Disease (CJD). The associate director then contacted CWU, which confirmed the payment arrangement with Mr. Hobbs. At this point, the issues with Mr. Hobbs were forwarded to the Human Resource Department for further investigation into possible UW Policy violations.

9. Mr. Hobbs told Mr. Payne that in 2004 Dr. Alvord, the then Head of Neuropathology, asked him to make the collection of the human brain tissue and send it to CWU.

10. Mr. Hobbs told Mr. Payne that he told Dr. Alvord that the disease scared him and he wanted to be compensated for the high risk involved. Mr. Hobbs stated that Dr. Alvord told him, "I'm just going to look the other way."

11. The UW IA investigation revealed that there were certain individuals in the Division of Neuropathology that were aware of this agreement and did not question it.

12. Mr. Hobbs told Mr. Payne that he contacted the Prion Center and asked for additional personal compensation. Mr. Payne asked Mr. Hobbs the amount of the additional compensation and Mr. Hobbs declined to answer.

13. Mr. Hobbs told Mr. Payne that he would complete the tissue removal during the weekend, evenings, or early in the morning. Never during normal working hours. This was to reduce the risk of contamination to the autopsy suite and personnel.

14. Mr. Hobbs told Mr. Payne that Ms. Malmberg had asked him about coming in to work on the weekends and submitting overtime. Mr. Hobbs told Mr. Payne that Ms. Malmberg told him that he could not work on the weekend unless she approved it beforehand.

15. Mr. Hobbs resigned from his position on December 23, 2015.

16. For the period of July 27, 2012 through November 20, 2015, the UW HMC billed CWU for 33-brain removal procedures conducted by Mr. Hobbs. Each procedure was billed out at \$200 each.

17. For those 33 procedures, Mr. Hobbs (estimating \$1,500 per) would have received additional compensation of \$49,500. Mr. Hobbs indicated to Board staff that he could not confirm or deny the numbers but had no reason to dispute them.

18. The UW IA investigation found evidence to support the allegation that Mr. Hobbs was using state resources to support his outside business. UW IA reviewed emails, phone records, morgue door access data for 2015, and morgue body logs.

19. IA's review found 17 emails sent/received by Mr. Hobbs related to his outside business of conducting autopsy services for the period of January 2, 2014 through July 23, 2015. Most of the emails were between Mr. Hobbs and Dr. Matthew Lacey (Dr. Lacey) regarding scheduling and setting the price to charge for each procedure. Some of the emails suggest that the procedures were to take place at the HMC Morgue. Board staff cross-referenced the dates of procedures mentioned in emails to HMC morgue access logs to determine if the HMC morgue was used by Mr. Hobbs to conduct autopsies in support of his personal business.

20. On April of 2017, Board staff received a notification from the Department of Health (DOH) Medical Quality Assurance Commission (MQAC). MQAC had received a complaint alleging that Dr. Lacey may have committed unprofessional conduct. MQAC ultimately determined there was not enough evidence to support disciplinary action by the Commission. However, their investigation did find evidence related to the UW IA investigation of Mr. Hobbs.

21. Through Dr. Lacey's attorney, Patrick Preston, Dr. Lacey indicated in his response to MQAC investigators that, through the fall of 2015, Dr. Lacey performed a limited number of private brain autopsies at the HMC morgue. Dr. Lacey further indicated that Mr. Hobbs arranged the use of the HMC morgue and would prepare the brains for him.

22. Dr. Lacey indicated in his response that he did not perform full autopsies at HMC and the procedures would generally take less than two hours to complete including the cleaning tasks afterward.

23. Dr. Lacey also indicated in his response that the autopsies were performed at the HMC morgue as a matter of convenience, because the HMC morgue was between Dr. Lacey's home in the Magnolia neighborhood and Mr. Hobbs' home in West Seattle.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (conflict of interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. 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.

3. Based on the evidence reviewed by Board staff, Mr. Hobbs conducted activities incompatible with his official duties in conducting unauthorized autopsies in the HMC Morgue for a personal financial gain in violation of RCW 42.52.020. Additionally, used his position to gain access to the HMC Morgue to assist Dr. Lacy in conducting private autopsies in violation of 42.52.070. These activities are in violation of RCW 42.52.070.

4. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from receiving additional compensation for the performance of their official duties. RCW 42.52.110 states:

No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: (1) The state of Washington; or (2) in the case of officers or employees of institutions of higher education or of the *Spokane intercollegiate research and technology institute, a governmental entity, an agency or instrumentality of a governmental entity, or a nonprofit corporation organized for the benefit and support of the state employee's agency or other state agencies pursuant to an agreement with the state employee's agency.

5. Based on the stipulated fact above, Mr. Hobbs received outside compensation from CWU for performing his official duties in violation of 42.52.110.

6. 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.

7. 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.

8. Based on the stipulated facts above, Mr. Hobbs used state resources for the personal benefit and gain for himself and others in violation of RCW 42.52.160. Mr. Hobbs' activities, as described above, do not meet the exception for the use of state resources as permitted in WAC 292-110-010.

9. 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, they were continuing in nature, and Mr. Hobbs received a personal financial gain.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Michael Hobbs 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. Michael Hobbs 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. Michael Hobbs 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. Michael Hobbs 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 Michael Hobbs 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. Michael Hobbs 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 Michael Hobbs 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 Michael Hobbs 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, Michael Hobbs 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, Michael Hobbs 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. Michael Hobbs agrees to pay a civil penalty in the amount of twenty seven-thousand, five hundred dollars (\$27,500).

12. The civil penalty in the amount of twenty seven-thousand, five hundred dollars (\$27,500) 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.

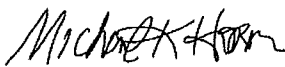
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II. CERTIFICATION

I, Michael Hobbs, 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.



10/10/18

MICHAEL HOBBS
Respondent

Date

Presented by:



10/12/18

KATE REYNOLDS
Executive Director

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 9th day of November 2018



John Ladenburg, Chair




Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Geri Davis, Member

* I, Michael Hobbs, accept/do not accept (circle one) the proposed modification(s).

Michael Hobbs, Respondent Date