

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2017-058

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 October 8, 2017, the Executive Ethics Board (Board) received a complaint alleging that ██████████), Physician Assistant (PA) at the Mission Creek Corrections Center for Women (MCCCW) with the Department of Corrections (DOC), may have violated the Ethics in Public Service Act. The complaint alleged that ██████████ was taking time off from work without submitting the proper leave slips, allowing certain employees under her supervision to leave their work shifts early without submitting the proper leave, using state resources for her personal benefit and gain, loaning money and giving gifts to some of her subordinates. Further, the complaint alleges that ██████████ has created a hostile work environment for some of her subordinates.

2. On September 25, 2017, some of the medical staff at MCCCW filed a similar complaint with DOC. On October 5, 2017, [REDACTED] was temporarily assigned to the DOC Headquarters Building in Olympia pending the internal DOC investigation.

3. Board staff reviewed the documentation provided in the internal DOC investigation including, interviews of MCCCW medical staff members, Key Watcher facility entry data, data obtained from [REDACTED] work cell phone emails, and statements of [REDACTED]. In addition, Board staff conducted a review of [REDACTED] emails, training records, travel reimbursement, leave reports, staff accountability and visitor logs.

4. [REDACTED] has worked at DOC since October 2006. In March of 2013, [REDACTED] was transferred into her current position and was in that position for all times pertinent to this investigation.

5. [REDACTED] is an overtime-exempt employee working four ten-hour shifts per week, from 7:00 am to 5:30 pm. Her regularly scheduled days off are Tuesday, Saturday and Sunday. [REDACTED] told DOC investigators that she would often switch Tuesdays off to Monday to accommodate student training.

6. In addition to her job duties at MCCCW, [REDACTED] would occasionally travel to other DOC facilities, Larch Correction Center (LCC), Olympic Corrections Center (OCC), and Washington Corrections Center for Women (WCCW), to assist their medical staff.

7. [REDACTED] indicated in her response to Board staff that she responded to DOC emails from home using DOC Outlook Web Access mostly using her DOC cell phone but occasionally she would use a DOC laptop, especially when working on administrative documents.

8. Mary Currey (Ms. Currey) indicated in a response to Board staff that she did not approve [REDACTED] to work from home or any other location outside of DOC. Ms. Currey further indicated that

on rare occasions ██████████ would assist at other DOC facilities when her counterpart at the other facility was on leave.

9. ██████████ indicated in a response to Board staff that her support for other facilities was not rare, stating, “Several times I supported LCC and SCCC for prolonged periods of time. I very rarely submitted travel reimbursement requests.”

10. ██████████ indicated in her response to Board staff that DOC would not attest to her being “allowed” to work from home but that all of her supervisors knew she did. She further indicated that she would make herself available to the MCCCW staff 24/7.

11. Ms. Curry indicated in a response to Board staff that ██████████ was not authorized to work from home except for those times she was on call. Ms. Currey also indicated that in most cases she would be notified by the employee earning and taking exchange time, however she does not recall ██████████ ever requesting exchange time for dealing with issues after hours during her on-call week.

12. Even though ██████████ did not officially request or earn exchange time for responding to work related emails and phone calls after hours, she did adjust her schedule for the time she believed she worked during her off time. ██████████ indicated in a response to Board staff that she “absolutely” believed the time she spent on responding to emails after hours was state work. She further indicated that she usually tried to take any time she believed to have earned relatively soon after but that if her work schedule did not allow it she would take it when she could. ██████████ indicated in a response on August 2<sup>nd</sup> that she would come in later or leave an hour earlier as work business would allow.

13. Even though ██████████ official work schedule was four ten-hour days with Tuesday, Saturday, and Sunday off she would often adjust her days off to accommodate working with a student on Tuesday or working on the weekends.

14. Board staff reviewed Key Watcher data, leave slips, staff accountability log, Outlook calendar, a personal calendar maintained by [REDACTED], emails regarding time off or off-site visits to other facilities, and statements of [REDACTED] and her supervisor for the period of January 1 through October 6, 2017. Board staff reviewed each seven-day week, Sunday through Saturday, 39 weeks in total, in an effort to show that [REDACTED] worked the required 40 hours for each week. For that period, Board staff was able to identify 422 hours of time where [REDACTED] was not conducting work for DOC. On average, over the 39-week period approximately 10 hours short per week.

15. Email evidence confirms that [REDACTED] would respond to emails when she was away from MCCCW on a daily basis, regardless if she was on her regular days off, sick and vacation leave, and after hours.

16. Included in the 422 hours of time are 13 days where [REDACTED] appeared not to be at work at MCCCW or any other DOC facility and did not submit leave. Board staff used [REDACTED] personal calendar, daily sign in/out log, Key Watcher logs, and emails indicating that she would not be coming in.

17. Even though [REDACTED] was not at work nor did she submit leave for the 13 days, she did respond to emails and was available to her staff and other DOC employees.

18. The complaint also alleges that [REDACTED] entered into personal business transactions with her subordinates, Amber MacDiarmid, Lainie Serrano and Susan Bosman, by providing them personal loans in the form of purchasing airline tickets to Las Vegas and that she used her personal credit card to purchase supplies to build a dock for one of her subordinates.

19. In April 2017, [REDACTED], Ms. MacDiarmid, Ms. Serrano and Ms. Bosman took a weekend trip to Las Vegas. [REDACTED] initially paid for all of the airline tickets so they would be seated

together on the flight. Ms. MacDiarmid, Ms. Serrano and Ms. Bosman paid [REDACTED] back in full shortly after she purchased the tickets.

20. [REDACTED] indicated in a response to Board staff that sometime approximately two years ago, when Ms. Bosman purchased a home on a lake, she and others from work went over to assist in yard work, it was hot and they went into the lake to cool off. The bottom was muddy and made it hard for them to walk out. At that time, [REDACTED] made the comment that Ms. Bosman needed a dock. Two years later, there was still no dock, [REDACTED] and her girlfriend decided that they should build one for her. At that time, Ms. Bosman was on vacation. [REDACTED] went to Lowe's and Home Depot, purchased the materials and proceeded to build the dock, with the help of many other friends. Ms. Bosman came home and told [REDACTED] that her boyfriend and her brother would finish what she and others had started.

21. [REDACTED] indicated that she used her Lowe's credit card to purchase the materials. When the bill came, she gave the bill to Ms. Bosman and she paid it.

22. Ms. Bosman told the DOC investigator that the total bill for the dock materials came to \$1,600. She paid it off in a five-month (August–November 2017) period by making monthly payments to Lowe's. Ms. Bosman told DOC investigators that the bill was paid in full.

23. The complaint further alleges that [REDACTED] used her state issued cell phone to take hundreds of personal photographs and videos.

24. The DOC investigation found over 1,500 personal photographs and videos on Ms. [REDACTED] work phone, including photographs of the construction of Ms. Bosman's dock, Las Vegas trip with staff, personal dog and family members, a trip to Washington D.C and more.

25. ██████ told DOC investigators that she used her work phone to take personal photos because it took better photos than her personal phone and that she had her work phone with her at all times.

## **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. Based on the stipulated facts above, ██████ entered into a personal business transaction with her subordinates in violation of RCW 42.52.020.

3. 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.

4. Based on the stipulated facts above, ██████ used state resources for a personal benefit in violation of RCW 42.52.160.

5. 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 they were continuous 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 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 [REDACTED] 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 five thousand dollars (\$5,000) associated with violations of, RCW 42.52. The Board agrees to suspend one-thousand, eight-hundred dollars (\$1,800) 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 non-suspended portion of the civil penalty in the amount of three-thousand, two-hundred dollars (\$3,200) 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]

10/23/18  
Date

Respondent

Presented by:

L. Reynolds  
KATE REYNOLDS  
Executive Director

10/31/18  
Date

