

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

3 In the Matter of:

EEB Case No. 2018-033

4 Kelly McPherson,

FINAL ORDER

5 Respondent  
6

7  
8 **I. PROCEDURAL HISTORY**

9 On March 8, 2019, the Executive Ethics Board (Board) found reasonable cause to  
10 believe that the Respondent, Kelly McPherson (Ms. McPherson), violated the Ethics in Public  
11 Service Act while employed as a Health IT Program/Project Manager at the Health Care  
12 Authority (HCA). Notice of the Reasonable Cause Determination and the right to request a  
13 hearing was served upon Ms. McPherson by regular mail and certified mail on March 11,  
14 2019. Ms. McPherson failed to respond to the Reasonable Cause Determination within 30  
15 days as required by WAC 292-100-060(2).

16 The Board entered an Order of Default on September 13, 2019. On September 17,  
17 2019, Board staff provided Ms. McPherson with notice of the Board's Order of Default by  
18 regular and certified mail.

19 Pursuant to WAC 292-100-060(4) Ms. McPherson was allowed 10 days to request  
20 vacation of the Order of Default. Ms. McPherson has not moved to vacate the order entered on  
21 September 13, 2019.

22 **II. FINDINGS OF FACT**

23 1. Ms. McPherson was originally hired by the HCA February 16, 2010, as an IT  
24 Specialist 3. On December 5, 2012, she was promoted to IT Specialist 4. On January 16, 2013,  
25 she was promoted to Health IT (HIT) Change Management Lead, IT Specialist 5. On June 13,  
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1 2014, she was promoted to HIT Lead and then on September 16, 2015, she was promoted to  
2 HIT Project/Program Manager which is her present position.

3 2. On July 26, 2017, the State Auditor's Office (SAO) received a whistleblower  
4 complaint alleging Ms. McPherson was conducting real-estate business on her state laptop and  
5 failed to submit leave.

6 3. On June 28, 2018, The Executive Ethics Board (Board) received an SAO  
7 referral alleging Ms. McPherson may have violated the Ethics in Public Service Act by using  
8 state resources for private benefit or gain and failed to submit leave when she was absent from  
9 work.

10 4. Board staff contacted the HCA and requested Ms. McPherson's emails and a  
11 forensic copy of her hard drive. The HCA advised Board staff that because of Ms.  
12 McPherson's position, her emails and hard drive could contain clients' protected health  
13 information which the HCA cannot disclose without legal authority. Board staff agreed to use  
14 the investigations conducted by the SAO and the HCA, including supporting documents  
15 provided by the agencies to conduct the investigation.

16 5. According to the SAO report, in November 2013, Ms. McPherson completed a  
17 form requesting a schedule change from five eight-hour days to four 10-hour days. Although  
18 the supervisor signed the form approving the change, it was not entered into the Department's  
19 timekeeping system until June 13, 2017. From November 18, 2013, through June 12, 2017,  
20 Ms. McPherson was unable to enter leave for a full day's absence because the leave system  
21 would not accept 10 hours of leave for an eight-hour workday. On June 5, 2017, the  
22 subject's new supervisor became aware of this discrepancy and the HCA opened an  
23 investigation into the subject's use of leave.

24 6. According to the SAO report, when they notified the HCA of their  
25 investigation, they learned there was an ongoing internal investigation regarding the subject's  
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1 leave. To avoid duplicating efforts, they agreed to review the results of HCA's investigation  
2 relative to the leave issues.

3           7.       According to the SAO report, in reviewing Ms. McPherson's hard drive and  
4 emails from July 14, 2016, through July 13, 2017, they found 27 emails related to real estate,  
5 of which eight were to and from a real estate client. Additionally, they found 12 emails that  
6 included videos or photos of homes for sale, which according to the SAO report; Ms.  
7 McPherson said she had taken using her state-issued cell phone.  
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- 9           • Board staff were provided an email string of seven messages located by the  
10           SAO, between Ms. McPherson and a real estate client discussing potential  
11           properties to view.
- 12           • Board staff were provided 12 email messages located by the SAO with video  
13           and/or photo attachments of homes using her state-issued cell phone. Eight of  
14           the emails were sent to a non-governmental email addresses. Four were sent to  
15           Ms. McPherson's personal email address, which was listed on the website for  
16           Van Dorm Realty.  
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- 18           • Board staff were provided nine PDF files related to the sale of  
19           houses/condominiums from Ms. McPherson's hard drive that were located by  
20           the SAO. Ms. McPherson's name was listed as the broker on seven of the  
21           documents.  
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23           8.       According to the SAO report, a review of Ms. McPherson's hard drive found  
24 465 minutes of non-work related browsing activity between February 15, 2017, and May 27,  
25 2017. According to the report, a total of 235 minutes was spent on sites related to real estate  
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1 with 136 of those minutes over a two-day period. The remaining time was spent on various  
2 non-governmental websites. The SAO provided Board staff with a spreadsheet listing Ms.  
3 McPherson's non-work related internet browsing activity in their report. An example of her  
4 browsing history on March 22, 2017 showed her visiting tcproperty.co.thurston.wa.us/sales,  
5 tcproperty.co.thurston.wa.us/photos, tcproprty.co.thurston.wa.us/land and wsecu.org.  
6

7 9. According to the SAO, during an interview with Ms. McPherson she  
8 acknowledged she had used her state laptop and cell phone for non-work related purposes,  
9 including her real-estate business. She said that at one time her current supervisor told her she  
10 could use her state laptop for personal use as long as it was outside her business hours. She  
11 said she now knows that is not allowable.  
12

13 10. According the HCA investigative report, on July 5, 2017, Jenny Holcomb,  
14 Administrative Assistant 5 to ETS Director Adam Aaseby (Mr. Aaseby), notified Human  
15 Resource Consultant (HRC) Nathan Hathaway (Mr. Hathaway), that Ms. McPherson had  
16 been working 10-hour days, Monday through Thursday, but her schedule in the HR  
17 personnel and payroll system was 8 hours per day, Monday through Friday. Mr. Hathaway  
18 reviewed Ms. McPherson's personnel file and located a schedule request form signed  
19 November 4, 2013, by Ms. McPherson. The schedule request noted that effective  
20 November 18, 2013, Ms. McPherson would be working 6:30 a.m. to 5:00 p.m., Monday  
21 through Thursday, with a 30 minute lunch from 12:00 p.m. to 12:30 p.m. On June 13,  
22 2017, Mr. Hathaway contacted the HCA Payroll office to adjust Ms. McPherson's  
23 schedule, effective June 13, 2017, to reflect 10-hour days to match the schedule change  
24 from 2013.  
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1           11.     According to the HCA investigative report, Mr. Hathaway reviewed Ms.  
2 McPherson's leave records beginning November 18, 2013, and identified 65 days in which  
3 Ms. McPherson appeared to have underreported leave for an all-day absence, for a total of  
4 130 hours. Board staff was provided a copy of those leave records. <sup>1</sup> On August 1, 2017,  
5 Ms. McPherson provided Mr. Hathaway access to 645 emails sent from her work account  
6 during the period in question.  
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8           12.     According to the HCA investigative report, Mr. Hathaway met with Mr.  
9 Oxford, Acting Deputy State HIT Coordinator and Ms. McPherson's supervisor. Mr. Oxford  
10 explained that he began supervising Ms. McPherson on June 1, 2017, and met with her on June  
11 5 or 6 in 2017 after it had been brought to his attention that Ms. McPherson was unable to  
12 enter full 10-hour leave days in the Employee Self Service (ESS) leave system. He said that  
13 they corrected some leave that had been entered in April for a vacation that Ms. McPherson  
14 took, including some full weeks and single days. Mr. Oxford said he was aware that Ms.  
15 McPherson had previously had a conversation with Melody Olsen (Ms. Olsen), Ms.  
16 McPherson's previous supervisor, to try to correct her schedule, but they were  
17 unsuccessful. He said his understanding was that Ms. McPherson had an agreement with  
18 Ms. Olsen to "work with" the incorrect schedule, rather than trying to resolve the issue.  
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21           13.     Also, according to the HCA investigative report, Ms. McPherson explained  
22 to investigators that she was on an 8-hour, Monday through Friday schedule before she  
23 began working 10-hour days in November of 2013. She said she tried several times,  
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25           <sup>1</sup> Ms. McPherson's schedule in the HR personnel and payroll system from November 18, 2013  
26 through June 12, 2017, was incorrectly recorded as 8-hours, Monday through Friday, and would not  
have allowed her to enter a full 10-hours of leave for an all-day absence during that time period.

1 unsuccessfully, to get her schedule corrected after she realized it had not been updated and  
2 then she and Ms. Olsen found a "work around." She said the understanding between her  
3 and Ms. Olsen was that she did not need to enter 10-hour days for full days off because  
4 she works extra hours outside of her work schedule. She claimed that she had worked for  
5 three hours each morning while vacationing in Thailand and every day while vacationing  
6 in Puerto Vallarta. She said that she could provide emails to prove that she was working.  
7 She claimed Ms. Olsen also told her that because she is in a project position there is more  
8 flexibility allowed in her schedule.  
9

10 14. According to the HCA investigative report, in September 2017, the HCA was  
11 advised of the Whistleblower complaint filed with the SAO. As a result, Mr. Hathaway was  
12 asked to expand the scope of the investigation to include the concerns included in the  
13 Whistleblower complaint.  
14

15 15. According to the HCA investigative report, Mr. Hathaway was provided  
16 access to all of Ms. McPherson's emails and Outlook calendar appointments, as well as  
17 Ms. McPherson's travel requests in the Travel Expense Management Systems (TEMS),  
18 HCA security badge scans and training completed in the Learning Management System  
19 (LMS) between November 2013 and September 2017. Mr. Hathaway compiled data  
20 between November 18, 2013, and September 12, 2017. The data included Ms.  
21 McPherson's leave use, the times each day that Ms. McPherson scanned her HCA security  
22 badge, the number of emails she sent each day and the times they were sent, the title and  
23 scheduled times of each of her calendar travel that was included in TEMS, as well as  
24 training completed in the LMS.  
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1           16.     According to the HCA investigative report, Mr. Hathaway asked Ms.  
2 McPherson about a possible discrepancy in her hours of work, which indicate 6:30 am to 5:00  
3 pm on her schedule change dated November 18, 2013, but on a telework agreement dated  
4 November 1, 2016, noted a 7:00 am to 5:30 pm shift. Ms. McPherson said she is not sure what  
5 her official schedule was at the time, and that she “just worked.” She said she had Fridays off  
6 but worked when she was off when required anyway. She said she just does her job and has  
7 never had anyone manage her.  
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9           17.     Ms. McPherson was provided a copy of information collected in regards to time  
10 between September 12, 2016 and September 12, 2017. She was asked to provide a response to  
11 whichever days she felt necessary, including any work that she performed that was not  
12 reflected by emails sent, calendar appointments, security badge scans, conferences recorded in  
13 the travel system, or training completed. Ms. McPherson provided a complete response on  
14 January 23, 2018.  
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16           18.     On January 17, 2018, Ms. McPherson also provided emails and text message  
17 conversations between her and Mr. Aaseby to demonstrate that he was aware of her real estate  
18 business and was actively using her as a resource to sell his house. Board staff was provided a  
19 copy of Ms. McPherson’s response and the emails and text messages between her and Mr.  
20 Aaseby.  
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22           19.     According to the HCA investigative report, Mr. Hathaway compared and  
23 analyzed Ms. McPherson’s responses to the electronic data compiled and Mr. Oxford’s  
24 responses. Mr. Oxford was also interviewed by Mr. Hathaway to try to verify the work  
25 activities that Ms. McPherson provided in her response. The investigator states that Ms.  
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1 McPherson's position is designated overtime exempt, which means she is not paid for each  
2 hour worked and is expected to work as many hours as necessary to accomplish her work,  
3 including working more than 40 hours per week when necessary. Ms. McPherson claims she  
4 often works before or after her work shift during the workweek and on scheduled days off.  
5 Because of Ms. McPherson's status, Mr. Hathaway summarized Ms. McPherson time by  
6 workweek.  
7

8 20. Based on the analysis using the information available, Mr. Hathaway estimated  
9 that Ms. McPherson worked or used paid leave an average of 39.57 hours per week from  
10 September 12, 2016 through September 9, 2017.

11 21. In a written response to Board staff from Ms. McPherson, she said that in  
12 regards to her badge and login activity, she is WMS and working almost every weekend and  
13 evening implementing and managing the Federal Mandated Program that was new to the State.  
14 During this time period she was working 10-hour days Monday through Thursday, with a  
15 Friday flex because most of her staff worked a 10-hour day and she was available for them  
16 during their work hours. She said she turned in a change shift form from a five 8-hour day to a  
17 four 10-hour day. It was signed by her manager and sent to HR. This document was in her file  
18 but it never inputted into the leave system even after repeated efforts to have it changed.  
19 Because she worked Monday through Thursday with Fridays off, she would still have to take  
20 calls, answer emails and attend meetings on her flex day from management, Centers for  
21 Medicare and Medicaid Services (CMS), the Office of the National Coordinator for Health  
22 Information Technology (ONC) and others because most management staff worked five 8's.  
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1           22.     Ms. McPherson said she did not track her time when she worked over 10-hours  
2 a day, on her flex day, or any other time. She said she did go back and look for emails she had  
3 sent or responded to that occurred during non-scheduled work hours as proof and sent those  
4 emails to HR. She said she was unable to retrieve permanently deleted emails.  
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6           23.     According to Ms. McPherson, her manager never seemed concerned that leave  
7 was never updated. She said she should have continued her efforts to have this corrected. She  
8 said HR also included time in their investigation for items on her Outlook calendar like “girls  
9 dance” with a scheduled time of 4-5 pm, and they would say she was missing 60 minutes of  
10 leave that was never reported. Seeing an appointment on her schedule, they assumed she was  
11 not in the office and included those hours in their total hour estimation as time she owed the  
12 state. These appointments were just items on her calendar regarding when her grandchildren  
13 had their class. It did not mean she attended them and more often than not, the time had no  
14 relevance. It was just a reminder.  
15

16           24.     According to Ms. McPherson, the HR investigator would mark down time  
17 indicating that she was not at work even though she had sent them emails showing she was  
18 working or pointed out that they had documented a badge swipe. They also included items on  
19 her calendar that said “Personal Appointment” and again, these were reminders for her to do  
20 something or something she had coming up. It did not mean she was away the office. She said  
21 that during the investigation she was told not to use Outlook for items unrelated to work. She  
22 said she did not know this at the time and no longer used her Outlook calendar for personal  
23 use.  
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1           25. Ms. McPherson said that according to HR, even if she logged on and worked  
2 during non-scheduled hours, unless she sent an email it would not track and would not be  
3 counted. Unless her badge was scanned when she left late or came in early, the time was not  
4 documented. She said she was unable to use her personal laptop to access applications for  
5 testing as well as email at that time so many of the work activities would not be documented  
6 on her current laptop.  
7

8           26. She said she would have had to take calls from her CIO at 2 am while out of the  
9 country on annual leave or during her non-scheduled hours. Ms. McPherson said she worked  
10 while on vacation every morning from Mexico, testing code release of the program she  
11 managed. These hours could not be tracked or documented. She said that they are told that  
12 WMS are to be monitored on deliverables and not time. She said she had one manager tell her  
13 to not worry about putting in leave when requesting short periods off because of the extra  
14 hours she worked. She said she never thought to document a lot of the time she worked outside  
15 her regular hours. She said this mistake will not happen again. She no longer works on  
16 weekends and she no longer takes her laptop with her while on vacation.  
17

18           27. According to the HCA report, while initially intending to analyze Ms.  
19 McPherson's time beginning November 2013, availability of data and time constraints  
20 necessitated limiting review of Ms. McPherson's time to a one-year time period beginning  
21 September 12, 2016. However, Mr. Hathaway reviewed all available email records for  
22 possible misuse of resources. Mr. Hathaway identified 493 non-work related emails sent  
23 from Ms. McPherson's email account between March 28, 2013 and September 19, 2017,  
24 including:  
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- 291 personal emails to Ms. McPherson's daughter, Jessica Longo, who is also an HCA employee;
- Managing personal finances and taxes;
- Researching personal health and genealogy;
- Researching personal home insurance and assessments;
- Other miscellaneous personal emails, including vacation planning, personal hobbies, health and fitness, and managing Veteran's Administration benefits for her father-in-law.

28. Mr. Hathaway also found emails and calendar appointments that appeared to be related to Ms. McPherson's personal real estate business. These included an introduction letter to clients, an email that appeared to be a client with a portal to view available homes, an email conversation between Ms. McPherson and another employee about a home sale consultation while they were at work, and emails on three separate days that included pictures and videos of homes. Board staff were provided copies of all the documents and emails reviewed by Mr. Hathaway.

29. According to the HCA report, in a follow-up meeting with Ms. McPherson, she explained that her understanding of inappropriate use of state resources is not using her computer after work hours. She said she was in Denver for a work conference and spent two hours "figuring out real estate" on her work computer. She said she used her work computer because she did not have her personal laptop with her, and had only used her work computer for real estate business when travelling. Ms. McPherson said Mr. Aaseby, her Division Director, was aware of her use of her work laptop for her real estate

1 business and asked to use her as a real estate agent to sell his house. She claimed Mr.  
2 Oxford told her that she could use her laptop for real estate business after her shift is over.

3 30. According to the HCA report, Ms. McPherson was provided with the list of  
4 email addresses to which she sent personal emails and asked her if she thought 493 emails  
5 between March 28, 2013 and September 19, 2017, was considered de minimis. She said  
6 she thought that they were de minimis, except the amount sent to her daughter. She said  
7 she told her daughter to stop emailing her. As to some of the remaining emails, she said:

- 9 • Kristie Wilson is her sister-in-law and there were a lot of emails after her  
10 brother died.
- 11 • jbarry1219(@gmail.com) belongs to a real estate client.
- 12 • The emails to Kathryn McPherson were work-related because they had to  
13 do with a job.
- 14 • Neil Edgin is the father of one of her daughters and they emailed about the  
15 Guaranteed Education Tuition (GET) program.

16 31. According to the HCA report, Ms. McPherson was shown examples of personal  
17 emails found by the investigator and she provide the following responses:

- 18 • **Managing personal finances and taxes.** Ms. McPherson said she thought  
19 it was "probably not" a de minimis use of her email but she claimed  
20 executive management had set the example for inappropriate use, having  
21 seen Karen De Leon, a section manager in another division of HCA that  
22 was formerly in her management chain, shopping for furniture, and Mr.  
23 Aaseby shopping for houses while at work. She said she "mirror[ed] [her]  
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1 management." She said she justified managing her personal banking and  
2 doing her taxes using state resources because she is paid by state funds  
3 through her employment.  
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- 5 • **Doing research on personal health and genealogy.** Ms. McPherson said  
6 she was working 14-hour days at the time and had seen a link to  
7 ancestry.com on the state's access.wa.gov website. She said she recalled  
8 being told by her manager that it was okay to use her state computer to  
9 research her ancestry, and because it was a link on a state website, she didn't  
10 think it would be inappropriate. She said the health emails had to do with  
11 her brother who had a disorder.  
12

- 13 • **Personal home insurance and assessment research.** Ms. McPherson said  
14 she had helped her daughter with insurance and building a house. She said  
15 Schinke is the street on which her daughter lives. She said she thought this  
16 was a de minimis use, but admitted that there were times that she was at  
17 work and questioned whether she should use her work email, but she was  
18 busy and decided it was easier to do from work.  
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- 20 • **Other miscellaneous personal emails, including vacation planning,  
21 personal hobbies, health and fitness, and managing Veteran's  
22 Administration benefits for her father-in-law.** Ms. McPherson said she  
23 was unsure whether two emails labeled AMP and PSI were personal or  
24 work-related. She said she could not be certain why she would have told her  
25 daughter "not in email" in a conversation, but speculated it was because  
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1 they were arguing. She said she emailed herself information about Spanish  
2 classes because she had seen information on an HCA bulletin board about  
3 it. She said there were many other employees that reached out to her about  
4 health activities and it "turned into a health challenge," which is why she  
5 used her email for it. She said she "totally gets" that the personal vacation  
6 planning was not appropriate, but said it was prior to having a work laptop.  
7 She also said she used her email to get a tattoo for her brother and to  
8 organize a Christmas gift for someone at work.  
9

10 32. When asked about the emails, calendar appointments, pictures and videos  
11 that appeared to be related to her personal real estate business Ms. McPherson claimed  
12 that she did not write the majority of a Van Dorm introduction letter she emailed at 9:15  
13 a.m. on March 29, 2016, and could not recall if she worked on it while she was at work  
14 that day.<sup>2</sup> She said a "Matrix Portal" email from July 3, 2016, was to a real estate client to  
15 view houses. She claimed an email chain between her and Jacqueline Su (Ms. Su), another  
16 HCA employee, dated July 5, 2017, was related to real estate but she told Ms. Su that she  
17 would meet her after work to discuss selling her house. Ms. McPherson said she has been  
18 approached by members of the HCA Executive Leadership Team for real estate help in  
19 the past, and she directed them to her Van Dorm real estate Facebook page to assist them  
20 outside of work.  
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23 33. Ms. McPherson claimed that the real estate related appointments on her  
24 calendar were reminders, but that she did not actually attend them at the times listed. She said  
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26 <sup>2</sup> March 29, 2016, was a Tuesday that Ms. McPherson was at work.

1 she stipulated when she started working for Van Dorm that she could not attend any meetings  
2 that were scheduled during her HCA work schedule. She confirmed that the pictures and  
3 videos of houses that she mailed on October 10, 12 and 14, 2016, were for her real estate  
4 business, and she said she used her state issued cell phone to record the pictures and videos.  
5 She said she could not recall when she recorded the pictures and video, but insisted that it  
6 would not have been done during work time. When asked why the daylight in the pictures and  
7 video appeared to be in the middle of the afternoon, which would have been during Ms.  
8 McPherson's work shift, Ms. McPherson speculated that she may have recorded the pictures  
9 and video the previous weekend and emailed them during the week. Ms. McPherson said she  
10 thought the use was de minimis.  
11

12  
13 34. According to the HCA report, Mr. Hathaway found additional real estate  
14 documents had been saved on Ms. McPherson's hard drive. The documents included:

- 15 • a seller disclosure statement, signed April 27, 2016;
- 16 • a condominium purchase and sale agreement, signed July 8, 2016;
- 17 • a residential real estate purchase and sale agreement, dated July 11, 2016;
- 18 • a counteroffer addendum, signed July 11, 2016;
- 19 • a residential real estate purchase and sale agreement, dated August 15, 2016;
- 20 • a picture of a master bedroom;
- 21 • a loan preapproval and residential real estate purchase and sale agreement,  
22 dated February 25, 2017;
- 23 • a residential real estate purchase and sale agreement, dated February 27, 2017;
- 24 • an addendum/amendment to purchase and sale agreement, dated March 9,  
25 2017; and  
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- an addendum/amendment to purchase and sale agreement for a current employee, Jimmie Windham, and a former HCA employee, Elizabeth Eskridge, dated March 13, 2017.

35. According to the HCA investigative report, Ms. McPherson reviewed the additional documents but did not have anything to add.

36. In a written response to Board staff, Ms. McPherson stated that she took full responsibility for not checking policy prior to using her work laptop in the evenings, on her breaks, and while traveling for HCA related business. At the time, she was unsure if she was allowed to bring two laptops with her while traveling on a plane as a carry-on when she did not check luggage.

37. According to Ms. McPherson, she was trying to learn real estate. She did not become a real estate agent to have a second job. She said her husband's company frequently buys and sells property to help supplement their retirement. They are a small, local excavation company. She studied and took her exam to become an agent to help support his company. She said she asked her manager at the time if he thought it was okay for her to use her work laptop while traveling out-of-state for HCA, so she did not have to bring two and he said he thought it would be as long as it was not on state time. She said she did not know if she gave him specifics as to what activity she was doing. Ms. McPherson said that this was her fault and it was her responsibility to check with her ethics advisor.

38. Ms. McPherson said as soon as she was told she could travel with two laptops on a plane as carry-on, she purchased a small laptop to take with her. She said her use of the state laptop stopped at that time and was prior to any investigation. Looking back, the fact that



1 she did not go to her ethics advisor or ask for written direction from someone in management  
2 with her question regarding the use of the state laptop is completely out of character for her.  
3 She said she has no excuse or even a reason that makes sense to her. She said she made many  
4 mistakes during this period. She said she is not trying to excuse what she did concerning using  
5 the state issued laptop and takes full responsibility.  
6

7 39. As for the items showing on her work cellphone, she said she it may have been  
8 because she was using her state laptop for non-state related activities and all attachments are  
9 saved. At one time, they were able to access their state email, applications and documents from  
10 their personal laptops, phones and other devices. There were instances where sometimes the  
11 emails would get crossed. She said she still receives emails related to HIT in her personal  
12 email at home although they are not state related.  
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14 40. According to Ms. McPherson, HR put a Letter of Reprimand in her personnel  
15 file stating she would be dismissed immediately if any further items arise concerning this  
16 issue. Her telework schedule was also taken away and she was put on probation. She said the  
17 outcome of these mistakes is that she is now better informed on how to manage her staff and  
18 set a positive example on state time and resources. She said she is now insistent on  
19 documenting time and has implemented a process on documenting both time and deliverables.  
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21 41. Board staff were provided a copy of the written reprimand issued to Ms.  
22 McPherson by Jody Costello (Ms. Costello), Administrative Services Director at HCA, on  
23 March 8, 2018, for her “gross misuse” of state resources to manage her personal business for  
24 financial gain and misuse of state email and time for other personal activities. The reprimand  
25 specifically notes that based on a review of her leave records it appeared she “may have  
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1 underreported leave by as much as 130 hours,” sent at least 493 personal emails from her state  
2 issued email account between March 28, 2013 and September 29, 2017, and used her state  
3 issued email account and calendar to conduct work for her personal real estate business.  
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### 5 III. CONCLUSIONS OF LAW

- 6 1. RCW 42.52.160(1) – Use of persons, money, or property for private gain, states:

7 No state officer or state employee may employ or use any  
8 person, money, or property under the officer’s or employee’s  
9 official control or direction, or in his or her official custody, for  
10 the private benefit or gain of the officer, employee, or another.

- 11 2. Under WAC 292-110-010 Use of state resources, prior to April 2016, states, in  
12 pertinent part:

13 (2)(d) a state officer or employee may make an occasional but limited personal use of  
14 state resources as long as each of the following conditions are met:

- 15 (i) There is little or no cost to the state;  
16 (ii) Any use is brief;  
17 (iii) Any use occurs infrequently;  
18 (iv) The use does not interfere with the performance of any officer's or  
19 employee's official duties; and  
20 (v) The use does not compromise the security or integrity of state  
21 property, information, or software.

- 22 Under WAC 292-110-010 Use of state resources, after April 2016, states, in pertinent  
23 part:

24 (3) **Permitted personal use of state resources.** This subsection applies to any use of  
25 state resources not included in subsection (2) of this section.

26 (a) A state officer or employee's use of state resources is de minimis 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 state officer’s  
or employee’s official duties;  
(v) The use does not compromise the security or integrity of state  
property, information systems, or software;  
(vi) The use is not for the purpose of conducting an outside business, in  
furtherance of private employment, or to realize a private financial gain;  
and  
(vii) The use is not for supporting, promoting the interests of, or soliciting  
for an outside organization or group.

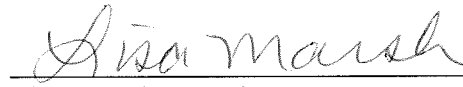


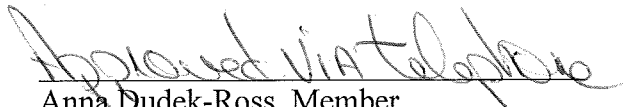
1 Respondent has the right to petition the superior court for judicial review of the Board's  
2 action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition  
3 for Judicial Review, see RCW 34.05.510 and sections following.  
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5 DATED this 8th day of November, 2019.  
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8 \_\_\_\_\_  
9 Shirley Battan, Chair

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11 \_\_\_\_\_  
12 Gerri Davis, Vice Chair

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14 \_\_\_\_\_  
15 Lisa Marsh, Member

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18 Anna Dudek-Ross, Member  
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