

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Jane Dykstra

Respondent.

No. 2020-021

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Jane Dykstra 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 April 17, 2020, the Executive Ethics Board (Board) initiated a complaint after receiving a State Auditor's Office (SAO) Fraud Report alleging that Jane Dykstra (Ms. Dykstra), a Fiscal Specialist 2 (FA2) with the Washington State University (WSU) College of Veterinary Medicine (CVM), may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. According to the SAO, the WSU Internal Audit Department notified their office of potential losses of public funds. The SAO reviewed WSU's final investigation reports and selected four cases totaling misappropriation of \$12,238.55 that occurred between August 2014

and February 2019. According to the SAO, they reviewed WSU's investigation for each of the cases and agree with the conclusions reached¹.

3. According to the Chief Audit Executive for WSU Heather Lopez (Ms. Lopez),² on December 10, 2018, the WSU Office of Internal Audit (IA) received a complaint referral regarding concerns that a WSU employee, Ms. Dykstra, of the CVM may have misreported time worked.

4. According to the WSUIR, Ms. Dykstra has been a long time employee with the CVM. She was originally hired July 28, 1987. Since 2015, Ms. Dykstra worked in the medical records auditor group and since October 2018 she has been working in Veterinary Clinic Sciences (VCS). At the time of WSU review, Ms. Dykstra held a Fiscal Specialist 2 position which required her to work independently under general direction on specialized account receivable and fiscal administrative support functions for the Veterinary Teaching Hospital service center. Ms. Dykstra was overtime eligible.

5. According to the WSUIR, they reviewed Ms. Dykstra's time reported to WSU financial systems and audited time reports from her date of hire through November 30, 2018. They reviewed her reported time against statements by her supervisor as to presence at work, messages left by Ms. Dykstra regarding work schedule, timestamps on system batching records, outgoing phone logs, system access logs, email activity sent, logs from swipe access through hospital building doors, and witness statements. The WSUIR said the review of the logs was only possible from November 2017 through November 2018, thus calculations of variances were limited to that timeframe.

¹ One of the four cases involved two employees in the same office. Board staff initiated complaints on all five of the individuals named in the WSU/SAO investigations.

² Author of the Washington State University Investigative Report (WSUIR) and Ethics Advisor for WSU.

6. According to the WSUIR, several unsuccessful attempts were made to schedule time with Ms. Dykstra to review results and verify accuracy of information analyzed. The WSUIR states that Ms. Dykstra has been separated from WSU for abandonment of position, effective December 29, 2018.

7. According to the WSUIR, over a thirteen month period (November 2017 through November 2018) they noted:

- 24 days (192 hours) reported as worked, but no evidence exists to support presence in the workplace.
- 11 of the 24 days are Saturdays, and one is a Sunday, for which she did not have approval to work on the weekend and witnesses present 8am to 8pm on those days did not see her in the office at all.
- 28 days where hours reported as worked have a variance of three hours from what reviewed logs indicate she was present.
- Eight days she did not claim any hours worked yet reviewed logs indicate sometime in the office – one of these days was a Saturday with only system login evidence available.

8. According to the WSUIR, Ms. Dykstra was not approved to work from home and, according to her supervisor, did not have the access or means to facilitate working from home.

9. According to the WSUIR, for the following spreadsheets, “conv hours” represents a conversion of time from the first recorded log in activity to the last on the noted days. The log in may have been from door access, system log in access, emails sent or phone calls made from Ms. Dykstra’s desk phone. The WSUIR said there were many instances where Ms. Dykstra was noted to log in to the system (authenticated via assigned credentials) but there was no log out of the system until multiple days later. There is no system restriction or unit requirement to log out of the system each day thus, it appears many times she logged in but simply did not log back out when done at days’ end, skewing the integrity of data calculations on work hours. For this reason,

they relied on all sources of log in and out activity to perform calculations of estimated hours at her office. For those days where the number of hours reported worked were significantly different than evidence logs indicate, they applied a margin of error of three hours to account for time that she may have been working on bills or mail before or after logging in or out of the system.

10. According to the WSUIR, the following are 24 days (192 hours) reported worked but there is no evidence to support office presence (Saturdays and Sundays are highlighted):

Date	Day of Week	Reported work hours
01/20/18	Saturday	6
04/21/18	Saturday	3
05/07/18	Monday	12
05/12/18	Saturday	5
06/02/18	Saturday	12
06/21/18	Thursday	14.5
06/30/18	Saturday	7
07/20/18	Friday	9
07/28/18	Saturday	4
08/04/18	Saturday	8
08/12/18	Sunday	16
08/25/18	Saturday	8
09/29/18	Saturday	7.5
10/05/18	Friday	10
10/11/18	Thursday	5
10/12/18	Friday	5
10/16/18	Tuesday	10
10/23/18	Tuesday	5
10/25/18	Thursday	5
11/03/18	Saturday	10
11/05/18	Monday	5
11/06/18	Tuesday	5
11/10/18	Saturday	10
11/15/18	Thursday	10

11. According to the WSUIR, the following are days with hours reported worked and evidence indicates presence, but converted hours have variance of three hours or greater than what is reported:

Date	Day of Week	Reported work hours	*conv hours	reported to activity - if reported>activity by more than 3, question
01/26/18	Friday	13.5	9.55	3.95
03/22/18	Thursday	9.5	1.29	8.21
04/09/18	Monday	10	13.67	-3.67
05/29/18	Tuesday	8	0.77	7.23
06/05/18	Tuesday	10	13.07	-3.07
06/18/18	Monday	11	4.24	6.76
06/19/18	Tuesday	9	0.00	9.00
06/22/18	Friday	5.5	13.17	-7.67
06/28/18	Thursday	8.5	1.52	6.98
06/29/18	Friday	16	2.31	13.69
07/02/18	Monday	11	5.28	5.72
07/13/18	Friday	16	9.59	6.41
07/27/18	Friday	14	9.03	4.97
08/08/18	Wednesday	12	8.33	3.67
08/10/18	Friday	12	6.62	5.38
08/14/18	Tuesday	16	11.28	4.72
08/23/18	Thursday	12	8.85	3.15
08/24/18	Friday	7	0.00	7.00
10/01/18	Monday	10	13.30	-3.30
10/04/18	Thursday	10	3.92	6.08
10/09/18	Tuesday	10	2.29	7.71
10/15/18	Monday	10	4.67	5.33
10/18/18	Thursday	10	4.26	5.74
10/24/18	Wednesday	10	2.37	7.63
10/26/18	Friday	10	2.85	7.15
11/01/18	Thursday	10	0.73	9.27
11/07/18	Wednesday	10	1.40	8.60
11/13/18	Tuesday	11	2.15	8.85

302

156.48

12. According to the WSUIR, on November 30, 2018, audited leave balances for Ms.

Dykstra were:

- Annual leave – 12.37 hours
- Sick leave – 7.7 hours
- Comp Time – 5.24 hours
- Ms. Dykstra did not record use of any of the accrued hours or leave without pay.

13. According to the WSUIR, applying the 192-hour variance to Ms. Dykstra's audited balances leaves a deficit of 166.69 hours. The WSUIR stated that these are calculations of total hours through November 30, 2018. They did not correspond the short hours by month to determine what should have been reported as leave without pay each month.

14. According to the WSUIR, the audit of employee time reports also indicated Ms. Dykstra reported working upwards of 17 plus hours on one day and was not into the office for the next three or four days without informing supervisor or colleagues. Ms. Dykstra did not keep standard work hours during the week, instead, she reported working odd hours during weekends, making it difficult for her supervisor to monitor. Ms. Dykstra's direct supervisor since August works in a different part of the building than her subordinate, also making it difficult to monitor presence. However, there are other staff within the office suite where Ms. Dykstra worked. The WSUIR states that they received statements from three individuals in this suite. Two of those employees work on both Saturdays and Sundays and state that Ms. Dykstra had not been seen in the office suite on Saturdays and Sundays, at all, since at least August with one exception (exact date not recalled) when she was seen to come in on a Saturday at about 8pm.

15. The WSUIR noted only one Saturday when hours were reported worked that there was some evidence to support her presence. On July 21, 2018, seven hours were reported worked and converted evidence logs note 5.25 hours onsite.

16. According to the WSUIR, because of the difficulty in directly observing Ms. Dykstra's activity, and because it was evident work product was falling behind in both completion and quality, Ms. Dykstra's supervisor directed her (in person and via email August 28, 2018) that her work schedule was to be Monday through Friday, and not more than 10 hours per day. Verbally, Ms. Dykstra was informed she could not work Saturdays without approval and to notify her supervisor when she would not be in the office. The WSUIR noted one Saturday (September 29, 2018) where a request to work was approved in order to make up hours to meet a 40-hour work week, but there is no evidence Ms. Dykstra was actually present that day. The WSUIR stated that they also noted four days where reported work hours were in excess of ten hours.

17. According to the WSUIR, Ms. Dykstra's supervisor did not sign the November 2018 time report submitted by Ms. Dykstra as she disagreed with the hours reported as worked.

18. Board staff were provided a copy of a certified letter mailed by WSU originally to Ms. Dykstra in August 2019 notifying Ms. Dykstra of the internal audit by WSU of time reporting errors that were found upon her separation. The letter states that this has resulted in a total gross overpayment of \$5,414.92. The letter gave Ms. Dykstra the option of a review of the findings or the option to provide payment of the overpayment. According to Ms. Lopez it appears that the letter came back unopened but may have been resent because Ms. Dykstra reached out to WSU in November 2019 asking for copies of her time reports.³

19. In a written response to Board staff, Ms. Dykstra said that the documentation that she had supporting her time worked was destroyed as soon as she reported it on her leave reports.

³ Board staff were provided a copy of an email dated November 22, 2019 from Ms. Dykstra to WSU HR. In the email Ms. Dykstra said: "I am writing you for copies of my time reports for June 2017 and February, July, August, October, November and December 2018. I would like to pick them up this morning if possible."

She said that by not keeping any of her notes it is a case of her word against WSU. Ms. Dykstra said she is hoping for a quick resolution to this audit situation.

20. Board staff recently spoke to Ms. Dykstra. She confirmed that as of September 1, 2020, she has started making payments of \$300 a month and will be paying \$500 a month until the \$6,076.49 that WSU says she owes them is paid off.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from Use of persons, money or property for private gain. RCW 42.52.160 states:

No state officer or state employee may employ or use any person, money, or property under the officers or employees official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.

WAC 292-110-010 Use of state resources, states, in part:

.....

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

(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.

2. Based on the evidence reviewed, Ms. Dykstra used state resources for personal benefit in violation of RCW 42.52.160. Ms. Dykstra's activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010.

3. 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. It is a mitigating factor that Ms. Dykstra is making payments of \$300 a month as of September 1, 2020 and will be paying \$500 a month starting December 1, 2020.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Jane Dykstra 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. Jane Dykstra 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. Jane Dykstra 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. Jane Dykstra 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 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. Jane Dykstra 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 Jane Dykstra 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 Jane Dykstra 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.

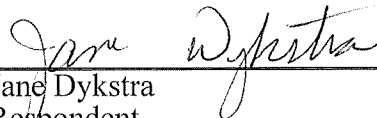
10. If the Board rejects this stipulation, or if Jane Dykstra does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Jane Dykstra 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. Jane Dykstra agrees to pay a civil penalty in the amount of three-thousand dollars (\$3,000) associated with violations of RCW 42.52.

12. The civil penalty in the amount of three-thousand dollars (\$3,000) 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.

I. CERTIFICATION

I, Jane Dykstra, 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.



Jane Dykstra
Respondent

10-5-2020
Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

11/13/20
Date

