

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Tar-Chee Aw

Respondent.

No. 2021-033

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Tar-Chee Aw 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 July 6, 2021, the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO) alleging that Tar-Chee Aw (Dr. Aw), former Director of the Fears Clinic¹ within the School of Dentistry (SOD) at University of Washington (UW), may have violated the Ethics in Public Service Act by using state resources for his private benefit and gain by using UW resources to perform outside work at the School of Dentistry.

¹ The Fears Clinic was established at the UW's School of Dentistry in 1982 and was a multidisciplinary and specialty dental clinic staffing dentist, psychologist, hygienist, and other dental professionals until it was closed in 2019.

2. UW is located in King County and operates on an annual budget of about \$8 billion. In fiscal year 2019 the School of Dentistry had a budget of \$50.4 million and the clinical (patient) revenue was \$17.7 million.

3. Included in the patient revenue are dental-related services performed at the request of the Department of Labor and Industries (LNI) for Workers Compensation claims paid through third-party billing companies. SOD faculty perform these service, using UW facilities, and the SOD collects payment. SOD faculty members are not allowed personal payments for professional services they provide. If a faculty member wants to perform outside professional work, they must receive prior approval.

4. In November 2017, the UW Internal Audit Department (IA) received a complaint that Dr. Aw was providing Independent Medical Exams (IME) services to patients but was personally collecting payments for the services.

5. IME exams are conducted to address specific legal or administrative questions related to workers compensation or personal injury lawsuits.

6. The IME's reviewed by the UW IA were performed at the request of LNI. LNI used third-party providers to identify dentists to perform the exams and used those same third-party providers to pay the dentist.

7. On July 31, 2019, the UW IAD notified the SAO regarding potential losses of public funds pursuant to RCW 43.09.185. On August 12, 2020, the SAO Fraud Unit obtained subpoenas for the payment records from the third-party insurance providers.

8. For all times pertinent to this investigation, Dr. Aw was the Director of the UW School of Dentistry Fear Clinic.

9. The scope of the UW IA was to review the work activity of Dr. Aw and determine if UW resources were used for his outside employment for a private gain. The IA investigation reviewed IMEs and other dental procedures performed by Dr. Aw for the period of January 1, 2016 through December 31, 2018. In addition, the IA investigation collaborated with LNI to determine the IMEs Dr. Aw performed on their behalf, reviewed outside work request/authorization forms, and interviewed SOD employees and Dr. Aw.

10. Through the investigative process, the UW IA was able to determine that for the period of review Dr. Aw conducted 129 IMEs in the clinic. All of these IMEs resulted in zero dollars received by the clinic.

11. The UW IA investigation determined that Dr. Aw was paid directly for 86 of the 129 IMEs performed at the SOD and that no portion of these were ever turned over to the SOD.

12. The UW IA investigators asked LNI to identify the services provided by Dr. Aw and their standard cost, because third-party providers would not disclose the exact amount they paid for those services nor who received the payment.

13. According to the UW, the average fee for IME services are \$400 per IME.² Based on this \$400 per IME fee, the UW IAD investigation estimated³ that Dr. Aw misappropriated \$51,600. This amount was for services performed at the SOD, not charging the third-party providers for the IME examinations that were conducted at the SOD, and personally receiving payment from the third-party providers for conducting the exam and producing a written report. These estimates and the other findings were contested by Dr. Aw.

² IMEs consist of the examination of the patient plus the written report.

³ Estimated amount of misappropriated funds = 129 (IMEs) x \$400 each = \$51,600.

14. Dr. Aw told UW investigators that the IME exams consisted mostly of him speaking to the patient and briefly checking their teeth prior to him writing up the IME report.

15. Dr. Aw explained in his interview with the UW investigators the process for setting up an IME exam with him is as follows:

- LNI would contact the third-party vendor notifying them of the patient and the services needed.
- The third-party vendors would contact the patient and Dr. Aw.
- LNI pays the third-party vendor.
- The third-party vendor would pay Dr. Aw for his IME report.

16. Dr. Aw told UW investigators that he was only compensated for time he spent on writing up the IME report, which he did on his own time.

17. Dr. Aw personally received payment from third-party vendors for writing the IME report.

18. The third-party vendors who hired Dr. Aw to conduct IMEs were Medical Evaluation Specialists (MES), Medical Consultants Network (MCN), and Inland Medical Evaluations.

19. SOD faculty can work in an outside practice with the approval of the Dean by submitting an Outside Practice Form 1460.

20. During an interview with the UW Investigator on July 16, 2018, Dr. Aw told the investigator that he had filed an outside work form with the Dean's office.

21. The UW investigation confirmed that on July 16, 2018, Dr. Aw submitted Form 1460 for approval for outside work to the Dean's Office.

22. On August 23, 2018, the SOD Dean's office advised Dr. Aw via email that they were in receipt of his Form 1460 requesting approval for outside work. The email further

indicated that his request was under consideration by SOD Dean Gary Chiodo and that he should not be conducting any outside work until fully approved by the Dean and the Office of the Provost.

23. Doug Ramsay (Mr. Ramsay), Chair of the Oral Health Sciences SOD, told the UW investigators during an interview on July 23, 2018, that about a year and a half ago he had a conversation with Dr. Aw regarding IMEs.

24. Mr. Ramsay told investigators that the conversation was prompted by someone, he couldn't recall who, telling him that there were patients on the schedule for IMEs and LNI consultations.

25. Mr. Ramsay told investigators that Dr. Aw told him that he was evaluating patient conditions for LNI.

26. Mr. Ramsay told investigators that Dr. Aw told him that the patients being seen by him in the Fears Clinic were being tracked in the SOD system and not maintained outside of the system.

27. Mr. Ramsay told investigators that Dr. Aw told him he entered the patients into the system but that the billing charge was zero.

28. Mr. Ramsay told investigators that Dr. Aw told him that he was not being paid under the table for these IMEs or the IME reports he was providing to the third-party vendors.

29. Mr. Ramsay told UW investigators that as the Clinic Director, Dr. Aw had the authority to make the decision to charge or not to charge a patient.

30. On July 31, 2019, after completing the UW SOD internal investigation, the UW notified the SAO regarding a potential loss of public funds, as required by state law (RCW 43.09.185).

31. The SAO Fraud Unit reviewed the UW IA report and determined that they needed additional documents to verify who accepted the payments identified in the UW IA report.

32. On August 12, 2020, the SAO obtained subpoenas for payment records from the three⁴ third-party insurance providers. A review of those records confirmed that Dr. Aw was paid directly for services he performed using UW facilities from January 1, 2016, through December 31, 2018.

33. The SAO's investigation found a misappropriation of \$66,086.57 and an additional questionable loss of \$8,852.69. Dr. Aw disputes these findings.

34. Board staff adjusted the SAO data to reflect the period of January 17, 2017 through December 31, 2018, in accordance with the Board's statute of limitations. This adjustment resulted in a reduction in the misappropriation cost to \$38,236.74. Dr. Aw also disputes this total. See below:

Third-Party Vendor	Amount
Inland Medical Evaluation	\$22,961
Medical Consultants Network (MCN)	\$8,619.31
Medical Evaluation Specialist (MES)	\$6,656.43
Total	\$38,236,74

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:

⁴ Medical Evaluation Specialist (MES), Medical Consultants Network (MCN), and Inland Medical Evaluations.

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. 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, they were continuous in nature, and Dr. Aw received personal financial gain.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Tar-Chee Aw 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. Tar-Chee Aw 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. Tar-Chee Aw further agrees that the evidence available to the Board is such that the Board may conclude they 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. Tar-Chee Aw waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their 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. Tar-Chee

Aw 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 Tar-Chee Aw 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 Tar-Chee Aw 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.

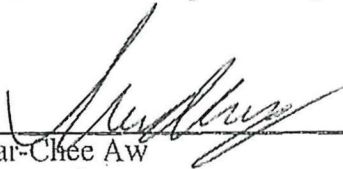
10. If the Board rejects this stipulation, or if Tar-Chee Aw does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Tar-Chee Aw 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. Tar-Chee Aw agrees to pay a civil penalty in the amount of thirty-three-thousand-two-hundred-thirty-six dollars (\$33,236) associated with violations of RCW 42.52.

12. The civil penalty in the amount of thirty-three-thousand-two-hundred-thirty-six dollars (\$33,236) 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, Tar-Chee Aw, 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.



Tar-Chee Aw
Respondent

3-21-22

Date

Presented by:



KATE REYNOLDS
Executive Director

8/3/2022

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 May 2022.

Approved via Zoom
Shirley Battan, Chair

Approved via Zoom
Jan Jutte, Vice Chair

Absent
Gerri Davis, Member

Approved via Zoom
Earl Key, Member

* I, Tar-Chee Aw, accept/do not accept (circle one) the proposed modification(s).

Tar-Chee Aw, Respondent Date