

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Celestia Higano
Respondent.

No. 2022-033

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Celestia Higano, M.D., 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 6, 2022, the Executive Ethics Board (Board) initiated a complaint resulting from a State Auditor's Office (SAO) Fraud Report. The complaint alleged that Celestia Higano, M.D. (Dr. Higano), a retired Professor with the University of Washington School of Medicine (UW), may have violated the Ethics in Public Service Act, by using state resources to conduct outside employment.

2. According to the fraud report, Dr. Higano allegedly used UW resources to perform outside work. Additionally, it was alleged that Dr. Higano had been using her former Program Operations Specialist, Martha Lee (Ms. Lee), to perform outside work for her personal consulting

business. Specifically, over a three-year period, the fraud report indicated that Ms. Lee spent approximately 950 hours assisting Dr. Higano coordinating her schedule with her outside work activities. Additionally, Ms. Lee spent approximately 35 hours assisting Dr. Higano with personal tasks. Based on Ms. Lee's salary, UW estimated the cost of her time at \$46,171. These allegations initially came forward in February 2020, which prompted UW to conduct an internal audit (IA).

3. In addition to using Ms. Lee for personal tasks, it was alleged that Dr. Higano utilized UW computers and email to perform the above mentioned non-University related activities and shared her user IDs and passwords to University systems and networks with Ms. Lee, which would not have been in compliance with UW Medicine information security policies.

4. According to UW, Dr. Higano was hired on July 1, 1982, as Clinical Fellow. Dr. Higano was appointed to an acting instructor on July 1, 1984. Dr. Higano was appointed to Assistant Professor on May 1, 1989. Dr. Higano moved from the UW Veterans Affairs Medical Center to UW Medical Center on November 1, 1989. Dr. Higano was promoted to Associate Professor on July 1, 1997. Dr. Higano was promoted to Professor on July 1, 2008. Dr. Higano retired from UW on July 1, 2020.

5. UW provided Board staff with a copy of their finalized IA. In reviewing the final investigative documents, Board staff identified that Dr. Higano allegedly performed a significant amount of outside work that included such activities as membership to advisory boards or committees of pharmaceutical companies, consulting, protocol reviews, and presenting as guest speaker/lecturer all of which had been approved by her Dean. Additionally, Dr. Higano served as a consultant to the Vancouver Prostate Centre as Medical Director of its Prostate Cancer Supportive Care program, located in Vancouver Canada. VPC is a non-profit organization. Dr. Higano alleges that any such outside work provided a substantial and direct benefit to UW.

6. UW requires faculty members to obtain prior approval for all outside work, which is defined as “any and all professional work performed for any type of compensation to the faculty from a non-University entity with some exceptions such as work for non-profit organizations.” UW also requires faculty members to obtain prior approval for teaching courses for credit or participating in continuing education activities not under the aegis of the University. The outside work, teaching course for credit, and participating in continuing education activities needs to be approved by the department chair, dean, and the Office of Research. UW sends periodic reminders to all faculty and staff about this policy as well as the State of Washington Ethics in Public Service Act. Additionally, UW indicated that Dr. Higano was communicated to directly, in both 2011 and 2014, that she cannot use UW staff to arrange travel related to her outside work.

7. As part of the UW IA, they interviewed Dr. Higano, division administrator and staff, and Ms. Lee. Additionally, Dr. Higano’s email communications and other documents (such as requests for approval of outside professional work – Form 1460) were reviewed, along with Dr. Higano’s travel logs and invoices prepared by Ms. Lee related to outside work, from January 2017 to December 2019. Dr. Higano maintains that she was never provided any of these documents or asked about them as part of the UW IA.

8. Ms. Lee was hired in August 2015. She informed UW it was her understanding that she would manage departmental prostate cancer activities. Dr. Higano alleges that Ms. Lee was informed prior to hiring that she would be serving as Dr. Higano’s administrative assistant, the position she had previously held for many years for another senior medical faculty member. Once hired, Ms. Lee indicated that she primarily managed Dr. Higano’s scheduling, travel arrangements, and financial matters, which included outside work activities. Ms. Lee further alleged that a significant portion of her time was spent supporting Dr. Higano’s outside work and other personal

trips. During Ms. Lee's time working for Dr. Higano, she maintained a Microsoft Excel spreadsheet to capture travel, invoices, contracts, and compensation. Ms. Lee informed UW that she performed the following activities related to Dr. Higano's outside work:

- Scheduling, including arranging travel
- Reviewing outside work contracts
- Signing Form 1460s requesting approval for outside work on behalf on Dr. Higano
- Invoice preparation
- Preparing Form W-9's and tracking form 1099s
- Tracking payments sent to Dr. Higano's home or bank account

Dr. Higano alleges that any time Ms. Lee spent performing these tasks had a substantial and direct benefit to UW.

9. Based on the IA, including inspecting the above noted files, UW confirmed that Ms. Lee performed the activities listed. UW further noted that outside work performed by Dr. Higano was not always pre-approved, as the 1460 forms were not always prepared and submitted by Dr. Higano for outside work. When asked, Dr. Higano informed UW that she believed Ms. Lee had been submitting the forms on her behalf.

10. UW found additional evidence showing Ms. Lee spent a considerable amount of time assisting Dr. Higano with obtaining a license to practice medicine in British Columbia. Documentation was located, from November 2015 to May 2017, detailing Ms. Lee's communication, coordination, and submittal of application and supporting materials. Ms. Lee also indicated that some of her time was spent arranging for Dr. Higano's personal trips, such as arranging flights and accommodations. According to Dr. Higano, the UW never gave her the opportunity to review or comment on these allegations or documents.

11. UW additionally reviewed Dr. Higano's travel logs for the period of January 1, 2017 thru December 31, 2019. They identified 37 occurrences of outside work performed by Dr. Higano when a 1460 form was not prepared showing prior approval. Of the 27 1460 forms

submitted by Dr. Higano, four of them were submitted for approval after the outside work was performed and 17 of them were submitted prior to the outside work being performed but were not approved by the dean until after the work had occurred. Additionally, UW noted the forms did not always include travel time and had a few incorrectly identified dates of the outside work conducted. Dr. Higano maintains that each occurrence of outside work had a substantial and direct benefit to UW.

12. When UW questioned Dr. Higano about the forms, she stated that her determination of form completion was based upon the type of outside work performed, for-profit vs. non-profit, and that her frequent schedule changes resulted in insufficient time to complete the forms and follow the normal approval process. According to Dr. Higano, UW denied her the opportunity to view the individual forms.

13. UW also found that Dr. Higano shared her usernames and passwords for several UW related systems, including email, Ariba procurement system, the financial interest disclosure system, grants and contracts, and the fellow and resident clinic evaluation system with Ms. Lee.

14. The IA also noted that Dr. Higano had unallowable personal expenses, which were charged to an oncology clinical surplus budget and a prostate cancer gift budget. The largest personal expense was \$4,844 on twelve separate invoices from a vendor to support computers not owned by UW. When asked, Dr. Higano stated the vendor was to invoice her separately for work performed on her personal devices and that the bulk of the work invoiced was for work-related problems as she often used her personal computers for University related work. According to Dr. Higano, despite requests, the UW never attempted to confirm her contentions with the vendor.

15. The State Auditor's Office (SAO) was contacted at the conclusion of the UW IA, on March 10, 2021.

16. Board staff reviewed the SAO provided documents, and, in summary, SAO agreed with the UW audit. According to Dr. Higano, without ever seeking input from her, the SAO noted UW “appeared conservative in their review and calculation of an estimated loss for the personal use of another UW employee’s time, however, we determined the estimated amount of time is difficult to quantify and we will not report further on the payroll portion. Further, the IA did consider other employees doing the same thing, but did not perform testing to confirm if this was true or not. This makes it difficult to know if this also might be occurring with other administrative support staff.”

17. In Dr. Higano’s written response to Board staff, she stated that the allegations are vague and inaccurate as she maintains she was never provided with an opportunity to view or comment on any of the evidence. She also indicated that UW faculty in the Department of Medicine are permitted to do one day per week of outside work and that the division must approve the outside work. Dr. Higano maintains that the Division of Oncology administrator approved all outside work she conducted over the years and that this work included attending advisory board meetings, consulting with the Prostate Cancer Supportive Care Program, giving CME lectures at national conferences, among other things. Dr. Higano indicated that, “[a]ll of these activities were considered part of my academic work and enhanced the reputation of the University of Washington. Internationally I am considered an expert in prostate cancer and therefore had many speaking engagements and scientific consultations. None of these activities were outside of my academic mandate, and I never considered that I was running another outside business.”

18. Dr. Higano also indicated that using her administrative assistant’s time was consistent with “virtually every other UW or other state institution faculty member.” She believes the accusations come from her former administrative assistant who “spent hours of work time

compiling records of her activities to make the case of using a state employee to conduct outside work." Dr. Higano stated that "[a]fter the investigation, the state auditor made no findings or recommendations regarding this accusation."

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** which 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.

And:

RCW 42.52.020 - Activities incompatible with public duties, which 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 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. In the matter at hand, there are no mitigating factors.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Celestia Higano 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. Celestia Higano 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. Celestia Higano 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. Celestia Higano 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. Celestia Higano 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 Celestia Higano 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 Celestia Higano 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 Celestia Higano 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

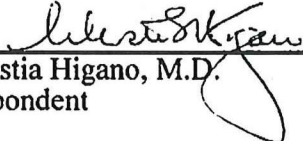
approval under WAC 292-100-090(2). Further, Celestia Higano understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Celestia Higano agrees to pay a civil penalty in the amount of seven-thousand-five-hundred dollars (\$7,500) associated with alleged violations of RCW 42.52.

12. The civil penalty in the amount of seven-thousand-five-hundred dollars (\$7,500) 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.

I. CERTIFICATION

I, Celestia Higano, M.D. 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.


Celestia Higano, M.D.
Respondent

05-10-2023
Date

Presented by:


KATE REYNOLDS
Executive Director

5/12/2023
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 12th day of May 2023.

Approved Viterally
Jan Jutte, Chair

Approved Viterally
Kelli Hooke, Vice Chair

Approved Viterally
Earl Key, Member

Approved Viterally
Shirley Battan, Member

Approved Viterally
Megan Abel, Member

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

Celestia Higano, Respondent

Date