

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Kristen Rhodes

Respondent.

No. 2022-051

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Kristen Rhodes 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 December 22, 2022, the Executive Ethics Board (Board) received a complaint from the State Auditor's Office (SAO) alleging that Kristen Rhodes, a Dental Hygienist 2 (DH2) with the Department of Corrections (DOC) at the Washington State Penitentiary (WSP) in Walla Walla, may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. According to Kristen Rhodes, they were originally hired on February 12, 2007, as a DH2, which is the position they presently hold. Kristen Rhodes is Flex Schedule Eligible.

3. According to the SAO, they originally received a whistleblower complaint alleging that a DH2 Kristen Rhodes and two Dental Assistants, Antoinette Perez and Elia Martinez¹ were not working a full 40 hours per week and not submitting leave when they were not at work.

4. Additionally the whistleblower alleges that all three individuals were watching online streaming during their shift and inappropriately using the Offender Management Network Information (OMNI) system to look up information on subjects that were unrelated to their jobs.

5. According to the SAO, to determine whether the three subjects failed to submit leave for time when they did not work, they reviewed the period of January 1, 2021 through December 31, 2021. The time records they used were the leave usage reports and activity reports from KeyWatcher.

6. According to the SAO, information or documents that may have verified employee attendance were no longer available during their investigation. The SAO states that KeyWatcher reports are imprecise tools when it comes to substantiating shift work, since the system is not designed specifically for that purpose. However, using those reports and the leave usage reports, they identified several days where all three subjects might have been absent and did not take any leave. The subjects then provided documentation, including screenshots from in-house leave forms and the state's online leave portal and timesheet systems, to support that they took leave on most of those days.

¹ Investigations were also opened by Board staff on Elia Martinez (2022-049) and Antoinette. Perez (2022-050).

7. The SAO states that they could not determine how DOC management reviewed and approved the subjects' leave during the period in question because their former supervisor is no longer employed with the DOC.²

8. According to the SAO, they were unable to determine whether an improper governmental action occurred because the WSP does not adequately track employees' time worked, and due to inconsistencies between KeyWatcher³ data, leave data, and time cards.⁴

9. According to the SAO, to determine whether the subjects misused state computer systems, they obtained the subjects' internet network activity. Based on consistency and duration of use, they determined that the subjects' personal use of all state computer equipment was more than de minimis. They found the subjects visited social media sites, streaming services, and news, travel and furniture websites.

10. According to the SAO, Antoinette Perez and Elia Martinez said they did use online streaming services during the investigation period because their work time activities were limited due to the COVID-19 pandemic. Instead of seeing patients, they prepared daily COVID-19 communications, and otherwise had little work to do during this time. According to the SAO,

² Board staff identified the former supervisor as Karen Forss who retired in 2021. Board staff were advised by DOC that their contact information was last updated on 2008. Board staff called the two telephone numbers provided. One number was disconnected. Board staff left a voice mail on the other. As of the date of this report, Karen Forss has not responded to Board staff.

³ According to the DOC KeyWatcher is an electronic key management system that tracks key custody and time in and time out. Board staff were advised by the DOC that KeyWatcher is not an accurate way to determine time in and out for employees because employees may keep the keys for a couple of days and there are times that they may remove or return keys at the same time another employee is accessing the system resulting in no record of when the keys were taken or returned.

⁴ Board staff were provided with copies of the KeyWatcher reports, leave data and time cards by the SAO and DOC.

Kristen Rhodes neither agreed nor disagreed that they used their state computer for personal purposes.

11. According to the SAO, the DOC OMNI system tracks all aspects of an incarcerated person's record with the justice system, including sentencing information from the state courts, no-contact orders, outstanding warrants, and other background information.⁵

12. According to the SAO, they reviewed a list of names of subjects searched within the OMNI system. The SAO states that all three subjects are allowed to use the OMNI system for scheduling, reviewing medical history, or other information related to dental care that is relevant to the appointment. The SAO states that their investigation determined that Kristen Rhodes did not use the OMNI system for personal use.

13. In a written response to Board staff, Kristen Rhodes said that they were working them 40 hours weeks and using leave slips when taking time off. Kristen Rhodes said they did not ever log onto their Facebook account from work nor did they stream anything online. Kristen Rhodes said they did not have any documentation about all the extra things they helped with around the institution during the COVID crisis. She said that she did temperature and wellness checks in the units, helped with employees and incarcerated individual testing, and helped medical records deliver COVID test results to the population.

14. Kristen Rhodes provided a list of individuals that, if necessary, could verify any down time they had, they were actively searching for ways to help in other departments. Kristen Rhodes said they regularly did wellness checks and COVID testing in the units and employee

⁵ According to state IT security policies, state and federal privacy laws, and DOC's policies, employees may only use state computer systems for official state business. The DOC also has a "Use of State Resources Policy" that is communicated to employees in an annual training.

testing up front. They were in medical records frequently and aided in the colossal labor involved in notifying inmates of months' worth of backlogged test results. Kristen Rhodes said they were genuinely trying to earn their paycheck, not just collect it.

15. In a written response to Board staff, Kristen Rhodes' current supervisor, Health Services Manager 1 (HSM1) Chris Mequet said they have been Kristen Rhodes supervisor since October 20, 2021. Chris Mequet confirmed that Kristen Rhodes' work hours are Monday-Friday, 7 am to 3:30 pm. They said Kristen Rhodes is eligible for Flex Time. Chris Mequet said that they has not observed Kristen Rhodes using their work computer for personal use.

16. According to Chris Mequet, Kristen Rhodes has had attendance issues at work. They said that since instituting the attendance tracker they have had to remind Kristen Rhodes to submit leave slips as they have "forgotten" to do so. Chris Mequet said that before becoming Kristen Rhodes' supervisor they were not sure if Kristen Rhodes has had attendance issues at work. As to accessing OMNI, Chris Mequet said they have not observed Kristen Rhodes accessing OMNI for non-work related purposes.

17. When asked by Board staff if there was any evidence that Kristen Rhodes was not working their assigned shift or not taking leave when required. Chris Mequet said that there was none as far as they could tell. Chris Mequet said that they do not have any documentation that would show this.

18. On April 14, 2023, Board staff were provided with a copy of an Investigative Report (IR) that was completed by DOC Investigator 3, Jessica Perva. According to the IR, the investigation was in regards to the allegation that between January 1, 2021 and December 31, 2021 on multiple occasions, Kristen Rhodes failed to arrive at their job site at WSP when scheduled, failed to work a 40-hour workweek and failed to submit leave slips. In addition, it was alleged that

from January 1, 2021 through December 31, 2021, Kristen Rhodes used a state issued computer for non-work related purposes, including watching online streaming services during work hours.

19. According to the IR, Kristen Rhodes was interviewed on March 15, 2023 and during the interview Kristen Rhodes confirmed that they have been with the DOC for 16 years, that they work Monday – Friday, 7 am - 3:30 pm and that they are flex time eligible.

20. According to the IR, Kristen Rhodes said that they are aware of the leave submission process. Kristen Rhodes explained that the typical process for calling in late and/or sick is as follows:

- Calling the outpatient nurse's desk (OPC), noting sometimes the OPC doesn't always inform the supervisor or make note of the call on the call-in log
- Upon arrival, they would submit the leave request using the DOC MyPortal system or utilize flextime.
- Kristen Rhodes explained the utilization of flextime was a conversation between them and their previous supervisor, Karen Forss. According to Kristen Rhodes, this process changed with new supervision.
- When asked if they were required to pull keys Kristen Rhodes said that they would not pull keys was if they were assisting with mass testing or working in medical records.

21. According to the IR, a review of the supervisor's leave report found that there were 23 handwritten notes during the timeframe of the allegation in which the supervisor stated that leave hadn't been submitted. According to the IR, the words "CIS" for called in sick and "Late" are written next to each date. According to the IR, the investigator found that out of the 23 dates in question, they found that only one day that was unaccounted for:

- According to the IR, on April 7, 2021 the OPC and supervisor audit indicated Kristen Rhodes called in sick however, leave was not submitted for this date. According to Jessica Perva, the Appointing Authority and Human Resources decided not to pursue the one day as it was reported that at times Karen Forss would lose the paper leave slips. Jessica Perva said that there was no way of verifying if that occurred or if flex time had been utilized to make that day up.

22. According to the IR, Chris Mequet was interviewed on March 15, 2023. Chris Mequet confirmed that they were Kristen Rhodes' supervisor from October 2021- December 2021. Chris Mequet said that when they arrived at WSP in 2021, they observed several issues surrounding flextime. Specifically, with Kristen Rhodes and two other members of the dental staff.

23. Chris Mequet said staff would call in late or leave early and assume the time could be made up using flextime. Chris Mequet said that they set the expectation that the usage of flextime needed to be pre-approved, leave requested needed to be submitted 72 hours in advance, and dental staff needed to be onsite and in the clinic by 7:15 am for the morning huddle.

24. According to the IR, Kristen Rhodes' former supervisor, Correctional Specialist 2 (CS2) Cameo Galler, was interviewed on March 16, 2023. Cameo Galler said they were only Kristen Rhodes' supervisor for the month of December 2021. Cameo Galler said that there were many areas of inconsistency and flaws surrounding leave and flex time in dental. They said that flex time was previously at the discretion of the supervisor. If staff called in late or left early, they could be allowed to stay late or come in early to make that time up.

25. According to the IR, Cameo Galler began tracking and documenting staff time. Cameo Galler said that Kristen Rhodes was very good about making up the time. Cameo Galler said that on occasion they had to remind Kristen Rhodes to submit their leave slip upon returning to work.

26. According to the IR, in regards to using their computer for non-work related purposes, Kristen Rhodes admitted that they used their work computer to listen to music, check the weather, news, and mandatory training on YouTube. Kristen Rhodes said they and other dental staff would listen to music while assisting medical with COVID lab results and setting up COVID testing carts. Kristen Rhodes said their understanding of misuse of state resources was logging

into Facebook, personal shopping, and logging in to a personal bank account, none of which they ever did.⁶

27. In regards to the use of state resources for non-work related purposes, Cameo Galler said that they had heard rumors that dental staff, including Kristen Rhodes, had been using state computers for music and to watch YouTube. To reduce the misuse of state computers, Cameo Galler said they provided Kristen Rhodes with an updated position description (PD) that outlined IT protocol and misuse of state resources. Cameo Galler said that after providing Kristen Rhodes with the updated PD, the behavior stopped.⁷

28. Board staff were provided with a copy of a letter that was sent to Kristen Rhodes from Zainab Ghazal, the Administrator for the DOC Health Services Division. The letter is dated April 14, 2023 and the subject line is Notification of Investigation Closure – Leave & Computer Usage. The letter notified Kristen Rhodes that based on the information provided in the DOC IR, they found that the allegations against them were unfounded, discipline is not warranted and that the matter is closed.

29. Board staff requested a copy of Kristen Rhodes work email history and an image of their work computer from DOC.⁸

⁶ According to Jessica Perva, during COVID and currently all staff to include medical and dental at WSP use Amazon, Office Depot and other supplier sites to submit purchase orders for medical and/or office supplies. Medical and dental staff at WSP are encouraged to add clip art to the daily offender callouts, which they search for on Google leading them to Pinterest, Facebook and any site the image chosen belongs too.

⁷ In a notation on the IR, Jessica Perva stated that during their interviews with other dental staff, most of the staff appeared to have the same misconception, that listening to music on a state computer while working was authorized.

⁸ Board staff processed the computer hard drive for Kristen Rhodes on a Forensic Recovery of Evidence Device (FRED) using the Magnet Axion Digital Investigation Platform to acquire and analyze the computer hard drive and work email history.

30. Board staff were provided with Kristen Rhodes' email history for the period of May 19, 2020 through March 14, 2023. A review of Kristen Rhodes' email history found no evidence related to the allegations or that Kristen Rhodes' was using their work email for personal use.

31. Board staff were also provided with a forensic image of Kristen Rhodes' work computer. A review of their work computer found the following.

32. Between November 1, 2021 and March 8, 2023, Kristen Rhodes accessed Google.com at least once on approximately 58 different days including eight different days in December 2021.

- December 2, 2021 from 12:31 pm to 3:25 pm., websites visited included news and entertainment articles and videos.
- December 3, 2021 from 12:24 pm until 12:56 pm., websites visited included news and entertainment and Information articles and videos.
- December 10, 2021 from 8:01 am until 12:32 pm., websites visited included Alaska Airlines shopping and flights, news articles and videos.
- December 20, 2021 from 3:04 pm until 3:17 pm., websites visited included news and entertainment articles and videos.
- December 23, 2021 from 2:31 pm until 2:55 pm., websites visited included news and entertainment articles and videos.
- December 27, 2021 from 9:34 am until 3:23 pm., websites visited included news and entertainment articles, videos, and movies.
- December 29, 2021 from 7:50 am until 12:27 pm., websites visited included news and entertainment articles, videos, movies and informational videos.
- December 30, 2021 from 8:02 am until 2:15 pm., websites visited included news and entertainment articles and visits, movies, and informational videos.⁹

33. Between November 9, 2021 and November 27, 2022, Kristen Rhodes accessed YouTube.com at least once on approximately nine different days. Websites that they accessed included the following:

⁹ Although some of the searches such as Amazon.com and Office Depot.com may have work related, the majority of the searches appear to be unrelated to their job and were entertainment.

- The Power of the Dog | Official Trailer | Netflix – YouTube
- The Full True Story Behind Unbelievable? | Netflix – YouTube
- JANIS JOPLIN MERCEDES BENZ – YouTube
- Kristen Stewart & Nicole Kidman | Actors on Actors - Full Conversation – YouTube
- I Jumped Off The Golden Gate Bridge – YouTube
- Prince Andrew formally responds to Virginia Giuffre lawsuit | GMA – YouTube
- The Full True Story Behind Unbelievable? | Netflix - YouTube

34. Although Kristen Rhodes has already admitted to using their work computer for personal use, Board staff provided Kristen Rhodes with the search results of their computer history to give them the opportunity to explain how they were job related.

35. In a written response, Kristen Rhodes provided a portion of their schedule from December 2021. According to Kristen Rhodes, they was busy on the December 10th with patient care from 8:30 am until approximately 11:30 am. They said that each appointment takes approximately one hour she was not sure how it was possible for them to be on their computer from 8:01 am until 12:32 pm.

36. According to Kristen Rhodes, they believe that from December 27, 2021 through December 30, 2021, they had a facility lockdown and would have had nothing to do in dental that week. Kristen Rhodes said that when they had nothing to do, they would volunteer to see if she could help other staff, mostly in medical records and employee testing. Kristen Rhodes said that they believe they were helping medical records out that week, getting COVID test results out to inmates. This involved logging each test result, making and stamping a copy, looking up current housing, filing the original in the chart, folding and putting results in envelopes and putting addresses on them. Kristen Rhodes said that this was a long, drawn out process as they were including test results from the last summer. Kristen Rhodes said that the entire population usually had weekly testing at this time. Kristen Rhodes said that they would have had the internet on for

some type of mental stimulation, like music. Kristen Rhodes said in regards to viewing “I jumped off the Golden Gate Bridge” on YouTube, that video was required viewing by DOC for suicide prevention training.

37. Kristen Rhodes said that they realize they were on the internet more than policy allows but it never affected patient care or any of their other duties in the clinic. They said that COVID was a huge stress for all of them in dental because they could not do their jobs in a normal method.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from disclosing confidential information. RCW 42.52.050, states in pertinent parts, the following:

.....

(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer’s or employee’s official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer’s or state employee’s agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

RCW 42.52.050(5) defines “confidential information” as:

(a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

2. 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:

(1) 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.

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 Kristen Rhodes 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. Kristen Rhodes 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. Kristen Rhodes 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. Kristen Rhodes 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. Kristen Rhodes 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 Kristen Rhodes 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 Kristen Rhodes 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 Kristen Rhodes 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, Kristen Rhodes 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. Kristen Rhodes agrees to pay a civil penalty in the amount of one-thousand-five-hundred dollars (\$1,500) associated with violations of RCW 42.52. The Board agrees to suspend seven-hundred-fifty dollars (\$750) on the condition that Kristen Rhodes 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 civil penalty in the amount seven-hundred-fifty dollars (\$750) 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, Kristen Rhodes, 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.

Kristen Rhodes 6-12-23
Kristen Rhodes Date
Respondent

Presented by:

K. Reynolds 7/13/2023
KATE REYNOLDS Date
Executive Director

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 14th day of July 2023.

Approved Vitterdalley
Jan Jutte, Chair

Approved Vitterdalley
Kelli Hooke, Vice Chair

Absent
Earl Key, Member

Shirley Battan
Shirley Battan, Member

Approved Vitterdalley
Megan Abel, Member

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

Kristen Rhodes, Respondent Date