

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

3 In the Matter of:

EEB Case No. 2014-95

4 Cheri Carter,

FINAL ORDER

5 Respondent
6

7 **I. PROCEDURAL HISTORY**

8
9 On September 11, 2015, the Executive Ethics Board (Board) found reasonable cause to
10 believe that the Respondent, Cheri Carter, violated the Ethics in Public Service Act while
11 employed as a Medicare Certification Specialist with the Department of Health (DOH). Notice
12 of the Reasonable Cause Determination and the right to request a hearing was served upon Ms.
13 Cater by regular mail and certified mail on September 11, 2015. On September 24, 2015, Ms.
14 Carter was provided a copy of the Reasonable Cause Determination and the request to respond
15 to her email address. Ms. Carter failed to respond to the Reasonable Cause Determination
16 within 30 days as required by WAC 292-100-060(2).

17 The Board entered an Order of Default on September 9, 2016. On September 12, 2016,
18 Board staff provided Ms. Carter with notice of the Board's Order of Default by regular and
19 certified mail.

20 Pursuant to WAC 292-100-060(4) Ms. Carter was allowed 10 days to request vacation
21 of the Order of Default. Ms. Carter has not moved to vacate the order entered on September 9,
22 2016.

23 **II. FINDINGS OF FACT**

24 1. Ms. Carter has worked for the DOH since January 16, 2011 and was so
25 employed for all times pertinent to this investigation. She voluntarily separated from state
26 service on November 18, 2014.

1 2. In March of 2014 Ms. Carter's supervisor became aware of her use of state
2 computer resources to support her outside business as a consultant with May Kay Cosmetics.
3 DOH conducted a preliminary internal investigation into the allegation. The investigation
4 concluded that Ms. Carter had been using state resources; including email, computer, printer,
5 and time for her personal use, including use supporting her outside business as a Mary Kay
6 Cosmetics consultant.

7 3. As a result of the preliminary internal investigation the DOH Human Resource
8 Department (HR) contracted with an outside company, Emphasis Technography LTD (ET), to
9 conduct a forensic examination of Ms. Carter's work computer.

10 4. On May 1, 2014, DOH HR provided ET with one computer optical disk (DVD-
11 ROM) containing various files from January 2012 through June 2014, for Ms. Carter's work
12 computer and system. The DVD-ROM contained four primary folders: "C drive" containing
13 1,093 files and 389 MB of Data; "Emails" containing 2 files and 0.99 MB of data; "H drive"
14 containing 5,799 files and 2.09 MB of data; and "Internet" containing 7 files and 38.8 MB of
15 data.

16 5. ET's analysis of the DVD-ROM found an abundance of evidence to support
17 the allegations. The details of ET's analysis are shown below:

18 **C-Drive**

19 The "C-drive" folder contains 389 MB of data consisting of 1,093 files. The contents
20 of the files contained in the "C drive" folder appeared to be consistent with DOH
21 business and within the scope of Ms. Carter's assigned duties related to DOH activities.

22 **Emails**

23 The folder "email" contains 0.99 MB of data consisting of two files. The contents were
24 reviewed and the following non-DOH business email messages were found within two
25 subfolder files:

1 "CDPTL"-contained 418 emails that were identified as non-work related. They
2 included emails and attachments related to school for the children of Ms. Carter, personal
3 mortgage refinance, Mary Kay Cosmetics, advertising and activities, personal tax documents,
4 vacation documents, and psychological and medical treatment records regarding Ms. Carter's
5 child.

6 "Cheri.Carter.pst"- ET reviewed all of the domain folders within this file. Two folders
7 of interest were identified, "PERS REFERENCE" and "Sent items." There were various
8 subfolders within these two primary folders in which 710 email messages were located that did
9 not appear to be work related.

10 "2009 2011 TAX STUFF"-contains 25 documents that were scanned related to the
11 personal tax information and the refinance of a personal mortgage of Cheri and Horace M.
12 Carter, Ms. Carter's husband.

13 "2012 TAX INFO" – contains 10 documents that were scanned related to the personal
14 information of Cheri and Horace "Michael" Carter.

15 "2013 IRS Taxes" – empty.

16 "C S MOD 2012" – contains 46 emails and documents related to a child support
17 modification for Ms. Carter.

18 "info" – contains 524 emails and documents related to Ms. Carter and her daughter as
19 well as Mary Kay Cosmetics business activities.

20 "KMM" – contains 92 emails and scanned documents related to Ms. Carter's daughter.

21 "Vacation" – contains five emails and documents regarding vacation activities of Ms.
22 Carter.

23 "A new job MC" – contains four emails related to a job search for Michael Carter, Ms.
24 Carter's husband.

25 "ASPEN OASIS STUFF" – contains 10 emails and documents related to the personal
26 and financial activities of Ms. Carter including forwarding messages and documents to a web
based email address, cl.carter@hotmail.com.

"BELLEVUE COLLEGE" – contains five emails and documents related to student
loans and enrollment for Ms. Carter.

In total 1,228 emails or documents were located which do not appear to be work related.
Many of the emails and documents were related to Mary Kay Cosmetics.

1 **H Drive**

2 The folder "H drive" contains 2.09 GB of data consisting of 5,799 files. There are 21 sub-
3 folders arranged primarily as letters of the alphabet. There are four additional folders with
4 specific names. The contents of the folders were reviewed and 1,543 documents consisting of
5 499 MB of data were found which appeared to be related to personal or outside business
6 activities of Ms. Carter. There are extensive amounts of files and documents relating to the
7 independent sale business, Mary Kay Cosmetics. There are also numerous files relating to the
8 personal matters of Ms. Carter, including medical bills and claims for Ms. Carter and her
9 children related to a motor vehicle collision, behavior and drug rehabilitation documents for
10 family members, vacation and travel documents, children's school documents and personal
11 financial records.

12 Some of the significant sub-folders found on the H drive with extensive amounts of personal
13 documents are shown below:

14 ***Sub-Folders***

15 **A** – Contains 61 personal documents, consisting of 19.1 MB of data. The documents are
16 related to medical treatment of family members, apartments for rent, and Mary Kay Cosmetics.

17 **B** – Contains 10 personal documents, consisting of 4.7 MB of data. The documents are related
18 to personal budget, Bank CDs for her daughter, and bank court papers related to child support.

19 **C** - Contains 4 folders with 226 documents, consisting of 74.9 MB of data. The documents are
20 related to a car accident March 11, 2013, child support worksheets, and Mary Kay Cosmetics.

21 **H** – Contains 45 personal documents, consisting of 7.29 MB of data. The documents are
22 mostly related to different types of hair styles and color.

23 **K** – Contains 4 folders with 300 personal documents, consisting of 81.9 MB of data. The
24 documents are mostly related to her daughter.

25 **M** - Contains 12 folders with 301 personal documents consisting of 84.5 MB of data. The
26 documents are mostly related to the sale and promotion of her outside business with Mary Kay
Cosmetics.

P - Contains 1 folder with 109 personal documents and pictures, consisting of 43.7 MB of
data. Some of these are related to Mary Kay Cosmetics products.

V – Contains 28 personal documents, consisting of 11.5 MB of data. The documents are
mostly related to vacations taken from February 2011 to August 2013.

A small example is Shown Below:

Title	Folder	Document type	Last saved	Printed	Length (pages)	Time edited
5 minute Business opportunity 50 years	M/BEAUTY STUDENTS	Word	9/19/13 at 9:37 am		1	1 min
50 FACES TRACKING SHEET	M/BEAUTY STUDENTS	Word	9/20/13 at 10:05 am		2	1 min
Glamor with John Maxwell	M/BEAUTY STUDENTS	Word	10/19/12 at 12:34 pm	10/19/12 at 12:33 pm	2	1 min
MARY KAY SKIN CARE CLASS 8 pt	M/BEAUTY STUDENTS	Word	7/3/13 at 10:05 am		7	12 min
Opening for skin care class SEPT 2013	M/BEAUTY STUDENTS	Word	9/12/13 at 1:53 pm		1	1 hour:54 min
Recruit listen to win call Cheri July 2013	M/BEAUTY STUDENTS	Word	7/22/13 at 1:28 pm		1	4 min
Thanks referrals 10 17-2011	M/RECRUITING INFO	Word	1/23/12 at 8:44 am		1	1 min
Want women want Marketing Survey	M/RECRUITING INFO	word	3/25/13 at 12:25 pm		2	6 min
Why Mary Kay	M/RECRUITING INFO	Adobe/PDF	4/15/2013 at 7:51 am		1	
YourFutureinMayKay 2010	M/RECRUITING INFO	Adobe/PDF	10/23/12 at 10:43 am		1	
Survey lip gloss 2013	M/SELLING INFO	Word	1/10/13 at 1:03 pm		1	1 min
TIMWISE REPAIR	M/SELLING INFO	Word	8/28/2012 11:30 am		1	7 min
2011 IRS taxes prepared Carter	AP7 H Drive	Adobe/PDF	10/31/12 at 3:30 pm			Encrypted
2012 tax docs to send to STEELE	AP7 H Drive	Adobe/PDF	4/8/13 at 11:47 am		21	
10-hour-a-week-PINK-business-plan	AP7 H Drive	Adobe/PDF	2/29/12 at 8:42 am			

III. CONCLUSIONS OF LAW

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

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

1 **V. AUTHORITY AND PROCEDURE**

2 Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for
3 Reconsideration stating the specific grounds upon which relief is requested. The Petition must
4 be filed with the Executive Ethics Board at 2425 Bristol Court SW, Olympia, Washington
5 98504, or by U.S. Mail at P.O. Box 40149, Olympia, Washington 98504-0149, within ten (10)
6 days of service of the Final Order upon Respondent.

7 The Petition for Reconsideration shall not stay the effectiveness of this order nor is a
8 Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely
9 Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the
10 petition is filed, the Board does not (a) dispose of the petition or (b) serve the parties with a
11 written notice specifying the date by which it will act on a petition.

12 Respondent has the right to petition the superior court for judicial review of the Board's
13 action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition
14 for Judicial Review, see RCW 34.05.510 and sections following.

15 DATED this 18th day of November, 2016

16
17
18 absent
19 Anna Dudek Ross, Chair

Lisa Marsh
Lisa Marsh, Member

20
21 Samantha Simmons
22 Samantha Simmons, Vice-Chair

absent
Sumeer Singla, Member

23
24 John Ladenburg
25 John Ladenburg, Member
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