BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: RANDY PETERSON, Respondent.	No. 03-016 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Randy Peterson, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through BRIAN R. MALARKY, Executive Director. The following stipulated facts, conclusions, 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.

Section 1: PROCEDURAL FACTS

1.1. On March 4, 2003, the Executive Ethics Board received complaint alleging that Randy Peterson, an employee of the State of Washington, Department of Social and Health Services (DSHS), received jokes on his state computer and distributed them to co-workers.

1.2. The Board is authorized under RCW 34.05.060 to 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.

1.3. Randy Peterson understands that if Board staff proves any or all of the alleged violations 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).

1.4. Randy Peterson recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Peterson 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 set forth below.

1.5. Randy Peterson waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

> The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing..

1.6. If the Board accepts this stipulation, the Board will release and discharge Randy Peterson from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint 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 agreed order. Mr. Peterson 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 and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Randy Peterson and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if Randy Peterson does not accept the Board's proposed modification(s), if any, Mr. Peterson waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. Peterson understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. When the complaint in this matter was filed, and at all times material hereto, the State of Washington, DSHS employed Randy Peterson as an Acting Operations Manager for DSHS Consolidated Support Services (CSS) in Medical Lake, Washington.

2.2. On February 23, 1999, Randy Peterson completed "Internet Connectivity" training regarding appropriate use of state property, including Internet access and services. On November 7, 2000, Mr. Peterson completed "Ethics and Policy Review" training.

2.3. On January 16, 2003 and February 20, 2003, Randy Peterson forwarded e-mail messages received from his sister to co-workers at CSS. The messages contained jokes and were unrelated to Mr. Peterson's official duties.

2.4. On March 12, 2003, ~~Terry Peterson~~ Randy was counseled by his supervisor, Terry LaFrance regarding his inappropriate use of e-mail. On March 10, 2002, Mr. LaFrance issued Mr. Peterson a Letter of Reprimand directing Mr. Peterson to fully review and adhere to DSHS policies governing e-mail and internet use. This document will be removed from Terry Peterson's personnel file after one year.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Randy Peterson and over the subject matter of this complaint.

3.2. 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.

3.3. A state officer or employee is prohibited under RCW 42.52.160 from using state 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."

3.4. The Ethics in Public Service Act allows for de minimus personal use of state resources. WAC 292-110-010 states that employees may make occasional but limited personal use of state resources such as electronic messaging systems and the Internet if the use conforms with ethical standards. Those standards include that the use is of little or no cost to the state, brief in duration and frequency, does not disrupt other state employees and does not obligate them to make a personal use of state resources.

3.5. Based on Findings of Fact 2.1 through 2.3, Randy Peterson violated RCW 42.52.160(1) in a manner that exceeded the de minimis standards in WAC 292-110-010, and disrupted the performance of official duties by other state employees.

3.6. 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. It is an aggravating factor the Randy Peterson has supervisory responsibility (WAC 292-120-030(3)(d)). It is a mitigating factor that on March 10, 2003 DSHS issued a Letter of Reprimand to Mr. Peterson (WAC 292-120-030(4)(a)).

Section 4: AGREED ORDER

4.1. Randy Peterson will accept a letter of reprimand from the Executive Ethics Board as authorized by WAC 292-120-020(1). Randy Peterson will also pay a civil penalty in the amount of three hundred fifty dollars ($350.00). The Board agrees to suspend on hundred dollars ($100.00) of the civil penalty on the condition that Randy Peterson complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW. The $250.00 due on the civil penalty is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

I, Randy Peterson, hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntary agree to this Stipulation.

3-29-04

Randy Peterson Date
Respondent

Stipulated to and presented by:

April 7, 2004

Brian R. Malarky 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;

X MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

Monetary penalty shall be $500.00

DATED this 9th day of April, 2004.

Marilee Scarbrough, Chair

Paul Zellinsky, Vice Chair

James M. Vaché, Member

Trish Akana, Member

Evelyn Yenson, Member

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

4-16-04

Randy Peterson, Respondent Date