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7 **BEFORE THE WASHINGTON STATE**
8 **EXECUTIVE ETHICS BOARD**

9 In the Matter of:

10 Susan Drake,

11 Respondent.

Docket No. 2012-EEB-0002

Complaint No. 10-004

12 FINDINGS OF FACT,
13 CONCLUSIONS OF LAW AND
14 FINAL ORDER

15 **I. PROCEDURAL HISTORY**

16 1.1 This case was commenced by a complaint dated September 25, 2009 alleging
17 that Susan Drake, an Occupational Therapist with the Department of Social and Health
18 Services (DSHS) at Western State Hospital, used her position as a patient group leader to
19 inform patients she had a home with rooms to rent and that it was a placement possibility for
20 them. Ms. Drake allegedly used work time to solicit a social worker to place a patient as a
21 tenant in a rental property she owned.

22 1.2 On September 9, 2011, the Board found reasonable cause to believe that a
23 violation of Chapter 42.52 RCW occurred. A hearing was scheduled with an Administrative
24 Law Judge (ALJ) presiding pursuant to RCW 42.52.500.

25 1.3 On July 12, 2012, after due and proper notice, a hearing was held in the above-
26 entitled matter before the Executive Ethics Board (Board). The case had been set for hearing
pursuant to a telephonic prehearing conference held on April 9, 2012, in which all parties
participated.

1 1.4 The hearing was held at the Board offices at Bristol Court in Olympia,
2 Washington on July 12, 2012, convening at 9:00 AM. Administrative Law Judge Ami
3 Peterson from the Office of Administrative Hearings conducted the proceedings, and Board
4 Vice Chair Lisa Marsh, members Michael Bahn and Anna Dudek Ross were present. Also
5 present was Bruce L. Turcott, Assistant Attorney General, legal advisor to the Board.

6 1.5 Board staff was represented by Chad Standifer, Assistant Attorney General, and
7 the Board's Executive Director Melanie de Leon. Other Board staff were also present.
8 Respondent Susan Drake appeared and represented herself.

9 1.6 The Board staff offered Exhibits 1 through 9. All were admitted into evidence.
10 The Board was provided copies of documents which were admitted as exhibits:

- 11 1. Executive Ethics Board Complaint No. 2010-004, dated September 25,
12 2009 (1 page)
- 13 2. Preliminary Investigation and Board Determination in Case No. 2010-
14 004, Susan Drake, dated September 9, 2011 (4 pages)
- 15 3. Notification of Outside Employment Form, dated January 28, 2008 (1
16 page)
- 17 4. Notification of Outside Employment Form, dated February 25, 2008 (1
18 page)
- 19 5. Hand-written Notes from Mike Parker, dated June 16, 2009 (3 pages)
- 20 6. DSHS Investigation Summary Report, dated August 12, 2009 and
21 Memo dated July 2, 2009 (20 pages)
- 22 7. Statement from Susan Drake, dated July 30, 2010 (1 page)
- 23 8. Performance meeting Records, dated August 4, 2010 (1 page)
- 24 9. Response to Reasonable Cause Determination, dated October 27, 2011
25 (7 pages)

26 1.7 Respondent did not offer any exhibits.

 1.8 The proceedings were recorded and open to the public.

 1.9 The Board heard the testimony of Georgia Armstrong-Cezar, Mike Parker, Lee
Chase who testified by phone, Susan Drake, and Melanie de Leon.

 1.10 The hearing was adjourned at 12:03 PM.

1 Based on the evidence presented, the Board enters the following Findings of Fact,
2 Conclusions of Law, and Final Order:

3 **II. FINDINGS OF FACT**

4 2.1 For all times pertinent to this matter, Susan Drake was employed by DSHS as
5 an Occupational Therapist at Western State Hospital.

6 2.2 Ms. Drake submitted a Notification of Outside Employment form dated January
7 28, 2008 to DSHS indicating that she “intended to rent to people with mental illness.” She also
8 indicated that she would be contacting DSHS staff and/or engaging in business with DSHS.
9 This request was not approved. She resubmitted the form, dated February 25, 2008, clarifying
10 that she would not contract with any agency; however, would rent to people with mental
11 illness, among others. The second request was signed, although it was not marked “approved”
12 or “disapproved,” and no conditions were attached.

13 2.3 In her position as an Occupational Therapist, Ms. Drake provides group therapy
14 for patients. During these groups, she uses her own life experiences to teach real-world
15 situations that involve decision-making, problem-solving, social skills, pre-vocational skills,
16 stress management, empowerment, assertiveness, substance use and abuse and consequence of
17 actions. She owns a rooming house and rents to people with mental illness/disabilities and
18 often uses situations that arise in her boarding home setting.

19 2.4 In April 2008, a patient was leaving Western State Hospital, and the Western
20 State Hospital placement team wanted to place the patient in Susan Drake’s home. Ultimately,
21 this patient was not discharged, so was not placed in her home.

22 2.5 After a group session, one of the patients asked Ms. Drake if he could rent a
23 room at her rooming house when he left the hospital. Ms. Drake had an open room and
24 directed the patient to speak with his social worker Mike Parker about discharge options. The
25 patient asked Ms. Drake to speak to Mr. Parker. One June 16, 2009, Ms. Drake spoke to
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1 Mr. Parker about the patient's discharge and placement at her rental home. The patient was
2 ultimately not placed in Ms. Drake's home.

3 2.6 Ms. Drake asserts that she has actually never had a patient come directly from
4 Western State Hospital to her rental property as a tenant. There is no evidence that a Western
5 State Hospital patient went directly from Western State Hospital to Ms. Drake's rental
6 property.

7 2.7 On August 4, 2010, Ms. Drake's supervisor issued a Performance Meeting
8 Record to document his concern that Ms. Drake was soliciting patients to rent rooms at
9 Ms. Drake's property and remind her that DSHS prohibits solicitation of patients.

10 III. CONCLUSIONS OF LAW

11 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
12 which authorizes the Board to enforce the Ethics in Public Service Act with respect to
13 employees in the executive branch of state government. The complaint was filed in
14 accordance with RCW 42.52.410, the Board found reasonable cause pursuant to
15 RCW 42.52.420, and the public hearing was conducted pursuant to RCW 42.52.430 and .500.
16 All the required procedural notices have been provided.

17 3.2 The Ethics in Public Service Act, chapter 42.52 RCW, governs the conduct of
18 state officers and employees. A state employee is restricted from using her position to secure
19 special privileges for herself or other persons.

20 RCW 42.52.070 states:

21 Except as required to perform duties within the scope of employment, no state
22 officer or state employee may use his or her position to secure special privileges
23 or exemptions for himself or herself, or his or her spouse, child, parents, or
other persons.

24 3.3 Susan Drake violated RCW 42.52.070 in that her professional relationships and
25 communications with patients in the performance of her duties constituted solicitations for
26 patients to be placed in her rental home. She used her experience as a patient group leader to

1 inform patients that she had rooms for rent which might be a placement opportunity for them.
2 This influenced the patients to seek placement with her, and therefore provided her with a
3 special privilege and a financial interest in the patients' placement, regardless of whether Ms.
4 Drake ever had a patient placed in her rental home from Western State Hospital.

5 3.4 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000
6 per violation or three times the economic value of anything received or sought in violation of
7 the Ethics in Public Service Act, whichever is greater. The Board may also impose the cost of
8 investigating the complaint and order restitution for any damages sustained by the state.

9 3.5 In determining the appropriate sanction, including the amount of any civil
10 penalty, the Board considered the extent or magnitude or severity of the violations under
11 WAC 292-120-030.

12 3.6 In determining the appropriate sanction, including the amount of any civil
13 penalty, the Board determined, under WAC 292-120-030(2), that the nature of the violations:

14 (a) Was continuing in nature, despite direction to the contrary;

15 (e) Tended to significantly reduce public respect for or
16 confidence in state government or state government officers or
employees; and

17 (f) Involved potential personal gain or special privilege to the
Respondent.

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19 3.7 In determining the appropriate sanction, including the amount of any civil
20 penalty, the Board considered as a aggravating circumstance, under WAC 292-120-030(3)(f),
21 that Respondent incurred no other sanctions as a result of the violation.

22 3.8 In determining the appropriate sanction, including the amount of any civil
23 penalty, the Board considered as a mitigating factors, under WAC 292-120-030(4), that:

24 (c) The unethical conduct was not clearly disapproved by the
Respondent's supervisor when Exhibit 4 was signed without marking
25 "approved" or "disapproved" or attaching conditions; and

26 (d) The violation was unintentional in that Respondent did not
understand her conduct involved an ethical violation.

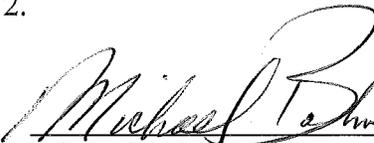
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2 3.9 Based on the totality of the facts in the record, and utilizing RCW 42.52.480
3 and WAC 292-120-030 as a guide, the Board finds that an appropriate monetary penalty is
4 \$300.

5 **IV. ORDER**

6 4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
7 ordered that Susan Drake violated the Ethics in Public Service Act as outlined in paragraph 3.3
8 above. Ms. Drake is assessed a monetary civil penalty in the amount of \$300. Payment in full
9 is due within 90 days of the date of this Order.

10 DATED this 14th day of September, 2012.

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12 Lisa Marsh, Vice-Chair


Michael Bahn, Member

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14 Anna Dudek Ross, Member

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16 **APPEAL RIGHTS**

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18 **RECONSIDERATION OF FINAL ORDER – BOARD**

19 Any party may ask the Executive Ethics Board to reconsider a Final Order. The
20 request must be in writing and must include the specific grounds or reasons for the request.
21 The request must be delivered to Board office within 20 days after the postmark date of this
22 order.

23 The Board is deemed to have denied the request for reconsideration if, within 20 days
24 from the date the request is filed, the Board does not either dispose of the petition or serve the
25 parties with written notice specifying the date by which it will act on the petition.
26 (RCW 34.05.470).

1 The Respondent is not required to ask the Board to reconsider the Final Order before
2 seeking judicial review by a superior court. (RCW 34.05.470).

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4 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

5 A Final Order issued by the Executive Ethics Board is subject to judicial review under
6 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
7 are provided in RCW 34.05.510 - .598.

8 The petition for judicial review must be filed with the superior court and served on the
9 Board and any other parties within 30 days of the date that the Board serves this Final Order
10 on the parties. (RCW 34.05.542(2)). A petition for review must set forth:

- 11 (1) The name and mailing address of the petitioner;
- 12 (2) The name and mailing address of the petitioner’s attorney, if any;
- 13 (3) The name and mailing address of the agency whose action is at issue;
- 14 (4) Identification of the agency action at issue, together with a duplicate copy,
15 summary, or brief description of the agency action;
- 16 (5) Identification of persons who were parties in any adjudicative proceedings that
17 led to the agency action;
- 18 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- 19 (7) The petitioner’s reasons for believing that relief should be granted; and
- 20 (8) A request for relief, specifying the type and extent of relief requested.

21 Service is defined in RCW 34.05.010(19) as the date of mailing or personal service.
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2 **ENFORCEMENT OF FINAL ORDERS**

3 If there is no timely request for reconsideration, this is the Final Order of the Board.
4 The Respondent is legally obligated to pay any penalty assessed.

5 The Board will seek to enforce a Final Order in superior court and recover legal costs
6 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
7 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
8 Board.