

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

MUHAMMAD KHURSHID,

Appellant,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent.

CASE NO. R-SUSP-06-005

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This matter came before the Washington Personnel Resources Board, MARSHA TADANO LONG, Chair, and LARRY GOODMAN, Vice Chair. The hearing was held on March 7, 2007, in the Personnel Resources Board hearing room in Olympia, Washington.

1.2 **Appearances.** Appellant Muhammad Khurshid was present and represented himself *Pro Se*. Shane Esquibel and Kari Hanson, Assistant Attorneys General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a three day suspension for accepting money and travel expenses from two drug companies in contravention of ethics laws and policies.

II. FINDINGS OF FACT

2.1 Appellant Muhammad Khurshid was a permanent employee for Respondent Department of Corrections (DOC). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder at Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on September 19, 2006.

1 2.2 By letter dated July 26, 2006, Marc F. Stern, Medical Director for DOC, notified
2 Appellant of his 3-day suspension for attending meetings with the Gilead Pharmaceutical
3 Speaker's Bureau and Boehringer Ingelheim and accepting \$6000 in compensation from the
4 companies. Both Gilead and Boehringer Ingelheim are companies that manufacture drugs.
5 Appellant's suspension was effective August 15, 2006 through August 17, 2006.
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7
8 2.3 Appellant began employment with DOC in July 2001. Appellant is a Physician 3 at
9 Stafford Creek Corrections Center (SCCC). As part of his duties at SCCC, Appellant prescribes
10 medications for inmates. DOC purchases the medications from drug manufacturers.
11

12 2.4 At the time of the actions giving rise to this appeal, Appellant also served as a member of
13 DOC's Pharmacy and Therapeutics Committee (P&T). The P&T recommends drugs that are
14 included in DOC's formulary of authorized drugs. The formulary is a list of drugs that DOC
15 medical staff may prescribe to inmates.
16

17 2.5 The drugs prescribed for inmates at SCCC and the drugs listed on the DOC formulary
18 include drugs manufactured by Gilead. The DOC formulary is not absolute and physicians may
19 obtain permission to prescribe a drug not on the authorized list. Boehringer Ingelheim
20 manufactures drugs that a physician may obtain permission to prescribe.
21

22
23 2.6 On July 20, 2001, Appellant signed a New Employee Policy Acknowledge form. The
24 form stated, in part, "I . . . understand that I am responsible for knowing and following the DOC
25 Human Resource Policies and Directives. . . ." The form lists the Ethics policy (800.010) and
26 the Outside Employment policy (850.025) as materials provided to Appellant in his orientation
27 packet. More recently, on March 1, 2005, Appellant signed a form acknowledging that it was his
28 responsibility to be continually familiar with and adhere to DOC Policy Directives including
29 policy 850.825 (sic), Outside Employment/Volunteer Activities, and 800.010, Ethics.

1
2 2.7 Appellant attended Gilead's Pharmaceutical Speaker's Training Program from April 30,
3 2005 through May 1, 2005 in Las Vegas. Gilead paid for Appellant's airfare, transportation to
4 and from the hotel, hotel fees and meals and gave Appellant a \$2,000 honorarium. Appellant did
5 not submit a DOC 03-0260 Outside Employment form for his association with Gilead.
6

7
8 2.8 In June 2005, Appellant sought approval for outside employment with Harbor Infectious
9 Diseases, Inc. by submitting a DOC 03-0260 Outside Employment form. Harbor Infectious
10 Diseases, Inc. was Appellant's private consulting business under which he intended to provide
11 infectious disease consultation to Grays Harbor Community Hospital.
12

13 2.9 Appellant attended Boehringer Ingelheim's Consultant's Meeting on June 5, 2005 in Los
14 Angeles. Boehringer Ingelheim paid for airfare, transportation to and from the hotel, hotel fees
15 and meals and gave Appellant a \$1,500 honorarium. Appellant did not submit a DOC 03-0260
16 Outside Employment form for his association with Boehringer Ingelheim.
17

18
19 2.10 Appellant was a recipient of a series of email exchanges which began with Dr. Stern's
20 August 16, 2005 email entitled "CME Ethics Alert." Dr. Stern's email message put staff on
21 notice that they could not accept meals provided by pharmaceutical companies. Dr. Stern
22 referred to the ethics law and two Ethics Advisory Opinions and provided staff with a series of
23 options in regard to meals provided at education events sponsored by pharmaceutical companies.
24 A number of staff had questions about Dr. Stern's direction. Therefore, on August 22, 2005, Dr.
25 Stern provided further clarification and specific reference to RCW 42.52.150 and attached two
26 Ethics Advisory Opinions (98-06 and 99-03) that addressed the issue. Some staff continued to
27 disagree with Dr. Stern's direction, but Dr. Stern did not modify or rescind his directive.
28
29

1 2.11 In October 2005, Appellant entered into a consulting and non-disclosure agreement with
2 Gilead. The agreement indicates that a speaker is a certified healthcare professional, with
3 specific expertise in clinical aspects of antiretroviral use for therapy of HIV infection. By
4 entering into the agreement, Appellant agreed to “participate in a Gilead HIV Speaker Bureau
5 Training Session and, thereafter, as faculty in programs of medical education on Gilead’s
6 behalf.” (Emphasis added.) In signing the agreement, Appellant indicated that his title was
7 Medical Director, SCCC.
8

9
10 2.12 On October 7, 2005, Appellant flew to Denver to attend a one-day consultant meeting the
11 following day. Gilead paid for Appellant’s airfare, transportation to and from the hotel, and
12 hotel fees and gave Appellant a \$1,000 honorarium. Dr. Marc Stern was also on the plane to
13 Denver to attend another event during this weekend. He assumed Appellant was attending the
14 same event, however, he learned through conversations with other event participants that
15 Appellant was attending the Gilead consultant’s meeting, not the event that Dr. Stern was
16 attending.
17

18
19 2.13 On October 22, 2005, Appellant flew to New York for a meeting. Gilead paid for
20 Appellant’s airfare, transportation to and from the hotel, and hotel fees and gave Appellant a
21 \$1,500 honorarium.
22

23 2.14 Dr. Stern was concerned that Appellant’s participation in the Gilead event in Denver
24 could be a conflict of interest. After returning from Denver, Dr. Stern asked Appellant if his trip
25 was for an event sponsored by a drug company. Appellant said that it was. Dr. Stern told
26 Appellant that he had concerns and that he would be looking into it. Dr. Stern asked Kathy
27 Smith, DOC’s Internal Audit Manager, to conduct an investigation. In addition to her role as
28 Internal Audit Manager, Ms. Smith was also DOC’s liaison with the Washington State Executive
29

1 Ethics Board. It was during Ms. Smith's investigation, that Appellant voluntarily disclosed
2 information about the other events he attended that were sponsored by the drug companies.
3

4 2.15 Ms. Smith met with Appellant on December 5, and 22, 2005. Appellant was cooperative
5 during the meetings with Ms. Smith. Appellant admitted that he attended the meetings and that
6 he received airfare, transportation, hotel fees, meals and money from Gilead and Boehringer
7 Ingleheim. He explained that the consultant meetings were attended by 20-25 physicians who
8 are experts in HIV and that the speaker's training meetings were attended by over 180 HIV
9 experts.
10

11
12 2.16 Appellant felt that his involvement in these meetings was not related to his position at
13 DOC and that they were educational and learning opportunities to enhance his development as a
14 leader in the field of HIV and Infectious Diseases. Appellant also felt that because the meetings
15 did not occur during his regular work hours, they were not work related.
16

17 2.17 Part of the information Appellant provided to Ms. Smith was the Speaker List included in
18 the Simply Speaking 2006 Speakers Bureau Program supported by Gilead. Appellant is
19 identified in the list as:
20

21 Aijaz Khurshid, MD
22 Director, Center of Excellence for HIV/AIDS
23 State of Washington, DOC
24 Medical Director
25 Stafford Creek Corrections Center
26 Aberdeen, WA
27

28 2.18 Appellant also provided Ms. Smith with a list of Participants for the Gilead HIV
29 Speakers Bureau. Appellant is identified in this list as:

30 M. Aijaz Khurshid, MD
31 Medical Director
32 Stafford Creek Corrections Center

1 Director, Center of Excellence for HIV/AIDS
2 Department of Corrections, Washington
3 Aberdeen, WA

4 2.19 Ms. Smith completed her investigation and provided her report to Dr. Stern. In summary,
5 Ms. Smith determined that:

- 6 • Appellant accepted \$6000 in compensation and \$3113 in travel expenses from
7 Gilead;
- 8 • He did not report his activities as required by DOC policy 850.025, Outside
9 Employment/Volunteer Activities;
- 10 • By prescribing drugs for inmates, he was in a position of authority to purchase
11 drugs;
- 12 • He participated in the P&T that developed DOC's draft formulary which included
13 drugs manufactured by Gilead;
- 14 • Because Appellant was in a position to purchase drugs manufactured by Gilead,
15 he was prohibited from accepting any compensation from Gilead; and
- 16 • Under state ethics laws, travel expenses are considered to be a gift. Under the
17 state ethics laws, employees of the State of Washington are prohibited from
18 accepting gifts greater than \$50 from a single source in a calendar year and under
19 DOC's policy 800.010, Ethics, employees may not accept gifts in any dollar
20 amount.

21 2.20 On December 20, 2005, Appellant attempted to resign from the P&T committee and
22 withdraw all of his recommendations about medications in general and specifically about Anti-
23 Retrovirals. He also suggested that an outside HIV specialist review the formulary before it was
24 signed off on by Dr. Stern. Dr. Stern did not accept Appellant's resignation from the committee.
25 Dr. Stern credibly testified that Appellant could not resign from the committee because it was
26 not a voluntary assignment. Rather, Appellant was assigned to serve on the committee as a
27 regular part of his duties as a physician and because of the expertise he brought to the committee.

28 2.21 DOC policy 850.025, Outside Employment/Volunteer Activities, allows employees to
29 hold outside employment provided, in part, that the employment does not conflict with the
provisions of RCW 42.52 which establishes a code of ethics for public officers and employees,
and provided that the outside employment is reported and approved.

1
2 2.22 DOC policy 800.010, Ethics, states in part, "Employees are to avoid actions that use, or
3 create the appearance of using their position for personal gain or private advantage for
4 themselves or another person." The policy also states, in part, "Employees shall not: . . . Have a
5 financial or other interest or engage in any business or professional activity that is in conflict
6 with their official duties. . . Receive any compensation from a source, except the state, for
7 performing or deferring the performance of any official duty. . . Accept any gifts."

8
9
10 2.23 The state ethics laws are found in Chapter 42.52 RCW Ethics in Public Service. RCW
11 42.51.010 defines compensation as, "anything of economic value, however designated, that is
12 paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in
13 consideration of, personal services to any person."

14
15 2.24 RCW 42.52.120(1) Compensation for outside activities, states, in relevant part, "[n]o . . .
16 state employee may receive any thing of economic value under any contract or grant outside of
17 his or her official duties. The prohibition in this subsection does not apply where . . . each of
18 the following conditions are met:

19
20 (a) The contract or grant is bona fide and actually performed;

21 (b) The performance or administration of the contract or grant is not within the
22 course of the officer's or employee's official duties, or is not under the officer's or
23 employee's official supervision;

24 (c) The performance of the contract or grant is not prohibited by RCW
25 42.52.040 or by applicable laws or rules governing outside employment for the
26 officer or employee;

27 (d) The contract or grant is neither performed for nor compensated by any
28 person from whom such officer or employee would be prohibited by RCW
29 42.52.150(4) from receiving a gift;

(e) The contract or grant is not one expressly created or authorized by the
officer or employee in his or her official capacity;

1 (f) The contract or grant would not require unauthorized disclosure of
2 confidential information.”

3
4 2.25 RCW 42.52.150(4) prohibits “Section (4)” employees from accepting meals offered on
5 an infrequent basis when attendance is related to official duties. Section 4 employees are
6 employees who participate in regulation or in the acquisition of goods and services. The state
7 Ethics Board’s Advisory Opinion 98.06 specifically states that state employed physicians
8 (Section 4 employees) cannot accept a meal paid for by a drug company.

9
10 2.26 RCW 41.52.010 defines honorarium as, "money or thing of value offered to a state
11 officer or state employee for a speech, appearance, article, or similar item or activity in
12 connection with the state officer's or state employee's official role.”

13
14
15 2.27 RCW 42.52.130 Honoraria, states, in part, “[n]o state officer or state employee may
16 receive honoraria unless specifically authorized by the agency where they serve as state officer
17 or state employee.”

18
19 2.28 The RCW 42.52.010 defines gifts as, “anything of economic value for which no
20 consideration is given.”

21
22 2.29 RCW 42.52.140 Gifts, states, “[n]o state officer or state employee may receive, accept,
23 take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or
24 favor from a person if it could be reasonably expected that the gift, gratuity, or favor would
25 influence the vote, action, or judgment of the officer or employee, or be considered as part of a
26 reward for action or inaction.”

1 2.30 RCW 42.52.150 Limitations on gifts, states, in relevant part, “[n]o state officer or state
2 employee may accept gifts . . . with an aggregate value in excess of fifty dollars from a single
3 source in a calendar year or a single gift from multiple sources with a value in excess of fifty
4 dollars.”

5
6 2.31 On January 23, 2006, Dr. Stern issued a pre-disciplinary letter to Appellant. The letter
7 provided Appellant an opportunity to respond to the allegations in the letter during a meeting on
8 January 31, 2006 or by providing a written response to the allegations by January 27, 2006.
9 Appellant did not receive a copy of the pre-disciplinary letter until January 30, 2006 and did not
10 have adequate time to prepare his response. As a result, the meeting was rescheduled to March
11 24, 2006. Appellant had from January 30, 2006 until March 24, 2006 to prepare his response.
12

13
14 2.32 During the pre-disciplinary meeting, Appellant told Dr. Stern that he had not attended the
15 conferences as a representative of DOC nor did he consider himself an employee of Gilead,
16 therefore, he did not feel a conflict of interest existed. Dr. Stern determined that because
17 Appellant signed the agreement with Gilead indicating that he was the medical director at SCCC,
18 Appellant created a direct connection between his position as a physician with DOC and his
19 relationship with Gilead. Dr. Stern also felt that because Appellant served on the P&T which
20 prepared the formulary of authorized drugs for DOC and which included drugs manufactured by
21 Gilead, Gilead had a customer/client relationship with DOC. In addition, Dr. Stern concluded
22 that the agreement between Appellant and Gilead indicated that Appellant would be acting in the
23 capacity of an independent contractor which created a conflict of interest between Appellant’s
24 employment as a physician with DOC and his membership with Gilead.
25
26

27 2.33 Appellant indicated that because he did not consider himself an employee of Gilead or
28 Boehringer Ingelheim, he did not think there was a need to report his activities on the Outside
29 Employment/Volunteer Activities form. Dr. Stern determined that because the compensation

1 Appellant received from Gilead and Boehringer Ingelheim was not authorized nor was Appellant
2 authorized to use state time or resources to prepare for the meetings, the compensation was for
3 outside activities and should have been reported as outside employment in accordance with DOC
4 policy.

5
6 2.34 Dr. Stern acknowledged that Appellant attempted to resign from the P&T committee and
7 that he ceased his continued involvement with Gilead when he learned that his participation had
8 been identified as a conflict of interest. During the hearing before the Board, Dr. Stern
9 acknowledged that throughout the time period of these incidents, Appellant followed national
10 medical guidelines and made every effort to make informed medical decision. However, Dr.
11 Stern still believed that Appellant's actions created an appearance of a conflict of interest.
12

13
14 2.35 Prior to determining the level of discipline to impose, Dr. Stern considered the
15 information Appellant provided, his past performance and his training history. Dr. Stern
16 concluded that Appellant's actions violated the RCW's and DOC policies and expectations. Dr.
17 Stern felt that Appellant failed to adhere to agency policies and directives and that his actions
18 created an appearance of a conflict of interest which could negatively impact the public's
19 perception of the agency. Dr. Stern felt that discipline with a financial impact was necessary in
20 order to impart to Appellant the severity of his misconduct, the seriousness of conflicts of
21 interest and the importance of maintaining the public's trust. After weighing the available levels
22 of discipline, Dr. Stern concluded that a three day suspension was appropriate because it would
23 demonstrate to Appellant the seriousness of his actions without adversely impacting the
24 department.
25

26
27 2.36 On July 14, 2006, Dr. Stern issued a disciplinary letter to Appellant notifying him of his
28 suspension effective August 1 through August 3, 2006. Appellant did not receive a copy of the
29 letter until July 25, 2006 which was less than fifteen days before the effective of the suspension.

1 WAC 357-40-035 requires notice of a suspension to be given no later than one day after the
2 suspension takes effect. However, DOC's practice is to provide fifteen days' notice of a
3 disciplinary action. Therefore, the July 14, 2006 letter was rescinded and was replaced with a
4 letter dated July 26, 2006. The July 26, 2006 letter imposed a suspension effective August 15,
5 2006 through August 17, 2006. Appellant received a copy of the July 26, 2006 letter on July 26,
6 2006.

7 8 9 **III. ARGUMENTS OF THE PARTIES**

10 3.1 Respondent asserts that by entering into the agreement with Gilead and accepting airfare,
11 transportation, meals and money from Gilead and Boehringer Ingelheim, Appellant placed
12 himself in a situation that might influence or appear to influence his official duties. Respondent
13 contends that the facts are not in dispute that Gilead and Boehringer Ingelheim manufacture
14 drugs, that Appellant is in a position to prescribe and recommend drugs, including those
15 manufactured by Gilead and Boehringer Ingelheim and that Appellant accepted airfare,
16 transportation, hotel fees, meals and money from Gilead and Boehringer Ingelheim. Respondent
17 asserts that Appellant's relationship with Gilead and Boehringer Ingelheim was a conflict of
18 interest. Respondent also asserts that the agreement between Gilead and Appellant was a
19 contract. Respondent argues that Appellant's actions violated the state ethics laws, were
20 contrary to the Ethics Board's Advisory Opinions and violated DOC policies and expectations.
21 Respondent contends that a three day suspension was the appropriate sanction.

22
23
24 3.2 Appellant argues that DOC misinterpreted and misapplied the WACs and RCWs and that
25 the disciplinary sanction was not warranted. Appellant asserts that DOC failed to follow their
26 policies and procedures and failed to consider a lower level of punishment as allowed by WAC
27 357-40-015. Appellant argues that he voluntarily provided the information about his relationship
28 with Gilead and Boehringer Ingelheim and that this information was used against him as a basis
29 for the discipline. Appellant contends that his attendance at the events in question benefited

1 DOC because it furthered his learning and education in the fields of HIV and Infectious
2 Diseases. Appellant asserts that he did not participate in the events as a representative of DOC
3 or in his capacity as a DOC physician and that neither his participation nor the agreement he
4 signed with Gilead obligated him to purchase or recommend any Gilead product. Appellant
5 contends that the airfare, transportation, hotel fees, meals and money he received from Gilead
6 and Boehringer Ingelheim was not outside compensation and did not fall under the category of a
7 contract or grant prohibited by the state ethics laws. Appellant also contends that he resigned
8 from the P&T before the DOC formulary was finalized and approved and that regardless of his
9 participation as a member of the committee, Dr. Stern was the final approving authority and the
10 inclusion of Gilead's HIV medications was a decision made by Dr. Stern. Appellant argues that
11 disciplinary action was not warranted and that the letter of suspension should be removed from
12 his file.
13

14 15 **IV. CONCLUSIONS OF LAW**

16 4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.
17

18 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
19 the charges upon which the action was initiated by proving by a preponderance of the credible
20 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
21 sanction was appropriate under the facts and circumstances. WAC 357-52-110.
22

23
24 4.3 Respondent has met its burden of proof. As a Physician employed by DOC at SCCC,
25 Appellant has a responsibility to comply with DOC policies and expectations. As an employee
26 of the State of Washington, Appellant has a responsibility to comply with state laws and the high
27 standard of ethics expected of employees. Appellant's behavior violated DOC policies and was
28 contrary to ethical expectations for state employees.
29

1 4.4 Considering that Appellant's ability to prescribe drugs manufactured by Gilead and
2 Boehringer Ingelheim causes the purchase of the drugs, his acceptance of airfare, transportation,
3 hotel fees, meals and money from these companies was inappropriate. Regardless of whether the
4 airfare, transportation, hotel fees, meals and money are called a gift, compensation or
5 honorarium, Appellant's acceptance of these items was in violation of state ethics laws and
6 DOC policy.
7

8
9 4.5 Furthermore, as evidenced by his actions in regard to Harbor Infectious Diseases, Inc.,
10 Appellant was aware of his obligation to seek approval before engaging in outside employment
11 or volunteer activities. However, he did not seek approval to engage in outside employment or
12 volunteer activities with Gilead and Boehringer Ingelheim as required by DOC policy.
13

14 4.6 Respondent followed the applicable rules and regulations in investigating Appellant's
15 actions and imposing the disciplinary sanction. Appellant argues that Respondent violated WAC
16 357-40-015 when it did not issue him a lesser form of discipline. WAC 357-40-015 is
17 permissive and does not obligate DOC to issue a lesser form of discipline than those contained in
18 the merit system rules. Furthermore, Respondent corrected any administrative oversights in the
19 disciplinary process prior to conducting the pre-disciplinary meeting and issuing the final
20 disciplinary letter. Appellant was provided ample time to respond to the allegations in the pre-
21 disciplinary letter and was provided adequate notice of his suspension.
22
23

24 4.7 Under the proven facts and circumstances and considering Appellant's knowledge of DOC
25 policies and ethically expectations, a three-day suspension was a minimal sanction and the appeal
26 should be denied.
27

28 **V. ORDER**

1 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Muhammad Khurshid is
2 denied.

3 DATED this _____ day of _____, 2007.
4

5 WASHINGTON PERSONNEL RESOURCES BOARD
6

7 _____
8 MARSHA TADANO LONG, Chair
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10 _____
11 LARRY GOODMAN, Vice Chair
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