



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Lisa Cooper**, Former Executive Director, Board of Massage Therapy, State of Nevada,

Ethics Complaint
Case No. 18-005C

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Ethics Complaint Case No. 18-005C (“Complaint”) before the Nevada Commission on Ethics (“Commission”) concerning Lisa Cooper (“Cooper”), the former Executive Director for the Board of Massage Therapy (“Board”) in the State of Nevada.

2. **JURISDICTION:** At all material times, Cooper was a public officer as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Cooper in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about February 2, 2018, the Commission received this Complaint from a member of the public (“Requester”), alleging that Cooper used her public position to receive additional unauthorized annual leave and compensation in violation of NRS 281A.400(1) and (2).
- b. On March 22, 2018, the Commission issued its *Order on Jurisdiction and Investigation* and directed the Executive Director to investigate this matter.
- c. On March 22, 2018, the Executive Director issued a *Notice of Complaint and Investigation* pursuant to NRS 281A.720 and Cooper was provided an opportunity to provide a written response to the Complaint.

- d. On November 2, 2018, in lieu of submitting a written response, Cooper and her legal counsel, Lyn Beggs, Esq., elected to meet with Commission staff to provide an oral response.
- e. On March 14, 2019, the Executive Director presented a recommendation relating to just and sufficient cause to a three-member review panel pursuant to NRS 281A.720.
- f. In a Panel Determination issued on March 20, 2019, the Panel unanimously found and concluded that:
 - 1) Credible evidence supported just and sufficient cause for the Commission to render an opinion in the matter regarding the alleged violations of NRS 281A.400(1) and (2) related to Cooper's use of her public position to receive additional unauthorized annual leave and compensation; and
 - 2) The matter should be referred to the Commission for further proceedings.
- g. In lieu of an adjudicatory hearing before the Commission, Cooper now enters into this Stipulated Agreement.

4. **STIPULATED FACTS:** At all material times, the following facts were relevant to this matter:¹

- a. Cooper was appointed as the Executive Director of the Board on or about September 25, 2006 and remained in that position until March 2016.
- b. The Board was created in 2005 as the licensing and regulatory agency for the practice of massage therapy in Nevada. NRS Chapter 640C specifies the authorized activities of the Board.
- c. The Board consists of nine voting members, including eight massage therapy practitioners and a representative of the public, and one nonvoting advisory member appointed by the Governor. The nonvoting advisory member must be a resident of Clark County, certified by P.O.S.T., and a current or former police officer with the Las Vegas Metropolitan Police Department.

¹ Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.755. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- d. Pursuant to NRS 284.013(1), the Board's staff is not subject to the terms and conditions of employment outlined in NRS Chapter 284 and applicable to persons within the State Personnel System. The terms and conditions of employment applicable to Board staff, including salaries and leaves of absence, must be fixed by the Board, which is the appointing or employing authority. See NRS 284.013(2).
- e. The Board approved Cooper's starting salary of \$58,488 and subsequently authorized raises for Cooper in 2007 (\$67,272), 2008 (\$80,000) and 2013 (\$92,000).
- f. Pursuant to NRS 353.005, the Board is excluded from the State Budget Act and the associated provisions governing the administration of state funding. Accordingly, the State's Department of Administration does not provide oversight of the Board's annual budgeting and accounting practices and procedures.
- g. The Board's fiscal records are audited annually by an outside accountant and a report of the audit is submitted to the Legislative Auditor and the Chief of the Budget Division of the Office of Finance on or before December 1 following the end of each fiscal year. NRS 218G.400.
- h. Pursuant to NRS 640C.200, the Board employs an Executive Director to serve as the chief administrative officer of the Board at a level of compensation set by the Board.
- i. Board staff is paid bimonthly and receives a paycheck on the 15th and the last day of every month, for a total of 24 paychecks per year. Board paychecks are processed at the Board office through Quickbooks and paychecks get issued to Board staff by the Executive Director without any Board approval or oversight.
- j. During her tenure as Executive Director, Cooper was solely responsible for payroll administration and the retention of all payroll records.
- k. Sandra Anderson ("Anderson") is the current Board Executive Director and has served in the position since 2016.

- I. Anderson was notified in an October 10, 2017 letter from the Governor's Finance Office that an audit of the Board was being conducted ("Governor's Audit"). The October 2017 letter included a request for information about the salary history for the Board's Executive Director and other staff members for fiscal years 2014-2017.
- m. While reviewing and collecting the information requested for the Governor's Audit, Anderson discovered that Cooper had paid herself 10 extra paychecks between 2011 and 2014, resulting in total net compensation of \$29,907.73 and the payout of 244 hours of accrued, unused annual leave and 324 hours of sick leave. The annual breakdown of extra paychecks received was as follows:

PAY DATE	GROSS PAY	NET PAY	LEAVE PAID OUT EARLY	LEAVE PAYOUT ENTITLED TO AT TERMINATION ²
09/28/11	\$3,333.33	\$2,749.00	44 hours sick 44 hours annual	22 hours sick (\$687.25) 44 hours annual (\$1374.56)
01/31/12	\$3,333.33	\$2,753.00	None	NA
11/21/12	\$3,333.33	\$2,817.00	80 hours sick	40 hours sick (\$1408.50)
01/09/13	\$3,333.33	\$2,817.00	None	NA
07/11/13	\$3,333.33	\$2,824.00	40 hours sick 40 hours annual	20 hours sick (\$706.00) 40 hours annual (\$1412.00)
09/19/13	\$3,833.33	\$3,194.75	40 hours sick 40 hours annual	20 hours sick (\$798.70) 40 hours annual (\$1597.40)
11/21/13	\$3,833.33	\$3,194.74	40 hours sick 40 hours annual	20 hours sick (\$798.70) 40 hours annual (\$1597.40)
01/02/14	\$3,833.33	\$3,202.75	None	NA
03/26/14	\$3,833.33	\$3,202.75	40 hours sick 40 hours annual	20 hours sick (\$800.70) 40 hours annual (\$1601.40)
07/10/14	\$3,833.33	\$3,152.74	40 hours sick 40 hours annual	20 hours sick (\$788.18) 40 hours annual (\$1576.35)
TOTAL	\$35,833.33	\$29,907.73	324 hours sick 244 hours annual	162 hours sick leave plus 244 hours annual leave \$15,147 total

² As further described in paragraph 4.aa, the Board agreed to pay out all of Cooper's accrued unused annual leave and half of her accrued unused sick time upon her termination.

- n. Cooper's extra paychecks resulted in her receiving annual compensation that exceeded the annual gross compensation levels approved by the Board between 2011 and 2014, as follows:

	Board Approved	Actual
2011	\$80,000	\$83,333
2012	\$80,000	\$86,667
2013	\$86,000 ³	\$99,833
2014	\$92,000	\$103,500

- o. Cooper did not obtain Board approval before she issued the extra paychecks to herself. Additionally, Cooper did not notify any individual Board member or the Board's legal counsel that she was doing so.
- p. The extra paychecks received by Cooper were not noticed by Board members because only lump sum payroll numbers were reflected in the financial records that Cooper prepared and shared with the Board.
- q. Cooper characterizes the extra paychecks as appropriate "payouts" of accrued and unused annual and/or sick leave, paid in lieu of time off. However, the extra paychecks dated 09/28/11, 01/09/13 and 01/02/14 indicate that no annual or sick leave was being paid out to Cooper.
- r. No existing Board records or written policies exist authorizing the payout of unused annual or sick leave during employment.
- s. No other Board staff members were permitted to receive payouts of accrued unused leave, in lieu of taking time off, during their employment with the Board.
- t. The Board's annual financial reports that were prepared by an independent auditor and submitted to the Legislative Auditor were based upon annual budgets prepared by the Board's Executive Director and reviewed by the Board and complete QuickBooks files for each year subject to an audit. The Board did not review the complete QuickBooks files provided to the auditor at the time of Board meetings, but rather reviewed financial statements prepared by the Board's Executive Director. None of the information contained in the financial statements provided to the Board was specific enough to reveal the extra

³ On July 12, 2013, the Board approved a salary increase for Cooper and her annual salary increased from \$80,000 to \$92,000. With the salary increase effective during the second half of 2013, Cooper's total annual compensation should have equaled approximately \$86,000.

- paychecks received by Cooper as purported leave payouts. Only general totals for “Personnel” and “Salaries” were provided. However, the independent auditor did have access to more detailed records.
- u. Budget documents prepared by Cooper for the Board’s review failed to report Cooper’s purported annual and sick pay buy-outs during fiscal years 2012, 2013, 2014 and 2015.
 - v. Before 2016, the Board did not have any written policies or procedures in place to govern the terms and conditions of employment for Board staff.
 - w. The Board Employee Manual dated April 2016 reflected the Board’s existing practice and policy regarding annual leave accrual - employees with less than 10 years of continuous service earn 10 hours of annual leave per month (5 hours per pay period). After 10 years of continuous service, employees earn 12 hours of annual leave per month; 14 hours of annual leave per month are earned after 15 years of service.
 - x. The Board Employee Manual permits payment of unused accrued annual leave upon termination if the employee has worked at least six months. Payout of unused accrued sick leave is not permitted.
 - y. Cooper was accruing 8 hours of annual leave per month (4 hours per pay period) between 2011 and 2014. However, she increased her annual leave accrual to 14 hours per month (7 hours per pay period), beginning with her paycheck dated March 14, 2014. As a result, Cooper accumulated over 100 hours of annual leave, worth approximately \$5,263 (net) that she was not entitled to, as calculated by the Board.
 - z. Cooper did not obtain Board approval before she increased her vacation accrual. Additionally, Cooper did not notify any individual Board member or the Board’s legal counsel that she was doing so.
 - aa. During a December 31, 2015 public meeting of the Board, the Board unanimously accepted Cooper’s resignation as Executive Director and agreed to pay out all of Cooper’s accrued unused annual leave and half of her accrued unused sick time upon her termination. As a result, Cooper received a net

amount of \$24,702.46 for her accrued unused annual and sick leave in March 2016.

bb. Had she not received the unauthorized payouts of 244 hours of annual leave and 324 hours of sick leave during her employment, Cooper would have been entitled to an additional net amount of approximately \$15,147 upon termination.

5. TERMS / CONCLUSIONS OF LAW: Based on the foregoing, Cooper and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.
- b. Cooper was a public officer, which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada.
- c. As a former public officer, Cooper should not have sought or accepted any gift, service, favor, emolument or economic opportunity which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties (NRS 281A.400(1)). Cooper also should not have used her public position to secure unwarranted privileges, preferences, exemptions or advantages for herself (NRS 281A.400(2)). The Commission considers whether an action is unwarranted pursuant to NRS 281A.400(2) if the action was contrary to statute or otherwise against written policies that are applicable to the public officer.
- d. Cooper violated NRS 281A.400(1) because the receipt of unauthorized compensation and leave accrual was not consistent with Cooper's responsibility to carry out the faithful and impartial discharge of her public duties as the Executive Director of the Board.
- e. Cooper secured unwarranted privileges or advantages for herself, in violation of NRS 281A.400(2), because the Board did not have a policy, custom or practice of providing payouts of annual or sick leave during employment and Cooper used her position to issue additional checks to herself and increase her accrual of annual leave without obtaining Board approval to receive additional compensation or annual leave.

- f. Cooper's actions constitute a single course of conduct resulting in one violation of the Ethics Law, implicating the provisions of NRS 281A.400(1) and (2) as interpreted and applied in accordance with the provisions of NRS 281A.020.
- g. Cooper's violation was willful pursuant to NRS 281A.170 because she acted intentionally and knowingly, as those terms are defined in NRS 281A.105 and 281A.115, respectively.
- h. For an act to be intentional, NRS 281A.105 does not require that Cooper acted in bad faith, or with ill will, evil intent or malice. However, Cooper acted in reckless disregard of the Ethics Law when she voluntarily or deliberately caused extra paychecks to be issued to herself and increased her vacation accrual without Board approval. See *In re McNair*, Comm'n Op. Nos. 10-105C, 10-106C, 10-108C, 10-109C and 10-110C (2011) ("the relevant inquiry regarding willful misconduct is an inquiry into the intentional nature of the actor's conduct . . . The fact that an actor may have acted with the best of intentions does not relieve the actor of liability.") (citation omitted).
- i. NRS 281A.115 defines "knowingly" as "import[ing] a knowledge that the facts exist which constitute the act or omission." NRS Chapter 281A does not require that Cooper had actual knowledge that his conduct violated the Ethics Law, but it does impose constructive knowledge when other facts are present that should put an ordinarily prudent person upon inquiry. See *In re Stark*, Comm'n Op. No. 10-48C (2010). Even if Cooper was deemed to have no actual knowledge that her conduct would violate the provisions of NRS 281A, Cooper's career in public service should have made her aware of the statutes and regulations governing public officers.
- j. Pursuant to the factors set forth in NRS 281A.775 in determining whether a violation is willful and the penalty to be imposed, the Commission has considered the following factors:
 - 1) Cooper has not previously violated the Ethics Law.
 - 2) Cooper has been diligent to cooperate with and participate in the Commission's investigation and resolution of this matter.

- k. However, these mitigating factors are offset by the seriousness of Cooper's conduct when measured against the public's trust that public officers will not use their public position or influence to acquire economic opportunities or advantages for themselves that are not available to the general public.
- l. For the willful violation, Cooper will pay a civil penalty of \$5,000.00 pursuant to NRS 281A.790(1)(a). Pursuant to NRS 281A.790(3), Cooper will pay an additional civil penalty in the amount of \$20,023.00, which penalty is described in the chart below and equals the financial benefit realized by Cooper. The total \$25,023.00 penalty may be paid in one lump sum or in monthly installment payments, as arranged with the Commission's Executive Director, with final payment due not later than June 30, 2021.

\$29,907.00	Total net pay received from 10 unauthorized extra paychecks (paragraph 4.m)
<u>minus</u> \$15,147.00	244 hours of accrued annual leave and half (162 hours) of accrued sick leave that would have been paid to Subject upon termination if she did not receive the unauthorized extra paychecks (see 5 th column in paragraph 4.m)
= \$14,760.00	Total financial benefit realized by Subject from extra paychecks
<u>plus</u> \$5,263.00	Value of over 100 hours of unauthorized accrued annual leave that was paid to Subject upon termination (paragraph 4.y)
= \$20,023.00	Total financial benefit realized by Subject for purposes of additional civil penalty (NRS 281A.790(3))

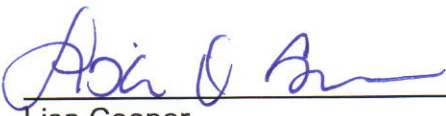
- m. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to the Ethics Complaint now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- n. This Agreement is intended to apply to and resolve only this Ethics Complaint and is not intended to be applicable to or create any admission of liability for

any other proceeding, including administrative, civil, or criminal regarding Cooper. If the Commission rejects this Stipulated Agreement, none of the provisions herein shall be considered by the Commission or be admissible as evidence in a hearing on the merits in this matter.

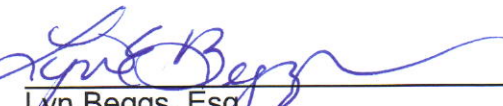
6. WAIVER

- a. Cooper knowingly and voluntarily waives her right to a hearing before the full Commission on the allegations in Ethics Complaint Case No. 18-005C and all rights she may be accorded with regard to this matter pursuant to the Ethics Law (NRS Chapter 281A), the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.
- b. Cooper knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other applicable provisions of law.

7. ACCEPTANCE: We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on May 22, 2019.⁴

DATED this 29 day of May, 2019. 
Lisa Cooper

FOR LISA COOPER,
Subject

DATED this 29 day of May, 2019. 
Lyn Beggs, Esq.
Counsel for Subject

⁴ Subject waived any right to receive written notice pursuant to NRS 241.033 of the time and place of the Commission's meeting to consider his character, alleged misconduct, professional competence, or physical or mental health.

The above Stipulated Agreement is approved by:

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.
Executive Director, Commission on Ethics

DATED this 29th day of May, 2019.

Judy A. Prutzman
Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 29th day of May, 2019.

/s/ Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the majority of the Commission.⁵

DATED May 29, 2019.

By: ABSENT
Keith A. Weaver, Esq.
Vice-Chair

By: /s/ Kim Wallin
Kim Wallin, CPA
Commissioner

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Amanda Yen
Amanda Yen, Esq.
Commissioner

By: /s/ Philip K. O'Neill
Philip K. O'Neill
Commissioner

⁵ Chair Lau and Commissioners Duffrin and Lowry participated in the Review Panel hearing and are therefore precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220(4).