

BEFORE THE PERSONNEL RESOURCES BOARD  
STATE OF WASHINGTON

HUONG MAI,

Appellant,

v.

HEALTH CARE AUTHORITY,

Respondent.

Case No. R-DISM-16-001

FINDINGS, CONCLUSIONS AND  
ORDER OF THE BOARD

**INTRODUCTION**

**Hearing.** This matter came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair, and SUSAN MILLER, Vice Chair. The hearing was held on September 7, 2016, in the Personnel Resources Board hearing room in Olympia, Washington. Appellant and Respondent submitted written closing arguments on September 30, 2016.

**Appearances.** Appellant Huong Mai was present and represented by Krysta Liveris, Attorney at Law. Jenny Sheehan, Assistant Attorney General, represented the Respondent, Health Care Authority (HCA).

**Nature of Appeal.** This is an appeal of a dismissal. Respondent alleges that Appellant was terminated for disclosing confidential information on numerous occasions to someone unauthorized to receive the information.

**WITNESSES**

**For Respondent.** Huong Mia, Appellant; Preston Cody, HCA Assistant Director; Steve Dotson, HCA Enterprise Risk Manager.

**For Appellant.** Kerri Kallay, HCA HR Operations Supervisor; Preston Cody, HCA Assistant Director; Steve Dotson, HCA Enterprise Risk Manager.

1  
2 **FINDINGS**

3 Appellant Huong Mai was a permanent employee for Respondent HCA. Appellant and  
4 Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder, Title 357  
5 WAC. Appellant filed a timely appeal with the Personnel Resources Board on January 29, 2016.

6  
7 Appellant began her employment with the State of Washington in 1994. Appellant had been  
8 employed with HCA since 2010. At the time of her dismissal, Appellant was a Medical  
9 Assistance Specialist 4 in the Medicaid Monitoring Unit, part of the Health Services Division.

10 Prior to the action giving rise to appeal, Appellant received no disciplinary actions or reprimands.

11  
12 On October 5, 2009, Appellant signed the DSHS Nondisclosure of Confidential Information  
13 form.

14  
15 On October 5, 2009, Appellant signed the DSHS Employee Annual Review Checklist  
16 (statements that mirror those in HCA), verifying she reviewed the DSHS policies regarding  
17 standards of ethical conduct for Employees and nondisclosure of confidential information.

18  
19 On July 9, 2015, Appellant completed the HCA Health Insurance Portability and Accountability  
20 Act (HIPAA) course through the Learning Management System (LMS). The course covered  
21 HIPAA regulations, protected health information (PHI), disclosure of PHI and potential HIPAA  
22 breach sanctions.

23  
24 On August 18, 2015, Appellant completed the Washington State Ethics in State Government  
25 training through the LMS.

26  
27 Kerri Kallay, Operations Supervisor, HCA HR, conducted an investigation into the allegations  
28 that Appellant violated confidentiality and privacy rules on multiple occasions; inappropriately  
29

1 accessed eligibility information for a friend or family member and distributed the information  
2 without authorization; and failed to act with honesty by claiming the work of a family member  
3 was her own.

4  
5 A pre-disciplinary meeting was held with Appellant on January 19, 2016. Those in attendance  
6 were Appellant; Preston Cody, Assistant Director, Medicaid Operations; Ms. Kallay, HCA  
7 Human Resources Operations Supervisor; and Christopher Coker, Attorney at Law. Appellant  
8 provided a written response to the Notice of Intent to Discipline. In her response, Appellant  
9 stated she agreed with the factual matters of the case and had nothing further to add.

10  
11 As a result of the investigation, Mr. Cody found Appellant violated HCA's Administrative Policy  
12 No. 1-02, *Privacy and Compliance with HIPAA*; and Policy No. 1-16, *Ethics: Conflict of*  
13 *Interest, Post-State Employment, and Obtaining Ethics Advice*. Mr. Cody found Appellant  
14 disclosed confidential client information without authorization as follows:

- 15  
16 • December 19, 2014: Appellant e-mailed an Excel document to her brother, Khoi Mai, an  
17 Information Technology (IT) staff member at DSHS, containing confidential information  
18 on 804 clients.
- 19 • On January 13, 2015, Appellant e-mailed a text document to Mr. Mai containing  
20 confidential information on 44,266 clients.
- 21 • On February 5, 2015, Appellant e-mailed an Excel document to Mr. Mai containing  
22 confidential information on 454 clients.
- 23 • On May 14, 2015, Appellant e-mailed an Excel document to Mr. Mai containing  
24 confidential information on 6,496 clients.
- 25 • On May 19, 2015, Appellant e-mailed an Excel document to Mr. Mai two separate times  
26 containing confidential information on the same 6,496 clients she emailed on May 14,  
27 2015. She also sent Mr. Mai a separate Excel document that contained confidential  
28 information on 35 of the same clients included in the other documents.

- 1 • On June 22, 2015, Appellant e-mailed two Excel documents to Mr. Mai containing  
2 confidential information on 5,791 clients, which included diagnosis codes for specific  
3 clients. Appellant also emailed him a separate document that contained diagnosis code  
4 descriptions.
- 5 • On October 9, 2015, Appellant e-mailed an Excel document to Mr. Mai containing  
6 confidential information on 506 clients.
- 7 • On October 12, 2015, Appellant emailed an Excel document to Mr. Mai containing  
8 confidential information on 11,575 clients.
- 9 • On October 22, 2015, Appellant emailed an Excel document to Mr. Mai containing  
10 confidential information on 10,754 clients.
- 11 • On October 29, 2015, Appellant e-mailed an Excel document to Mr. Mai containing  
12 confidential information on 200 clients.
- 13 • On January 7, 2015, Appellant inappropriately accessed and released confidential client  
14 information for a family member without authorization. This included a social security  
15 number, address, date of birth and client identification number.
- 16 • On August 31, 2015, Appellant accessed ACES and looked up information about her  
17 uncle, then emailed the information to Mr. Mai. The information included a client  
18 identification number and instructions for appealing an eligibility decision.
- 19 • On October 15, 2015, Appellant accessed ACES and looked up information about a  
20 family member, then emailed the information to Mr. Mai. The information sent included  
21 the client name, excerpts of case worker notes regarding eligibility and benefit amounts,  
22 and Appellant's recommendations about contacting the case worker to appeal the  
23 eligibility decision.

24  
25 By letter dated January 25, 2016, Preston Cody, Assistant Director, Health Care Services,  
26 notified Appellant of her dismissal. Mr. Cody alleged that Appellant:

- 27  
28 1. Disclosed confidential information on numerous occasions to someone not authorized to  
29 receive information.

2. Accessed confidential client information for family members without authorization.
3. Misrepresented her technical abilities by submitting her brother's work as her own.

## ARGUMENTS OF THE PARTIES

**Summary of Appellant's Arguments.** Appellant asserts her termination was unjust. Appellant contends that, given her unblemished disciplinary record and stellar performance reviews, HCA should have given her an opportunity to improve, rather than terminate her.

Appellant maintains she had no personal motive or benefit for receiving scripts from Mr. Mai on PHI from Provider One. Rather, she was looking for a more streamlined way to do her job. Appellant states that downloads from Provider One to Excel are limited in size. Appellant further states she had to cut and paste from Provider One into Excel, which took a good deal of time and resulted in a high margin of error. Appellant asserts she wanted a better way to do her job so asked the HCA IT unit for a solution, but they were unable to help her. With no help from HCA IT, she looked to her brother, Mr. Mai at DSHS, to help her streamline transfers from Provider One to Excel. Appellant states she sent Mr. Mai reports with a large amount of data and when Mr. Mai sent back the script for each report, she copied and pasted the reports into a new email and sent them to her co-workers.

Appellant asserts she was told through training, verbatim, that "HCA is not required to obtain patient authorization to release PHI to DSHS for HCA's general administrative activities, health care administration or [when] performing quality assessment and improvement activities." For these reasons Appellant argues she released PHI to Mr. Mai at DSHS in compliance with HCA's training. Appellant contends she never received or reviewed the HCA policies that provided the basis for her termination and that she was unaware of the policies she violated.

Knowing Mr. Mai was an ITS/AS 6 at DSHS, Appellant asserts she was allowed to disclose medical information to him. Appellant further asserts that because DSHS was a business

1 associate and a covered entity under the HIPAA law, she acted in conformity with her training  
2 when she disclosed PHI to a DSHS employee. Appellant testified that as an employee of HCA,  
3 on a daily basis, she witnessed HCA and DSHS employees meet personally, speak on the phone,  
4 exchange emails, and share information. Ms. Mai states she reasonably believed that a DSHS  
5 employee would be considered a business associate of HCA.

6  
7 Appellant contends and exhibits show that several employees were disciplined less severely and  
8 further contends she was given a harsher punishment compared to other disciplined staff.

9  
10 **Summary of Respondent's Arguments.** Respondent asserts Appellant's blatant disregard of the  
11 HIPAA policy made her unqualified to retain a position with HCA, thus justifying her termination.  
12 HCA is accountable to secure health information for approximately 2.2 million people and sending  
13 PHI to Appellant's brother put HCA's clients at risk.

14  
15 Respondent argues that Appellant knew the consequences of sharing unauthorized PHI. Appellant  
16 completed training containing information about potential costs and penalties to HCA. The training  
17 also explained that discipline to employees who divulge PHI could result in termination of  
18 employment.

19  
20 Respondent contends Appellant was taking credit for her brother's work. Rather than tell staff the  
21 scripts were written by Mr. Mai, she sent emails containing the reports her brother helped her with  
22 and did not tell co-workers her brother wrote the scripts. In her Performance Development Plan  
23 (PDP), she was credited for "developing a spreadsheet to make collecting data easier." In her PDP  
24 she expressed interest in pursuing computer programming opportunities and was encouraged to talk  
25 with HR about computer programming training opportunities. Her co-workers and her direct  
26 supervisor believed she was writing the scripts to automate data collection. Although she did not  
27 say, "look at this script I wrote," by not saying "here is the script my brother wrote," she was taking  
28 credit for his work through omission.

1  
2 Respondent disagrees with Appellant that she was following the HCA’s training by divulging PHI  
3 to Mr. Mai and DSHS. Some of the training Appellant received was HIPAA training online on  
4 April 29, 2014, and July 9, 2015. Respondent maintains that HCA policies are contained on the  
5 agency website accessible to all staff. Her PDP expectations signed on August 6, 2015, and  
6 September 8, 2015, state the following regarding her key competencies: “Knowledge of state and  
7 federal laws, policies, regulations and procedures on Medicaid and healthcare both within and  
8 outside the Health Care Authority.”

9  
10 Respondent contends the on-line training contains a slide that defines a “business associate” as a  
11 contracted document shredding service, a transcription vendor, or anyone who uses PHI to perform  
12 a function for HCA. The investigations by HCA revealed that Mr. Mai lacked authorization to  
13 receive the information sent to him by Appellant. He worked as an ITS/AS 6 for DSHS. His job  
14 duties at DSHS did not require involvement with HCA, therefore he was not using PHI to perform  
15 a function for HCA. During the hearing, Appellant could not identify functions Mr. Mai performed  
16 for HCA. Respondent asserts Appellant did not speak with the Privacy Officer to determine if her  
17 brother was designated as a business associate and at the hearing she could not explain why she  
18 thought Mr. Mai met the definition of a “business associate.” Regarding Ms. Mai’s statement about  
19 DSHS employees conversing with HCA staff on a regular basis, Respondent contends it is not  
20 unusual for employees of state agencies to engage in phone conversations or meetings together. But  
21 that does not elevate them to a position where they can share confidential information with each  
22 other.

23  
24 Respondent asserts that if Appellant believed she could share PHI with Mr. Mai because he was an  
25 employee of DSHS, that reasoning would enable her to share PHI with any employee at DSHS,  
26 whether it be custodial staff, administrative staff or security guards.

1 Respondent contends the actions of other employees receiving less severe discipline does not  
2 compare to the actions of Appellant. Therefore, her discipline of termination compared to  
3 discipline of other employees is irrelevant.

#### 4 5 **BOARD DECISION**

6 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

7  
8 In a hearing of an appeal for a dismissal, Respondent has the burden of supporting the charges upon  
9 which the action was initiated by proving by a preponderance of the credible evidence that  
10 Appellant committed the offenses set forth in the disciplinary letter and that the sanction was  
11 appropriate under the facts and circumstances (WAC 357-52-110).

12  
13 When considering whether there was just cause for a disciplinary action, we consider factors such  
14 as whether the employee was aware of the expectations, rules, or policies allegedly violated,  
15 whether the employee was aware of the need to comply with the rule or policy or to improve  
16 performance, whether the employee had an opportunity to demonstrate compliance or  
17 improvement, whether the discipline was imposed for good reason, whether the disciplinary process  
18 and procedures followed were appropriate and whether the sanction imposed was sufficient to  
19 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
20 program.

21  
22 Appellant was aware of the expectations, rules and policies she violated. Appellant completed  
23 multiple trainings and signed documents indicating she was fully aware of HIPAA laws,  
24 Washington State ethics and nondisclosure of confidential information. Appellant was fully trained  
25 to know that her brother, a DSHS employee in IT, was not authorized to receive protected health  
26 information from HCA.

27  
28 Appellant's failure to maintain HCA client information interfered with HCA's ability to keep  
29 sensitive information confidential. Appellant disclosed confidential information on approximately



1 140,000 total clients, in several emails to Mr. Mai, clearly bypassing HIPAA laws and Washington  
2 State ethics laws. Therefore, the Board finds the acts of sharing confidential information for the  
3 purpose of streamlining data processes, while concealing Mr. Mai's role in the process, was a  
4 flagrant disregard of the laws and policies for which Appellant was trained and which are intended  
5 to protect clients. Clients of HCA expected their information to remain confidential, as HCA  
6 guaranteed. These acts were an injustice to the clients and a breach of their HIPPA rights.

7  
8 In determining whether a sanction imposed is appropriate, consideration must be given to the facts  
9 and circumstances, including the seriousness and circumstances of the offenses. The penalty should  
10 not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent  
11 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.  
12 The Board finds that the volume of confidential information illegally shared on multiple occasions  
13 was severe enough to warrant termination and is sufficient to prevent recurrence, to deter others  
14 from similar misconduct, and to maintain the integrity of the program.

15  
16 The Board and its predecessor, the Personnel Appeals Board, have previously ruled on relevant  
17 cases, some of which include:

- 18
- 19 • *McCurdy vs. Department of Social and Health Services*, PAB No. D86-119 (1987).
- 20 • *Skaalheim vs. Department of Social and Health Services* PAB No. D93-053 (1994).
- 21 • *Doreen White vs. Washington State Patrol*, Case No. R-DISM-05-0012 (2005).
- 22

23 Respondent has met the burden proof and established just cause for Appellant's termination.  
24  
25  
26  
27  
28  
29

**ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Huong Mai is denied and the termination by the Health Care Authority is upheld.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.

WASHINGTON PERSONNEL RESOURCES BOARD

\_\_\_\_\_  
NANCY HOLLAND YOUNG, Chair

\_\_\_\_\_  
SUSAN MILLER, Vice Chair