

Legislative Ethics Board

BOARD MEMBERS:
SHONTRANA GATES-WERTMAN
SEN. CHRIS GILDON
REP. DAVID HACKNEY
TOM HOEMANN
LARRY HOFF
STEVE O'BAN
SEN. JAMIE PEDERSEN
PAM TAJIMA PRAEGER
REP. MIKE STEELE



1007 WASHINGTON ST. SE
OLYMPIA, WA 98501
360-786-7343
www.leg.wa.gov/leb
JENNIFER STRUS - COUNSEL
Jennifer.Strus@leg.wa.gov

COMPLAINT 2023 – No. 9

In re Macri

July 28, 2023

REASONABLE CAUSE FINDING & ORDER

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent has violated the Ethics Act by her membership on the Board of Directors of the non-profit organization, Alliance for a Healthy Washington, which has a registered lobbyist.

II. JURISDICTION

The Board has personal and subject matter jurisdiction. RCW 42.52.320.

III. PROCEDURAL HISTORY

Complaint 2023 – No. 9 was received on April 24, 2023 and discussed at the Board's regularly scheduled meeting on July 10, 2023.

IV. FINDINGS OF FACT

1. Respondent is a member of the House of Representatives representing the 43rd Legislative District. She has been a member of the House since 2016.
2. Respondent has served on the AHW Board of Directors since January 2019. She is not paid for her position as a member of the Board. AHW board members are not expected to fund raise for the organization.
3. AHW is a 501(c)(4) non-partisan, non-profit advocacy organization for health care system reform in Washington State. It receives its funding from private donations, either from member organizations or from individual members. The last time AHW did fundraising, which was in 2021, it raised about \$50,000. Most of that has not been spent as the organization has no staff.
4. According to its website, AHW, during the 2019 session, "took the lead on advocacy in winning the Pathway to Universal Healthcare Workgroup. It also supported and advocated on other important health legislation such as Reproductive Healthcare for All, the American

Indian Health Parity Act, state behavioral health systems reform, the HEAL Act, and several more. In 2020 AHW sat on the Universal Health Care Workgroup and worked on recommendations to the Washington State Legislature which were provided in January 2021.”

5. Respondent indicated that board meetings are sporadic and she has not attended one in over a year.
6. Respondent stated that AHW generally has a legislative agenda each year which is created by a subcommittee of board members and then approved by the entire board, including herself. According to Bevin McLeod, AHW had a legislative agenda for 2022 and 2023 although neither is posted on the AHW website.
7. AHW has an annual meeting at which the legislative agenda is presented and voted upon by both the organization’s members as well as the board members. Attempts to contact the Secretary, Nicole Gomez, to obtain copies of the minutes have been unsuccessful.
8. The most recent legislative agenda available on the AHW website is from the 2021 legislative session. It lists the following bills as its agenda:
 - SB 5399 – Universal health care commission (Randall)
 - HB 1272 – Health system transparency (Macri)
 - SB 5149 – Foundational public health (Robinson)
 - HB 1191 – Expanding health coverage for immigrants (Thai)*
 - SB 5068 – Postpartum Medicaid expansion (Randall)*
 - SB 5142 – Dental therapy (Frockt)*
 - SB 5003 – Living donor act (Keiser)*
 - HB 1110 – Health board restructuring (Ricelli)*
 - HB 1264 – Equity impact (Thai)*
 - HB 1216 – Urban Forestry (Ramos)*
 - SB 5101 – Tribal Representation to the state emergency management council (Stanford)*
9. The agenda also stated that for the bills with an asterisk, AHW would sign-on in support of efforts led by community partners and provide assistance as needed. For bills without an asterisk, AHW would take an active role in all aspects of policy development and advocacy.
10. According to the PDC, Nicole Gomez, Secretary of the AHW Board of Directors, is the also the registered lobbyist for the organization.
11. During the 2019 legislative session, Nicole Gomez, representing AHW, testified in favor of SB 5822 – providing a pathway to establishing universal health care for Washington state residents.
12. During the 2020 legislative session, Bevin McLeod, representing AHW, testified in favor of SB 6447 - requiring co-prescription of opioid overdose reversal medication.

13. During the 2021 session, Bevin Mcleod, Nicole Gomez and Jessa Lewis, all AHW board members representing AHW, testified on the following bills: SB 5399 – creation of a universal health care commission; SB 5096 – enacting an excise tax on gains from the sale or exchange of certain capital assets; HB 1272 – health system transparency (Respondent was the prime sponsor); and HB 1406 – establishing a 1% wealth tax on intangible financial assets of more than \$1 billion.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.020 provides that “no state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer’s or state employee’s official duties.”

The analysis used to determine whether a legislator has a conflict with outside employment is equally applicable in analyzing the situation when a legislator is a member of the Board of Directors for a non-profit organization. *In re Dhingra*, 2022 – No. 4. In determining whether a legislator’s membership on an organization’s Board of Directors presents a conflict of interest with the legislator’s official duties, the Board uses two tests: *per se* and functional. See, e.g., *In re Berry*, 2023 – No. 11; *In re Pedersen*, 2022 – No. 3.

The *per se* test looks at whether a legislator’s Board membership presents such a direct conflict with his or her official duties that the membership itself would violate .020. Using the *per se* test, the question is whether membership on a board of directors of an organization presents such a direct conflict with a legislator’s official duties that the member cannot sit on the board while serving as an elected official. If the organization’s major purpose or mission is grass roots lobbying or providing the state legislature with policy recommendations on a particular issue, the legislator’s membership on the organization’s board of directors could constitute a *per se* conflict of interest. See *Advisory Opinion* 1998 – No. 6 (Board equated an organization’s purpose of “public education” to grass roots lobbying which it indicated was a *per se* conflict under .020).

The functional test asks whether there are any activities of the Board membership that would conflict with a member’s legislative duties, thereby requiring the legislator to refrain from such duties or refrain from the Board membership. *In re Berry*, 2023 – No. 11. The general rule is that a legislator does not have an interest in conflict with the proper discharge of legislative duties if no benefit or detriment accrues to the legislator as a member of a business, profession, occupation, or group, to a greater extent than to any other member of such business, profession, occupation, or group. *In re Berry*, 2023 – No. 11.

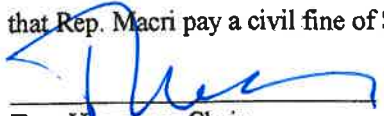
AHW is an advocacy organization. One of its main purposes is to advocate for health policy changes at the legislative level. It has carried out this purpose by having its board members testify in the legislature on legislation on which it has a position. The legislation selected for which AHW advocates is voted on by the Board of Directors. Respondent is a member of that Board of Directors and admits she voted on their legislative agenda and priorities. This action by Respondent in voting on the legislative agenda represents a *per se* violation of RCW 42.52.020.

That AHW has a registered lobbyist is not the determinative factor in this matter. Legislators can participate as members of boards of directors of organizations that have lobbyists provided the board does

not oversee the lobbyist's work or set the legislative agenda. If the organization does perform these functions, the legislator who is a member of the board has the option of recusing him or herself from participating in any work done by the Board that would involve a legislative agenda or overseeing a lobbyist.

VI. ORDER AND STIPULATION

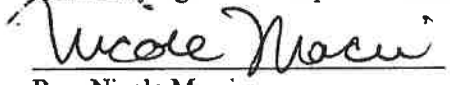
IT IS HEREBY ORDERED: that reasonable cause exists that Rep. Macri violated RCW 42.52.020 and that Rep. Macri pay a civil fine of \$100.



Tom Hoemann, Chair

Date: 7-28-23

I, Nicole Macri, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the opinion of reviewing this agreement with legal counsel, or have actually reviewed it with legal counsel; fully understand its legal significance and consequence; agree to the entry of findings of fact and conclusions of law, and agree to personally sign it as a resolution of this matter and have voluntarily signed this Stipulation and Order.



Rep. Nicole Macri

Date: 7/27/23

Having reviewed this proposed Stipulation, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.



Tom Hoemann, Chair