

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW**

BOARD OF ETHICS

*** DOCKET NO. 2015-0662-ETHICS-B**

IN THE MATTER OF

*

MICHELLE BARNETT

*** AGENCY TRACKING NO. 2013-1777**

DECISION AND ORDER

The Louisiana Board of Ethics charged Michelle Barnett with violating Louisiana Revised Statutes (La. R.S.) 42:1111(C)(2)(d) of the Code of Governmental Ethics. The Louisiana Board of Ethics proved by clear and convincing evidence that Ms. Barnett was a public servant who received a thing of economic value, other than compensation and benefits from her employer, the Office of Behavioral Health of the Louisiana Department of Health and Hospitals,¹ in violation of La. R.S. 42:1111(C)(2)(d). For this violation, Ms. Barnett is fined \$1,000 in accordance with La. R.S. 42:1153(B) and is penalized \$22,053.74 in accordance with La. R.S. 42:1115(A).

APPEARANCES

An adjudicatory hearing in this matter was held at the Division of Administrative Law on October 13 and 14, 2022, in Baton Rouge, Louisiana, before the Ethics Adjudicatory Board, Panel B.² Suzanne Mooney and David Bordelon appeared as counsel for the Louisiana Board of Ethics. David Lowe appeared as counsel for Michelle Barnett. Karen Stubbs Church, Michelle Barnett, and Thomas Barnett were called as witnesses for the Louisiana Board of Ethics. Counsel for Respondent did not call any additional witnesses on her behalf.

¹ Louisiana Department of Health and Hospitals (DHH), after the events involved in this matter, changed to Louisiana Department of Health (LDH).

² The panel consisted of administrative law judges Gregory J. McDonald (presiding), Esther A. Redmann, and Michele L. Staggs.

JURISDICTIONAL AUTHORITY

The Ethics Adjudicatory Board (EAB) is a legislatively created board, as contemplated by Article X, Section 21 of the Louisiana Constitution. The EAB has original jurisdiction under La. R.S. 42:1141.5 to determine whether violations of the Code of Governmental Ethics (Ethics Code), La. R.S. 42:1101 *et seq.*, have occurred and to conduct hearings under La. R.S. 18:1505.4 for specific violations of the Campaign Finance Disclosure Act (CFDA), La. R.S. 18:1481 *et seq.*

This adjudication is conducted in accordance with the CFDA, the Code of Governmental Ethics, the Administrative Procedure Act, La. R.S. 49:950 *et seq.*, the enabling legislation for the Division of Administrative Law, La. R.S. 49:991 *et seq.*, and Louisiana Administrative Code (LAC) 52:I.1102 *et seq.*

STATEMENT OF THE CASE

The Louisiana Board of Ethics (BOE) issued *Charges* against Michelle Barnett (Respondent) on January 15, 2015, and requested a hearing to have the EAB determine whether Respondent violated the Ethics Code and, if so, to assess any appropriate fines and penalties.

In its *Charges*, the BOE alleged that Respondent was married to Thomas Barnett; Respondent was an employee of Louisiana Department of Health and Hospitals's (DHH), Office of Behavioral Health (OBH). OBH supervised the Business Intelligence Section (BI). Respondent's responsibilities included managing an effective, ongoing data exchange with Magellan Health Services, Inc. (Magellan), which was the Statewide Management Organization (SMO). Thomas Barnett was hired by Magellan as a Senior Network Business Analyst and performed analysis and reports in support of Magellan's data exchange for the SMO. The BOE alleged Respondent received income in the form of her marital portion of Thomas Barnett's income from Magellan for his work on the SMO contract for the period of February through

October, 2013. The BOE alleged Respondent's receipt of this income this violated La. R.S. 42:1111(C)(2)(d).

The hearing on the merits took place on October 13 and 14, 2022. At the hearing, the BOE's exhibits BOE-0 through BOE-15 were admitted into evidence over the objection of Respondent's counsel.³ The parties offered joint exhibits marked Barnett Exhibit C, pp. 51A and 52A, which were admitted into evidence.⁴ Respondent offered selected portions of Barnett Exhibits marked A, B, C, D, F, and I, which were admitted into evidence.⁵ Barnett Exhibit I, pp. 813-814 was admitted over the BOE's objection. Barnett Exhibit M, pp. 849-858, was excluded for lack of relevance. The BOE called Karen Stubbs Church,⁶ Thomas Barnett,⁷ and Respondent as witnesses.⁸ Counsel for Respondent cross-examined the BOE's witnesses. Respondent called

³ Respondent's counsel objected that the exhibits had not been properly authenticated, contained hearsay, and lacked a proper foundation for admission into evidence, and made the objection continuing. The EAB overruled the objections. Testimony of Karen Church Stubbs (testimony of Karen Stubbs), October 13, 2022, at 10:33 a.m., finding the records were admissible under *Harvey v. Francis*, 2001-1268 (La. App. 4 Cir. 3/21/01), 785 So. 2d 893; La. R.S. 49:9756.1(1) and (2); and Louisiana Administrative Code (LAC) 52:I.1008(f). The exhibits admitted were: **BOE-0**, Affidavit of the BOE secretary; **BOE-1**, copy of laws creating DHH and OBH, pp.1-2, 10-11 (omitting pp. 3-9); **BOE-2**, excerpt of Respondent's DHH personnel file for her first position at DHH; **BOE-3**, excerpt of Respondent's DHH personnel file for her second position at DHH, effective September 9/ 22, /2011; **BOE-4**, excerpt of Respondent's DHH personnel file for her third position at DHH, effective February 23, 2013; **BOE-5**, excerpt of Respondent's DHH personnel file for her fourth position at DHH, effective August 25, 2014; **BOE-6**, marriage license of Respondent and Thomas Barnett; **BOE-7**, copy of employment history from Thomas Barnett's personnel file produced by Magellan; **BOE-8**, 2012 Financial Disclosure Statement by Thomas Barnett; **BOE-9**, 2013 Financial Disclosure Statement by Thomas Barnett; **BOE-10**, 2014 Financial Disclosure Statement by Thomas Barnett; **BOE-11**, excerpts from July 8, 2011 Request for Proposal issued by DHH-OBH for a Statewide Management Organization for the Louisiana Behavioral Health Partnership; **BOE-12**, Contract between DHH Office of Behavioral Health and Magellan Health Services, Inc.; **BOE-13**, Amendment to Agreement between DHH Office of Behavioral Health and Magellan Health Services, Inc.; **BOE-14**, letter dated December 13, 2013, from Stephen Russo, Executive Counsel for DHH; and **BOE-15**, Conflict of Interest Statement completed by Respondent.

⁴ Two organizational charts, pp.51 and 52 from Barnett's Exhibit C; and enlargements of pp.51 and 52 from Barnett Exhibit C, marked pp.51A and 52A.

⁵ **Barnett Exhibit A**, pp. 1-5; **Barnett Exhibit B**, pp. 47-55, 224, 306-308; **Barnett Exhibit C**, pp. 321-323; **Barnett Exhibit D**, pp. 324-329; **Barnett Exhibit F**, pp. 435-442, 453-455, 813-814; and **Barnett Exhibit I**, pp. 813-814.

⁶ Karen Stubbs Church is referred to as Karen Stubbs, her name at the time of the events herein. Testimony of Karen Stubbs, October 13, 2022, at 10:45 a.m. Ms. Stubbs was hired as Deputy Assistant Secretary, Level III, in charge of Health Plan Management in April, 2013. Testimony of Karen Stubbs, October 13, 2022, at 9:47 a.m. and 11:51 a.m.

⁷ Testimony of Thomas Barnett, October 13, 2022, commencing at 1:05 p.m.

⁸ Testimony of Respondent, October 13, 2022, commencing at 2:46 p.m., and October 14, 2022.

no witnesses on her behalf. After closing arguments, the record closed and the matter was taken under advisement.

FINDINGS OF FACT

DHH was created by Act 513 of the 1976 Legislative Session as one of the twenty principal departments of the Executive Branch of the Louisiana state government.⁹ OBH was created within DHH to manage the provision of mental health and addictive services in Louisiana.¹⁰ Provision of mental health and addictive services are through two programs, one funded and governed by Medicaid, and the other referred to as “safety net services.”¹¹

The SMO is a company contracted with OBH to manage or run the Medicaid insurance plan that oversaw behavioral health services. Behavioral health services included both mental health services and substance abuse services for the Medicaid population.¹² The contract was issued to Magellan Health Services, Inc. (Magellan) by OBH to manage, monitor, and oversee those requirements.¹³ The Magellan contract worked like an insurance plan, including work doing quality monitoring and network development, and Magellan contracted with thousands of direct service providers and managed those contracts.¹⁴ OBH monitored and managed Magellan.¹⁵

BI is a section within OBH.¹⁶ “BI” is a general business term referring to managing and monitoring data and systems.¹⁷ The BI section was over the data and systems for Magellan and other systems that allowed OBH to monitor, review quality, and examine data, to manage

⁹ BOE-1; La. R.S. 36:251.

¹⁰ BOE-1; Testimony of Karen Stubbs, October 13, 2022, at 9:51 a.m.; La. R.S. 28:4(A). OBH was created from the merger of the former Office of Mental Health and former Office of Addictive Disorders.

¹¹ Testimony of Karen Stubbs, October 13, 2022, at 9:51-9:55 and 10:45-10:47 a.m.

¹² Testimony of Karen Stubbs, October 13, 2022, at 10:45-10:47 a.m.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Testimony of Karen Stubbs, October 13, 2022, at 10:48 a.m.

¹⁷ *Id.*

Magellan.¹⁸ “Analytics” is data that allowed OBH to monitor and look at the performance of the SMO.¹⁹ Data was extremely important to the process by which OBH evaluated Magellan’s performance.²⁰

“Program Manager” is a series of state civil service classifications of employee positions in DHH.²¹ The job duties for PM2 for Analytics, Respondent’s position for the period February 2013 through October 2013, included but were not limited to interaction with several systems, coding of data, and preparation of reports.²² PM2 in Analytics pulled and analyzed data to create reports to allow subject matter experts to review.²³ PM2 for Analytics worked with other program managers or clinicians to determine what the reports look like and what they would contain.²⁴

The Electronic Behavioral Health Record System (EBHRS) was an electronic health record system that allowed program managers to collect data and analyze, collate, and summarize it into a report form that OBH could read.²⁵ Magellan had an existing EBHRS that their contracted providers used, which under the SMO collected data for Medicaid providers and patients only.²⁶ OBH worked to establish an EBHRS that included data from Magellan’s system for the Medicaid population and data from OBH’s safety net population, to capture the performance of the whole behavioral health system.²⁷ Respondent’s job description provided that she would interact with data from Magellan’s Medicaid reports and the data from the safety net population.²⁸ Providers’

¹⁸ *Id.*

¹⁹ *Id.* OBH did not go into provider offices to monitor service performance. OBH monitored aggregate data from Magellan, which Magellan collected from service providers.

²⁰ Testimony of Karen Stubbs, October 13, 2022, at 10:49 a.m.

²¹ The positions ranged from Program Manager 1 (PM1) through Program Manager 4 (PM4), with escalating pay and responsibilities. Testimony of Karen Stubbs, October 13, 2022, at 10:50 a.m.

²² Testimony of Karen Stubbs, October 13, 2022, at 10:51 a.m. The reports would consist of a wide variety of data analysis, from utilization of provider services to recidivism.

²³ *Id.*

²⁴ *Id.*

²⁵ Testimony of Karen Stubbs, October 13, 2022, at 10:53 a.m.

²⁶ *Id.*

²⁷ Testimony of Karen Stubbs, October 13, 2022, at 10:53-10:55 a.m.

²⁸ BOE-4.

data went to Magellan, which stored the data in Magellan's EBHRS, and Magellan personnel worked on the data, prepared reports, and sent the reports and data to OBH.²⁹ OBH then accessed the reports and data and created different, more comprehensive reports. Not all of the patient and provider data that came from Magellan was from Medicaid providers, as Magellan captured data from OBH's ten Human Service Districts (HSD),³⁰ also referred to as local government entities (LGE), for their population of Medicaid patients.³¹ Magellan did not capture the data from OBH's ten LGE's for the OBH safety net patients who were uninsured but had not qualified for Medicaid.³²

OBH wanted a data system in which they could pull data which was comprehensive for both Medicaid and safety net patients,³³ and they were building the systems to capture the desired data.³⁴ Respondent's job as PM2 in OBH, in the Analytics subsection of BI, included analysis of data from the ten LGE's which went to Magellan for the Medicaid patients.³⁵

In 2011, DHH/OBH released a request for proposal (RFP) for the SMO. Different vendors, including Magellan, submitted proposals.³⁶ BOE-11 is the Request for Proposal for the SMO for the Louisiana Behavioral Health Partnership issued by OBH on July 8, 2011.³⁷ Magellan Health

²⁹ *Id.*

³⁰ They were also referred to as Local Governmental Entities, or LGE's.

³¹ Testimony of Karen Stubbs, October 13, 2022, at 10:53-10:59. The ten HSDs are sometimes referred to as human service authorities (HSA); whichever term is used, they are all LGEs that perform similar functions in their respective regions throughout the state. OBH wanted to create a system that would capture data both from the SMO for the Medicaid population, and from the LGE's, which had a much smaller footprint.

³² *Id.*

³³ *Id.*

³⁴ Testimony of Karen Stubbs, October 13, 2022, at 10:56 a.m.

³⁵ Testimony of Karen Stubbs, October 13, 2022, at 10:58-10:59. Because the ten HSDs served both Medicaid and safety net patients, the data from the ten HSDs went to Magellan for Medicaid patients and to OBH/BI for safety net (non-Medicaid) patients.

³⁶ Testimony of Karen Stubbs, October 13, 2022, at 11:00 a.m.

³⁷ BOE-11, p. 71; Testimony of Karen Stubbs, October 13, 2022, at 11:17-11:20 a.m.

Services, Inc.,³⁸ was selected, and the three-year contract began in 2012. OBH moved to Magellan to manage care for behavioral health systems.³⁹

BOE-12 is the contract for the SMO for the Louisiana Behavioral Health Partnership (LBHP) between OBH and Magellan Health Services, Inc.⁴⁰ The contract summarizes that Magellan, as contractor, would:

[O]perate a Pre-paid inpatient health plan (PIHP) as defined in 42 CFR 438.2 for behavioral health services provided to children, youth, and adults. The Contractor shall manage behavioral health services throughout the State and across individuals enrolled with multiple state agencies including Medicaid, DCFS, OBH, OJJ, and DOE. Specifically, the Contractor shall manage the behavioral health care of children eligible for Coordinated System of Care (CSoc) and children requiring medically necessary behavioral health services. The Contractor shall manage the behavioral health services for Medicaid adults with addictive disorders or with functionally defined serious mental health disorders as well as services funded through Block Grant and BGF.⁴¹

Respondent started at DHH as a PM2 for Medicaid on April 18, 2011.⁴² Thereafter, due to reorganization for the SMO contract with Magellan, Respondent became a PM2 in the Analytics subsection of OBH's BI section.⁴³ BOE-4 is a position description for Respondent in response to a business reorganization in October-November, 2012.⁴⁴ Respondent's job description provides Respondent would have contact with the SMO.⁴⁵ Her job description provided, in relevant part, as follows:

³⁸ Ms. Stubbs testified Magellan had a number of name changes during the course of the contract, but Magellan Health Services, Inc., was the party to the contract. Testimony of Karen Stubbs, October 13, 2022, at 11:00 a.m. and 11:52 a.m.

³⁹ Testimony of Karen Stubbs, October 13, 2022, at 11:00-11:52 a.m.

⁴⁰ BOE-12, p. 84; Testimony of Karen Stubbs, October 13, 2022, at 11:21-11:22 a.m.

⁴¹ BOE-12, p. 84. The contract was later amended in 2014. See BOE-13, p. 88.

⁴² BOE-2, pp.12-15; Testimony of Karen Stubbs, October 13, 2022, at 9:53 a.m.; 11:03-11:05 a.m. BOE-2 is an *Employee Notification Form* utilized by DHH. Ms. Stubbs was familiar with Respondent, as Ms. Stubbs served as Respondent's supervisor when Ms. Stubbs was hired in April 2013. Testimony of Karen Stubbs, October 13, 2022, at 10:45 a.m.

⁴³ Respondent testified there were two subsections under BI. One was the SMO subsection (Medicaid) and the other subsection was the HSDs/safety net providers (the non-SMO). Testimony of Respondent, October 14, 2022.

⁴⁴ Testimony of Karen Stubbs, October 13, 2022, at 11:07 a.m. For position 50445806, job code 169300, BOE-4, p. BOE-30. The position description was signed by Respondent on October 4, 2012. BOE-4, p. 37.

⁴⁵ Testimony of Karen Stubbs, October 13, 2022, at 11:09-11:10 a.m. Contact with the SMO is specifically referenced,

This is a highly responsible management position within the central Office of Behavioral Health (OBH)-Division of Health Plan Management, Section on Business Intelligence, reporting directly to the Section Chief. The incumbent serves as the Clinical Services Quality/Performance Accountability Branch Program Manager, responsible for the development, implementation and ongoing management of the **OBH Data Mart/Business Intelligence (DM/BI) system** for clinical services data, analyses of these data, and reporting of quality and performance metrics derived from the data.

The DM/BI is a **critical resource created from varying data sources (SMO, contractors, non-OBH entities, private hospitals, etc.) and used by the OBH Business Intelligence section to manage and evaluate the SMO and to monitor and evaluate the statewide network of behavioral health services and providers.** The DM/BI stores large volumes of client/services data and provides web-based analysis and reporting for use in program planning, quality management, and performance accountability purposes. The unit manager will be responsible for managing effective, ongoing data exchange with the SMO and participating agencies statewide, as well as maintaining the utility of the data contained in the data mart based on SMO and OBH policies and business objectives.

Essential Functions

Manage the creation, implementation and ongoing operation of the OBH Data Mart/Business Intelligence (DM/BI) System **supporting the functions of the LBHP working in close coordination with OBH, DHH-IT and Statewide Management Organization (SMO) technical staff.**

Develop, update, approve and monitor the progress of all business processes and how they affect the data received from the SMO. Develop and adhere to a system implementation and operational plan, which includes tasks, deliverables, timelines, milestones, responsible parties, and resource assignments; **establish an effective written plan for communication between OBH, DHH-IT, the SMO and all implementation agents.**

Organize and coordinate implementation teams to assure a smooth and effective implementation and operation of the Data Mart statewide **with all participating agencies and the SMO**; provide ongoing liaison with all system implementation and operation agents and facilitate teamwork. (emphasis added).⁴⁶

as is LBHP, which is the program that the SMO/Magellan would run and would deliver to OBH. The position description also references OBH's BI Section, which Respondent would manage.

⁴⁶ BOE-4, pp.31-32 (emphasis added); testimony of Karen Stubbs, October 13, 2022, at 11:11-11:12 a.m. Respondent would interact with the SMO in that position.

The SMO, Magellan, interacted with the Analytics subsection and Respondent as its PM2, because so much of the contract was devoted to data and analytics.⁴⁷

In October 2013, OBH circulated a *Conflict of Interest Form* to Respondent, which Respondent signed on October 11, 2013, identifying her husband as working for Magellan.⁴⁸ Upon learning of the conflict with Magellan, DHH transferred Respondent out of OBH in October 2013.⁴⁹ Ms. Stubbs learned that Respondent's husband worked for Magellan about a month or two before the *Conflict of Interest Form* was signed, when it came up in casual conversation.⁵⁰

Thomas Barnett is married to Respondent.⁵¹ Respondent recommended that Mr. Barnett apply to work for Magellan.⁵² Before Mr. Barnett went to work for Magellan, Respondent specifically asked for and received approval from her supervisor, Randy Lemoine, PM4, and Joseph E. Comaty, who served as the RFP Coordinator and OBH's Chief Compliance Officer, Director of Quality Assurance, and LBHP Implementation Manager, to continue in her position when Mr. Barnett worked for Magellan.⁵³

On July 16, 2012, Mr. Barnett was hired by Magellan with a starting salary of \$70,000,⁵⁴ as a Senior Network Business Analyst to work on data analysis and reports on provider and claims information for the OBH-Magellan contract.⁵⁵ In 2012, 2013, and 2014, Magellan paid Mr.

⁴⁷ Testimony of Karen Stubbs, October 13, 2022, at 11:25 a.m.

⁴⁸ Testimony of Karen Stubbs, October 13, 2022, at 11:14-11:17; BOE-15, p. 93.

⁴⁹ Testimony of Karen Stubbs, October 13, 2022, at 11:14.

⁵⁰ Testimony of Karen Stubbs, October 13, 2022, at 11:17. Ms. Stubbs went on maternity leave on October 28, 2013.

⁵¹ BOE-6; Testimony of Thomas Barnett and Respondent.

⁵² BOE-7, p. 52.

⁵³ Testimony of Respondent; BOE-11, p. 77; BOE-12, pp. 84 and 87.

⁵⁴ BOE-7.

⁵⁵ BOE-7; Testimony of Thomas Barnett. BOE-7, p. 50, lists Mr. Barnett's current employer as Magellan Health Services, and provides the following job description: "Provides analysis and produces reports in support of Magellan provider network for the Louisiana Behavioral Health Partnership (LBHP). Contracting and credentialing reports, GEO Access reports monitoring provider network adequacy, CSOC reports, prescriber sufficiency reports, **ad hoc reports for presentation to DHH/OB**, and contractually required quarterly reports. Work with people in other department members to solve problems and meet goals." (Emphasis added.) Mr. Barnett was provided a Magellan Health email address, and work location (LA02). BOE-7, p. 48. In that same form, Mr. Barnett was asked if, to the best of his knowledge, any of his family members or members of his household were current employees, contractors,

Barnett through an affiliate, Magellan HRSC, Inc.,⁵⁶ for work on the OBH-Magellan contract.⁵⁷

On his Financial Disclosure Statements filed with the BOE, Mr. Barnett listed Respondent's agency as OBH and his business as Magellan Health Services, and his business activity as: "Produce reports on the provider network showing provider locations, levels of care, specialties, ethnicity, access, etc."⁵⁸ Mr. Barnett testified he performed quarterly and annual reports on provider networks for mental health in Louisiana for a computer directory and was not sure where his reports went.⁵⁹

Thomas Barnett did not think there was a conflict with the Ethics Code because he only worked with provider network data, not patient data.⁶⁰ Mr. Barnett only noticed that he was paid by Magellan HRSC, Inc. a few months prior to the October 2022 trial, when Respondent pointed out his W-2 forms listing it as his employer.⁶¹ Prior to that time, Mr. Barnett believed he worked for Magellan Health Services.⁶² Mr. Barnett filed out disclosure statements required by the BOE

subcontractors, consultants or agents of any federal or state agency. Thomas Barnett provided no answer to the question. BOE-7, p. 52. Further, Thomas Barnett stated in the form that Respondent referred him to Magellan. BOE-7, p. 52.

⁵⁶ Barnett Exhibit F, pp. 435-440, 453-455.

⁵⁷ BOE-7, pp. 55-65, in which Mr. Barnett listed for Magellan HRSC, Inc., for Department 162790-LA Public Network, and his mail location was LA02. His Employee Statement of Confidentiality and Conflict of Interest states: "I understand that as an employee of Magellan Health Services or any of its affiliates, I may have access to data, files, records, documents and conversations which are confidential and/or proprietary in nature.... I have received and am familiar with Magellan Health Service's Conflict of Interest policy."

⁵⁸ BOE-8, pp. 65-66 (calendar year 2012); BOE-9, pp. 67-68 (calendar year 2013). These were filed May 10, 2015.

⁵⁹ Testimony of Thomas Barnett, October 13, 2022, at 1:09-1:15, 1:42-1:43. Mr. Barnett placed his work on a computer folder, and someone else at the company accessed the folder and used or forwarded his work.

⁶⁰ Testimony of Thomas Barnett, October 13, 2022, at 1:52 p.m. Mr. Barnett admitted he received provider information that had to be kept confidential under Magellan's privacy policy. Accordingly, he worked on data and posted reports, and did not know who utilized the data and for what purposes. Testimony of Thomas Barnett, October 13, 2022. The tribunal found Mr. Barnett's testimony that he did not work on the SMO to be without support based on his personal knowledge. Similarly, Mr. Barnett's testimony that Magellan HRSC, Inc. had no direct contractual relationship to the SMO or Magellan's contract with OBH, to be without support based on his personal knowledge, where he admitted that he did not know if Magellan HRSC, Inc. was an affiliate of Magellan Health Services. Testimony of Thomas Barnett, October 13, 2022, at 1:41-1:42 p.m.

⁶¹ Testimony of Thomas Barnett, October 13, 2022, at 1:26-1:39 p.m.; Barnett Exhibit F, pp. 435-441; 453-455. Mr. Barnett testified he worked for Magellan HRSC, Inc. To the extent he testified that it was a wholly separate company from Magellan Health Services, Inc., and that his work was not performed in connection with the SMO, the testimony was without support based on his personal knowledge and is contrary to other credible evidence. Testimony of Thomas Barnett, October 13, 2022, at 1:40 p.m.; BOE-7.

⁶² Testimony of Thomas Barnett, October 13, 2022, at 1:19 p.m.

in 2015, and paid a fine for not disclosing he worked for Magellan Health Services.⁶³ Mr. Barnett earned \$70,571.32 from Magellan HRSC, Inc., in 2013.⁶⁴ Mr. Barnett admitted his wife, Respondent, worked at OBH.⁶⁵

CONCLUSIONS OF LAW

The EAB concludes that Respondent violated La. R.S. 42:1111(C)(2)(d) by receiving one-half of her husband Thomas Barnett's salary for services he provided to Magellan Health Services, Inc. during the period of March 1, 2013, through October 15, 2013, from a prohibited source. For this violation, and in accordance with La. R.S. 42:1153(B), La. R.S. 42:1115(A), and considering the facts and mitigating factors in this case, the EAB imposes a fine of \$1,000 and a penalty of \$22,053.74 against Respondent.

A. Applicable Substantive Law

The Ethics Code, La. R.S. 42:1101 *et seq.*, was enacted to establish ethical standards for the conduct of elected officials and state employees to protect against conflicts of interest between their private interests and the duties of their positions. La. R.S. 42:1111(C)(2) specifically prohibits persons seeking to obtain or having governmental contracts or having interests substantially affected by the performance of certain governmental employees from attempting, through payments of something of economic value, to curry favor, gain preferential treatment, or be excused from substandard performance by reason of prohibited payment.

La. R.S. 42:1111(C)(2)(d) provided, at the time of the alleged violation:

C. Payments for nonpublic service.

⁶³ Testimony of Thomas Barnett, October 13, 2022, at 1:44-1:45 p.m.; BOE-8 and BOE-9 (forms Mr. Barnett filled out, identified his employer as Magellan Health Services).

⁶⁴ BOE-9; Testimony of Thomas Barnett, October 13, 2022, at 1:20 p.m.

⁶⁵ Testimony of Thomas Barnett, October 13, 2022, at 1:26-1:45 p.m.

⁶⁶ *Louisiana Board of Ethics in the Matter of Great Southern Dredging, Inc.*, 2015-0870, p. 4 (La. App. 1 Cir. 5/25/16), 195 So. 3d 631, 634, *citing* La. R.S. 42:1101(B).

(2) No public servant and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are:

(d) Neither performed for nor compensated by any person from whom such public servant would be prohibited by R.S. 42:1115(A)(1) or (B) from receiving a gift.

La. R.S. 42:1115 provided, at the time of the alleged violation:

A. No public servant shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person:

(1) Has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency

B. Respondent is a “public servant” under the Ethics Code

For purposes of the Ethics Code, a “public servant” is “a public employee or an elected official.”⁶⁷ The Ethics Code defines “public employee” as:

[A]nyone, whether compensated or not, who is:

(i) an administrative officer or official of a governmental entity who is not filling an elective office;

* * *

(iii) engaged in the performance of a governmental function; or
(iv) under the supervision or authority of an elected official or another employee of the governmental entity.⁶⁸

DHH was created by Act 513 of the 1976 Legislative Session as one of the twenty principal departments of the Executive Branch of the Louisiana state government.⁶⁹ OBH was created within DHH by Act 384 of the 2009 Legislative Session.⁷⁰ OBH is a governmental entity.⁷¹

⁶⁷ La. R.S. 42:1102(19).

⁶⁸ La. R.S. 42:1102(18)(a). Governmental entity means the state or any political subdivision which employs the public employee. La. R.S. 42:1102(12).

⁶⁹ BOE-1; La. R.S. 36:251.

⁷⁰ BOE-1; La. R.S. 28:4.

⁷¹ BOE-1.

Respondent was a public employee because she was employed as a PM2 by OBH, performing functions⁷² within OBH in furtherance of DHH's responsibility for the development and provision of health and medical services for the citizens of Louisiana, and she was reporting to other DHH employees. Respondent reported to and was supervised by DHH/OBH employees Randy Lemoine, and later, Karen Stubbs.⁷³ The BOE proved by clear and convincing evidence that Respondent was a public servant because she was performing a governmental function outlined in her job responsibilities, and performed those responsibilities under the supervision of another employee, Randall Lemoine and later, Karen Stubbs, of the governmental entity.

C. Respondent received a "thing of economic value" ...

Respondent was married to Thomas Barnett, and their marriage created a community property regime under which she owned 50% of the assets and income of the community.⁷⁴ Respondent received, directly or indirectly, one-half of the salary Thomas Barnett received as a result of his employment with a Magellan affiliate, Magellan HRSC, Inc.

In *Louisiana Board of Ethics in the Matter of Great Southern Dredging, Inc.*, *supra*, the First Circuit considered whether payments by a contractor of the Greater Lafourche Port Commission to its subcontractor (which was fifty-one percent owned by the spouse of a Port Commission member) was income from a prohibited source under La. R.S. 42:1111(C)(2) to the

⁷² Respondent managed the creation, implementation and ongoing operation of the OBH Data Mart/Business Intelligence (DM/BI) System **supporting the functions of the LBHP working in close coordination with OBH, DHH-IT and SMO technical staff**. Respondent was also developed, monitored, updated, approved and monitored the progress of all business processes and how they affected the data received from the SMO. Respondent developed and adhered to a system implementation and operational plan, which included tasks, deliverables, timelines, milestones, responsible parties, and resource assignments; and **established an effective written plan for communication between OBH, DHH-IT, the SMO and all implementation agents**. BOE-4, pp.31-32 (emphasis added).

⁷³ Barnett Exhibit C, p. 52, Testimony of Karen Stubbs.

⁷⁴ The community property comprises property acquired during the existence of the legal regime through the efforts, skill, or industry of either spouse; property acquired with community things or with community and separate things ... natural and civil fruits of community property; damages awarded for loss or injury to a thing belonging to the community; and all other property not classified by law as separate property. La. C.C. art. 2338; *Great Southern Dredging*, *supra*, at 636.

Port Commission member. The First Circuit found that actual ownership was determined under Louisiana's community property law, and payment to the subcontractor majority-owned by the Commission member's spouse was income to the Commission member from a prohibited source, reasoning:

Section 42:1111(C)(2) specifies that its prohibitions apply to any company in which a public servant '**owns** an interest in excess of twenty-five percent.' La. R.S. 42:1111(C)(2) (emphasis added). Black's Law Dictionary defines 'own' as '[t]o have a good legal title; to hold as property; to have a legal or rightful title to; to have; to possess.' We find that the unrestricted term 'owns' used in Section 42:1111(C)(2) encompasses ownership by virtue of a community property regime. The term 'owns' is not generally understood to be restricted to the legal ownership recognized by the Louisiana Corporation Code. Legal ownership is distinguished from actual ownership, which may be determined from all the facts and circumstances of a case. [citations omitted] While legal ownership determines which spouse is afforded the rights and privileges of a stockholder, actual ownership between the spouses is determined by Louisiana's community property law. [citation omitted]. The language of Section 42:1111(C)(2) is unambiguous. Its application does not lead to absurd consequences. Therefore, we apply it as written. 195 So. 3d at 638 (citations omitted) (emphasis in original).

Respondent's argument that the community property regime is not a legal entity for purposes of the Ethics Code is irrelevant. Respondent received one-half of the salary her husband received from his employment with Magellan because she was his wife in a community property regime. The BOE proved by clear and convincing evidence that Respondent received a "thing of economic value."⁷⁵

D. ...[F]or or in Consideration of Services Rendered ... to or for any person, unless such services are neither performed for nor compensated by any person from whom such public servant would be prohibited from receiving a gift under La. R.S. 42:1115(A)(1) or (B).

The BOE proved by clear and convincing evidence that Respondent's husband was paid to render services for Magellan while it had a contract with OBH as the SMO. The entity that

⁷⁵ La. R.S. 42:1102(22)(a) defines "thing of economic value" as "money or any other thing having economic value."

processed Respondent's husband's paychecks is immaterial. Mr. Barnett admitted that he thought he was working for Magellan Health Services; he listed Magellan Health Services on his Financial Disclosure Forms;⁷⁶ he was accessing and analyzing mental health provider data for Louisiana mental health providers, access of which was permitted to private employees only by way of the Magellan contract with OBH and subject to Magellan Health Service's confidentiality policy.

Magellan's records produced pursuant to a subpoena by the BOE to Magellan Health Services contained Mr. Barnett's employment records. In those records, Magellan Health Services is listed as the entity for which Thomas Barnett's services were provided.⁷⁷ Respondent and Thomas Barnett believed Mr. Barnett worked for and provided services to Magellan Health Services, Inc., and only changed their minds a few months before trial based on Mr. Barnett's W-2 forms.⁷⁸ Mr. Barnett had a Magellan Health email address. Mr. Barnett's job description included providing analysis and reports in support of Magellan Health Services provider network for the LBHP, and provide **ad hoc reports for presentation to DHH/OBH**.⁷⁹ Further, Mr. Barnett stated Respondent referred him for the position at Magellan.⁸⁰

Magellan Health Services is a prohibited source for Respondent under La. R.S. 42:1115(A)(1). The statute provides:

A. No public servant shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person ...

(1) **Has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency,**

La. R.S. 42:1102(2)(a) defines "agency" as:

(2)(a) **"Agency" means a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity.** For

⁷⁶ BOE-8 and BOE-9.

⁷⁷ BOE-7.

⁷⁸ Testimony of Respondent and Thomas Barnett.

⁷⁹ BOE-7, pp. 48 and 50 (emphasis added).

⁸⁰ BOE-7, p. 52.

purposes of this Chapter, “agency of the public servant” and “his agency” when used in reference to the agency of a public servant shall mean:

(i) For public servants in the twenty principal departments of the executive branch of state government, **the office in which such public servant carries out his primary responsibilities** (emphasis added)

Respondent’s agency is OBH. DHH is one of the twenty principal departments of the executive branch of state government, and OBH is the office in which Respondent was employed. Respondent argued that agency is the smallest department, office, division, agency, or organizational unit of the governmental entity, and that her agency was the Analytics subsection of the BI section of OBH. This argument directly contradicts the specific language of La. R.S. 42:1102(2)(a)(i), which provides that for executive branch departments, the agency is the “office”, which is OBH, an office of DHH created by statute where Respondent was employed.

Magellan Health Services, Inc. had a contractual relationship with OBH. Magellan Health Services, Inc. carried out operations and activities under the OBH-Magellan contract.

Thomas Barnett provided services to Magellan Health Services. Magellan’s contractual work for OBH made Magellan a prohibited source for Respondent.

Magellan HRSC, Inc. was paying Thomas Barnett for the services he rendered to Magellan, which made Magellan HRSC, Inc.’s salary payments to Mr. Barnett, which Respondent received as community property, prohibited payments to Respondent.

Another argument Respondent made was that she must be in a position of management or authority over the SMO which Magellan contracted to provide in order to prove a violation of La. R.S. 42:1111(C)(2)(d). The BOE maintained it did not have to prove Respondent directly managed Magellan or worked on the SMO in order to prove a violation of La. R.S. 42:1111(C)(2)(d).

La. R.S. 42:1115(A)(1) concerns “person” making payment where the “person” “has or is seeking to obtain contractual or other business or financial relationships with the public servant’s

agency.” It does not require the public servant be in a management position over the person providing the payment or for which the services were provided; it requires only a relationship between the “person,” Magellan Health Services, Inc., and the public servant’s agency, OBH.⁸¹

The EAB is charged with determining whether the BOE has established by clear and convincing evidence that a violation of the Ethics Code has occurred, and if so, what penalties or sanctions, if any, should be imposed.⁸² Clear and convincing evidence is an intermediate standard of persuasion requiring more proof than a preponderance of the evidence but less proof than required to establish guilt beyond a reasonable doubt.⁸³

The BOE proved by clear and convincing evidence that Respondent was a public servant who violated La. R.S. 42:1111(C)(2)(d) by receiving a thing of economic value for or in consideration of services rendered to or for a person from whom she would be prohibited from receiving a gift under La. R.S. 42:1115(A)(1).

E. Fines under La. R.S. 42:1153(B)

La. R.S. 42:1153(B) provides with respect to penalties:

Upon a determination that any public employee or other person has violated any provision of any law within the jurisdiction of the Board of Ethics, except violations of the Campaign Finance Disclosure Act which shall be governed by Chapter 11 of Title 18 of the Louisiana Revised Statutes of 1950, the Ethics Adjudicatory Board may remove, suspend, or order a reduction in pay, or demotion of the public employee or other person, or impose a fine of not more than ten thousand dollars, or both.

The evidence supports a finding that Respondent violated La. R.S. 42:1111(C)(2)(d).

In considering the amount of a fine to impose, the EAB considered that Respondent recommended that her husband apply to work for Magellan. Respondent also sought clearance for

⁸¹ There was evidence that Respondent was responsible for Mr. Barnett working on the SMO.

⁸² La. R.S. 42:1141.5.

⁸³ *La. State Bar Ass’n. v. Edwins*, 329 So. 2d 437, 441 (La. 1976).

working in OBH before her husband was hired by Magellan from at least two higher level DHH authorities: her former supervisor, Randy Lemoine, as well as Joseph E. Comaty, who served as the RFP Coordinator and OBH's Chief Compliance Officer, Director of Quality Assurance, and the LBHP Implementation Manager. Respondent told her new supervisor, Karen Stubbs, about her husband's employment with Magellan before DHH asked its employees to complete a *Conflict of Interest Form*; Respondent disclosed her husband's employment with Magellan on the form; and Respondent did not contest her transfer out of OBH after DHH reviewed the disclosure she made on the form. Further, La. R.S. 42:1170 was amended to require an hour of ethics training for department heads, specifically on contract ethics (in addition to the hour of ethics training required for all public employees annually), beginning January 1, 2014, after the facts that led to this case.

Although the BOE correctly identified Respondent's agency as OBH in its *Charges*, it added that "In October 2013, when requested by the DHH to work on a request for proposals for the SMO, Ms. Barnett disclosed her husband, Tom Barnett, worked for Magellan. The DHH subsequently moved Ms. Barnett laterally to another Program Manager 2 position **that is not involved with the Magellan contract.**" (Emphasis added.) The BOE had challenged Respondent's earlier *Motion in Limine* and *Motion for Summary Judgment* over the BOE's language in filings in this matter which purported to show that Respondent's agency was something other than OBH. After the two-day trial, the BOE succinctly pointed out in its closing argument that its case hinged on Respondent's agency being OBH. While these facts do not excuse Respondent's conduct, the EAB considers them important in determining penalties to be imposed.

Taking these factors into account, the EAB imposes a \$1,000 fine against Respondent for the violation of La. R.S. 42:1111(C)(2)(d), as authorized by La. R.S. 42:1153(B).

F. Penalties under La. R.S. 42:1155(A)

Respondent may also be assessed penalties pursuant to La. R.S. 42:1155(A), which provides:

If an investigation conducted pursuant to this Part reveals that any public servant or other person has violated any law within the jurisdiction of the Board of Ethics to his economic advantage, and after an adjudicatory hearing on the matter, the Ethics Adjudicatory Board may order the payment of penalties. Recovery may include, in addition to an amount equal to such economic advantage, penalties not to exceed one-half of the amount of the economic advantage.

The Louisiana First Circuit Court of Appeal has interpreted the phrase “economic advantage” to mean the profits derived by the person from the prohibited conduct, consisting of the price received by the person, minus the direct expenses attributable to prohibited conduct, for which evidence is provided in the record.⁸⁴ Applying the First Circuit’s interpretation, the phrase “economic advantage” in this matter means Respondent’s receipt of her one-half interest in the salary of Thomas Barnett for the period February through October, 2013. Thomas Barnett’s salary for the entirety of 2013 was \$70,571.32. The BOE did not prove the exact date in February, 2013, when Barnett transitioned to her new position and, accordingly, the EAB will consider the period for economic advantage to be from March 1, 2013, through October 15, 2013.⁸⁵ On a pro rata basis, the economic advantage of Respondent’s portion of the Thomas Barnett salary during the relevant time period was \$22,053.74.⁸⁶

The EAB orders as a penalty under La. R.S. 42:1155(A) that Respondent pay the economic advantage of \$22,053.74. While the EAB has discretionary authority to award up to one-half of the amount of the economic advantage as an additional penalty under La. R.S. 42:1155(A), for the reasons set out under the analysis of fines under La. R.S. 42:1153(B), the EAB declines to do so.

⁸⁴ *Villanueva v. Comm’n on Ethics for Pub. Emps.*, 98-0980 (La. App. 1 Cir. 5/18/99), 812 So. 2d 1.

⁸⁵ The date Appellant disclosed the conflict with Magellan.

⁸⁶ $(\$70,571.32 \text{ divided by } 12) \times 7.5 \text{ (seven and a half months)} = \$44,107.07 \div 2 = \$22,053.74.$

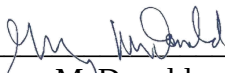
ORDER

IT IS ORDERED that Michelle Barnett violated La. R.S. 42:1111(C)(2)(d) by receiving one-half of her husband Thomas Barnett's salary for services he provided to Magellan Health Services, Inc. during the period of March 1, 2013, through October 15, 2013, from a prohibited source.

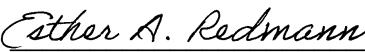
IT IS FURTHER ORDERED that, in accordance with La. R.S. 42:1153(B), a fine in the amount of \$1,000.00 is imposed against Michelle Barnett for violating La. R.S. 42:1111(C)(2)(d).

IT IS FURTHER ORDERED that, in accordance with La. R.S. 42:1155(A), a penalty in the amount of \$22,053.74 is imposed against Michelle Barnett for violating La. R.S. 42:1111(C)(2)(d).

Rendered and signed on December 20, 2022, in Baton Rouge, Louisiana.



Gregory McDonald
Presiding Administrative Law Judge



Esther A. Redmann
Administrative Law Judge



Michele L. Staggs
Administrative Law Judge

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Tuesday, December 20, 2022, I have sent a copy of this decision/order to all parties of this matter.



Division of Administrative Law

REVIEW RIGHTS

This decision exhausts your administrative remedies. If you are dissatisfied with this ruling, you may have the right to seek a rehearing or reconsideration of this decision or order, subject to the grounds for and time limitations provided in Louisiana Revised Statute 49:959, Louisiana Code of Civil Procedure article 5059. To determine your review rights, you should act promptly.

To request a rehearing or reconsideration, please send it to one of the addresses listed below:

EMAIL documents to:
EABprocessing@adminlaw.la.gov

FAX documents to:
EAB Section Deputy Clerk
(225) 219-9820

MAIL documents to:
DAL – EAB Section
ATTN: EAB Section Deputy Clerk
P. O. Box 44033
Baton Rouge, LA 70804-4033

If you do not request a rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 49:964, La. R.S. 42:1142(A)(1), and La. C.C.P. art 5059. To determine your review rights, you should act promptly.