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# HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

## **Resolution of Investigation** **2020-5**

**(COMPL-I-19-00300)**

### **Office of Health Care Assurance, Department of Health, Nurse Consultant’s Alleged Violations of Fair Treatment Law and Conflicts of Interests Law**

**August 28, 2020**

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The Hawai‘i State Ethics Commission (“Commission”) has resolved an investigation of Roel Salanga (“Respondent Salanga”), Nurse Consultant, Office of Health Care Assurance, Department of Health (“DOH”), for alleged violations of the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84.

#### I. Facts

Respondent Salanga admits and declares, under penalty of perjury, that the following facts are true and correct:

- a) Respondent Salanga, at all times relevant herein, was employed by the Department of Health (“DOH”), a state agency, as a nurse consultant for the DOH Office of Health Care Assurance.
- b) Respondent Salanga, at all times relevant herein, was a state employee as defined in HRS § 84-3. As a state employee, Respondent Salanga was required to comply with the State Ethics Code.
- c) The DOH Office of Health Care Assurance licenses adult residential care homes. At all times relevant herein, Respondent Salanga was responsible for performing on-site inspections of adult residential care homes to ensure that they complied with state licensing requirements. Adult residential care homes are subject to both annual and unannounced DOH inspections.
- d) At all times relevant herein, Respondent Salanga’s state working hours were Monday through Friday, from 7:45 a.m. to 4:30 p.m., excluding breaks.

- e) Respondent Salanga, at all times relevant herein, was privately employed as a licensed real estate salesperson by a real estate brokerage firm.
- f) In or around September 2018, Respondent Salanga performed an on-site inspection of a certain adult residential care home (“ARCH” or “care home”). Respondent Salanga had not previously inspected the care home or met the operator of the care home (“ARCH Operator A”). During the inspection, Respondent Salanga learned from ARCH Operator A that she wanted to expand her care home business and was interested in purchasing a “care home ready” property to use as a second care home. Respondent Salanga learned that ARCH Operator A was renting the property on which she was operating her current care home. Respondent Salanga was informed that ARCH Operator A’s mother-in-law would help ARCH Operator A and ARCH Operator A’s husband in purchasing a second care home, which would be occupied by ARCH Operator A, ARCH Operator A’s husband, and ARCH Operator A’s mother-in-law, along with the clients of the care home.
- g) Respondent Salanga informed ARCH Operator A that he had a private job as a real estate salesperson and offered his services to find a care home ready property for ARCH Operator A’s care home business. At the conclusion of the inspection, Respondent Salanga gave ARCH Operator A his private business card, which included his name, the name of the real estate brokerage firm he worked for, his personal email address, and his personal cell phone number.
- h) At the conclusion of the inspection, Respondent Salanga also reviewed with ARCH Operator A a preliminary report of deficiencies in her care home that he found during the inspection, which needed correction.
- i) ARCH Operator A accepted Respondent Salanga’s offer to represent her in finding a property for her care home business.
- j) Beginning in approximately September 2018 and into June 2019, Respondent Salanga, using a non-state email account, sent dozens of emails to ARCH Operator A to apprise her of property listings; Respondent Salanga sent many of these emails to ARCH Operator A during state working hours. Respondent Salanga also accompanied ARCH Operator A to visit at least one property for potential use as a care home.
- k) Following his inspection of ARCH Operator A’s care home, Respondent Salanga communicated with ARCH Operator A via a non-state email account about correcting the deficiencies discovered during the inspection. For example, in one such email communication in October 2018, which Respondent Salanga sent to ARCH Operator A during state

working hours, Respondent Salanga instructed ARCH Operator A to send her plan of corrections to his state office as soon as possible. In the same communication, Respondent Salanga asked ARCH Operator A if she had any interest in property listings he had previously sent her, and if not, he could keep looking for properties for her.

- l) At some point, Respondent Salanga was informed that ARCH Operator A's mother-in-law no longer wished to live in the same house as ARCH Operator A's care home clients; ARCH Operator A's mother-in-law instead wanted to purchase a property as a residence for herself and family members only, including ARCH Operator A and ARCH Operator A's husband ("family residence"). Respondent Salanga emailed property listings to ARCH Operator A and also accompanied ARCH Operator A and her mother-in-law to visit open houses on Sundays.
- m) In or around January 2019, ARCH Operator A informed Respondent Salanga that she (ARCH Operator A) had found a potential family residence property on her own and wanted to visit it. Respondent Salanga contacted the real estate agent representing the seller of the property and arranged for ARCH Operator A and her mother-in-law to visit the property.
- n) In or around late January 2019, ARCH Operator A's mother-in-law, represented by Respondent Salanga as her real estate agent, submitted an offer to purchase the property. The agreed-to sales price for the property was \$910,000, and an escrow account was opened.
- o) In or around early February 2019, ARCH Operator A deposited into escrow a check in the amount of \$3,000, as an initial deposit towards the purchase of the property. The check was signed by ARCH Operator A and drawn from a bank account that she used for her care home business.
- p) In or around late January and February 2019, Respondent Salanga, during state working hours, sent several email messages to ARCH Operator A and to the escrow company relating to the sale of the property to ARCH Operator A's mother-in-law. Respondent Salanga used a non-state email account to send these email communications.
- q) As stated in paragraphs j) and p), above, Respondent Salanga – using a non-state email account – sent dozens of email communications to ARCH Operator A regarding property listings; he also sent several email communications to ARCH Operator A and the escrow company relating to the sale of the property to ARCH Operator A's mother-in-law. On over 20 occasions, Respondent Salanga sent these email communications during state working hours.

- r) The sale of the property to ARCH Operator A's mother-in-law closed on or about March 1, 2019.
- s) Respondent Salanga, by representing ARCH Operator A's mother-in-law as the buyer of the property, earned a commission in the amount of \$22,750.00 for the real estate brokerage firm he worked for. Out of that amount, Respondent Salanga received a commission of \$9,947.50.
- t) After the sale of the property to ARCH Operator A's mother-in-law closed (on or about March 1, 2019) and into June 2019, Respondent Salanga continued to send email communications to ARCH Operator A to apprise her of listings of potential properties for her care home business. Respondent Salanga stopped emailing property listings to ARCH Operator A when she informed him that she was no longer interested in expanding her care home business.
- u) Respondent Salanga served as the inspector of ARCH Operator A's care home until approximately September 2019.
- v) In or around March 2019, Respondent Salanga performed an on-site inspection of another adult residential care home. Respondent Salanga had not previously inspected this care home and had not previously met the care home operator ("ARCH Operator B"). At the conclusion of the inspection, ARCH Operator B asked Respondent Salanga about the state requirements applicable to care homes. ARCH Operator B explained that her personal circumstances were changing, such that she would be moving her clients out of the current care home and was considering either renovating an existing house or buying a house to use as a care home. Respondent Salanga informed ARCH Operator B that he had a private job as a real estate salesperson and offered his services to find a property for her care home business.
- w) At the conclusion of the inspection, Respondent Salanga also reviewed with ARCH Operator B a preliminary report of deficiencies in her care home that he had found during the inspection, which needed correction.
- x) Beginning in approximately March 2019 and into June 2019, Respondent Salanga emailed ARCH Operator B several times to apprise her of property listings. Respondent Salanga sent these email communications to ARCH Operator B via a non-state email account during non-state working hours. ARCH Operator B later informed Respondent Salanga that she decided not to buy a property and instead would renovate a house for use as a care home.

## II. The State Ethics Code, HRS Chapter 84

### A. Constitutional Mandate and Statutory Purpose

The State Ethics Code arises from the declaration contained in the State Constitution that “[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.”<sup>1</sup> To this end, the Hawai‘i Constitution further directs that the Legislature enact a code of ethics that applies to all appointed and elected state officers and employees.

In accordance with this constitutional mandate, the Legislature enacted the State Ethics Code and charged the Commission with administering and enforcing the law “so that public confidence in public servants will be preserved.”<sup>2</sup> Additionally, the Legislature explicitly directed that the State Ethics Code be liberally construed to promote high standards of ethical conduct in state government. HRS § 84-1. It is in this context that the Commission examines every employee’s actions.

### B. Application of the State Ethics Code to Respondent Salanga

As a DOH employee, Respondent Salanga is a state employee for purposes of the State Ethics Code.<sup>3</sup> As a state employee, Respondent Salanga is required to comply with the State Ethics Code.

#### 1. The Fair Treatment Law (HRS § 84-13(a))

HRS § 84-13(a), the Fair Treatment Law,<sup>4</sup> prohibits a state employee from using the employee’s state position to obtain unwarranted privileges, advantages, or benefits for the employee or others. The Fair Treatment Law also contains several subsections describing specific actions that are prohibited. The Fair Treatment law, in relevant part, states:

**§84-13 Fair treatment.** (a) No . . . employee shall use or attempt to use the . . . employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or

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<sup>1</sup> Hawai‘i State Constitution, Art. XIV.

<sup>2</sup> HRS chapter 84, Preamble.

<sup>3</sup> HRS § 84-3.

<sup>4</sup> HRS § 84-13 was amended in 2019; these amendments included the addition of subsection enumeration (i.e., adding in “(a)” through “(d)”) and substantive amendments not relevant here. The substantive text quoted herein has not changed since prior to the actions at issue herein.

treatment, for oneself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.  
...
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the . . . employee inspects or supervises in the . . . employee's official capacity.

The Commission investigated Respondent Salanga's actions, and Respondent Salanga admits to violating multiple provisions of the Fair Treatment law:

- Violation of HRS § 84-13(a): Respondent Salanga admits that he used or attempted to use his official position as a state inspector to obtain unwarranted advantages for himself and the real estate brokerage firm he worked for by offering to provide private real estate services to ARCH Operator A (and/or her mother-in-law) and to ARCH Operator B in return for real estate commissions.
- Violation of HRS § 84-13(a)(1): Respondent Salanga admits that he used or attempted to use his state position to seek private employment from ARCH Operator A (and/or her mother-in-law) and ARCH Operator B as their real estate agent.
- Violation of HRS § 84-13(a)(3): Respondent Salanga admits that he used state time for private business purposes. He offered to provide real estate services to ARCH Operator A and ARCH Operator B while conducting state inspections of their respective care homes, and he performed real estate work for ARCH Operator A and ARCH Operator A's mother-in-law on over 20 occasions during state working hours.
- Violation of HRS § 84-13(a)(4): Respondent Salanga admits that he solicited or engaged in a substantial financial transaction with ARCH Operator A and ARCH Operator B, whose care home businesses he inspected in his state capacity.

State inspectors must be sensitive to the power they have over persons and businesses they inspect: State regulators may not solicit private employment from, or otherwise attempt to engage in private financial transactions or business arrangements

with, those whom they regulate. Such solicitations by a state employee are inherently coercive and amount to a misuse of the employee's official position.

## 2. The Conflicts of Interests Law (HRS § 84-14)

HRS § 84-14, the Conflicts of Interests Law, prohibits state employees from taking official action – that is, it prohibits them from acting in their official capacities, as state employees – when such action directly affects their own financial interests. It also prohibits state employees from creating new conflicts of interests. Two sections of the Conflicts of Interests law are relevant in this case: HRS § 84-14(a) and HRS § 84-14(b).

HRS § 84-14(a) prohibits a state employee from taking official action directly affecting a business or undertaking in which the employee has a financial interest. HRS § 84-14(a) states in relevant part:

**§84-14 Conflicts of interests.** (a) No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which the employee has a substantial financial interest . . . .

Respondent Salanga admits that, by reviewing with ARCH Operator A the deficiencies Respondent Salanga found during his inspection of ARCH Operator A's care home, and by communicating with ARCH Operator A about correcting the deficiencies, Respondent Salanga took official action directly affecting a business or undertaking in which he had a financial interest, in violation of HRS § 84-14(a).

HRS § 84-14(b) prohibits a state employee from acquiring a financial interest in a business or undertaking that is likely to be directly involved in official action the employee takes in the employee's state capacity. HRS § 84-14(b) states:

**§84-14 Conflicts of interests.**

. . .

- (b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.

HRS § 84-14(b) prohibits an employee from creating a conflict of interest that would interfere with the state duties the employee was hired to perform. Respondent Salanga admits that, by entering into a private business relationship as a real estate agent with ARCH Operator A's care home business, Respondent Salanga acquired a financial

interest in a business or undertaking subject to his official action as a state employee, in violation of HRS § 84-14(b).

### III. Resolution of Investigation

Respondent Salanga admits to violating the Fair Treatment law (HRS §§ 84-13(a), 84-13(a)(1), 84-13(a)(3), and 84-13(a)(4)) and the Conflicts of Interests law (HRS §§ 84-14(a) and 84-14(b)).<sup>5</sup>

Respondent Salanga has not previously been the subject of a Commission investigation. He cooperated fully with the Commission in its investigation.

Given Respondent Salanga's admissions to having violated the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve the investigation by (1) issuing this Resolution of Investigation, (2) requiring Respondent Salanga to pay an administrative penalty of \$25,000.00 to the State of Hawai'i, and (3) referring this matter to DOH for further disciplinary action as appropriate.

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<sup>5</sup> This Resolution of Investigation does not make formal findings, but relies on the facts admitted by Respondent Salanga.