



HAWAI‘I STATE ETHICS COMMISSION

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

Resolution of Charge **2020-04**

(COMPL-C-19-00378)

Board of Chiropractic Member’s Violation of the Conflicts of Interests law

September 17, 2020

The Hawai‘i State Ethics Commission (“Commission”) has resolved a Charge and Further Statement of Alleged Violation issued against Gerald Simmons (“Respondent Simmons”), a board member of the Board of Chiropractic, for alleged violation of the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84.

On April 16, 2020, the Commission issued Charge No. COMPL-C-19-00378 against Respondent Simmons, alleging that he violated the State Ethics Code, Chapter 84, Hawai‘i Revised Statutes (“HRS”) by voting to place his spouse on a permitted interaction group. The Commission issued a Further Statement of Alleged Violation on July 16, 2020. The “Charge” refers collectively to Charge No. COMPL-C-19-00378 and the Further Statement of Alleged Violation.

I. Facts

Respondent Simmons admitted and declared, under penalty of perjury, that the following facts are true and correct:¹

- a) Respondent Simmons is a member of the Board of Chiropractic (“Board”), which is a state board established by HRS chapter 442 to regulate the chiropractic profession in Hawai‘i.
- b) Respondent Simmons was appointed to the Board on April 12, 2019 with a term to expire on June 30, 2022.
- c) As a member of a state board, Respondent Simmons, at all times relevant herein, was an “employee” as defined in HRS section 84-3 (defining an

¹ This Resolution does not make formal findings, but relies on the facts admitted by Respondent Simmons.

employee as “any nominated, appointed, or elected officer or employee of the State, including members of board, commissions, and committees...”), and was required to comply with the State Ethics Code.

- d) On July 11, 2019, the Board met and discussed amending the administrative rules pertaining to continuing education courses. Respondent Simmons attended and participated in the July 11 meeting, which was his first Board meeting. Dr. Gary Saito, who is Respondent Simmons’ spouse and was also the President of the Hawai’i State Chiropractic Association (“HSCA”) at that time, testified at the meeting on behalf of HSCA. Dr. Saito testified that he did not believe the Board’s administrative rules allowed for online continuing education courses and that the administrative rules should be amended to require more continuing education credits.
- e) The Board voted to create a permitted interaction group (“PIG”) to recommend possible amendments to its administrative rules.
- f) Dr. Saito requested that the Board appoint him to be a member of the PIG.
- g) The Board voted to place Dr. Saito on the PIG, and Respondent Simmons voted in favor of placing Dr. Saito, his spouse, on the PIG.

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.”² 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.”³ 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.

² Hawai’i State Constitution, Art. XIV.

³ HRS Chapter 84, Preamble.

B. Application of the State Ethics Code to Respondent Simmons

Respondent Simmons is a state employee for purposes of the State Ethics Code,⁴ and is bound by the State Ethics Code's Conflicts of Interests law, HRS § 84-14(a).

The Conflicts of Interests law, HRS § 84-14(a)(1), prohibits state employees from taking official action directly affecting a business or other undertaking in which the employee has a substantial financial interest. The State Ethics Code defines "financial interest" as an interest "held by an individual [or] the individual's spouse" and including "a directorship or officership in a business." HRS § 84-3 (emphasis added). A "business" is "any other individual or organization carrying on a business, whether or not operated for profit." Id. (emphasis added). The Conflicts of Interests law therefore prohibits state employees from taking any official action affecting a non-profit organization in which their spouse is an officer, director, or employee.

The Commission investigated Respondent Simmons' actions, and Respondent Simmons admits that he violated the Conflicts of Interests law inasmuch as he (1) took official action directly affecting HSCA by placing its President, Dr. Saito, on the PIG; and (2) had a financial interest in HSCA by virtue of Dr. Saito's position as its President.

III. Resolution of Charge

Respondent Simmons admits that he violated the Conflicts of Interests law (HRS § 84-14(a)). Respondent Simmons has not previously been the subject of a Commission charge or investigation and the violation occurred at his first Board meeting prior to his receiving ethics training. He has since received ethics training and indicated that he would comply with the State Ethics Code.

Given the violation of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve the Charge by (1) issuing this Resolution of Charge, and (2) requiring Respondent Simmons to pay an administrative penalty of \$175 to the State of Hawai'i.

⁴ HRS § 84-3.