

April 14, 2010

TO: Teresa Parsons, SPHR  
Director's Review Program Supervisor

FROM: Kris Brophy, SPHR  
Director's Review Investigator

SUBJECT: Michelle Singer v. Department of Health  
Allocation Review Request ALLO-09-054

On March 23, 2010, I conducted a combined Director's review by telephone conference regarding the position allocations of Michelle Singer and Bruce Bronoske. Present during the Director's review conference call were Michelle Singer, Bruce Bronoske, Amy Murphy, Washington Federation of State Employees (WFSE); Perry Gordon, WFSE; Robert Kowalski, Department of Health (DOH) Human Resources (HR); Rozanne Stewart, DOH HR.

### **Director's Determination**

This position review was based on the work performed for the six-month period prior to April 7, 2009, the date DOH Human Resources received the request for position review (Exhibit A-5). As the Director's Review Investigator, I carefully considered all of the documentation in the file, the exhibits presented during the Director's review conference, and the verbal comments provided by both parties. Based on my review and analysis of Ms. Singer's assigned duties and responsibilities, I conclude her position is properly allocated to the Hearing Scheduler classification.

### **Background**

On April 7, 2009, Ms. Singer submitted a Position Review Request (PRR) to the DOH HR Office requesting that her position be reallocated from the class of Hearing Scheduler, to Health Services Consultant 1. On August 12, 2009, Robert Kowalski, Human Resource Consultant, issued his decision denying the reallocation (Exhibit A-4). In his letter, Mr. Kowalski outlined the reasons and basis for the denial. On August 27, Amy Murphy, WFSE Council Representative, filed a request for a Director's review on Ms. Singer's behalf (Exhibit A-1).

## **Rationale for Director's Determination**

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which the work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

### Duties and Responsibilities

In addition to the PRR, I reviewed the Position Description form completed by Ms. Singer and signed by her supervisor and DOH management dated January 21, 2008 (Exhibit A-7). I also reviewed a management-initiated agency allocation determination dated February 19, 2009 (Exhibit A-3). The duties did not significantly change over this period of time.

Ms. Singer's position is located within the Health Professions Section of the division of Health Systems Quality Assurance (HSQA). The HSQA division regulates health providers ranging from medical practitioners, hospitals and health care facilities to acupuncturists to veterinarians. HSQA also incorporates emergency service workers and vehicles, as well as transient and migrant worker accommodations. (Exhibit B-1)

Ms. Singer's position is assigned to Adjudicative Clerks Office (ACO) in the Customer Service Office within the HSQA division. Her position supports the adjudication process concerning all Secretary-related activities and Board/Commission-regulated professions. Her position requires knowledge of the legal process under the Administrative Procedures Act and is primarily responsible for docketing cases, scheduling hearings, and preparing and serving all legal documents related to the disciplinary process of health care providers. Her position evaluates orders to determine compliance with the Uniform Disciplinary and Administrative Procedures Act.

Ms. Singer's position is also responsible for reporting the results of final orders involving disciplinary actions to a national data bank for all reportable health professions. She also updates and maintains internal data tracking systems regarding the status of disciplinary cases from the initiating document through final case disposition, and performs other adjudicative activities as assigned. In addition, her position is independently responsible for issuing decisions related to mandatory suspensions of health profession licenses for nonpayment of child support or student loans.

### Summary of DOH's Perspective

Mr. Kowalski asserts the definition for the HSC 1 class describes positions which show active participation in work directly related to ensuring the quality, compliance and

standards of a health program. The appellant supports an adjudicative office, not a health program. Mr. Kowalski asserts the databases the appellant provides support in maintaining, monitoring and updating are adjudicative or regulatory in nature and are not specialized health databases. Further, the duties the appellant performs educating and providing outreach to customers are limited to adjudicative processes and do not involve providing education outreach related to improving public health.

#### Summary of Ms. Singer's Perspective

Ms. Singer asserts that 90% of her time is spent performing entry level professional work which is clearly above the scope of the Hearing Scheduler class (Exhibit A-5). She asserts the Hearing Scheduler class does not address the full scope of work performed. The duties described by this class end with scheduling. She asserts her duties include following cases and certifying the record as proceedings go all the way through to completion and on to Superior Court when needed.

Ms. Singer contends her duties meet three of the four definition statements for the Health Services Consultant 1 class. She asserts her work evaluating, interpreting and entering orders and other information into internal and external databases fits the first HSC 1 definition statement regarding maintaining, monitoring and updating specialized health databases regarding client eligibility, hospital patient data, vital statistics, enrollment, demographics and utilization.

Ms. Singer asserts she contributes to the second definition requirement of evaluating public health program effectiveness, compliance and standards with her responsibility for entering final order information into databases regarding the modification and/or revocation health practitioner credentials following disciplinary or other actions, and for her responsibility for independently processing mandatory suspensions of health practitioners for failure to pay child support and for student loan defaults.

Ms. Singer asserts the duties she performs educating and providing outreach to customers regarding adjudicative processes and participating in process improvements meets the third definition statement of conducting public education outreach and/or prevention activities to improve public health.

Ms. Singer also asserts another person in her unit performs the same duties and is classified as a Health Services Consultant 1.

#### Comparison of Duties to Class Specifications

When comparing the assignment of work and level of responsibility to the available class specifications, the class series concept (if one exists) followed by definition and distinguishing characteristics are primary considerations. While examples of typical work identified in a class specification do not form the basis for an allocation, they lend support to the work envisioned within a classification.

### Health Services Consultant series

The classes within the Health Services Consultant series describe positions which provide professional health-services related consultation, assistance, and management regarding public health programs.

### Health Services Consultant 1

The Definition for the Health Services Consultant 1 classification states:

“This is the entry level of the professional Health Services Consultant series. Positions must perform one or more of the following functions within the Department of Health;

- Maintains, monitors and updates specialized health databases regarding client eligibility, hospital patient data, vital statistics, enrollment, demographics and utilization.
- Promotes and assists with the evaluation of public health program effectiveness, compliance, and standards.
- Conducts public education outreach and/or prevention activities to improve public health.
- Maintains and distributes vaccine immunization biologicals and supplies.”

There are no Distinguishing Characteristics for this class.

Ms. Singer's position does not meet the Definition's first functional requirement. Approximately 15% of Ms. Singer's time involves reporting final orders for all reportable health professions issued through the agency's adjudication process to the federal HealthCare Integrity and Protection Data Bank (HIPDP), a U.S. Health and Human Services national data base. (Exhibit A-5) This includes evaluating final orders to determine the nature of the discipline involved, and coding and entering the information into the data bank. In addition, Ms. Singer is responsible for collecting and reporting adjudicative case data into the agency's internal HSQA's Integrated Licensing and Regulatory System (ILRS) database.

While these activities involve entering information into specialized data bases, this work is regulatory in nature and is done in direct support of the agency's adjudicative function. This work is limited in scope and does not encompass the broader responsibility for maintaining, monitoring and updating information regarding client eligibility, hospital data, vital statistic, enrollment, demographics and utilization relative to public health programs as required.

Ms. Singer's position does not meet the Definition's second functional requirement. While her work entering final order information into databases regarding health practitioner

disciplinary actions, and processing mandatory suspensions of health practitioners for failure to pay child support and for student loan defaults serves a regulatory compliance function, this work does not directly involve evaluating the effectiveness, quality and compliance of a health program. Ms. Singer works in a centralized adjudicative services unit within DOH. Her primary function is to provide professional adjudicative support to all divisions within the agency. Ms. Singer does not perform health-services related activities in support of a public health program.

In order to meet the third functional requirement, the incumbent must provide education and outreach associated with improving public health. Ms. Singer spends approximately fifteen percent of this time serving as a resource on special projects and participating in quality improvement work groups. However, this work involves providing developing policies and procedures regarding the effectiveness of the adjudicative process, not public health. For this reason her duties do not meet the third functional requirement.

It is undisputed that Ms. Singer does not maintain and distribute biological vaccines and supplies.

In Byrnes v. Dept's of Personnel and Corrections, PRB No. R-ALLO-06-005 (2006), the Board held that "[w]hile a comparison of one position to another similar position may be useful in gaining a better understanding of the duties performed by and the level of responsibility assigned to an incumbent, allocation of a position must be based on the overall duties and responsibilities assigned to an individual position compared to the existing classifications. The allocation or misallocation of a similar position is not a determining factor in the appropriate allocation of a position." Citing to Flahaut v. Dept's of Personnel and Labor and Industries, PAB No. ALLO 96-0009 (1996).

In summary, Ms. Singer does not perform health-services related activities in support of a public health program. She works in a centralized adjudicative services unit within the DOH. Her primary function is to provide professional adjudicative support to all divisions within the agency for disciplinary-related actions taken toward health care providers as well as supporting other adjudicative or regulatory proceedings. Her position does not meet the Definition of the Health Services Consultant 1 class.

#### HEARINGS COORDINATOR

The Definition for this class states:

"Coordinates hearings process and drafts orders according to instructions from a Board or Commission. Positions may also provide professional level staff support services."

The Distinguishing Characteristics for this class state:

The majority of work performed by these positions include tasks as: attending hearings; instructing parties on procedures and explaining process; marking exhibits; drafting decisions based and supported by the evidence.

While Ms. Singer coordinates hearings and provides professional level staff support services, her position does not draft orders. For this reason her position is more aligned with the Hearing Scheduler class.

## HEARINGS SCHEDULER

The Definition for this class states:

“Responsible for scheduling and coordinating contested case hearings as defined in the Administrative Procedures Act.”

Ms. Singer's position has primary responsibility for scheduling and coordinating contested case hearings for formal disciplinary-related actions taken toward health care providers and other adjudicative or regulatory proceedings within the agency.

The Distinguishing Characteristics state:

“Positions allocated to this class are assigned the responsibility for the scheduling process to include: (1) identification of issues and interested parties; (2) review of case to ensure presence of complete documentation before scheduling; obtain missing information; (3) determination of need for and type of hearing/notice form; (4) prepare hearing calendars for and coordinate with Administrative Law Judge(s); (5) assignment or adjustment of hearing date and place; determine time needed for hearing based on type of issues and number of parties; coordinate scheduling services (e.g., interested parties, attorneys, witnesses, subpoena requests, court reporter, hearing space, postponements, withdrawals); (6) maintenance of tracking system. Incumbents must demonstrate independence of judgment in all steps of the scheduling process; be accountable for efficient use of professional staff time; use knowledge of applicable administrative law and legal staffs' practice to respond to inquiries on pending cases; or supervise a support staff involved in aspects of the scheduling process.”

The portion of work Ms. Singer performs scheduling and coordinating hearings closely matches the Distinguishing Characteristics for this class. Ms. Singer prepares, issues and serves all hearing notices. She establishes settlement, motion, and discovery deadlines along with hearing dates. She coordinates and resolves scheduling and hearing date issues, organizes hearing dockets and prepares hearing schedules. She reviews the case and ensures complete documentation of the file. She also monitors and maintains electronic tracking of hearing dates and collects and reports adjudicative case data.

It is uncontested that Ms. Singer performs various adjudicative duties in addition to those described by this class. (Exhibit A-4). Ms. Singer's duties include following cases and certifying the record as proceedings go all the way through to completion and on to Superior Court when needed.

Ms. Singer is responsible for processing mandatory suspensions of health practitioners for failure to pay child support and for student loan defaults. The law requires the agency to suspend the license of any person who has been certified by a lending agency and reported to the department for nonpayment of federally or state-guaranteed educational loan or service-conditional scholarship. Approximately five percent of this time involves processing mandatory suspensions.

Most positions within the civil service system occasionally perform duties that appear in more than one classification. However, when determining the appropriate classification for a specific position, the duties and responsibilities of that position must be considered in their entirety and the position must be allocated to the classification that provides the best fit overall for the majority of the position's duties and responsibilities. See Dudley v. Dept. of Labor and Industries, PRB Case No. R-ALLO-07-007 (2007).

It is apparent that some of the work described in the HSC 1 class specification contains similar aspects of the work that Ms. Singer performs. Although Ms. Singer's work contributes to the overall goal and mission providing quality health care, the primary focus of her position is more consistent with the Definition, Distinguishing Characteristics and Typical Work statements of the Hearing Scheduler class.

A position's allocation is not a reflection of performance or an individual's ability to perform higher-level work. Rather, it is based on a comparison of duties and responsibilities to the available job classifications. The Hearing Scheduler classification best encompasses the overall scope of work and level of responsibility assigned to Ms. Singer's position.

### **Appeal Rights**

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to . . . the Washington personnel resources board . . . . Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 600 South Franklin, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 753-0139.

If no further action is taken, the Director's determination becomes final.

c: Michelle Singer  
Amy Murphy, WFSE  
Robert Kowalski, DOH  
Lisa Skriletz, DOP

Enclosure: List of Exhibits

## List of Exhibits

### A. Michelle Singer Exhibits

1. Letter of Appeal from WFSE Amy Murphy dated August 26, 2009
2. Request for Director's Review August 31, 2009
3. Agency Allocation determination (Hearings Scheduler to a HSC 1) letter dated February 19, 2009
4. Agency Allocation determination letter (Hearings Scheduler to HSC 1) dated August 12, 2009
5. Position Review Request date stamped HR April 7, 2009
6. Position Review Request – Supplemental Questionnaire
7. Position Description signed and dated January 27, 2009
8. Class Specification: Hearings Scheduler (425K)
9. Class Specification: Health Services Consultant 1 (283H)

### B. Department of Health Exhibits

1. Organizational Chart – Customer Service Office
2. Class Specification: Hearings Scheduler (425K)
3. Class Specification: Health Services Consultant 1 (283H)
4. Position Review Request Supplemental Questionnaire. Includes Email correspondence from Shellie Carpenter, Supervisor, dated June 19, 2009