

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

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In the matter of

Professor Sabina Burton  
UW-Platteville

Recommendation of dismissal for  
cause

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Brief of the University of Wisconsin-Platteville

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Dennis Shields, Chancellor of the University of Wisconsin-Platteville (UWPL), upon the advice and recommendation of the Faculty, requests the dismissal of tenured professor Sabina Burton of the Criminal Justice Department for just cause as permitted by University of Wisconsin Board of Regents Policy 20-23(4). Dr. Burton's unprofessional and uncivil behavior, unchecked over several years, has caused serious damage to her colleagues and the university.

**STATEMENT OF THE CASE**

On December 16, 2016, Interim Provost Elizabeth Throop and Interim Dean Melissa Gormley filed a complaint pursuant to Wis. Admin. Code UWS § 4.02(1) seeking Burton's termination from her tenured faculty position in the Department of Criminal Justice (UWPL 17-18)<sup>1</sup>. Chancellor Shields notified Dr. Burton of the complaint and, after seeking the advice of

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<sup>1</sup> UWSP hearing exhibits are cited by reference to the Bates number in the upper right corner of the page.

the faculty, placed her on administrative leave (UWPL 16). Dr. Petra Roter, of the UW System Administration, was appointed to investigate the matter.

Dr. Roter submitted a report dated March 1, 2017 (UWPL 7-13) finding that:

1. Dr. Burton had recorded a series of UW-Platteville internal conversations, meetings, and proceedings without prior consent or notification, including some involving confidential personnel matters. She provided the recordings to her husband who published them widely on the internet.
2. Colleagues reported feeling threatened and harassed by Dr. Burton who undermined their professional integrity and damaged their reputations and future employment opportunities.
3. Dr. Burton had strayed from or violated letters of direction to improve her behavior and treat colleagues with respect and civility.

Chancellor Shields offered Burton the opportunity to discuss Roter's investigation as provided for in UWS § 4.02(1). Dr. Burton accepted the offer, but cancelled minutes before the scheduled meeting was to begin (5/25/17 tr. 27-28). Chancellor Shields determined that the Roter investigation supported the provost/dean complaint and provided grounds for dismissal. He issued a statement of charges on March 30, 2017 (UWPL 1-6) accusing Burton of publicly disclosing confidential personnel information, engaging in disrespectful, harassing, and intimidating behavior towards colleagues, and involving students in her personal complaints.<sup>2</sup>

Pursuant to UWS § 4.04, Burton requested a hearing before her peers, the faculty committee provided for by UWS § 4.03. The committee set a hearing date for May 25, 2017.

Dr. Burton repeatedly tried to postpone the hearing, but the panel denied her requests (see, e.g.

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<sup>2</sup> The faculty appeals panel did not find facts supporting dismissal on grounds of student involvement and the chancellor does not pursue dismissal on that theory. *See Appeal Panel decision, 12.14.17, pt. III.*

Hansen email dated 5/23/17). Minutes before the hearing was to commence on May 25, Dr. Burton's husband, Roger Burton, arrived and announced that his wife would not be attending because she was ill. The Burtons did not provide a medical excuse, and the faculty committee went forward to hear the administration's case (5/25/17 tr. 4-6). Some weeks after the hearing, Burton provided a medical excuse asserting that she was too ill to attend a hearing for several months. The faculty panel set a second hearing date for September 19, 2017 at which Burton did appear, now represented by legal counsel. Dr. Burton used her entire hearing allotment of three hours to make argument and cross-examine Chancellor Shields (9/19/17 transcript). Dr. Burton then requested additional hearing time, and the committee heard testimony from her and rebuttal testimony from Chancellor Shields on November 30, 2017.

The Faculty Appeal Panel provided findings and recommendations to Chancellor Shields on December 14, 2017. By unanimous vote, the Panel found clear and convincing evidence to establish just cause for Burton's dismissal. As required by UWS § 4.07(1), Shields afforded Burton the opportunity to discuss the report which she accepted and scheduled for February 15, 2018. Approximately an hour before the scheduled meeting, Burton cancelled (2/16/18 Shields letter). Chancellor Shields submitted his termination recommendation to President Raymond Cross on February 16, 2018.

### **STATEMENT OF FACTS**

Following a long series of concerns with Burton's behavior (5/25/17 tr. 34-38), Elizabeth Throop, Dean of the UWPL College of Liberal Arts and Education, served Burton with a Letter of Direction dated October 28, 2014 (UWPL 34-36). The letter detailed a number of threatening and unprofessional behaviors that Burton had engaged in, including insulting the chair of her

department, accusing former colleagues of unethical behavior, abdicating responsibility for a visit from an international delegation, using poor judgment in interactions with a new colleague, demeaning an academic staff member, threatening a junior colleague's tenure case, and proposing to involve students in her personnel affairs. Dean Throop directed Burton to work to resolve issues within her department, cease making unwarranted accusations against colleagues by email, treat her colleagues with respect, apologize to Dr. Solar for threatening his tenure, and avoid involving students in her personal disputes.

Dr. Burton sued in federal court claiming, among other things, that the Throop letter of direction was in retaliation for her protected activities. The federal court granted summary judgment in favor of the university, and the United States Court of Appeals for the Seventh Circuit upheld the decision. *See Burton v. Board of Regents*, 851 F.3d 690 (7<sup>th</sup> Cir. 2017). The court found that Burton did not dispute the truth of the allegations in the Throop letter, only their characterization, and noted that Burton had decided not to heed any of the direction in Throop's letter. *See Id.* at 698. At the May 25th hearing, Throop testified that Burton said she would not follow the directions and that Burton did not follow the directions (5/25 tr. 39).

Dr. Burton's relentless and lengthy campaign against her colleagues and the administration of UWPL stems primarily from an incident in 2012 where a fellow faculty member, Dr. Loren Gibson, engaged in a "breach experiment" in two of his classes by passing a female student a note with his telephone number and the words "call me." One of the students believed she was the victim of sexual harassment and complained to Burton. Dr. Burton reported the matter to Dean Throop who, along with the chair of the department, verbally reprimanded Dr. Gibson, "for performing such a stupid stunt" (5/25 tr. 35). Dr. Gibson was later non-renewed and left UWPL (5/25 tr. 25).

After Burton's involvement in the Gibson matter she received tenure and two raises (5/25 tr. 38-39). Nevertheless, she continued to claim publicly that the UWPL had failed to address sexual harassment and had retaliated against her for her part in it. For example, see the letter from a "disappointed student" claiming to feel unsafe and accusing the university of covering-up "Lorne Gibson's mistake" (UWPL 52). See also, Burton's Facebook posting to "dear students" (UWPL 59).

On June 3, 2016, Chancellor Shields issued Burton a second letter of direction detailing unprofessional and concerning interactions with campus colleagues including (in widely distributed emails) referring to an academic staff member as "nasty," claiming that Dean Throop was covering up wrongdoing, accusing the Provost of pressuring others not to communicate with her, claiming that she had received death threats, accusing the former department chair of lying and a junior colleague of making racially offensive comments in class, accusing the current department chair of hiring friends and making false assertions in a grant application, and demanding that UWPL inform a potential granting agency that it was under investigation for civil rights violation. Chancellor Shields directed Burton to "cease using University resources to harass, intimidate, or threaten co-workers and supervisors." (UWPL 37-8).

Dr. Burton filed a second lawsuit in federal court claiming that Shields issued his letter of direction in retaliation for her protected activities. That action remains pending, *See* Case No. 17-CV-36, United States District Court for the Western District of Wisconsin.

In August of 2016, Chancellor Shields offered to meet with Burton to hear her perspective. After he made clear that the meeting was not to be recorded, Burton declined the invitation (5/25 tr. 20-22; UWPL Exhibit E).

In about October of 2016, Professor Cheryl Banachowski-Fuller contacted Throop (now interim provost) to notify her of confidential, evaluative information about Criminal Justice probationary faculty posted on a publicly accessible website maintained by Roger Burton (5/25 tr. 40, 97-98). For years Burton secretly recorded department meetings, including those that she knew should have been kept confidential. She never received approval for making such recordings, nor did she tell any of her colleagues that she was recording their discussions. She gave copies of recordings to a media “watchdog” site (5/25 tr. 40-41, UWPL 38-46; 60-65). Dr. Burton has never denied providing the recordings to her husband for posting on the public site.

Deliberations regarding probationary faculty are confidential, as all faculty know. It is a national norm (5/25 tr. 41). Dr. Burton knew or should have known of her obligations in this regard.

Dr. Burton ignored the directions in both the Shields and Throop letters about ceasing to demean and harass colleagues. In particular, she made insulting accusations about Solar to her husband who posted them on line and wrote a threatening letter when Solar complained (5.25.17 tr. 47-48; 105-113; UWSP 56-58). She rudely dealt with Dr. Nemmetz, a junior faculty member, telling her that the other faculty in the department had “marked [her] down” during her hire as “minimally qualified,” which, if true, was not only cruel, but also a revelation of confidential hiring information (5/25 tr. 49-50). Burton leveled outrageous and false accusations against the department chair, Dr. Strobl (5/25 tr. 75; UWPL: 33-37). In addition, she demeaned David Couper, a well-respected academic staff member, accusing him of misrepresenting his credentials (5/25 tr. 50-51; UWPL 55).

The cumulative effect of Dr. Burton’s uncivil and bullying behavior seriously harmed the department and the university as a whole. Department Chair Strobl described the situation as

intolerable and described a department that was nonfunctional. Provost Throop and Strobl agreed that only after Burton was placed on administrative leave and removed from campus was the department able to function as a productive, cohesive unit; so toxic was Burton's presence and so broken was any trust in her (5/25 tr. 53, 89-90).

## ARGUMENT

The Board of Regents should not tolerate the type of behavior exhibited by Dr. Burton. She has received due notice of her misconduct and the opportunity to be heard. There is just cause to terminate Burton from her tenured position.<sup>3</sup>

### I. There is just cause for discipline of Dr. Burton.

1. The Board should apply the same "just cause" definition it has applied in prior decisions dismissing tenured professors.

In its most recent faculty termination cases, the Board has applied the standard for just cause set forth by the Wisconsin Supreme Court in *Safransky v. State Personnel Board*, 62 Wis. 2d 464 (1974).

The basis for such a requirement of 'just cause' or rational nexus is between conduct complained of and its deleterious effects on job performance as constituting grounds for termination of tenured government employees has been to avoid arbitrary and capricious action on the part of the appointing authority and the resulting violation of the individual's rights to due process of law. Only if the employee's misconduct has sufficiently undermined the efficient performance of the duties of employment will 'cause' for termination be found.

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<sup>3</sup> See e.g. *Reinke v. Personnel Board*, 53 Wis. 2d 123 (1971); *Safransky v. Personnel Board*, 62 Wis. 2d 464 (1974); Wis. Code § UWS 4.01 ("Any faculty member having tenure may be dismissed only by the board and only for just cause and only after due notice and a Hearing.") accord *Marder v. Board of Regents of the University of Wisconsin System*, 2005 WI 159, ¶ 2 ("Marder does not assert that there was insufficient evidence presented to the Board to terminate him for just cause"); and *Yao v. Board of Regents of the University of Wisconsin System*, 2002 WI App 175, ¶ 8 (Question is whether "taking into account all of the evidence in the record . . . the Professor . . . engaged in misconduct").

*Safransky*, at 474-75.

It is important that the Board consistently applies the just cause definition that it has used in prior cases. No court has found the Board's definition to be incorrect and the Wisconsin courts that have reviewed the Board's termination of tenured professors in *Yao* and *Marder* (cited above) have upheld the Board.<sup>4</sup>

2. Dr. Burton's conduct should result in serious discipline under any reasonable definition of just cause.

"Just cause" for discipline is established if Dr. Burton's deficiencies can be said to impair the performance of her duties or her position and/or the efficiency of the university's operations. Under any definition, there is just cause for discipline of Dr. Burton.

A competent, tenured university professor must be able to engage civilly and professionally with colleagues. At a minimum, a university must be able to trust its faculty to evaluate junior faculty fairly and honestly. The university cannot have an effective system of shared governance if the faculty cannot deal candidly with colleague evaluations and work cohesively to fulfill the university's mission (*See 5/25 tr. 41*).

Dr. Burton admitted to intentionally recording conversations related to personnel decisions and evaluations of her colleagues' work performance during meetings of the departmental faculty performance review committee. She knew that both senior and junior faculty have a reasonable expectation of privacy in sensitive personnel decisions. She knew that once she gave these materials to Roger Burton, she was violating the trust and faith her colleagues and the university had put in her. As the faculty appeals panel so eloquently put it:

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<sup>4</sup> The definition of just cause was not at issue in either case.

The expectation of privacy in the faculty appointment and tenure review process is standard practice in university settings, including at UW-Platteville. The process of peer review is at the center of faculty governance. Robust review of faculty personnel matters cannot occur without candor and candor cannot occur without trust. Recording sensitive discussions and making those recordings available for dissemination in a public medium breaks that trust and discourages candid discussions in the future . . . Taken as a whole, this conduct has a chilling effect on tenure rights and diminishes academic freedom, especially with regard to junior faculty.

(Findings and recommendations of the Faculty Appeal Panel, 12/14/17).

Dr. Burton's serious breach of trust in releasing confidential personnel information must also be viewed in the context of her bullying behavior. She did not confine herself to criticism of the chancellor, provosts, and deans but was remarkably unprofessional and uncivil in her dealings with her department chairs and other members of her department, including junior colleagues. A review of Burton's emails, the editorial remarks made accompanying the transcripts posted on the public forum, and the hearing testimony of Strobl, Solar, and Fuller, demonstrates that Burton went the extra mile to intimidate her colleagues. In particular, Burton sent demeaning comments to junior faculty members Solar and Nemmetz and was disrespectful to academic staff member David Couper. Her comments and behavior towards them was clearly designed to damage their reputations and career prospects.

As the faculty panel noted, "[a]ll members of a unit, faculty and teaching academic staff, are colleagues regardless of rank. Thus, all should be treated with respect." Dr. Burton has been unwilling to comply with this basic expectation of a tenured faculty member.

Dr. Burton's disrespectful treatment of her colleagues coupled with her violation of a serious trust "has sufficiently undermined the efficient performance of the duties of employment" and constitutes cause for discipline.

II. Dr. Burton received all due process.

The second prong of a dismissal for just cause is due process. It is undisputed that a tenured professor in the University of Wisconsin System is entitled to due process prior to termination. *See Marder* and *Yao* decisions cited above.

Compliance with Wis. Admin. Code § UWS 4.05 more than satisfies the requirements of due process. Here Burton received notice of her wrongdoing and opportunity to contest the charges before a committee of her peers. She was provided with the names of witnesses and access to documentary evidence. She was given the right to counsel, to offer witnesses, to confront and cross-examine adverse witnesses. And she received a verbatim record of the hearings, written findings of fact and a decision based on the hearing record.

Dr. Burton used much of her faculty peer review to complain about process, and we expect that she will continue to do so in this proceeding. She is, however, incorrect in her assertions that she was denied due process. Dr. Burton received all process required by UWS 4.05, and nothing more is owed.

III. Termination of Dr. Burton is the only reasonable discipline.

Termination is the only reasonable disciplinary outcome in this case. It is clear that the Department of Criminal Justice cannot function while Burton remains a member. No colleague can escape her attacks on their integrity and reputations. No one can work with her on grant or service projects, and no one can trust her to keep necessary confidences or treat people with fairness and respect. Indeed, not one member of the Criminal Justice Department came forward to support Dr. Burton's retention.

There is no hope that Dr. Burton will change for the better. She received two letters of direction and did not modify her behavior. She cancelled every meeting with the chancellor that was set to try to work things out. She has never shown remorse or displayed even the smallest bit of understanding as to her behavior's deleterious effect on the institution. Termination of Dr. Sabina Burton's employment with the UWPL is the only reasonable outcome for this matter.

Dated this 16<sup>th</sup> day of March, 2018.



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