

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
May 11, 2023**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present were Katherine Noel, Chair; Corinne Finnerty; Sue Anne Gilroy; Rafael Sanchez; and John Krauss. Office of Inspector General (OIG) staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Mark Mitchell, Director of Investigations; Mike Lepper, Special Agent; Sam Stearley, Special Agent; and JJ Fajt, Special Agent.

Others present were Matthew Gerber, Ethics Officer, Family and Social Services Administration; Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Rachael Ehlich, OPS Director, Office of the Governor; Richard Brown, Executive Director, Indiana Department of Correction; Emily Fajardo, Executive Assistant, Indiana Department of Correction; Elliot Anderson, Chief of Staff, Indiana Department of Correction; Beth Green, General Counsel, Indiana Department of Workforce Development; Jon McDonald, Ethics Officer, Indiana Criminal Justice Institute; Bill Anthony, Deputy Attorney General, Office of Attorney General; and Dr. Frank Messina, Director of Clinical Operations, Family and Social Services Administration.

**II. Adoption of Agenda and Approval of Minutes**

Commissioner Krauss moved to adopt the agenda, Commissioner Sanchez seconded the motion, and the Commission passed the agenda (5-0).

Commissioner Sanchez moved to approve the Minutes of the April 13, 2023, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (4-0). Commissioner Krauss abstained from voting due to his absence at the April meeting.

**III. Request for Formal Advisory Opinion**

2023-FAO-004

Elliot Anderson, Ethics Officer  
Indiana Department of Correction

Elliot Anderson serves as the Chief of Staff and the Ethics Officer for the Indiana Department of Correction (DOC). Mr. Anderson requests the Commission’s formal advisory opinion on behalf of DOC to determine the Ethics Code’s implications for DOC employees pursuing outside employment opportunities with DOC contractors while maintaining DOC employment.

After hearing Mr. Anderson’s presentation, the Commission discussed the matter and indicated that it would be inappropriate to rule on the matter as it potentially involves the Commission’s

retroactive determination regarding DOC employees working outside of their state employment for DOC vendors..

Commissioner Krauss moved to decline to issue a Formal Advisory Opinion, and Commissioner Finnerty seconded the motion, which passed (5-0). The Commission recommended that DOC seek a legislative remedy to the outside employment questions.

**IV. Request for Formal Advisory Opinion**

2023-FAO-005

Dr. Frank Messina, Director of Clinical Operations for Office of Medicaid Policy & Planning

Matthew Gerber, Ethics Officer

Family and Social Services Administration

Matthew Gerber is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Mr. Gerber is requesting the Commission's formal advisory opinion on behalf of Dr. Frank Messina, the Director of Clinical Operations for FSSA's Office of Medicaid Policy and Planning (OMPP). Specifically, Mr. Gerber is requesting an opinion from the Commission regarding Dr. Messina's proposed post-state employment opportunity with Eskenazi Hospital.

Dr. Messina previously sought a formal advisory opinion from the Commission (2022-FAO-005) to determine the ethical implications of his continued employment with Eskenazi Hospital (Eskenazi), Indiana University Health (IU Health) and the Indiana University School of Medicine (IU School of Medicine) after beginning his role at FSSA. Mr. Gerber provides that Dr. Messina has adhered to the Commission's requirements that he screen himself from participation in any matters in which Eskenazi, Indiana University Health Physicians (IU Health Physicians) or IU Health would have a unique financial interest.

As the Director of Clinical Operations for OMPP, Dr. Messina's duties include providing medical oversight, expertise and leadership to projects and operations within OMPP. He also works with FSSA's Pharmacy Team and the Coverage and Benefits Team, and he occasionally assists the Program Integrity Team. The Program Integrity Team is primarily responsible for reviewing suspected cases of fraud and abuse and making recommendations regarding Medicaid providers. In addition to those duties, Dr. Messina also participates in rulemaking and vendor procurement activities at OMPP. Those activities generally apply to all Medicaid providers.

Dr. Messina has been offered the position of Medical Director of Transitions of Care with Eskenazi and would like to accept the offer and begin employment on August 1, 2023, or sooner if possible. In his proposed role at Eskenazi, Dr. Messina would occasionally treat patients in the Emergency Department, which could include the treatment of Medicaid patients. Eskenazi contracts with IU Health for professional physician services, which would provide the source of his compensation for patient care in the Emergency Department; however, ninety percent of his proposed role will

be administrative in nature, including acting as a physician advisor on the Eskenazi Utilization Review Committee.

Based on information provided to the Commission, IU Health Physicians pays Dr. Messina on an hourly basis for his work at Eskenazi, rather than Dr. Messina billing patients or insurance. As Dr. Messina will be providing patient care in the Emergency Department, this could potentially include Medicaid patients similar to any other physician providing medical services for IU Health Physicians. His compensation would not be tied to the charges and collections that he generates or the payer mix of the patients for which he cares; however, his fees may be paid from general Medicaid funds.

Dr. Messina remains on faculty with the IU School of Medicine. Dr. Messina took an unpaid leave of absence while maintaining his faculty appointment during his tenure at FSSA. Dr. Messina would like to return to full time employment with the IU School of Medicine where he would teach medical and physician assistant students at their Department of Emergency Medicine.

Eskenazi and IU Health Physicians are Indiana Medicaid enrolled providers maintaining agreements with FSSA and which receive Medicaid reimbursement. Eskenazi has five active contracts with FSSA's Division of Mental Health and Addictions (DMHA). DMHA also certifies Eskenazi's community health center. IU Health Physicians is affiliated with IU Health and maintains five contracts with FSSA, none of which are administered by OMPP. In his role at FSSA, Dr. Messina is not the owner or administrator of any contracts with FSSA and does not believe he has made any discretionary decisions affecting the outcome of the negotiation or nature of the administration of any contract with Eskenazi Health or IU Health.

In Dr. Messina's role at FSSA, he does not provide regulatory or license oversight on behalf of FSSA for Eskenazi Health, IU Health or the IU School of Medicine. Dr. Messina's proposed post-employment opportunities with Eskenazi and IU Health would not include any lobbying activities. He also understands that he is prohibited from representing Eskenazi, IU Health or the IU School of Medicine with any particular matter in which he personally and substantially participated during his employment at FSSA.

Dr. Messina also understands his obligation to protect confidential information learned through his work at FSSA and is aware that he is prevented from divulging any confidential information or allowing anyone, including Eskenazi and IU Health Physicians, to benefit from it.

Dr. Messina is also an appointed member of the Indiana Medical Licensing Board (MLB) and plans to continue to serve in that role after leaving his position at FSSA. The MLB consists of seven (7) members and grants licenses to physicians, osteopathic physicians, telehealth providers, postgraduate trainees, teaching permits and non-ECFMG training permits. The MLB oversees waiver of certain licensing requirements and monitors compliance with the provisional licenses the MLB issues as a result. Those seeking licensing bring individual licensing requirement matters directly to the MLB.

The MLB also oversees allegations of unprofessional conduct that are brought as complaints by the Indiana Attorney General's Office. Those allegations can range from general unprofessional conduct, alcohol or substance abuse and pending criminal charges or convictions. The MLB is charged with the responsibility of disciplining licensees who have violated practice standards, acted dishonestly or acted unethically. As a result, MLB board members are asked to vote to terminate, suspend or restrict licenses of individual practitioners. The standard of those votes is whether, by a preponderance of the evidence, the individual presents a danger to the public by his/her continued practice of medicine and, therefore, whether MLB should terminate, suspend or restrict the individual's license.

As a member of the MLB, Dr. Messina does not believe his decisions or votes financially benefit any of his proposed employers directly, as the MLB's decisions affect individual physicians and other practitioners' licenses, and the MLB ensures those in the profession maintain professional standards while practicing in an honest and ethical manner.

Mr. Gerber is seeking the Commission's formal advisory opinion regarding the application of any of the rules in the Code to Dr. Messina's proposed post-employment with Eskenazi and IU School of Medicine, as well as any implications under the Code for his continued service with the MLB.

The analysis stated the following:

Mr. Gerber's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Post-employment, Conflicts of Interests, Use of State Property and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. Messina is analyzed below.

*A. Post-employment*

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Dr. Messina from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, as Dr. Messina plans to leave state government and will be a former employee for the purposes of this rule, he is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

Based on the information provided, Dr. Messina would not be engaging in any lobbying activities in his positions at Eskenazi or the IU School of Medicine. To the extent that Dr. Messina does not engage in executive branch lobbying for one year after leaving state employment, his post-

employment opportunity at Eskenazi and his return to teaching at the IU School of Medicine would not violate this provision of the post-employment rule.

Second, Dr. Messina is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

Eskenazi and IU Health Physicians are Indiana Medicaid enrolled providers maintaining agreements with FSSA and which receive Medicaid reimbursement. Eskenazi has five active contracts with FSSA's Division of Mental Health and Addictions (DMHA). IU Health Physicians is affiliated with IU Health and maintains five contracts with FSSA, none of which are administered by OMPP. In his role at FSSA, Dr. Messina is not the owner or administrator of any contracts with FSSA and does not believe he has made any discretionary decisions affecting the outcome of the negotiation or nature of the administration of any contract with Eskenazi Health or IU Health.

Dr. Messina has worked at least peripherally on some contracts while at FSSA. He provided that one of the medical directors who reported to him at FSSA is a contractor for FSSA under a contract between OMPP and University Medical Diagnostic Associates, which is affiliated with IU Health. Dr. Messina's involvement is limited to validating hours worked and authorizing payment. Dr. Messina also identified a pilot project funded by OMPP with Indiana University regarding complex case management. This contract predated his tenure at FSSA and his involvement with that project is limited to validating services provided and authorizing reimbursement.

Based on the information provided, Dr. Messina's involvement in the contracts between OMPP and University Medical Diagnostic Associates and between OMPP and Indiana University do not constitute the negotiation or administration of a contract where he was in a position to affect the outcome of the negotiation or the nature of the administration of such contracts.

Third, Dr. Messina is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Mr. Gerber provides that Dr. Messina has not made any regulatory or licensing decisions in his position with FSSA that directly applied to Eskenazi, IU Health or the IU School of Medicine.

Dr. Messina has not made any regulatory or licensing decisions in his position at FSSA that directly applied to Eskenazi, IU Health, the IU School of Medicine, or any of these entities' parents or subsidiaries.

Fourth, Dr. Messina is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee.

The information presented to the Commission does not suggest that Eskenazi has extended an offer for his prospective new role in an attempt to influence Dr. Messina in his capacity as a state employee.

**Accordingly, the Commission finds that the cooling off period of the post-employment rule would not prohibit his intended employment opportunity with Eskenazi nor his resuming teaching activities at the IU School of Medicine immediately upon leaving state government.**

Finally, Dr. Messina is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Dr. Messina would be prohibited from representing or assisting Eskenazi, the IU School of Medicine, or any other person, in a particular matter in which he personally and substantially participated as a state employee.

**Dr. Messina has not identified any particular matters that he worked on in his role at FSSA that he will be required to work on in his role at Eskenazi or the IU School of Medicine.**

*B. Conflict of interests - decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Dr. Messina from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Messina from participating in any decision or vote, or matter relating to that decision or vote, if a business organization with whom he is negotiation or has an arrangement concerning prospective employment or in which he serves as an employee has a financial interest in the matter.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority in writing and either seek an advisory opinion from the Commission or file a written disclosure statement.

Dr. Messina maintains an active screen at FSSA, which was part of his disclosure statement filed under this rule on April 28, 2022. The screen prohibits Dr. Messina from participating in any

decisions or votes, or matters related to decisions or votes, at FSSA in which Eskenazi, IU Health Physicians or IU Health have a financial interest. As such, he has complied with the requirements in IC 4-2-6-9 for any potential conflict of interests that exists between his FSSA employment and his arrangement concerning prospective employment with Eskenazi, IU Health Physicians or IU Health.

In his continued role at the MLB, Dr. Messina may potentially be in a position to participate in a decision or vote, or matter related to a decision or vote, in which Eskenazi, IU Health Physicians, IU Health or IU School of Medicine would have a unique financial interest.

**The Commission advised Dr. Messina to work with the Professional Licensing Agency's ethics officer to identify any potential conflicts of interests in his role at MLB, and to implement a screen and file a new disclosure with the Commission relevant to his role at the MLB should the MLB or Dr. Messina identify a potential conflict of interests.**

*C. Conflict of interests – contracts*

Pursuant to IC 4-2-6-10.5, a special state appointee may not knowingly have a financial interest in a contract made by an agency. This prohibition however does not apply to a special state appointee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Mr. Gerber provides that Eskenazi has five active contracts with FSSA's DMHA, and FSSA's divisions have five active contracts with IU Health. Although Dr. Messina plans to leave employment at FSSA, he will continue to be subject to the Code's requirements due to his retained position as a special state appointee on the MLB.

Mr. Gerber and Dr. Messina provided that IU Health Physicians pays Dr. Messina hourly for his Emergency Department work, and Dr. Messina does not bill his patients or insurance directly. Dr. Messina's Emergency Department work would potentially include Medicaid patients similar to any other physician providing medical services for IU Health Physicians. His services may result in payment to his employer paid from general Medicaid funds; however, under these circumstances such funds are not considered to be derived from a state contract.

**Based on the information provided, Dr. Messina does not have a financial interest in a state contract that would create a conflict of interests under this rule or under the Indiana criminal code, nor has he identified any potential conflict of interests in his proposed post-employment with Eskenazi and IU School of Medicine.**

*D. Confidential information*

Dr. Messina is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature

except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Dr. Messina from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as IU Health. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Dr. Messina has acquired or maintains access to such confidential information obtained in his role at FSSA or the MLB, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including any of his outside employers, in any manner.

#### *E. Use of state property*

42 IAC 1-5-12 prohibits Dr. Messina from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the Commission.

Dr. Messina cannot use state property, such as his state email, state phone or state computer for activities related to his outside employment with Eskenazi and the IU School of Medicine in order to comply with the use of state property rule (IC 4-2-6-17).

To the extent that Dr. Messina observes these provisions regarding his post-employment activities, his outside positions would not violate these ethics laws.

Commissioner Sanchez moved to approve the Commission’s findings, and Commissioner Krauss seconded the motion, which passed (5-0).

#### **V. Ethics Director’s Report**

State Ethics Director Sean Gorman reported that since the last Ethics Director’s Report in April, 24 Informal Advisory Opinions had been issued regarding application of the gifts rule, post-employment issues, outside employment/professional activities issues, and related potential conflicts of interest. There was also an increase in the amount of gifts rule issues as compared to previous months outside of the holiday season.

Director Gorman continued that the General Assembly’s first 2023 session has concluded since the last Commission meeting. There were a few items to note from the session as it relates to the OIG and State Ethics Commission.

Rulemaking: HB 1623 was signed into law and makes several procedural changes to the administrative rulemaking process. For example, the timeframe for the sunset provision that requires agencies to readopt rules at least every seven years has been reduced to 5 years. There are some changes to the public hearing and comment periods for administrative rule adoption,



including requirements that such public hearings be webcast. OIG and SEC maintain several administrative rules but for those rules last readopted in 2018, we have until 2025, and for those last readopted in 2019, the law gives agencies until 2026 before the 5-year sunset clock sets. There are several agencies involved in implementing these new changes and OIG will ensure that we stay updated on process changes as this law is implemented.

Live Streaming public meetings: As noted in previous Commission meetings, HB 1167 amends Indiana's Open Door Law to require the live streaming and provision of archived recordings of public meetings such as SEC meetings. This law was signed by the Governor but has an effective date of July 1, 2025. OIG will continue to work on assessing the equipment, software and process changes that will be required to implement this new law.

Confidentiality of Office of Inspector General Informal Advisory Opinions: In an 11<sup>th</sup> hour move during the state budget bill's conference committee, Lawmakers inserted a provision that makes the Inspector General's informal advisory opinions confidential. This provision applies retroactively. Informal advisory opinions are already treated as confidential pursuant to administrative rule 42 IAC 1-8-1 and the Public Records Law. OIG does not believe the law change impacts the way the IG handles the IAO process.

Director Gorman told the Commission that the next Ethics Officers Roundtable meeting would be held on May 23, 2023.

Finally, the Commission was reminded that the Office of Inspector General's annual Auditor and Investigator Conference is set for Thursday, June 8, 2023, between 1:00 and 4:30 pm at the Indiana Government Center South – Conference Center Auditorium. With speakers from the U.S. Department of Justice, the U.S. Environmental Protection Agency's office of inspector general, Indiana's Auditor of State, a County Deputy Prosecutor, and more. There will not be a remote attendance option for this event, but all are invited to attend. Registration was opened on May 5th.

## **VI. Adjournment**

Commissioner Sanchez moved to adjourn the public meeting of the State Ethics Commission. Commissioner Gilroy seconded the motion, which passed (5-0).

The public meeting adjourned at 10:50 a.m.