

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
July 9, 2020**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:03 a.m. The meeting was held virtually using Microsoft Teams. Commission members present were Katherine Noel, Chairperson; Corinne Finnerty; Sue Anne Gilroy; Kenneth Todd; and Rafael Sanchez. Staff present included Lori Torres, Inspector General; Jennifer Cooper, State Ethics Director; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Kelly Elliott, Staff Attorney, Office of Inspector General; Luba Gore, Staff Attorney, Office of Inspector General; Jack Bedan, Special Agent, Office of Inspector General; Mike Lepper, Special Agent, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Mattheus Mitchel, Compliance & Ethics Specialist, Department of Revenue; Amber Nicole Ying, Special Counsel/Director and Ethics Officer, Compliance and Ethics, Department of Revenue; Deana Smith, Ethics Officer, Indiana State Department of Health; Ed Feigenbaum, Indiana Legislative Insight; Keith Beesley, Attorney, State Personnel Department, Beth Green, General Counsel, Department of Workforce Development; Kathleen Mills, Ethics Officer, Indiana Department of Environmental Management; Gabrielle Owens, General Counsel and Ethics Officer, Indiana Department of Veterans Affairs; Latosha N. Higgins, Managing Attorney and Ethics Officer, Family and Social Services Administration; Maria Finnell, Director of Clinical Operations, OMPP, Family and Social Services Administration; Rebecca Eifert Joniskan, Chief, Permits Branch, Office of Land Quality, Indiana Department of Environmental Management; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Sylvia Watson, General Counsel and Ethics Officer, Indiana State Library, Whitney Fritz, Staff Attorney, Department of Child Services; Kathleen Mills, Ethics Officer, Indiana Department of Environmental Management; Bruno L. Pigott, Commissioner, Indiana Department of Environmental Management; Joan Blackwell, General Counsel and Ethics Officer, Office of Attorney General; Chris Serak, Prequalification Director & Ethics Officer, Indiana Department of Transportation; and David P Johnson, Chief Counsel, Advisory Division, Office of Attorney General.

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

Commissioner Finnerty moved to adopt the Agenda and Commissioner Gilroy seconded the motion which passed (5-0).

Commissioner Gilroy moved to approve the Minutes of the May 14, 2020 Commission Meeting and Commissioner Sanchez seconded the motion which passed (5-0).

### **III. Consideration of Indiana Department of Environmental Management Waiver of Post-Employment Restrictions for Rebecca Joniskan**

Bruno L. Pigott, Commissioner, and Kathleen Mills, Ethics Officer, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval. During the presentation and consideration, it was decided that an Amended Waiver was necessary to add in the “cooling off” provisions regarding serving as a lobbyist which was not in the original waiver presented to the Commission.

Commissioner Sanchez moved to approve the Waiver as amended, and Commissioner Gilroy seconded the motion which passed (5-0).

### **IV. Request for Formal Advisory Opinion**

2020-FAO-007

Dr. S. Maria E. Finnell, Director of Clinical Operations  
Latosha N. Higgins, Managing Attorney & Ethics Officer  
Family and Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Dr. S. Maria E. Finnell, the Director of Clinical Operations and Assistant Medical Director, who works as part of the Strategy Team for the FSSA Office of Medicaid Policy and Planning (OMPP).

Specifically, Ms. Higgins is requesting an opinion from the Commission addressing whether it would be a conflict of interests for Dr. Finnell to obtain outside employment with Indiana University Health Physicians (IUHP).

IUHP is an Indiana Medicaid Provider that has an Indiana Medicaid Provider Agreement with FSSA and receives Medicaid reimbursements. IUHP is affiliated with Indiana University Health (IU Health) and its related entities, with whom FSSA’s various divisions have active contracts. The FSSA division directors are the owners of the IU Health contracts. Dr. Finnell is not in a position to negotiate or sign these contracts.

Dr. Finnell joined FSSA on August 15, 2019. She is responsible for overseeing the OMPP Medical Director, the Pharmacy Team led by a pharmacy director and the Coverage and Benefits Team. She is not in a position to make decisions regarding Medicaid providers, and any direction she provides regarding protocols, policies or procedures that might impact external stakeholders apply to all clinical specialists, hospital administrators and any other providers uniformly.

Occasionally, Dr. Finnell assists the Program Integrity Team when the OMPP Medical Director is unavailable. The Program Integrity Team is primarily responsible for reviewing suspected cases of fraud and abuse and making recommendations regarding Medicaid providers. Usually, the OMPP Medical Director serves on the Program Integrity Team and

participates in the meetings. Furthermore, the reviews the Program Integrity Team conducts usually concern the actions of an individual and not an entity; therefore, it is unlikely FSSA would make a decision that would have a unique impact on IUHP, IU Health or their related entities. In the unlikely event that FSSA is required to make such a decision, FSSA intends to screen Dr. Finnell from participating in any such decision by having her supervisor delegate full authority to another employee to handle such matters independently.

Ms. Higgins provides that Dr. Finnell would like to pursue this outside employment opportunity because she does not want to lose her clinical skills as a pediatrician. Additionally, she is interested in the opportunity because she believes it would increase her credibility in her current role within FSSA. Dr. Finnell is interested in working in a clinic with pediatricians, nurse practitioners, speech therapists and physical therapists so that she can get a better understanding of their interactions with Medicaid, which would be helpful to her in her position with FSSA.

If approved to accept the position, IUHP would pay for Dr. Finnell's medical malpractice insurance and certifications. She would pay her own licensing fees. Furthermore, she would not serve in an administrative leadership role with IUHP. Her responsibilities with IUHP would include working in the Neonatal Intensive Care Unit Follow-Up Clinic (Clinic) to assess the discharged children's growth and development and connect them with referrals and resources as indicated. She would serve as supplemental faculty and may occasionally have medical students or residents in the clinic that she would be responsible for overseeing. She would not charge patients nor would she bill insurance.

She would contract with IUHP through the Division of Neonatology in the Department of Pediatrics and would not be an employee of IUHP. Dr. Finnell would not be paid by any State grant or contract dollars. Rather, IUHP would pay her on an hourly basis. The patients she would be caring for in the Clinic could potentially include Medicaid patients similar to any other neonatologist providing clinical service for IUHP. Her compensation would not be tied to the charges and collections that she generates or the payer mix of the patients for which she cares; however, her fees may be paid from general Medicaid funds.

Dr. Finnell understands and agrees that she may not use state time for her outside employment activities. Additionally, she is confident that she will meet the 37.5-hour work week requirement despite seeing patients a few hours a month.

Based on the information presented, Ms. Higgins does not believe that Dr. Finnell's outside employment activities would be incompatible with her FSSA duties. Rather, Dr. Finnell's outside employment activities would help maintain and build upon her professional skills such that she may better be able to meet the essential functions of her position as Director of Clinical Operations and Assistant Medical Director.

The analysis stated the following:

Ms. Higgins' request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment and

Benefitting from and Divulging Confidential Information. The application of each provision to Dr. Finnell is analyzed below.

*A. Outside employment*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of her official duties that her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities since these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Based on the information and opinion provided by Ms. Higgins, the Commission finds that Dr. Finnell's employment at IUHP would not create a conflict under this provision. Dr. Finnell would not be an employee and would not serve in an administrative leadership role with IUHP; she would be an independent contractor and would be paid on an hourly basis. According to Ms. Higgins, Dr. Finnell's responsibilities in working as a physician in the Clinic for IUHP would include caring for patients and occasionally overseeing clinic students. This role would not conflict with her responsibilities as Director of Clinical Operations and Assistant Medical Director for FSSA and would not require her to recuse herself from matters that are critical to the performance of her duties at FSSA.

Further, Dr. Finnell would not be required to disclose confidential information to which she may have access to by virtue of her state employment in her outside position with IUHP. In addition, nothing in the information presented suggests that Dr. Finnell would use or attempt to use her state position for any unwarranted privileges or exemptions. Dr. Finnell must continue to ensure she does not use or attempt to use her official FSSA position in this manner.

Accordingly, the Commission finds that Dr. Finnell's outside employment opportunity with IUHP would not create a conflict of interests for her under IC 4-2-6-5.5.

*B. Conflict of interests - decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Dr. Finnell from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Finnell from participating in any

decisions or votes, or matters related to such decisions or votes, in which IUHP or IU Health would have a financial interest in the outcome.

Ms. Higgins provides that FSSA's various divisions have active contracts with IU Health and related entities. Ms. Higgins provides that these contracts are at the division level in FSSA and that the division directors are the owners of the contracts.

According to the information provided by Ms. Higgins, Dr. Finnell, as Director of Clinical Operations and Assistant Medical Director for FSSA, is not in a position to negotiate or sign these contracts. Further, Dr. Finnell is not in a position to make decisions regarding Medicaid providers or community mental health centers, and any direction she would provide regarding protocols, policies or procedures that might impact external stakeholders would apply to all clinical specialists, hospital administrators and any other providers uniformly.

Ms. Higgins notes that Dr. Finnell occasionally attends meetings of the Program Integrity Team when the OMPP Medical Director, who usually participates in these meetings, is unavailable. The Program Integrity Team is primarily responsible for reviewing suspected cases of fraud and abuse and making recommendations regarding Medicaid providers. Furthermore, the reviews conducted by the Program Integrity Team usually concern the actions of an individual and not an entity.

Therefore, even if Dr. Finnell was required to take the OMPP Medical Director's place and participate on the Program Integrity Team, it is unlikely Dr. Finnell, or even FSSA, would make a decision that would have a unique impact on IUHP, IU Health or their related entities.

The Commission finds that Dr. Finnell does not have an identified potential conflict of interests at this time; however, if a potential conflict of interests is identified in the future, Ms. Higgins must ensure that Dr. Finnell meets the disclosure and notification requirements in IC 4-2-6-9(b). Ms. Higgins has provided that if any conflicts arise for Dr. Finnell, FSSA will ensure that she is screened from participating in the matters and her supervisor would delegate full authority to another employee to handle such matters independently.

### *C. Conflict of interests – contracts*

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

Ms. Higgins provides that FSSA's various divisions have six active contracts with IU Health and its related entities, including IUHP.

Ms. Higgins provides that IUHP will not use funds from these contracts with FSSA to pay Dr. Finnell. Further, her compensation would not be tied to the charges and collections that she generates or the payer mix of the patients she cares for; however, her fees may be paid from general Medicaid funds. Dr. Finnell's salary would be paid hourly through IUHP's Division of Neonatology in the Department of Pediatrics, and her compensation would not be derived from any State grant or contract dollars.

Accordingly, the Commission finds that Dr. Finnell would not have a conflict of interests under this rule, because she will not have a financial interest in a state contract if she were to accept the outside employment opportunity with IUHP.

*D. Confidential information*

Dr. Finnell 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. Finnell from accepting any compensation from any employment, transaction or investment which 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 IUHP/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. Finnell is exposed to or has access to such confidential information in her position with FSSA, she is prohibited not only from divulging that information but from ever using it to benefit any person, including her outside employer, in any manner.

*E. Use of state property and Ghost employment*

42 IAC 1-5-12 prohibits Dr. Finnell 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. Likewise, 42 IAC 1-5-13 prohibits Dr. Finnell from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

Ms. Higgins provides that Dr. Finnell understands that she may not use state time to work at her outside position. She further provides that she is confident that she will meet the 37.5-hour work week requirement despite seeing patients a few hours per month.

To the extent that Dr. Finnell observes these provisions regarding her outside employment activities, her outside position would not violate these ethics laws.

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

## **V. Director's Report**

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 33 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

Director Cooper also reported that the Inspector General's quarterly report would be presented next month and would be presented the month following the end of the quarter from here on out. This will give the Office of Inspector General ample time to gather all relevant metrics and information prior to the State Ethics Commission monthly meeting.

Finally, she reported that the Auditors and Investigators Conference held in June went very well. The conference had sessions over the course of three days and were all held virtually due to the ongoing Covid-19 situation. OIG received very positive survey results.

## **VI. Adjournment**

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

The public meeting adjourned at 10:34 a.m.