

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
January 11, 2018**

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 included James Clevenger, Chairperson; Corinne Finnerty; Priscilla Keith (arrived late); and Katherine Noel. Staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Matthew Savage, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Kelly Haltom, Staff Attorney, and Celeste Croft, Legal Assistant, Office of Inspector General.

Others present were Adrienne Brune, Staff Attorney/Ethics Officer, State Department of Health; Stephanie Mullaney, Deputy Attorney General, Attorney General’s Office; Scott Miley, Reporter, Community Newspaper Holdings, Inc.; Sarah Kamhi, Assistant General Counsel, Department of Revenue; Gina Williams, Deputy Director of Administration/Ethics Officer, Department of Financial Institutions; Leslie Huckleberry, General Counsel, Family & Social Services Administration; Gary Hoagland, Registered Nurse, Family & Social Services Administration; Rachel Russell, Deputy General Counsel, Department of Child Services; Tammera Glickman, Assistant General Counsel, Department of Administration; Jacqueline Tucker, Program Coordinator, Department of Child Services; Sylvia Watson, General Counsel, State Library; Daniel Perry, Assistant General Counsel, Department of Revenue; Jared Prentice, Ethics Officer, Department of Revenue; Kristina Box, State Health Commissioner, State Department of Health; Deana Smith, Attorney, State Department of Health; Jennifer O’Malley, Deputy Chief of Staff, State Department of Health; Hilari Sautbine, Attorney, State Department of Health; and Whitney Fritz, Attorney, State Department of Health.

II. Adoption of Agenda and Approval of Minutes

Commissioner Finnerty moved to adopt the Agenda and Commissioner Noel seconded the motion which passed (3-0). Commissioner Noel moved to approve the Minutes of the November 15, 2017 Commission Meeting and Commissioner Finnerty seconded the motion which passed (3-0).

III. Inspector General’s Report

Inspector Torres stated that in Quarter Four of Calendar Year 2017, which ran from October 1, 2017 through December 31, 2017, the Office of Inspector General issued 107 Informal Advisory Opinions, as opposed to the 91 Informal Advisory Opinions that the Office of Inspector General issued in Quarter Three of Calendar Year 2017, which ran from July 1, 2017 through September 30, 2017. Inspector Torres also stated that for the entire Calendar Year 2017, the total number of Informal Advisory Opinions issued by the Office of Inspector General was 371, but in 2016, the Office of Inspector General issued 318 Informal Advisory Opinions, 16.6% less than that of 2017.

Inspector Torres further stated that in Quarter Four, the average turnaround time for Informal Advisory Opinions was 1.88 days, but for 2017 itself, it was 1.4 days.

Inspector Torres then stated that the Office of Inspector General received 82 requests to investigate in Quarter Four, as opposed to the 83 requests it received to investigate in Quarter Three. Inspector Torres also stated that for Calendar Year 2017, the Office of Inspector General had received 297 total requests to investigate. Inspector Torres further stated that the Office of Inspector General opened 15 of the 82 requests to investigate it received in Quarter Four and closed 24 cases, but that it closed 70 cases for the Calendar Year 2017 and opened 54. Inspector Torres also stated that three of the aforementioned cases were brought before the State Ethics Commission during 2017. Lastly, Inspector Torres stated that as of January 1, 2018, there were 23 open investigations remaining.

As it relates to the State Ethics Commission, Inspector Torres stated there were 13 post-employment waivers heard and approved by the Commission, 13 Formal Advisory Opinions issued by the Commission, and three formal matters brought before the Commission, two of which were disposed of settlement and the other disposed of by trial, all in favor of the Office of Inspector General. Inspector Torres further stated that the Commission approved three policies, two related to the limited use of state property and one related to electronic meetings. Inspector Torres stated that of the 12 scheduled State Ethics Commission meetings, eight of them were held and four of them were canceled.

Lastly, the Inspector recapped the half-day 2017 Legal & Ethics Conference held November 14, 2017. Inspector Torres stated that there were 217 registered attendees and that 216 of those attendees attended the Conference and that there was a waitlist containing approximately 20 people. Inspector Torres stated that in total, 436 people viewed the registration page for the event, which indicated that there was a greater demand for Conference attendance than there was space available to accommodate same. The Inspector further stated that because the event was more strategically directed at particular groups, such as attorneys, and having a half-day event instead of a full day event, reduced taxpayer costs by about \$30,000.00. The Inspector thanked Chairman Clevenger, who not only attended the Conference, but was a featured speaker. The Inspector lastly stated that 63% of the attendees who were surveyed rated the Conference as Very Good or Excellent, 29% rated it as Good, and 6% rated it as Fair.

IV. Request for Formal Advisory Opinion

**2018-FAO-001 Dr. Kristina Box, State Health Commissioner
Adrienne Brune, Staff Attorney/Ethics Officer
Indiana State Department of Health**

Adrienne Brune, Ethics Officer for the Indiana State Department of Health (ISDH), requested an opinion from the Commission on behalf of Dr. Kristina Box, State Health Commissioner. Dr. Box began her employment with the ISDH on October 16, 2017.

Prior to becoming the ISDH Commissioner, Dr. Box served as an Obstetrician-Gynecologist (OB-GYN) at Community Hospital. Dr. Box has worked in the Community Health Network as an OB-GYN for over thirty years. Dr. Box plans to continue working in this role in addition to her state employment. Under IC 16-19-4-4, Dr. Box may “in an individual capacity as a licensed physician and not in the official capacity as state health commissioner, engage in the practice of medicine if the practice of medicine does not interfere with the performance of the state health commissioner’s duties as state health commissioner.”

Ms. Brune provides that even though IC 16-19-4-4 governs Dr. Box’s ability to practice as an OB-GYN outside of her current state position, and Dr. Box does not anticipate her outside employment will interfere with her performance as State Health Commissioner, she wants to ensure she follows the letter and spirit of the provisions in the Code. Two additional matters of importance are confidentiality and salary. As to 42 IAC 1-5-10, “Benefitting from Confidential Information,” and 42 IAC 1-5-11, “Divulging Confidential Information,” the ISDH will put screening in place to avoid any issues with these rule sections. Lastly, Dr. Box has informed Ms. Brune that her outside salary is not tied to any contract or grant with the ISDH or the State.

As the State Health Commissioner, Dr. Box has general supervision for all of the ISDH. By statute (IC 16-19-4-1), the State Health Commissioner will serve as secretary, a non-voting member position, of the ISDH Executive Board. She will serve on any state board prescribed by state law. She will establish effective policy and strategy for the ISDH after consulting with staff and the Executive Board. Her work requires contact with a wide variety of entities, from hospitals to nursing homes, whether private, public, or non-profit. These are just some of the duties she will perform.

Dr. Box is employed at Community Physician Network. Community Physician Network is a part of the Community Health Network, which operates Community Hospital. The ISDH deals directly with Community Hospital. In the past, the ISDH has had contracts and/or grants with Community Hospital. Dr. Box has already been advised not to sign or negotiate any contracts involving Community Hospital, and she has been advised not to be involved in any regulatory matters involving Community Hospital. However, to address any issues that may arise due to Dr. Box’s affiliation with this entity, and to comply with the conflict of interests laws, the ISDH has established the following procedures to screen Dr. Box from all involvement with any contract or regulatory issues relating to Community Hospital:

1. Any and all contracts involving Community Hospital shall be assigned and/or negotiated by the ISDH’s Chief of Staff. If he is not available, the contract shall be assigned to one of the approved agency signatories.
2. Any and all regulatory matters involving Community Hospital shall be handled by the Deputy State Health Commissioner or the ISDH’s Chief of Staff. If either of these individuals is not available, an individual listed as an approved signatory designee of the agency will be consulted.

3. Any and all documents that require a licensed physician's signature, including isolation orders, quarantine orders, and any medical directives involving or related to Community Hospital shall be signed by the Deputy State Health Commissioner, the ISDH's Chief Medical Consultant, or the ISDH's Medical Director.
4. While this screen should prevent the Commissioner from having access to any confidential information involving Community Hospital, the Commissioner shall not benefit from or divulge such information.
5. Any other miscellaneous matters involving Community Hospital shall be handled by the Deputy State Health Commissioner or the ISDH's Chief of Staff. If either of these individuals is not available, an individual listed as an approved signatory designee of the agency will be consulted.
6. The Commissioner will contact the agency ethics officer if there are any changes in her association with Community Hospital or any other entity which has a business relationship with or is regulated by the ISDH.

The advisory opinion stated the following analysis:

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 when 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 his official duties that his 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 his or 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 it views them as being in the best 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 provided by Ms. Brune, the Commission finds that Dr. Box's outside employment position would not create a conflict of interests for her under this provision. Specifically, the responsibilities of the two positions would not overlap in any meaningful way. Dr. Box would not have to disclose confidential information she gained from her state employment in her work as an OB-GYN, and Dr. Box was already employed in her outside position prior to becoming the ISDH Commissioner. Moreover, the statutory provision creating the position contemplates and allows the ISDH Commissioner to engage in outside employment as a licensed physician.

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Box 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. Box from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she is serving as an employee has a financial interest in the matter.

Dr. Box is the Commissioner for the ISDH. She is also employed by Community Physicians Network, a related entity of the Community Health Network, which operates Community Hospital. The ISDH has ties, including contractual ties, with Community Hospital. Accordingly, Dr. Box would have a potential conflict of interests if she participates in decisions or votes, or matters related to such decisions or votes, in which she or Community Hospital would have a financial interest in the outcome.

IC 4-2-6-9(b) provides that a state employee who identifies a potential conflict of interests shall notify the person's appointing authority and seek an advisory opinion from the Commission or file a written disclosure statement.

Ms. Brune and Dr. Box have requested this formal advisory opinion, and Ms. Brune has proposed the following procedures to screen Dr. Box from all involvement with regulatory issues relating to Community Hospital:

1. Any and all contracts involving Community Hospital shall be assigned and/or negotiated by the ISDH's Chief of Staff. If he is not available, the contract shall be assigned to one of the approved agency signatories.
2. Any and all regulatory matters involving Community Hospital shall be handled by the Deputy State Health Commissioner or the ISDH's Chief of Staff. If either of these individuals is not available, an individual listed as an approved signatory designee of the agency will be consulted.
3. Any and all documents that require a licensed physician's signature, including isolation orders, quarantine orders, and any medical directives involving or related to Community Hospital shall be signed by the Deputy State Health Commissioner, the ISDH's Chief Medical Consultant, or the ISDH's Medical Director.
4. While this screen should prevent the Commissioner from having access to any confidential information involving Community Hospital, the Commissioner shall not benefit from or divulge such information.
5. Any other miscellaneous matters involving Community Hospital shall be handled by the Deputy State Health Commissioner or the ISDH's Chief of Staff. If either of these individuals is not available, an individual listed as an approved signatory designee of the agency will be consulted.

6. The Commissioner will contact the agency ethics officer if there are any changes in her association with Community Hospital or any other entity which has a business relationship with or is regulated by the ISDH.

The Commission finds that Dr. Box's adherence to the proposed screen would prevent her from having a conflict of interests under IC 4-2-6-9 if any potential conflicts of interests arise. This screen should remain in place for the duration of her tenure as the State Health Commissioner. Should a potential conflict of interests arise for her under IC 4-2-6-9, Dr. Box must still follow the requirements in IC 4-2-6-9(b) and notify her appointing authority and file an ethics disclosure statement.

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. Because Ms. Brune provides that Dr. Box's outside salary is not tied to any contract or grant with the ISDH or the State, she would not have a prohibited financial interest. Accordingly, the Commission finds that Dr. Box would not have a financial interest in a state contract through her position at Community Physician Network and would not be in violation of this rule.

D. Confidential information

Dr. Box 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. Box 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. 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. Box is exposed to or has access to such confidential information in her position as the ISDH Commissioner, she would be 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

IC 4-2-6-17 prohibits Dr. Box 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. Likewise, 42 IAC 1-5-13 prohibits Dr. Box 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.

To the extent that Dr. Box observes these provisions in her employment with Community Physician Network, such outside professional activity would not violate these ethics laws.

The Commission found that Dr. Box's continued employment with Community Physician Network would not be contrary to the Code of Ethics so long as she follows the screening procedures established by the ISDH.

Commissioner Noel moved to approve the Commission's findings and Commissioner Finnerty seconded the motion which passed (3-0). Commissioner Keith rescued herself from this vote, due to her Board association with Community Health.

V. Request for Formal Advisory Opinion

**2018-FAO-002 Jacqueline Tucker, Program Coordinator
Rachel Russell, Deputy General Counsel/Ethics Officer
Department of Child Services**

Jacqueline Tucker is a Program Coordinator 6 at the Indiana Department of Child Services (DCS) Child Support Bureau. In this position, she assists the agency in child support enforcement and ensures children receive financial support from their parents by collecting information using multiple resources on custodial and non-custodial parents. She also conducts investigations in complex cases, which contributes to the collection of millions of dollars distributed on delinquent open cases in child support.

Ms. Tucker would like to know whether she can accept a part-time position with Journey Support Services, LLC (Agency) as a home-based caseworker and/or supervised visit facilitator while still working full-time for DCS's Child Support Bureau. Ms. Tucker would be responsible for monitoring supervised visits with parents and children, home visits, facilitation and transportation, supporting and monitoring progress of parenting skills and other tools needed to help families with their journey to reunification.

The Agency has a contract with DCS and Ms. Tucker provides that she would be working as an employee sub-contractor for the Agency. If she takes the outside position, she will have interaction with DCS case workers for each case she is required to complete. She will not be involved in the contract process for DCS or for the outside agency, and she does not participate in any decisions or votes at DCS that involve the Agency.

Ms. Tucker completed the Department of Child Services' Supplemental Employment Authorization on October 30, 2017. Her supervisor did not approve the outside employment position and instead referred the matter to DCS' Ethics Officer, Erica Sullivan. Ms. Sullivan denied the request, noting that she believed there was too much potential for a conflict of interests

with Ms. Tucker's official DCS duties and referred Ms. Tucker to the State Ethics Commission for a final determination on the matter.

Ms. Tucker and DCS' current Ethics Officer, Rachel Russell, provided a summary of the request and answered the Commission's questions regarding Ms. Tucker's outside employment opportunity. The Commission expressed concerns regarding how Ms. Tucker would be screened from matters that would create a potential conflict of interests for her under the ethics rules. The Commission also wanted to know how much of Ms. Tucker's work for the outside employer would involve DCS clients and whether her salary, or any part of it, would be derived from contract funds received from DCS.

The Commission agreed to hold the decision and not issue a Formal Advisory Opinion until such time as the requestor produced a screening mechanism and information on the financial arrangements made between DCS and Journey, as well as information on how the outside employer handles DCS cases. Commissioner Keith moved to approve the Commission's findings and Commissioner Noel seconded the motion which passed (4-0).

VI. Request for Formal Advisory Opinion

2018-FAO-003 Gary Hoagland, Registered Nurse, Madison State Hospital Leslie Huckleberry, General Counsel Family & Social Services Administration

Gary Hoagland is a registered nurse and is employed by the Family and Social Services Administration (FSSA) as the Assistant Director of Nursing at Madison State Hospital. Mr. Hoagland is interested in applying for the position of a reserve police officer with the city of Hanover. He plans to continue working full-time for FSSA/Madison State Hospital while training and working as a reserve officer. He provides that he would not train or serve as a reserve officer while on state time. He further provides that he would not seek any political gain and he would not receive any compensation for performing his duties as a reserve officer for the city of Hanover.

Mr. Hoagland advises that there are times when he is serving as a reserve officer that he may be asked to provide back up to county or state police within the Clifty Falls State Park.

Mr. Hoagland asked the Commission whether, under the Code, it would be acceptable for him to (1) obtain employment as a reserve police officer for the Hanover Police Department while also employed at FSSA, and (2) enter a state park with a firearm while carrying out his duties as a reserve police officer.

The advisory opinion stated the following analysis:

The Commission can only interpret the rules in the Code of Ethics. Mr. Hoagland's question about his ability to carry a firearm onto state property, such as the Clifty Falls State Park, falls outside of the Code of Ethics and should be addressed by the State Personnel Department and the agencies who oversee that property.

A. *Outside employment*

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when 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 his official duties that his 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 his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Mr. Hoagland would not be compensated by the city of Hanover for serving as a reserve police officer so the Commission does not need to make a determination on subsection (1) of this rule. In addition, Mr. Hoagland's service as a reserve police officer would not require him to disclose confidential information he gained through his state employment. Mr. Hoagland must ensure that he does not use his official position to secure unwarranted privileges.

Leslie Huckleberry, General Counsel for FSSA, attended the meeting on behalf of FSSA's Ethics Officer, Latosha Higgins, and advised the Commission that FSSA did not have any concerns about Mr. Hoagland's outside professional activity as a reserve officer.

Accordingly, the Commission finds that Mr. Hoagland's outside professional activity as a reserve police officer would not create a conflict of interests for him under this rule.

B. *Conflict of interests-decisions and votes*

IC 4-2-6-9 (a)(1) prohibits Mr. Hoagland 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 Mr. Hoagland from participating in any decision or vote, or matter relating to such a decision or vote, if he has knowledge that a business organization with whom he is negotiating employment with or serving as an officer, director, trustee, partner, member, or employee has a financial interest in the matter. Mr. Hoagland will not be a paid employee of the Hanover Police Department, but he will be serving as a member of the Hanover Police Department. Accordingly, this rule would be triggered if Mr. Hoagland participates in any matter related to a decision or vote that could financially impact the Hanover Police Department. Specifically, if the Department is considered a business organization with which he is serving as a member and it has a financial interest in any decisions or votes Mr. Hoagland would make or participate in as the Assistant Director of Nursing, he could have a potential conflict of interests under this rule.

The Commission finds that Mr. Hoagland's current responsibilities as the Assistant Director of Nursing would not require him to participate in decisions or votes, or matters relating to such decisions or votes, in which the Hanover Police Department would have a

financial interest. In the event he would otherwise participate in any such matters during the course of his state employment, he should follow the procedure set forth in IC 4-2-6-9(b) to disclose the conflict.

C. Confidential information

Mr. Hoagland 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 Mr. Hoagland 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. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Mr. Hoagland is exposed to or has access to such confidential information in his position with FSSA, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including the Hanover Police Department, in any manner.

D. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Mr. Hoagland 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. Likewise, 42 IAC 1-5-13 prohibits Mr. Hoagland 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.

To the extent that Mr. Hoagland observes these provisions while serving as a reserve police officer, such outside professional activity would not violate these ethics laws.

The Commission found that that Mr. Hoagland’s intended outside professional activity/service as a volunteer reserve police officer for the city of Hanover would not be contrary to the Code of Ethics.

Commissioner Noel moved to approve the Commission’s findings and Commissioner Keith seconded the motion which passed (4-0).

VII. Director’s Report

Ethics Director, Jennifer Cooper, discussed the launch of the 2017 version of the biennial ethics training, which was administered to all members of the executive branch of state government. Ms. Cooper further stated that as of January 11, 2018, 76 agencies had received the training, and that a total of 29,317 people had completed the training, including 7 state officers, 76 appointing authorities, and 1,022 special state appointees. Ms. Cooper further stated that the Department of

Natural Resources completed the training more recently, which included 1,500 employees and 150 special state appointees, making the total over 30,000 executive branch individuals who had completed the ethics training.

Ms. Cooper then discussed how the Office of Inspector General was in the midst of the 2017 Financial Disclosure Statement filing season, which required all elected officers, appointing authorities, Department of Administration Division Directors, certain Public Retirement Systems employees, and state employees with final purchasing authority, to file their Financial Disclosure Statement for the Calendar Year 2017 by February 1, 2018. Ms. Cooper further stated that the Office of Inspector General would ultimately process over 2,000 Financial Disclosure Statements between January 11, 2018 and February 1, 2018. Lastly, the Ethics Director stated that she would provide the Commission with an update at the next Commission meeting, which was set to take place on Thursday, February 8, 2018, and then with a full report during the March, 2018 or April, 2018 Ethics Commission meeting, which would include the names of any individuals who failed to comply with the filing requirements.

VIII. Adjournment

Commissioner Keith moved to adjourn the public meeting of the State Ethics Commission and Commissioner Noel seconded the motion, which passed (4-0).

The public meeting adjourned at 11:11 a.m.