



INVESTIGATIVE REPORT

Cynthia V. Carrasco, Inspector General

OFFICE: INDIANA PROFESSIONAL LICENSING AGENCY (IPLA)
TITLE: IPLA BOARD OF PHARMACY CONFLICT OF INTEREST
CASE ID: 2015-10-0173
DATE: OCTOBER 14, 2016

Inspector General Chief Legal Counsel, Tiffany Mulligan, after an investigation by Special Agent Mark Mitchell, reports as follows:

On October 1, 2015, the OIG received a complaint outlining a potential conflict of interest involving a member (the Board Member) of the Indiana Board of Pharmacy (the Board). The Board is administered through the Indiana Professional Licensing Agency (IPLA). The complaint alleged that the Board Member is a partner in at least one company that contracted with and negotiated to buy a pharmacy (the Pharmacy) that has come before the Board. Furthermore, the complaint alleged that the Board Member participated in Board decisions and votes involving the Pharmacy, which the Board Member's company had a financial interest in due to its contractual relationship and interest in purchasing the Pharmacy. The OIG launched an investigation, which Special Agent Mark Mitchell conducted.

The Indiana General Assembly has charged the OIG with addressing fraud, waste, abuse, and wrongdoing in agencies. IC 4-2-7-2(b). The OIG also investigates criminal activity and ethics violations by state employees and special state appointees. IC 4-2-7-3.

During the investigation, the OIG interviewed several witnesses, including the Board Member, his business partners, the Pharmacy's owner (the Owner), and staff of IPLA. The OIG

also reviewed Board meeting minutes, emails, and other documentation. The investigation revealed that the Board Member had participated in several votes in which both he and a business organization in which he serves as a partner had a financial interest in the outcome.

The Board Member joined the Board in 2003. As a member appointed to the Board, the Board Member qualifies as a “special state appointee”; therefore, the Board Member is subject to the Code of Ethics. According to the State Ethics Commission’s (the Commission) training records, the Board Member completed the required ethics training, which addresses the conflicts of economic interests rule found in IC 4-2-6-9, on June 6, 2012 and on November 18, 2015.

I. BACKGROUND

A. The Pharmacy was on Probation with the Board

On January 21, 2014, IPLA investigated the Pharmacy and found five violations against the Pharmacy license and five violations against the Owner’s pharmacist’s license. On May 30, 2014, the Office of the Attorney General (OAG) filed a complaint with the Board based on IPLA’s inspection. On August 11, 2014, the Board voted to place the Pharmacy’s license and the Owner’s pharmacist license on probation for three years and to issue a fine of \$2,500 against each license, for a total of \$5,000 in fines to be paid within six months.

After receiving the Board’s order, the Owner met with IPLA staff for his probationary appearances every month from September 2014 to June 2015. For each month, IPLA staff recommended to approve the Owner’s probationary appearance, which means they found the Owner was meeting the requirements of his probation. The Board voted to approve the probationary recommendations for a group of pharmacists, including the Owner’s probationary appearance, for each month that the Board met.

At the Owner’s March 8, 2015 probationary appearance, the Owner explained that he was

unable to pay the fine and asked for an extension. Along with approving the Owner's March probationary appearance, the Board minutes also reflect that the Board voted to issue an Order to Show Cause that ordered the Owner to come before the Board at their June meeting to determine if the Pharmacy's license should be suspended or be subjected to the imposition of further sanctions for the Owner's failure to pay the fine.

At the Owner's June 8, 2015 probationary appearance, the Owner informed the IPLA compliance officer that he received an offer from Walgreen's Pharmacy to purchase the Pharmacy. He indicated that if the sale went through, he would be able to pay his fines in full. On the same day, the Board Member was present during a meeting with IPLA staff where IPLA staff discussed Walgreen's potential purchase of the Pharmacy.

B. The Board Member received ethics training and advice

On August 11, 2014, the Board Member signed a form acknowledging that he received and read IPLA's Policy on Perceived Conflicts of Interest. At the June 8, 2015, Board meeting, the IPLA ethics officer explained to the Board changes in the Code of Ethics conflict of interest rule, which became effective on July 1, 2015.

On July 13, 2015, the Board Member disclosed to the IPLA ethics officer that he and his company intended to purchase the Pharmacy. The IPLA ethics officer advised the Board Member to file a disclosure statement with the Commission. After some back and forth communication between the IPLA ethics officer and the Board Member, the Board Member filed an Ethics Disclosure Statement with the Commission on November 16, 2015.

II. CONFLICT OF INTEREST

A. The Board Member has a financial interest in the Pharmacy

The Board Member has a one-third ownership interest in a private company (Company

1). The Board Member and his two partners incorporated Company 1 on January 28, 2015. One of the Board Member's business partners is his nephew (Nephew). All three partners are principals, and the Board Member is listed as the registered agent of the Company 1 with the Indiana Secretary of State. The same three partners also own and are each principals of a second company (Company 2). The Board Member also is the registered agent for Company 2. The Board Member and his partners incorporated Company 2 on July 8, 2015.

In May of 2015, the Board Member and his partners began discussing an interest in purchasing the Pharmacy. The Owner had been in discussions with other pharmacies to sell the Pharmacy due to the problems with the Pharmacy's license and his own pharmacist's license. After learning that the Owner might be selling the Pharmacy, the Nephew asked the Board Member to give the Owner his phone number at the June 2015 Board meeting. The Board Member approached the Owner at the June 8, 2015 Board meeting and asked the Owner to call his Nephew prior to selling the Pharmacy to another company.

On June 13, 2015, the Owner called the Nephew to discuss selling the Pharmacy to Company 1. After this conversation, the Board Member and his partners agreed to purchase the Pharmacy. On June 15, 2015, Company 1 entered into a contract with the Owner where Company 1 would serve as the central fill pharmacy for the Pharmacy. The Board Member explained that Company 1 entered into the contract with the Owner for the sole purpose of keeping the Pharmacy's doors open prior to completion of the purchase. Through the central fill contract, Company 1 would fill the prescriptions and send them back to the Pharmacy, who would dispense the prescriptions to the customer.

On July 15, 2015, Company 2, which was a separate company owned by the Board Member and his partners, filed a Certificate of Assumed Name and Notice with the Indiana

Secretary of State to do business under the Owner's name. According to the Owner, Company 2 paid the Owner a total of \$50,000, in four payments between June 18, 2015, and July 20, 2015, so that the Owner could keep the Pharmacy's doors open.

On July 24, 2015, Company 2 submitted two applications to IPLA so that Company 2 could operate a pharmacy; however, Company 2 withdrew these applications and submitted corrected applications in late September 2015. The Board voted on and approved the new store application at its November 9, 2015, meeting. The Board Member recused himself from this vote and left the room during discussions. After the vote, the new store had to pass an IPLA inspection before it could become fully operational.

On November 19, 2015, IPLA completed an inspection of the Pharmacy operated by Company 2. The Pharmacy passed inspection, and Company 2 took over operation of the Pharmacy. The original Pharmacy closed its doors after the inspection. Company 2 new pharmacy under the Owner's name continued to employ the Owner after Company 2 took over the store.

B. The Board Member participated in decisions and votes involving the Pharmacy after the Board Member developed a financial interest in the Pharmacy

After the Board Member and his business partners discussed purchasing the Pharmacy in May of 2015, the Board Member participated in several votes involving the Pharmacy. He also participated in several votes involving the Pharmacy after Company 1 entered into a central fill contract with the Pharmacy on June 15, 2015, so that the Pharmacy would be able to keep its doors open prior to the Pharmacy's purchase.

The Board held three votes on June 8, 2015. The Board Member participated in all three votes, which were unanimous. First, the Board Member voted to approve the probationary

appearances for a group of probationers, including the Owner. Second, the Board Member voted to modify the Owner's probationary order to allow the Owner to make monthly payments of \$150 until he had completely paid the \$2,500 fine. Third, the Board Member voted to issue an Order to Show Cause for unpaid fines for the Pharmacy's license. The Board Member participated in these votes; however, the record does not show that the Board Member did anything other than vote

The Board Member disputes that he had a financial interest in the outcome of the votes on June 8, 2015. He argues that on June 8, 2015, he had no interest in directly or indirectly entering into any business transaction with the Pharmacy or the Owner. He also argues that on June 8, neither the Board Member nor any related business had a financial interest in the outcome of the votes pertaining to the Pharmacy or the Owner.

On July 13, 2015, the Board Member voted to approve a group of probationary appearances, including the Owner's appearance. The Owner also appeared before the Board on the same day for an administrative hearing in response to the July 8th Order to Show Cause regarding his failure to pay his \$2,500 delinquent fee on the Pharmacy's license. According to the Board minutes, the Board Member did not participate in this vote and left the room during the discussion. The five remaining Board members conducted the hearing, and the Owner provided the receipt showing he paid IPLA the fine in full that morning. The Board voted unanimously to withdraw the Order to Show Cause.

On July 31, 2015, the Board Member sent a text message to an IPLA Compliance Officer asking if IPLA had scheduled an inspection for Company 2's new pharmacy.

The Board Member voted to approve a group of probationary appearances, including the Owner's appearances, on August 10, 2015; on September 14, 2015; and on December 15, 2015.

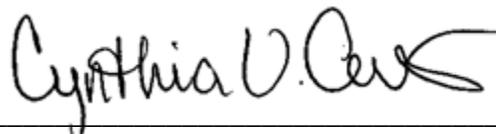
The December 15, 2015 vote took place after Company 2 took over operation of the Pharmacy and while the Owner served as an employee of the new pharmacy owned by Company 2.

In conclusion, the Board Member, a special state appointee subject to the Code of Ethics, had a financial interest in the Pharmacy. Although he recused himself from some votes, he participated in several other votes in which both he and a business organization in which he serves as a partner had a financial interest in the outcome. Also, he did not seek an advisory opinion from the Commission or file a disclosure statement with the Commission until he filed a statement on November 16, 2015, and he continued to vote on the Owner's probationary appearances even after he filed a disclosure statement.

The OIG filed an ethics complaint against the Board Member alleging the he violated IC 4-2-6-9(a). The Commission found probable cause to support the complaint. The OIG and the Board Member reached a settlement agreement, which was submitted to the Commission for approval. The Commission approved the settlement agreement during their October 13, 2016 meeting and assessed a fine to the Board Member. Accordingly, this investigation is closed.

Dated this 14th of October, 2016.

APPROVED BY:

A handwritten signature in black ink that reads "Cynthia V. Carrasco". The signature is written in a cursive style with a long horizontal flourish at the end.

Cynthia V. Carrasco, Inspector General