

Job Creation Committee

Minutes from the March 19, 2015 Meeting

Call to Order & Establishment of Quorum

The Job Creation Committee (JCC) meeting was called to order by Chairman Nick Rhoad on Thursday, March 19, 2015 in Conference Room W064 at 9:05 AM.

- David Miller
- Dr. Matt Will
- Barbara Quandt
- Col. Richard Wilson
- Nicholas Rhoad
- Courtney Everett
- Timothy Reed

IPLA Staff Members Present

- Nick Goodwin

Adoption of Agenda & Review of February Minutes

Both adopted by the committee.

Presentation on “Poverty and Entrepreneurship in Indiana: Widening the Road out of Poverty”

Dr. Douglas Noonan, Associate Professor at the IUPUI School of Public and Environmental Affairs and Director of Research at the Indiana University Public Policy Institute, presented to the committee on the subject of “Widening Pathways out of Poverty in Indiana.”

David Miller asked if Dr. Noonan’s opinion included that each professional industry should be deregulated, or does he think that each profession should be carefully considered—especially in regards to public safety—for their specific regulation necessities. Dr. Noonan responded that he is not a fan of the “one-size-fits-all” approach and that each profession should be examined individually.

Col. Wilson asked Dr. Noonan for his opinion on the potential barriers to entry for voluntary professional certifications versus state-regulated licenses. Dr. Noonan responded that in his opinion, voluntary certifications would allow more opportunities for lower-income people to provide lower-quality services at a lower-cost to serve other members of the low-income class. Mr. Rhoad asked Dr. Noonan for his opinion regarding professions that are licensed in some states and not in other states. He elaborated that Indiana does not license prosthetics dealers, but Ohio does. In states with licensure, one needs a prescription to obtain a prosthetic, and the licensed prosthetic dealer will bill your insurance. He asked Dr. Noonan how can you determine if licensure has brought value to an industry. Dr. Noonan explained that licensing and regulation in most states are heavily influenced by lobbying, politics, and unions—not necessarily public health concerns. If a state has a greater interest in an industry, more lobbyists will fight for licensure and state regulation.

Col. Wilson asked Dr. Noonan for his opinion regarding why lower-income people trying to

enter a profession can't provide high-quality services. Dr. Noonan explained that the point of licensure is to add barriers and costs to entry into an industry. For example, in regards to food production in the food industry, the requirements to sell food products involve using large, industrial-scale kitchens that lower-income people may not have access to when they want to open a restaurant or food stand. Some community-based industrial-kitchens are popping up to allow these lower-income business owners to meet those food safety requirements, but that doesn't address the main problem and promote independence and stability for these business owners. Strict licensing standards like that only put lower-income business owners into the underground economy, which only makes them harder to track down and held accountable if something bad happens. Col. Wilson remarked that he is amazed at the amount of revenue that states miss out on due to the underground economy, as those business owners don't pay taxes on their earnings. He asked if there is any data on the size of the underground economy in Indiana. Dr. Noonan responded that there is a little bit of evidence on the subject, but due to the understandably discreet nature of the underground economy, there is no accurate hard data out there.

Presentation from the State Board of Funeral and Cemetery Service

Tracy Hicks, Board Director of the State Board of Funeral and Cemetery Service, presented to the committee. She explained the role of the Board, types of licenses for the industry, and those license functions. She mentioned that the Board is not issuing any new embalmer licenses, but they are renewing previously issued embalming services. The Board also offers "courtesy cards" to professionals outside of the state, which allows them to offer limited services to consumers in Indiana if they need to practice here (such as supervising a funeral in Kentucky when the burial is in cemetery in Indiana). The Board also issues facility licenses for funeral homes and funeral branches, even when the business does not conduct embalming at that specific location. Ms. Hicks also explained the presence of consumer protection funds that are dispersed if the owner of a cemetery is unable to maintain the grounds and meet certain environmental and safety standards. She also explained the Preneed Consumer Protection Fund and how it can help provide either funeral directors or consumers with restitution if they are harmed by either professional incompetence or fraud from the funeral homes.

Col. Wilson raised concerns that the Preneed Consumer Protection Fund is excessive, especially if the fund has only paid out \$429,000 since January of 2004. Mr. Miller spoke up and explained the historical precedents and necessity of the preneed reimbursement fund for Indiana. Col. Wilson explained that he is concerned about Indiana collecting large amounts of money from licensees through licensing fees to help add to this consumer protection fund, when only twelve requests or so for restitution occur every year. He proposed that the Committee might seek more data on the kind of restitution requests being made in Indiana to determine if the state is collecting too much for this fund. Ms. Hicks responded that she does not have specific data on the approved restitution requests.

Ms. Hicks explained the Board's Funeral Service Education Fund and how \$5 of every license fee is diverted into that fund. The Board determines how to use it, and they usually use it pay association fees for professional associations that only totals to \$250/year. The current balance of the fund is \$40,000, and any amount that exceeds \$40,000 is diverted to the General Fund.

Col. Wilson again expressed his concerns and frustrations that the state is collecting \$5 from every license fee to go towards yet another fund that only utilizes a small percentage every year. He explained that he feels it is arbitrary.

Col. Wilson asked Ms. Hicks how Indiana's licensing fees for this industry compares to other states. Ms. Hicks responded that she does not have specific data, but she believes that Indiana's fees are slightly lower than the surrounding states. She also explained that the only fee in this profession that is not set by the board is the courtesy fee, which is set by statute. Col. Wilson asked about the providers of continuing education for this profession, outside of trade organizations. Ms. Hicks responded that hospitals, independently owned funeral homes, and some hospice facilities offer some of the continuing education opportunities for individuals in this profession. Mr. Rhoad elaborated that there is a statute that automatically authorizes certain institutions to provide continuing education credits to professionals, and those usually include state colleges and professional organizations in which the majority of its members are professionals licensed by the state. He explained that this statute helps keep those continuing education providers accountable without much additional involvement from the State.

Presentation from the Indiana Attorney General's Office re: Funeral Home Directors & Cemeteries

Laura Iosue, Supervising Deputy AG, presented to the committee regarding funeral directors and cemeteries. Ms. Iosue believes that licensing for this industry is very important for public health issues, preneed restitution, and judiciary action that might be needed to protect people harmed in this industry. It is her opinion that licensing is the only way to keep this specific industry enforceable.

Col. Wilson asked Ms. Iosue if she believes that state-regulated licenses or professional licenses/voluntary certification is the only way to regulate this industry and keep the public safe. Ms. Iosue explained that she understands the committee's desire to simplify professional licensure, but it is her opinion that this industry's licenses are structured well. She explained that there is a license not only for the funeral facility, but for individual funeral operators. Most violations in this profession are committed by an individual and not the entire facility or business. She believes that this protects the industry and allows businesses to continue operating, even if they discover one "bad apple" amongst their employees. Col. Wilson expressed his concerns that needing six licenses just to operate a funeral business seems excessive, and he would like to find a way to simplify the process. Ms. Iosue responded that different licenses are necessary to operate a funeral business, due to the many intricate working parts of providing funeral services from start to finish. Each of those aspects require specific education and licensing requirements, and it would be extremely difficult to issue one general license to cover all aspects of this industry for a business owner. Col. Wilson responded that he understands that, but he proposes the possibility of licensing just the owner of the funeral business, who can be qualified and able to lead and supervise employees. Ms. Iosue elaborated that it might be possible to simplify licenses, but a business would need a qualified, licensed funeral director at each branch, assuming that a business operates out of multiple locations. She further explained that there are certain structural regulations for each building, and separating individual funeral

worker licenses and funeral building licenses helps keep the entire business in operation if one aspect has a violation. It is easier to remedy.

Ms. Iosue presented data on the complaints received in the AG's office for this profession and how those complaints were resolved. Col. Wilson asked if the complaints are mostly consumer driven or coming from other professionals in the industry. Ms. Iosue responded that most complaints come from consumers, and it is usually people who feel like they were taken advantage of financially by unscrupulous business practices or unfair pricing. She explained that most complaints end with no violation found. Since most complaints involve money, she believes that licensing is important to protect the public by allowing the State to move in quickly to remedy bad business practices as opposed to waiting for lengthy criminal investigations to resolve the issue. Ms. Iosue explained that sometimes complaints brought into the AG's office become both criminal actions and license violations. When licenses are involved, the AG's office can swiftly revoke someone's license to stop them from practicing and harming any more of the public.

Col. Wilson asked for Ms. Iosue to clarify the AG's office's definition of professional incompetence in this industry. Ms. Quandt asked about the number of businesses mentioned in the complaints to the AG's office. She would like to know if most of the complaints are about a small handful of businesses, or if many businesses occasionally have one or two violations. Ms. Iosue responded that she doesn't know the answer, but she would guess that there have been complaints about 75 different funeral businesses over the past seven years. Ms. Quandt would like to have that data, if possible, because she believes it would help the committee better understand what kind of specific violations are occurring and where.

Dr. Will asked if state licensing is meant to prevent violations or prosecute after the fact. Ms. Iosue responded that it's neither of those, but she believes that licensing does protect the public from bad practitioners. She explained that from her experience, violators usually end up in front of the board for three reasons, anecdotally: they are sick (They are not able to perform their duties well due to old age or otherwise regression of skill.); they are evil (They have malicious intentions to cause harm.); or they are dumb (They are generally incompetent.). In her experience, state-regulated licensing also helps protect licensees from false, ill-intentioned complaints against them. She explained that she wants to avoid pursuing litigation against a practitioner and threaten their livelihood unless the AG's office has a great deal of evidence that they present harm to the public. She further explained that the AG's office only deals with "after the fact" prosecution, so she cannot speak directly to the preventative effectiveness of licensing.

Dr. Will asked for her opinion about licensing being a convenient prosecuting tool when necessary. Ms. Iosue responded that state-regulated licensing makes it easier for her office to take swift action to revoke a license and protect the public from harmful practitioners as the disciplinary process moves relatively quickly. Dr. Will asked if the AG's power to quickly suspend licenses, does that power impede on an individual's right to due process. Ms. Iosue believes very strongly in protecting due process, so she takes extra care to pursue possible violators in a very transparent manner so that the practitioners know exactly what they are being accused of.

Dr. Will asked the AG's office if they could protect the public effectively if the licenses for this industry were condensed into one business license. Ms. Iosue responded that a business license would not be handled by the AG's office, it would be handled by the Secretary of State's office.

Mr. Rhoad asked Ms. Iosue if the violating practitioners are responsive to inquiries from the AG's office. Ms. Iosue responded that yes, usually these licensees are eager to correct any violations. Mr. Miller elaborated on behalf of the AG's office that his office enforces the statutes/rules set by the General Assembly. In his experience, having license roles and functions distinctly defined by the state helps the state protect the public by proving harmful behavior and keeping practitioners accountable. He believes the individual licenses in this industry helps prevent people from claiming ignorance and trying to absolve themselves of blame.

Report from Indiana Funeral Directors Association

Andy Clayton, Acting President of the IFDA, Dr. Michael St. Pierre from the American Board of Funeral Association, and Robert Hagenmeier all presented to the committee. It is noted that Mr. Clayton and Dr. St. Pierre are both currently acting practitioners in the industry. Mr. Clayton explained that the IFDA represents 470 family-owned funeral homes and around 1100 individual funeral director licenses in Indiana.

Mr. Clayton explained that from his perspective, state-regulated licensure is not expensive or overbearing in any way for the industry. He believes that the preneed legislation in Indiana is fairly simple compared to other states. He believes that less regulation would put consumers at risk for preneed fraud and other harmful practices. In his opinion, the preneed consumer protection fund is important, although it may seem arbitrary, because it could easily be depleted if multiple funeral businesses go out of business or commit fraud at the same time.

Mr. Clayton said that IFDA does handle some marketplace/consumer complaints on an organizational level, but they forward anything criminal to the AG's office. Mr. Clayton does not believe that licensing of this industry is a barrier to entry, mostly because in his opinion people are not lining up to open a funeral home.

Col. Wilson wants to discuss again the state's preneed fund. Mr. Hagenmeier explained that a private funeral business's preneed funds are placed in trusts that are monitored by banks. Col. Wilson asked why the state would need such a large preneed fund, if those trusts from private businesses are protected even if the funeral home goes out of business. He asked for clarification if the state's preneed fund is only meant for consumer recuperation from fraudulent activity. There was no concrete response from IFDA.

Col. Wilson also wanted to discuss further the continuing education requirements for this profession. He wanted to know if the IFDA is the bulk provider of continuing education for professionals of this industry in Indiana. Mr. Clayton responded that well over 50% of their members elect to complete their continuing education requirements through the IFDA. Col. Wilson asked if the IFDA believes that the current amount of continuing education credits for license renewal is enough. Mr. Clayton answered that the IFDA believes that Indiana does not require enough continuing education requirements.

Col Wilson asked Mr. Clayton if he believed that the state is the best agency to regulate the industry, or if their organization, with the right authority and resources, be able to regulate it themselves. Mr. Hagenmeier stated that he believes it would make IFDA hated among the profession. Mr. Clayton elaborated that he believes that, as it is now, the state doesn't conduct enough inspections of funeral homes. For his own business, he has only experienced one surprise inspection in 19 years of business. Mr. Hagenmeier agreed and suggested that higher licensing fees for this profession might help regulate the industry more thoroughly.

Dr. Will asked about who is responsible for overseeing funds gathered from preneed packages purchased by consumers. Mr. Hagenmeier responded that the IPLA requires that a funeral home obtain a certificate of authority to sell preneed packages and register with the board. Funeral homes must also submit an annual report of all preneed funds received and where exactly those funds are being held, so the IPLA oversees that. Dr. Will asked that if the adjudicating body for the industry is the board, are there any consumer members and how are they selected? Mr. Clayton responded that they are selected by the governor.

Mr. Rhoad asked the IFDA members about their biggest challenges in the profession. Mr. Clayton responded that the changing attitudes of consumers and how they are making different choices that break with tradition have been difficult to adapt to.

Break for Lunch

The committee took a break for lunch at 12:27 PM and reconvened at 1:30 PM.

Presentation from the Committee on Hearing Aid Dealer Examiners

Leo Korolev, staff attorney for PLA, presented board information regarding hearing aid dealer examiners. He briefly covered the different license types/definitions, establishment of the board, role of the board, staffing specifics of PLA as concerns the board and licensing costs. Members of the committee read the board report given to them outlining these specific points and had no questions for Mr. Korolev.

Presentation from the Indiana Attorney General's Office, re: Hearing Aid Dealers

Terry Tolliver, Deputy AG, presented to the committee regarding complaints and investigative/litigation results for the profession of hearing aid dealers. Mr. Rhoad asked for Mr. Tolliver to clarify the definition of professional incompetence versus unprofessional conduct in this profession. Col. Wilson also asked about the complaints that were labeled as "no violation" or "referred to another agency". Mr. Tolliver explained that a "non-sanctionable action" could be a complaint that a hearing aid dealer was very rude to a customer, which is still a concern, but it's not illegal.

Dr. Will asked if the AG's office has data about the number of transactions conducted in the industry overall. He believes it would be interesting to compare the amount of transactions in the industry to the amount of complaints received. Mr. Tolliver responded that he does not have that data. Dr. Will asked about the specific nature of the 16 complaints that the AG's office has received for this profession over the years. Mr. Tolliver responded that he doesn't have specific data, but he explained a current complaint they are investigation that involves a "failure to supervise" a hearing aid dealer's student in an area when the dealer is out of state. Mr. Tolliver is

also aware of a complaint where people are taking advantage of immigrants where they bring them in for “tests” and then try to sell them very high-priced goods. Dr. Will asked if licensing didn’t exist, would consumers still have recourse for harm caused by this profession. Mr. Tolliver explained that there is always an avenue to complain about a transaction or profession, whether through civil or criminal courts. Mr. Miller explained that some non-medical boards can issue restitution when necessary.

Report from the Indiana Hearing Aid Alliance

Allen Reese, Chairman of Hearing Aid Dealer Examiners, presented to the committee. He was joined by Dr. Richard Miyamoto, Professor at IU School of Med in Indianapolis, Vicki Fisher, Hearing Aid Dealer/President of Hearing Aid Alliance, and Bruce Campagna, Director of the Indiana Hearing Aid Alliance. Mr. Reese first clarified that the licenses for this profession are issued to individual practitioners and not businesses.

Mr. Campagna addressed the committee and explained that the IHAA focuses on promoting ethical practices for hearing aid dealers. He believes that the industrial is regulated fairly and adequately by the state. He also explained that the IHAA believes that the 10 hours per year of continuing education required for licensure renewal is adequate. Mr. Campagna further stated that the IHAA believes that the licensing fees are almost too low for this profession. Currently, the fees are \$40 every two years, and continuing education credits are \$100/year from their professional organization. Dr. Will asked if an individual can obtain their continuing education credits without going through the IHAA. Mr. Campagna responded that yes, they can get them from many other places.

Col. Wilson asked if an audiologist is a separate profession that is separately licensed. Mr. Campagna affirmed. Col. Wilson asked if there is a clear and present health and safety danger to the public from the work of hearing aid dealers. Mr. Campagna responded that online/TV ads cause the biggest safety issue, since the consumers often don’t receive an examination to ensure that the hearing aids fit properly. He stated that the IHAA is pleased with how the state currently regulates the profession.

Col. Wilson asked Mr. Campagna if the IHAA, given the resources and the authority to act as an agent of the state, would be able to regulate the licenses independently. Mr. Campagna responded that IHAA feels that the state issuing the licenses is in the best interest of the profession. He explained that eliminating the license happened in Colorado back in the 1980s, and it had negative affects for consumers. Mr. Campagna elaborated that since the system is currently working well with minimal complaints, he and the IHAA see no need for change.

Dr. Will proposed a question of why should the government be telling people where they can and can’t buy their products. Mr. Campagna responded that the government is not stopping people from buying things from wherever they want, it’s just that licensure and FDA approvals show consumers where they can buy from vendors who can be trusted. Dr. Will asked that if there are so few complaints about this profession, why licensing/state oversight is even necessary. Mr. Campagna responded that he believes that the low number of complaints show that the current state-run licensure is working well to protect consumers who need to utilize the industry. Usually people only come in for hearing testing when their hearing very poor, and that

can be somewhat of a vulnerable time due to strained communication with their friends and family.

Mr. Rhoad asked if consumers need a prescription for hearing aids to be covered by insurance. Ms. Fisher spoke up to explain that the insurance that she provides for her employees will cover hearing aid services if they are administered by a licensed professional. Mr. Reed asked if it is typical for an insurance company to require for an individual to utilize a licensed hearing aid dealer. Ms. Fisher responded that only licensed individuals can register as an in-network provider, which makes it much easier for insurance to cover the costs for the consumer. Dr. Miyamoto explained that in his opinion, the low number of complaints is a positive, and he believes it shows that the Board and examining committee is doing their job well.

Report from the Indiana-Speech-Language Hearing Association

The Indiana-Speech-Language Hearing Association presented explaining that ISLHA's goals are to ensure the professionalism and continuing education of hearing aid dealers. ISLHA is concerned with properly administered hearing tests, as improperly done ones can lead to missed medical issues and harm to consumers.

Col. Wilson asked about the difference between speech pathologists, audiologists, and how they are licensed differently. Col. Wilson asked if it would better serve the industry if it was required that a patient needed a prescription from an audiologist to visit a hearing aid dealer to purchase hearing aids. ISLHA stated that not everyone needs to see an audiologist. Especially if the hearing loss isn't related to anything else, then seeing an MD about it would be arbitrary and expensive for consumers. Col. Wilson explained that he thought it was said earlier that hearing loss is usually a symptom of something else and not usually just a single diagnosis, so examination from a doctor is warranted to rule out more severe health issues. Dr. Miyamoto explained that most hearing loss cases are pretty straight forward, so audiologists don't need to see every routine hearing loss patients—especially from the elderly who can naturally experience diminished hearing abilities. He explained that the point of licensing certified hearing aid dealers is that these professionals can handle routine hearing loss issues, but they are also trained to recognize when the consumer needs to see a doctor to follow up on something that could be serious. He said that is where a close relationship with audiologists and ENTs come in handy, and most of the professionals in these industries work very well together.

Mr. Rhoad asked if 3D printing is affecting the industry, and Ms. Fisher responded that it has not yet.

Concluding Discussion by the Committee

There was no concluding discussion by the committee.

Adjournment

Seeing no further discussion, Mr. Rhoad asked the committee for a motion to adjourn. Col. Wilson motioned to adjourn, and Mr. Reed seconded. With no objections, the committee adjourned at 3:00 PM.

**NEXT SCHEDULED MEETING
FOR THE JOB CREATION COMMITTEE MEETING**

Thursday, April 16, 2015, 9:00 AM
Indiana Government Center – South
402 West Washington Street, Room W064
Indianapolis, IN 46204