



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA STATE DEPARTMENT OF HEALTH (ISDH)

TITLE: ISDH POST-EMPLOYMENT

CASE ID: 2018-08-0233

DATE: May 10, 2019

Inspector General Staff Attorney Heidi Adair, after an investigation by Inspector General Special Agent Jack Bedan, reports as follows:

The Indiana General Assembly charged the Office of the Indiana Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in executive branch agencies of state government. IC 4-2-7-2(b). The OIG also investigates allegations of criminal activity and Code of Ethics (Code) violations within state government. IC 4-2-7-3.

On August 13, 2018, the OIG received a hotline complaint regarding a former Public Health Nurse Surveyor (Surveyor) with the Indiana State Department of Health (ISDH), Jada Mocaby (Mocaby). The complaint alleged that Mocaby had accepted a position with Aperion Care (Aperion) whose facilities she had surveyed during her last two years as a state employee, thereby violating the Code's 365-day cooling off provision of the post-employment rule.

The OIG opened an investigation into the matter. During the investigation, Special Agent Jack Bedan interviewed Mocaby's former ISDH supervisor (ISDH Supervisor), an Aperion Executive and Mocaby. Additionally, he obtained and examined several emails and documents.

I. BACKGROUND

A. Background

Mocaby worked as a Surveyor in ISDH's Long Term Care Division (LTC) from August 8, 2016 to July 27, 2018. Before leaving state employment, she sought the opinion of ISDH's Ethics Officer as to whether she could accept a post-employment position with an assisted living, skilled nursing and therapy company called Aperion. Aperion has a number a facilities throughout the State, but most are located in the northern region. Mocaby's role as a Surveyor involved her conducting annual and complaint surveys at Aperion facilities in the northern region of the State. Because Mocaby surveyed these facilities as part of her job with ISDH, the Ethics Officer advised her via email that she may be subject to the post-employment rule's 365 day cooling-off period. The Ethics Officer encouraged Mocaby to request an informal advisory opinion from the OIG.

On July 24, 2018, Mocaby requested an informal advisory opinion from the OIG. She indicated in her request for advice that she would be leaving her ISDH position on July 27th and that she was considering taking a consulting position with a company whose facilities she had surveyed during her last two years with the State. She wrote that as a Surveyor, she could issue citations against the company's facilities for violations; however, when it came to "harm level" citations or those that could directly affect a facility's license or funding, she needed a supervisor's approval. Mocaby said that while the citations she issued alone could not directly affect a facility's license or funding, they could be a factor in a decision to proceed with that type of action.

In the informal advisory opinion, the OIG advised Mocaby that "the [State Ethics] Commission will very likely find that you made a regulatory or licensing decision when you conducted the surveys and provided your findings and recommended citations to your supervisor." The OIG explained Mocaby's other options, such as seeking a formal advisory opinion from the Commission or requesting a post-employment waiver. Mocaby did not pursue either of these options.

B. Mocaby's Position at ISDH

Mocaby was a full-time employee at ISDH. Her position as a Surveyor involved the inspection of nursing homes and assisted living homes. This included conducting both annual and complaint on-site surveys for Aperion facilities within her assigned region. She conducted these surveys mainly as a member of a team or as a team leader. The purpose of these surveys was to determine compliance with federal certification and state licensure requirements where applicable and evaluate the quality of care, quality of life, environment, and services provided to all residents in the facilities.

During a survey, an ISDH team generally inspects a facility to determine if it is following proper guidelines. Each team member writes his or her own citations when a facility fails to meet a guideline and submits the citations to a team leader. The team leader then compiles the citations and submits a report to the area's supervisor. The survey supervisor then reviews the report to ensure it includes adequate information, then uploads it into the computerized survey system. ISDH's Processing Department finalizes the upload into the system and sends the final report to the surveyed facility. A facility will then review the report and institute a "plan of correction" to address any citations issued against it through the survey.

The ISDH Supervisor indicated that during Mocaby's employment with the State, Mocaby physically surveyed all four Aperion facilities within her assigned region and issued citations against these facilities.

As a state employee, Mocaby was subject to the Code. Commission training records indicate that Mocaby completed the required state ethics training, which addresses the post-employment rule found in Ind. Code § 4-2-6-11, in 2016 and 2017.

II. POST-EMPLOYMENT VIOLATION

The investigation revealed that Mocaby violated Ind. Code § 4-2-6-11(b)(3), which is part of the one-year cooling off provision of the post-employment rule, by accepting employment and compensation from Aperion less than two weeks after she left state employment because Mocaby made a regulatory or licensing decision that directly applied to her employer (Aperion) while she was an ISDH employee. Ind. Code § 4-2-6-11(b)(3) reads in relevant part:

(b) A former state ... employee ... may not accept employment or receive compensation: ... (3) from an employer if the former state ... employee ... made a regulatory or licensing decision that directly applied to the employer ... before the elapse of at least three hundred sixty-five (365) days after the date on which the former state ... employee ... ceases to be a state ... employee

A. Mocaby Made Regulatory or Licensing Decisions that Directly Applied to Aperion as an ISDH Employee

As part of her duties as an ISDH Surveyor, Mocaby surveyed Aperion facilities within her designated region, which included Michigan City Arbors, Demotte, Tolleston Park and Valparaiso. The ISDH Supervisor provided Special Agent Bedan with a report from a federal reporting system known as Aspen Central Office (ACO) that documented Mocaby's involvement with Aperion surveys.¹

The ACO report that the ISDH Supervisor provided to Special Agent Bedan specifically displayed the Aperion facilities for which Mocaby was part of the survey team from April 2017 through June 2018. The report also showed the number of "tags" Mocaby cited for each survey. Tags are the citations ISDH issued based upon violations found through surveys. As an example, the report showed that Mocaby was involved in a June 8, 2018 annual survey at Aperion's Valparaiso facility. The ISDH Supervisor indicated that Mocaby was the team leader for that

¹ ACO houses the reports and information for all of ISDH's completed surveys. According to the ISDH Supervisor, the results of each survey documented in ACO play a role in the federal government's Centers for Medicare and Medicaid Services (CMS) facility rating system.

particular survey, that the team found a total of twenty federal violations and Mocaby cited at least seven of these violations.

Also during the course of the investigation, Special Agent Bedan conducted several telephonic interviews with Mocaby. During one of these conversations, Mocaby acknowledged that she had surveyed and issued citations against Aperion facilities while employed with the State. Additionally, she acknowledged requesting an informal advisory opinion from the OIG before beginning her new position with Aperion. Furthermore, she acknowledged that she had not received any official approval or indication that it would be permissible for her to begin working for Aperion before the lapse of 365 days upon leaving state employment.

**B. Mocaby Accepted Employment with Aperion
less than 365 Days After Leaving State Employment**

Special Agent Bedan obtained records indicating that Mocaby officially left state employment on July 27, 2018. Special Agent Bedan interviewed an Executive Staff Member with Aperion (Executive). The Executive acknowledged that Mocaby was a regional nurse consultant with Aperion. He stated that Mocaby began working for Aperion on August 6, 2018. This is less than two weeks after she left state employment.

The OIG's investigation found no evidence that Mocaby sought a post-employment waiver from her appointing authority or a formal advisory opinion from the Commission regarding employment with Aperion, despite receiving an informal advisory opinion from the OIG that she was likely subject to the post-employment rule's cooling off provision.

III. CONCLUSION

The Commission found probable cause for the OIG to file an ethics complaint against Mocaby on March 14, 2019. On March 18, 2019, the OIG filed a complaint alleging that Mocaby violated Ind. Code § 4-2-6-11(b)(3) by accepting employment or receiving compensation from

Aperion less than 365 days after leaving state employment after making a regulatory or licensing decision that directly applied to Aperion.

Mocaby entered into an agreed settlement with the OIG in which she admitted to the violation of the Code as alleged in the ethics complaint and agreed to pay a fine of \$7,500. The OIG filed an Agreed Settlement with the Commission on May 3, 2019, and the Commission approved it on May 9, 2019. Full payment of the fine is due by January 4, 2020. Accordingly, this investigation is closed, pending receipt of the fine.

Dated: May 10, 2019

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General