



INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: INDIANA PROFESSIONAL LICENSING AGENCY (IPLA)
TITLE: MISUSE OF STATE FUNDS
CASE ID: 2022-10-0311
DATE: June 6, 2023¹

Indiana Office of Inspector General Chief Legal Counsel, Tiffany Mulligan, after an investigation by Inspector General Special Agent Sam Stearley reports as follows:

The Indiana General Assembly charged the Office of the Indiana Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in the executive branch agencies of state government. Ind. Code §4-2-7-2(b). The OIG also investigates allegations of criminal activity and Code of Ethics² violations within state government. Ind. Code §4-2-7-3. The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code §4-2-7-3(2).

I. Complaint

In October of 2022, the OIG received a complaint alleging that the Indiana Professional Licensing Agency (IPLA) misused state funds. More specifically, the complaint alleged that IPLA has oversight of a dental compliance fund (Fund), which IPLA has misused without proper authority or approval from the Indiana Dentistry Board (Board).

¹ Pursuant to Ind. Code §§4-2-7-4 and 8, the OIG issued a confidential Investigative Report summarizing the results of this investigation on December 13, 2022. The OIG shared the Investigative Report with IPLA. The Inspector General has since learned that the existence of the Investigative Report was discussed at a public meeting; therefore, the Inspector General has determined that it is in the public interest to publish the report in its entirety.

² The Code of Ethics is found in Ind. Code 4-2-6 and 42 IAC 1.

II. OIG Investigation

OIG Special Agent Sam Stearley investigated the complaint. As part of the investigation, Special Agent Stearley interviewed multiple individuals, including IPLA employees, a member of the Board and an employee of the Office of Attorney General (OAG). He also reviewed documentation, including a spreadsheet from IPLA of expenses paid utilizing the Fund, meeting minutes from several Board meetings and Memorandums of Understanding (MOUs) between IPLA and the OAG.

The Fund is established in Ind. Code §25-14-1-3.7³, which provides that the Fund is for the purpose of “administering and enforcing the provisions of [Ind. Code 25-14].” Ind. Code 25-14 governs the regulation of dentists. Subsection (a) of Ind. Code §25-14-1-3.7 provides that IPLA is responsible for administering the Fund. Pursuant to subsection (b) of the statute, the Fund consists of compliance fees paid by dentists and hygienists and from fines and civil penalties that the Board or the OAG collects through investigations of violations of certain statutes. Subsection (d) provides that money in the Fund at the end of the State fiscal year does not revert to the State’s general fund. Subsection (e) requires the OAG and IPLA to execute a MOU to provide the OAG with “funds to conduct investigations and pursue enforcement action” against certain violators. Subsection (f) requires the OAG and IPLA to present the MOU to the Board for review on an annual basis.

Special Agent Stearley interviewed a Board member. According to the Board member, the Indiana Dental Association (IDA) and certain Board members encouraged passage of the legislation that established the Fund. The Board member stated that the original purpose of the Fund was to investigate compliance issues involving dentists and hygienists. He believed that the

³ The Indiana General Assembly passed Ind. Code §25-14-1-3.7 as Public Law 103-2011 in 2011.

Board was responsible for directing use of the Fund; however, he stated that the Board had never directed or approved any expenditures from the Fund.

The Board member said that the Board recently began asking IPLA for an accounting of expenditures from the Fund. According to the Board member, IPLA staff stated at Board meetings that money from the Fund went to pay part of the salaries for IPLA staff. The Board member also stated that IPLA staff began providing the Board with a spreadsheet showing “loosely” where the money was going, but he said that the spreadsheet did not provide specifics. The Board member stated that he does not believe IPLA’s use of the Fund violated any criminal statutes; however, he believes IPLA did not use the Fund as it was intended.

Special Agent Stearley obtained copies of the spreadsheet that IPLA staff provided to the Board with an accounting of the Fund. The spreadsheet includes the incoming revenue for each month since July of 2011, when the Fund was created. It also includes a list of expenditures by month going back to 2013. The list of expenditures includes items such as salaries, benefits and other administrative costs. The total revenue included in the spreadsheet is approximately one million, seventy-five thousand dollars (\$1,075,000). The total expenditures included in the spreadsheet is approximately five hundred and forty-six thousand dollars (\$546,000).

According to the Board member whom Special Agent Stearley interviewed, the Board has repeatedly shared its concerns with IPLA and the OAG regarding use of the Fund. He also shared copies of several letters that the Board Chair sent to IPLA’s Executive Director sharing his concern regarding IPLA’s oversight of the Fund. The Board member stated that IDA plans to seek legislation to eliminate the Fund because IDA believes IPLA is not using the Fund properly. The Board member stated that he believes the Fund should be placed under the Board’s authority, rather than IPLA’s authority, as was originally intended.

Special Agent Stearley interviewed an OAG employee regarding the Fund. He asked about the MOU that the statute requires the OAG and IPLA to execute to provide funds to the OAG to conduct investigations and pursue enforcement action. The OAG employee stated that the OAG and IPLA currently have no active MOU. They have had MOUs in previous years, but the last active MOU expired in July of 2022. The OAG employee said that the OAG and IPLA briefly enacted an MOU earlier this year, but the OAG withdrew from it after learning about concerns from the Board. The OAG employee explained that the recent MOU set up parameters for a compliance officer, such as how much the compliance officer would be paid. She stated that past MOUs did not provide very specific information, but the OAG was working with IPLA to include more specific information in the updated MOU.

Special Agent Stearley obtained copies of past MOUs between the OAG and IPLA regarding the Fund. Several of the past MOUs provided that IPLA would reimburse the OAG up to thirty-two thousand, two hundred fifty dollars (\$32,250) for investigative and compliance services. The OAG employee stated that the OAG has not used money from the Fund in the past. She explained that one reason for this is because the expert witnesses they have used in enforcement cases have not charged the State for their services. The IPLA employees whom Special Agent Stearley interviewed also stated that IPLA has not received any invoices from the OAG. They said that the OAG has one contractor to conduct investigations for the Board; however, the contractor has not submitted any invoices for investigations.

Special Agent Stearley interviewed two IPLA employees. He asked the IPLA employees about the Fund and its purpose. According to the IPLA employees, IDA originally worked for passage of the Fund for the purpose of creating a compliance officer position; however, during the

legislative process, the intent of the bill was modified. The resulting statute, Ind. Code §25-14-1-3.7, included administration as part of the purpose of the Fund.

The IPLA employees stated that the entirety of IPLA's budget is generated by licensing fees. The IPLA employees explained that the Indiana State Budget Agency (SBA) issued a Financial Management Circular (FMC) that instructed state agencies how to spend funds. They pointed to subsection 1 of FMC 1.1, which reads "When possible and appropriate, agencies should spend federal funds, then dedicated funds, before using General Fund resources."⁴ They explained that because the Fund is a dedicated fund, the FMC instructs them to use it for the specific purposes for which the Fund is allowed before using money from the General Fund.

The IPLA employees further explained how IPLA determined what expenses to charge to the Fund. They stated that IPLA is split up into eight groups that administer licensures for several boards. They looked at how much money IPLA spends to run the group in which the Board sits. They then looked at the volume of work needed to run the Board and determined what percentage of the group's efforts are expended on the Board. They took that percentage times the group's operating budget to determine the amount of money to pull from the Fund.

According to the IPLA employees, IDA and the Board are upset with IPLA for using the Fund for administrative expenses because it is not what they envisioned when they advocated for creation of the Fund; however, the IPLA employees said IPLA is following the law as passed by the legislature, along with SBA's directives. The IPLA employees stated that they are trying to work with the Board and the OAG to address the dispute regarding the use of the Fund.

⁴ FMC 1.1 is found at: [FMC-1.1-Fiscal-Prudence-Measures-January-1,-2022.pdf \(in.gov\)](#).

III. Conclusion and Recommendations

The OIG's investigation found no evidence of any criminal activity involving use of the Fund. Furthermore, the allegations in the complaint did not implicate any provision of the Code of Ethics. Nothing in the complaint or information obtained as part of the investigation revealed any evidence that an individual IPLA employee engaged in wrongdoing.

Although the complaint raised concerns about misuse of the Fund, the investigation found insufficient evidence that IPLA engaged in waste, fraud or abuse in their administration of the Fund. The OIG's investigation found that IPLA maintained an accounting of revenue coming into the Fund, along with expenditures made from the Fund. IPLA staff also were able to explain why they believed IPLA's use of the Fund complied with state statute as written.

Based on the investigation, the Board and IPLA clearly have a different interpretation of how the Fund may and should be used. Although both sides raise reasonable arguments, the OIG's role is to investigate waste, fraud and abuse, not to interpret the statutes governing the Fund or to mediate a dispute between the Board and IPLA. We recommend that the Board and IPLA continue to work together to resolve their differences, and if needed, seek clarification from the Indiana General Assembly through revised legislation governing the Fund.

As the investigation did not reveal any evidence of a Criminal Code or Code of Ethics violation, the OIG is closing this case.

Dated: December 13, 2022

APPROVED BY:



David Cook, Inspector General