

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
August 9, 2018**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:01 a.m. Commission members present included James Clevenger, Chairperson; Sue Anne Gilroy; Priscilla Keith, and Katherine Noel. Staff present included Jennifer Cooper, Ethics Director; Lori Torres, Inspector General; Kelly Elliott, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; and Cynthia Scruggs, Director of Administration, Office of Inspector General.

Others present were Dyllan Keys, Intern, Department of Revenue; Beth Green, General Counsel, Department of Workforce Development; Chris Serak, Ethics Officer, Department of Transportation; Sarah Kamhi, Assistant General Counsel/Director of Agreements, Department of Revenue; Tammera Glickman, Assistant General Counsel, Department of Administration; Stephanie Semaan, Intern, Department of Workforce Development; Mattheus Mitchel, Compliance & Ethics Specialist, Department of Revenue; Latosha Higgins, Managing Attorney/Ethics Officer, Family & Social Services Administration; Michelle Stanley, Legal Specialist, State Board of Accounts; Ben Badger, Revenue Tax Specialist, Department of Revenue; Stephanie Mullaney, Deputy General Counsel, Office of Attorney General; and Daniel Rusyniak, Chief Medical Officer, Family & Social Services Administration.

II. Adoption of Agenda and Approval of Minutes

Commissioner Noel moved to adopt the Agenda and Commissioner Gilroy seconded the motion which passed (4-0). Commissioner Gilroy moved to approve the Minutes of the July 12, 2018 Commission Meeting and Commissioner Noel seconded the motion which passed (4-0).

III. Request for Formal Advisory Opinion

**2018-FAO-0017 Dr. Daniel Rusyniak, Chief Medical Officer
Latosha Higgins, Managing Attorney/Ethics Officer
Family & Social Services Administration**

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Dr. Daniel Rusyniak, the new Chief Medical Officer for FSSA. Specifically, Ms. Higgins is requesting an opinion from the Commission addressing whether it would be a conflict of interests for Dr. Rusyniak to continue his outside employment with Eskenazi Health, hold his appointment at the Indiana University School of Medicine while on temporary leave, and retain privileges at the Roudebush VA Medical Center while employed as the Chief Medical Officer for FSSA.

Dr. Rusyniak will join FSSA after serving as the Medical Director of the Indiana Poison Center,

Division Chief Medical Toxicology, and holding numerous roles at Indiana University School of Medicine, including Faculty President. Dr. Rusyniak is scheduled to commence working at FSSA on August 6, 2018. He has agreed not to work any shifts at Eskenazi Health after his start date at FSSA until he receives a formal advisory opinion from the State Ethics Commission indicating that it would not be a conflict of interests for him to continue his outside employment activities.

The Chief Medical Officer position is a clinical executive position that reports to the Secretary of FSSA. The Chief Medical Officer's primary role is to provide leadership to the medical directors in each FSSA Division and the Office of Social Determinants of Health. As the Chief Medical Officer, Dr. Rusyniak will provide medical oversight, expertise and leadership to projects and operations within the Agency, including policy advising and program planning. His duties will not include any contract administration or rulemaking.

Dr. Rusyniak would like to continue to work a few evenings a month in the emergency department at Eskenazi Health while employed as the Chief Medical Officer of FSSA. He does not anticipate working more than three evenings a month on average. Dr. Rusyniak believes that it is important for him to continue working in the emergency room to maintain his skills through patient contact because it will aid him in his performance as Chief Medical Officer. Eskenazi Health partners with the Indiana University School of Medicine and serves as the public hospital division of the Health & Hospital Corporation of Marion County. Eskenazi Health's programs have received national recognition. Eskenazi is a safety-net hospital, meaning that it provides health care and other related services to the uninsured, Medicaid-recipients, and other vulnerable populations regardless of ability to pay. It is also the home of the first adult level trauma center in Indiana, the region's only adult burn center, and Indiana's first community mental health center. As a physician in the Eskenazi Health emergency room, Dr. Rusyniak will see firsthand the barriers to receiving medical care faced by the indigent, geriatric and pediatric patients he encounters.

Dr. Rusyniak will pay for his own medical malpractice insurance, licensing fees and certifications. Furthermore, he will not serve in a supervisory or leadership role with Eskenazi Health or Indiana University Health Physicians (IU Health Physicians). Rather, he will serve as an independent contractor to Eskenazi Health through IU Health Physicians. He will not charge patients nor will he bill insurance. He will be paid by IU Health Physicians on an hourly basis.

Eskenazi Health and IU Health Physicians are Indiana Medicaid Providers. Each has an Indiana Medicaid Provider Agreement with FSSA and both receive Medicaid reimbursements. Eskenazi Health does not have a direct contract with FSSA; however, its community mental health center is certified by FSSA's Division of Mental Health and Addiction. Additionally, IU Health Physicians is affiliated with Indiana University Health (IU Health), and FSSA's various divisions have six active contracts with IU Health, Indiana University and related entities. The contracts are at the division level in FSSA. The division directors are the owners of the contracts. Dr. Rusyniak, as Chief Medical Officer, would not be in a position to negotiate or sign these contracts. Per Dr. Rusyniak, to avoid a potential conflict under IC 35-44.1-1-4, IU Health Physicians will not use funds from these contracts with FSSA to pay him; however, his fees may be paid from general Medicaid funds.

Ms. Higgins provides that Dr. Rusyniak has no leadership role with IU Health Physicians or IU Health, that he is taking a leave of absence from the medical school, and that he would only be

staffing the emergency room a few times a month; she asserts that all of these measures should ensure that there is not even an appearance that he is deriving a profit from or has a pecuniary interest in any of the IU Health contracts with the State.

Dr. Rusyniak would not be in a position to make decisions regarding Medicaid providers or community mental health centers, and any direction he would provide regarding protocols, policies or procedures that might impact external stakeholders would apply to all clinical specialists, hospital administrators, and any other providers uniformly. Therefore, it is unlikely Dr. Rusyniak would make a decision that would have a unique impact on Eskenazi Health, IU Health Physicians, IU Health, or their related entities. If the situation presented itself, FSSA would screen Dr. Rusyniak from participating in any such decision by having the Secretary delegate full authority to another employee to handle such matters independently.

In addition to working as an independent contractor to Eskenazi Health, Dr. Rusyniak is in the process of applying for privileges to work in the emergency room at the Roudebush VA Medical Center and would like to retain said privileges if awarded. He does not believe at this time that he will seek work there; however, he wants to obtain privileges in case an opportunity would arise in the future.

Dr. Rusyniak would also like to maintain his appointment at the Indiana University School of Medicine while employed by FSSA. Dr. Rusyniak recently completed his term as Faculty President. He plans to take an approved temporary leave of absence from the medical school that will permit him to retain his title and the full rights of a faculty member. During his temporary leave of absence, Dr. Rusyniak will not receive any benefits or salary; however, he will be required to continue to abide by the professional standards of the medical school to remain a faculty member in good standing. He will also be required to renew his leave of absence annually.

Dr. Rusyniak understands and agrees that he may not use state time to work at Eskenazi Health, the medical school or Roudebush VA Medical Center. Additionally, he is confident that he will meet the 37.5 hour work-week requirement despite seeing patients a few evenings a month.

Based on the information presented, Ms. Higgins does not believe that Dr. Rusyniak's outside employment activities would be incompatible with his duties as Chief Medical Officer. Rather, she believes that Dr. Rusyniak's outside employment activities will help maintain and build upon his professional skills such that he may better be able to meet the essential functions of his position as Chief Medical Officer. This would include identifying opportunities to collaborate and develop clinical integration initiatives with other stakeholders in the State to achieve effective and affordable outcomes, as well as participating as a spokesperson to the public and health care professionals.

Ms. Higgins' request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Use of State Property, Ghost Employment, and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. Rusyniak is analyzed below.

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 if 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 official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Based on the information and opinion provided, the Commission finds that Dr. Rusyniak's employment at Eskenazi Health would not create a conflict under this provision. Specifically, Dr. Rusyniak would not serve in a supervisory or leadership role with the hospital; he would be an independent contractor and will be paid on an hourly basis. According to Ms. Higgins, Dr. Rusyniak's responsibilities in treating patients during a few evening per month in the emergency department at Eskenazi Health would not conflict with his responsibilities as the Chief Medical Officer for FSSA and would not require him to recuse himself from matters that are critical to the performance of his duties at FSSA.

His other outside employment/professional activities would not provide Dr. Rusyniak with compensation of a substantial value. Dr. Rusyniak is taking a leave of absence from his position with IU School of Medicine and will not receive any benefits or salary during this time. Dr. Rusyniak is in the process of applying for privileges to work at the Roudebush VA Medical Center and would like to retain such privileges if awarded. However, he does not have any current plans to seek paid employment at this facility.

Ms. Higgins confirmed that Dr. Rusyniak would not be required to disclose confidential information that he may have access to by virtue of his state employment in any of his outside positions. Further, nothing in the information presented suggests that Dr. Rusyniak would use or attempt to use his state position for any unwarranted privileges or exemptions. Dr. Rusyniak held all of these outside positions prior to becoming the Chief Medical Officer for FSSA.

Accordingly, the Commission finds that the employee's outside employment positions would not violate IC 4-2-6-5.5.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Rusyniak 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 Dr. Rusyniak from participating in any decision or vote, or matter relating to that decision or vote, if he or a business organization which employs him has a financial interest in the matter.

Dr. Rusyniak will be serving as the Chief Medical Officer for FSSA and will also be working a few shifts per month in the emergency department at Eskenazi Health.

Dr. Rusyniak will serve as an independent contractor to Eskenazi Health through IU Health Physicians, which is affiliated with IU Health.

Accordingly, Dr. Rusyniak would have a potential conflict of interests if he participates in decisions or votes, or matters related to such decisions or votes, in which he, Eskenazi Health, IU Health Physicians or IU Health would have a financial interest in the outcome.

Eskenazi Health does not have any direct contracts with FSSA; however, its community mental health center is certified by FSSA's Division of Mental Health and Addiction. Additionally, FSSA's various divisions have six active contracts with IU Health and related entities. Ms. Higgins provides that these contracts are at the division level in FSSA and that the division directors are the owners of the contracts.

According to the information provided by Ms. Higgins, Dr. Rusyniak, as Chief Medical Officer, would not be in a position to negotiate or sign these contracts. Further, Dr. Rusyniak would not be in a position to make decisions regarding Medicaid providers or community mental health centers, and any direction he would provide regarding protocols, policies or procedures that might impact external stakeholders would apply to all clinical specialists, hospital administrators, and any other providers uniformly. Therefore, it is unlikely Dr. Rusyniak, or even FSSA, would make a decision that would have a unique impact on Eskenazi Health, IU Health Physicians, IU Health, or their related entities.

The Commission finds that Dr. Rusyniak does not have an identified potential conflict of interests at this time. However, if a potential conflict of interests is identified in the future Ms. Higgins must ensure that Dr. Rusyniak meets the disclosure and notification requirements in IC 4-2-6-9(b). Ms. Higgins has provided that if any conflicts arise for Dr. Rusyniak, FSSA will ensure that he is screened from participating in the matters and the Secretary would delegate full authority to another employee to handle such matters independently.

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. This prohibition however does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Higgins provides Eskenazi Health does not have any direct contracts with FSSA; however, FSSA's various divisions have six active contracts with IU Health and related entities.

Ms. Higgins provides that in order to avoid any conflicts under IC 35-44.1-1-4 (the criminal conflict of interests statute), IU Health Physicians will not use funds from these contracts with FSSA to pay Dr. Rusyniak. She notes that his fees may be paid from Medicaid funds.

Accordingly, the Commission finds that Dr. Rusyniak would not have a financial interest in a state contract through any of his outside employment positions.

D. Confidential information

Dr. Rusyniak 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. Rusyniak 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, such as IU Health. 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. Rusyniak is exposed to or has access to such confidential information in his position as Chief Medical Officer of FSSA, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including any of his outside employers, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Dr. Rusyniak 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 that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Dr. Rusyniak 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.

The Commission found that to the extent that Dr. Rusyniak observes these provisions regarding his outside employment/professional activities, his outside positions would not violate these ethics laws.

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

IV. Director’s Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 24 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, the use of state property, and gifts.

Ms. Cooper also stated that the public hearing in the Arvin Copeland matter had been continued from September 13, 2018 to December 13, 2018 in order to allow the parties’ additional time to reach a settlement in lieu of having a hearing.

V. Adjournment

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

The public meeting adjourned at 10:10 a.m.