

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
October 12, 2023**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present were Katherine Noel, Chair; Corinne Finnerty; and John Krauss. Office of Inspector General (OIG) staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Doreen Clark, Staff Attorney; Mark Mader, Staff Attorney; Mike Lepper, Special Agent; Jason Fajt, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Beth Green, General Counsel, Indiana Department of Workforce Development; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Chris Serak, Ethics Officer, Indiana Department of Transportation; Erin Elam, Ethics Officer, Indiana Department of Health; Dr. Guy Crowder, incoming Chief Medical Officer, Indiana Department of Health; Deborah Franco, former employee, Indiana Department of Health; Josh Browelle, Legal Analyst, Indiana Department of Revenue; Matthew Gerber, Ethics Officer, Family and Social Services Administration; Taffanee Keys, Civil Rights Counsel, Indiana Department of Transportation; and, James French, Ethics Officer, Indiana Department of Environmental Management.

II. Adoption of Agenda and Approval of Minutes

Commissioner Krauss moved to adopt the agenda, Commissioner Finnerty seconded the motion, and the Commission passed the agenda (3-0).

Commissioner Krauss moved to approve the Minutes of the September 14, 2023, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (3-0).

III. Consideration of Waiver of Post-Employment Restrictions for Deborah Franco

Shane Hatchett, Chief of Staff for the Indiana Department of Health and ad designated by Commissioner Weaver, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Finnerty moved to approve the Waiver, and Commissioner Krauss seconded the motion, which passed (3-0).

IV. Request for Formal Advisory Opinion

2023-FAO-010

Dr. Guy Crowder, Incoming Chief Medical Officer

Erin Elam, Ethics Officer

Indiana Department of Health

Erin Elam is the Ethics Officer for the Indiana Department of Health (IDOH). Ms. Elam requested the Commission's advisory opinion on behalf of Dr. Guy Crowder, the Chief Medical Officer (CMO) for IDOH. Specifically, Ms. Elam requested this opinion from the Commission to ensure that Dr. Crowder's continued outside employment/professional activity as a Travel Medical Physician providing Direct Patient Care and his international volunteer work is acceptable under the Code while he is employed at IDOH.

Dr. Crowder is scheduled to begin his position as CMO at IDOH on November 6, 2023. He will join state employment after having served as Medical Director of Employee Health and Travel Medicine at Franciscan Health and the Franciscan Physician Network. Dr. Crowder would like to continue outside employment with Franciscan Health after starting his role at IDOH, serving as a Travel Medical Physician in Direct Patient Care. Dr. Crowder also proposed to continue participating in international volunteer work.

In his role as IDOH CMO, Dr. Crowder will report to Indiana's State Health Commissioner. In this clinical executive position, he will provide medical guidance, support and advocacy of agency initiatives to the IDOH Commissioner, executive team and divisions within the agency. The CMO role will not include any contract administration or rulemaking duties.

Franciscan Health will pay for Dr. Crowder's medical malpractice insurance for his patient care activities. He will pay for his own medical licensing fees and certifications. In his proposed outside employment at Franciscan Health, he will not serve in a supervisory or leadership role; rather, Dr. Crowder will serve as an intermittent/as-needed employee provider for Franciscan Health and Franciscan Physician Network. Dr. Crowder plans to work one shift per week. Franciscan Health will pay Dr. Crowder an hourly wage for his services, and his rate will not be dependent on patient billing.

Franciscan Health is affiliated with the Franciscan Health Foundation, with whom IDOH maintains seven active contracts. Ms. Elam provided that these contracts are maintained and administered at the division level within IDOH. In his role as CMO, Dr. Crowder will not be involved in the negotiation of or serve as a signatory for these contracts.

Ms. Elam further provided that Dr. Crowder's compensation from Franciscan Health will not be derived from any contracts with IDOH; his hourly wage will be paid from general patient revenue.

In his role as CMO, Dr. Crowder will not be in a position to make decisions regarding specific providers, 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. Ms. Elam provided that if Dr. Crowder were to be in a position where he could be involved in a matter that would uniquely impact Franciscan Health, Franciscan Physician Network, Franciscan Health Foundation or their related entities, IDOH would implement a screen to prevent his involvement in such decisions.

Dr. Crowder has historically participated in medical mission trips one to two times per year and would like to continue doing so during his state employment. During these trips, Dr. Crowder partners with international health organizations or universities to see patients in a clinical setting and pays his own expenses. Dr. Crowder understands that if he were to be offered any gifts, lodging, travel expenses or food and drink during his volunteer work he would need to communicate with IDOH's ethics officer to ensure the Code's gifts rule would permit his acceptance.

Dr. Crowder understands and agrees that he may not use State time to conduct his proposed outside work for Franciscan Health or his volunteer medical mission trips.

Ms. Elam provided that IDOH does not believe that Dr. Crowder's proposed outside employment activities would be incompatible with his role as IDOH CMO. Ms. Elam explained that such outside activities will help Dr. Crowder maintain and build upon his professional skills such that it will support his ability to perform his duties as IDOH CMO.

Ms. Elam requested Commission's opinion regarding the application of any of the rules in the Code to Dr. Crowder's proposed outside employment with Franciscan Health and his volunteer medical mission work.

Ms. Elam's 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, Gifts and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. Crowder's proposed outside activities 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.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities since these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Based on the information provided by Ms. Elam, IDOH does not believe that Dr. Crowder's employment at Franciscan Health is incompatible with his role as CMO such that it would create a conflict under this provision. Dr. Crowder will not serve in a supervisory or leadership role with Franciscan Health. Instead, he will be providing patient care in the travel medicine clinic. As to his proposed continuation of his volunteer work on medical missions, Dr. Crowder will not be compensated.

Nothing in the information presented suggests that Dr. Crowder would use or attempt to use his state position for any unwarranted privileges or exemptions.

Dr. Crowder confirmed that he understands that he is prohibited from disclosing confidential information that he may have access to by virtue of his state employment in any of his outside positions.

Based on the information provided to the Commission, the Commission finds that Dr. Crowder's outside activities will not violate IC 4-2-6-5.5.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Crowder 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. Crowder 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.

Per IC 4-2-6-1(a)(11), the term "financial interest" does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority and seek an advisory opinion from the Commission or file a written disclosure statement.

Accordingly, Dr. Crowder would have a potential conflict of interests if he is in a position to participate in decisions or votes, or matters related to such decisions or votes, in which he or Franciscan Health would have a financial interest in the outcome.

In his role as CMO, Dr. Crowder will not be in a position to negotiate or administer any contracts that IDOH maintains with the Franciscan Health Foundation. Further, he will not be in a position to make decisions regarding specific providers, 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. Ms. Elam provides that if

Dr. Crowder were to be in a position where he could be involved in a matter that would uniquely impact Franciscan Health, Franciscan Physician Network, Franciscan Health Foundation or their related entities, IDOH would implement a screen to prevent his involvement in such decisions.

The Commission finds that neither Dr. Crowder nor IDOH have identified a potential conflict of interests for Dr. Crowder at this time. The Commission confirmed with Ms. Elam that if such a potential conflict of interests is identified, IDOH will include the screen implemented by Ms. Elam as part of a disclosure filed with the Commission.

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.

Franciscan Health is affiliated with the Franciscan Health Foundation, with whom IDOH maintains seven active contracts. Ms. Elam provides that these contacts are maintained and administered at the division level within IDOH. In his role as CMO, Dr. Crowder will not be involved in the negotiation of or serve as a signatory for these contracts.

Dr. Crowder's compensation from Franciscan Health will not be derived from any contracts with IDOH; Franciscan Health will pay his hourly wage from general patient revenue. The Commission has found that compensation that an employee receives from his or her outside employer that comes from general Medicaid funds does not implicate this rule. As such, Dr. Crowder is not prohibited from receiving compensation from Franciscan Health derived from general patient revenue, even if some of that general patient revenue may be sourced from state Medicaid payments for eligible patients.

So long as Franciscan Health does not compensate Dr. Crowder from funds derived from a state contract, Dr. Crowder will not have a financial interest in a state contract that would create a conflict of interests under the Code.

D. Confidential information

Dr. Crowder 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. Crowder from accepting any compensation from any employment, transaction or investment that 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 Franciscan 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. Crowder is exposed to or has access to such confidential information in his new position at IDOH, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including Franciscan Health, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Dr. Crowder 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. Crowder 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.

To the extent that Dr. Crowder observes these provisions regarding his outside employment and volunteer activities, such activities would not violate these ethics laws.

F. Gifts and Donor Restrictions

The gifts rule (42 IAC 1-5-1) prohibits state employees from knowingly soliciting or accepting any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from a person who has a business relationship with the state employee's agency or is seeking to influence an action by the state employee in his or her official capacity.

A "business relationship" is defined as "[d]ealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing: (i) a pecuniary interest in a contract or purchase with the agency; or (ii) a license or permit requiring the exercise of judgment or discretion by the agency." It also includes the relationship a lobbyist has with an agency and the relationship an unregistered lobbyist has with an agency.

The donor restrictions rule (42 IAC 1-5-2) mirrors the gifts rule and prohibits those with a business relationship with a state employee's or special state appointee's agency from offering a gift in that same circumstance.

The general prohibition on gifts is subject to the eight exceptions outlined in subsection (b) of 42 IAC 1-5-1 or its application in certain circumstances may be waived by the agency's appointing authority as provided for in subsections (c) and (d).

Ms. Elam provides that Dr. Crowder pays his own expenses for the volunteer medical mission trips that he plans to continue during his state employment. During these trips, Dr. Crowder partners with international health organizations or universities to see patients in a clinical setting. Ms. Elam provides that if Dr. Crowder were to be offered any gifts, lodging, travel expenses or food and drink during his volunteer work, he is aware that he would need to communicate with IDOH's ethics officer to ensure the Code's gifts rule would permit his acceptance.

The Commission advises that Dr. Crowder work in advance to make Ms. Elam aware of any health organization or university he may receive assistance or reimbursement from as part of his volunteer activities, in order to identify any entities that maintain a business relationship with IDOH such that the gifts rule would be invoked.

Commissioner Krauss to approve the Commission's findings, and Commissioner Finnerty seconded the motion, which passed (3-0).

V. Consideration of Agreed Settlement

In the Matter of Myranda Strange

Case Number 2023-05-0181

Tiffany Mulligan, Chief of Staff and Chief Legal Counsel

OIG

Tiffany Mulligan presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commissioner Krauss moved to approve the Agreed Settlement, and Commissioner Finnerty seconded the motion, which passed (3-0).

VI. Ethics Director's Report

State Ethics Director Sean Gorman provided the following information to the State Ethics Commission:

INFORMAL ADVISORY OPINIONS:

Since our last meeting, our office has issued 17 informal advisory opinions. No trends to report as to the subject matter of these requests, as they continue the general pattern from most to least common on situations involving outside employment, post-employment, and gifts.

OUTREACH:

Our office continues to provide targeted ethics presentations in our ongoing outreach effort. We presented on ethics in public service at the Indiana Township Association conference, to provide township officials with information on how the state ethics program is structured. Our office also provided a presentation to Board Members at the Indiana Dental Board's regular meeting. This week I spoke to leadership at DOC, including executive staff, wardens, and assistant wardens, specifically on the topic of gifts.

Inspector General Cook and Tiffany Mulligan participated in a panel discussion at the Association for Inspectors General conference last week regarding the topic of parallel investigations and agency coordination. Tiffany also participated in a separate panel regarding legal issues faced by Inspector General agencies.

NEW OIG PERSONNEL

OIG was able to secure additional funding in its agency budget for an additional agent and attorney to bolster our office's staff. OIG has selected a new staff attorney, Hope Blankenberger, who will join Mark Mader and Doreen Clark as our staff attorneys. She starts this coming Monday, October 16, and we will make sure to introduce her to the Commission at the next meeting.

LEGAL & ETHICS CONFERENCE

We are gearing up for OIG's annual legal and ethics conference, which will take place in the Indiana Government Center South's Auditorium on November 16, 2023. We have Judge Thomas Kirsch from the 7th Circuit US Court of Appeals who will speak on the importance of ethics in public service, Judge Gary Miller of the Marion County Superior Court, who will provide a presentation on legal ethics, Tiffany Mulligan will be presenting on parallel investigations, i.e. the coordination between the OIG and agency internal investigations, and I will provide a brief presentation on political activity and the Code of Ethics. We are applying for 3 hours of CLE and requesting approval of all 3 hours for ethics CLE hours.

VII. Adjournment

Commissioner Finnerty moved to adjourn the public meeting of the State Ethics Commission. Commissioner Krauss seconded the motion, which passed (3-0).

The public meeting adjourned at 10:23 a.m.