

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
October 14, 2021**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:01 a.m. The meeting was held virtually using Microsoft Teams. Commission members present were Corinne Finnerty; Sue Anne Gilroy; Kenneth Todd; and Rafael Sanchez. Staff present included David Cook, Inspector General; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Jennifer Cooper, State Ethics Director; Luba Gore, Staff Attorney, Office of Inspector General; Mark Mader, Staff Attorney, Office of Inspector General; Mike Lepper, Special Agent, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were: Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Ed Feigenbaum, Indiana Legislative Insight; Jessica Keyes, Ethics Officer, Family and Social Services Administration; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Amber Nicole Ying, Director/Special Counsel, Compliance and Ethics and Ethics Officer, Department of Revenue; Keith Beesley, Attorney, State Personnel Department; John Walls, Ethics Officer and Chief Counsel of Advisory, Attorney General; Alexander Van Gorp, Attorney, Indiana State Department of Health; Rachel Russell, Ethics Officer, Department of Child Services; Kathy Mills, Ethics Officer, Indiana Department of Environmental Management; Jennifer Thuma, Administrative Law Judge and Ethics Officer, Indiana Board of Tax Review; Kristi Shute, Deputy General Counsel and Ethics Officer, Indiana Department of Homeland Security; Beth Green, General Counsel/Ethics Officer, Department of Workforce Development; Jerry Bonnet, General Counsel, Ethics Officer, Office of the Secretary of State; Dr. S. Maria E. Finnell, Chief Medical Officer, Family and Social Services Administration; and Corina Andorfer.

II. Election of Interim Chair

Commission Chair Katherine Noel was unable to attend this meeting. Commissioner Todd moved that Commissioner Finnerty be appointed Interim Chairperson for the October meeting. Commissioner Gilroy seconded the motion which passed (4-0).

III. Adoption of Agenda and Approval of Minutes

Commissioner Sanchez moved to adopt the Amended Agenda (addition of presenter for the Mayes Post-Employment Waiver) and Commissioner Gilroy seconded the motion which passed (4-0).

Commissioner Gilroy moved to approve the Minutes of the September 9, 2021, Commission Meeting and Commissioner Sanchez seconded the motion which passed (3-0). Commissioner Finnerty abstained due to her absence from the September Commission Meeting.

NOTE: Due to technical issues, the order of the Agenda was changed mid-meeting and the Formal Advisory Opinion was moved up.

IV. Request for Formal Advisory Opinion

2021-FAO-010

Dr. S. Maria E. Finnell, Chief Medical Officer

Jessica Keyes, Deputy General Counsel & Ethics Officer

Family and Social Services Administration

Jessica Keyes is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Keyes is requesting an advisory opinion on behalf of Dr. Maria Finnell, the recent Director of Clinical Operations and Assistant Medical Director, and the new Chief Medical Officer for FSSA. Specifically, Ms. Keyes is requesting an opinion from the Commission to ensure that Dr. Finnell's continued outside employment/professional activity with Riley Hospital for Children (Riley) through a contract with Indiana University Health Physicians (IUHP) is acceptable under the Code while she is employed in her new role as Chief Medical Officer of FSSA.

Dr. Finnell was formerly employed as the Director of Clinical Operations and Associate Medical Director for FSSA's Office of Medicaid Policy and Planning (OMPP) from August 15, 2019, to August 22, 2021. Dr. Finnell has worked at Riley Hospital for Children in the Division of Neonatology in the Department of Pediatrics since August 1, 2019. During her tenure as Director of Clinical Operations and Associate Medical Director for OMPP, Dr. Finnell sought a formal advisory opinion and continued her work with IUHP. Dr. Finnell wishes to continue this outside employment with IUHP after the shift to Chief Medical Officer of FSSA.

Dr. Finnell appeared before the Commission in 2020 when she requested to engage in this same outside employment with IUHP at Riley. In [2020-FAO-007](#) the Commission found that her outside employment opportunity would not create any conflicts of interests under the Code and that she could pursue this position while serving as Director of Clinical Operations and Assistant Medical Director for FSSA. Recently, Dr. Finnell was promoted to Chief Medical Officer of FSSA, effective August 23, 2021, and out of an abundance of caution, due to her new role within the agency, Dr. Finnell is requesting an updated opinion regarding continued outside employment with IUHP.

As Chief Medical Officer for FSSA, Dr. Finnell's duties include providing leadership to the medical directors in each FSSA division and providing expertise and leadership to the agency, including policy advising and program planning. Dr. Finnell's role as Chief Medical Officer does not include any contract administration or rulemaking. In her previous role as Director of Clinical Operations and Associate Medical Director, Dr. Finnell was responsible for overseeing the OMPP Medical Director, the Pharmacy Team and the Coverage and Benefits Team. Additionally, Dr. Finnell assisted FSSA's Program Integrity Team, the team responsible for reviewing suspected cases of fraud and abuse and making recommendations as to same, when the Medical Director for OMPP was unavailable.

Dr. Finnell has been working a few clinics per month in the Department of Pediatrics, Division of Neonatology at Riley, including a four (4) hour clinic shift on Thursday mornings. Dr. Finnell

appreciates the benefit of continuing to interact with clinical providers and patients, she believes that these continued shifts increase her skillset and credibility in her role as Chief Medical Officer with FSSA. Seeing patients in a local setting allows Dr. Finnell the ability to predict issues and hear feedback regarding FSSA services.

In her new position as Chief Medical Officer, Dr. Finnell's outside employment duties and structure will not substantively change. She will continue to work with the Department of Pediatrics for a few clinics per month at Riley. Due to her recent promotion, Dr. Finnell seeks an updated formal opinion regarding whether her change in role with FSSA would impact her outside employment opportunities.

Dr. Finnell will continue to pay for her own licensing fees. She has not and will not serve in a managerial or leadership role with Riley or IUHP, her direct employer. Dr. Finnell is paid hourly by IUHP, and her pay is based only on her contracted hourly rate and not based on the amount/number of patients she sees, treatments or services provided.

Riley Hospital for Children and IUHP are Indiana Medicaid enrolled Providers. Each have Indiana Health Coverage Program provider agreements with FSSA and receive Medicaid reimbursement. There are no known active contracts between FSSA and Riley Hospital for Children directly; however, Riley Hospital for Children is associated with Indiana University Health (IU Health). IUHP is also affiliated with IU Health, and FSSA's divisions have approximately four (4) active contracts with IU Health and associated entities. The contracts with IU Health are at the division level, and the FSSA divisions have ownership of the contracts. Dr. Finnell will not sign or negotiate these contracts as Chief Medical Officer. To avoid a potential conflict under IC 35-44.1-1-4, neither Riley nor IUHP will use funds from contracts with FSSA to pay Dr. Finnell; however, her fees may be paid from general Medicaid funds.

Pursuant to IC 12-8-1.5-10.5, the Office of the Secretary of FSSA is designated as the single state agency for administration of the state Medicaid program under IC 12-15, and the Office of the Secretary shall develop and coordinate Medicaid policy for the State. Therefore, Dr. Finnell may make decisions and recommendations involving Medicaid providers; however, her decisions would apply broadly to Medicaid providers in general, and not Medicaid providers at Riley or IUHP specifically. For example, if reimbursement rates were revised for Medicaid providers, they would apply to all relevant Medicaid providers. Additionally, while Riley or IUHP may have infrequent issues to address specifically with FSSA, there is little direct contact between these institutions and FSSA generally.

Should there be a situation whereby Dr. Finnell would need to make a decision in her role as Chief Medical Officer related specifically and solely to Riley Hospital for Children or IU Health Physicians, Dr. Finnell understands and acknowledges that pursuant to IC 4-2-6-9, FSSA will screen her from participating in any decision or vote, or matter relating to that decision or vote. Should such an issue arise, the Deputy Secretary/Chief of Staff, Michael Gargano, would address any screened matter.

Dr. Finnell also understands the duty to maintain confidential information learned through her employment with the State and that she is prevented from divulging confidential information or allowing anyone, including but not limited to, Riley and IUHP from benefiting from same.

Dr. Finnell further understands that she cannot use state time for outside employment, and Dr. Finnell has no concerns about her continued ability to meet all state work hours. During her Thursday morning clinic, Dr. Finnell has flexibility to step out if an emergency arises and does charting at other times, outside of regular working hours. Dr. Finnell has not had any issues meeting her regular work hour requirements previously working these clinics.

The previous Chief Medical Officer, Dr. Rusyniak, now the Secretary of FSSA, also sought a formal advisory opinion from the Commission for a similar situation where he worked shifts at Eskenazi Hospital while acting as FSSA's Chief Medical Officer, and the Commission found in that instance, that there was not a conflict of interest after careful consideration of many factors (2018-FAO-017). Ms. Keyes notes that Dr. Finnell's situation is analogous in many ways to Dr. Rusyniak's work at Eskenazi.

Further, there are no changes to Dr. Finnell's outside employment duties, which the Commission previously approved. She and Ms. Keyes are seeking a formal opinion regarding whether her change in roles within FSSA would impact the permissibility of her outside employment opportunities under the Code.

The analysis stated the following:

Ms. Keyes' 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. Finnell 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 her official duties that her 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 her 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 provided by Ms. Keyes, the Commission finds that Dr. Finnell's continued outside employment with IUHP at Riley would not create a conflict under this provision. Dr. Finnell would not be an employee and would not serve in an administrative leadership role with IUHP; she would be an independent contractor and would be paid on an hourly basis. Further, Dr. Finnell's responsibilities in working as a physician in the Clinic for IUHP would include a few

clinical rounds a month in the Department of Pediatrics, Division of Neonatology at Riley. Accordingly, this role would not conflict with her responsibilities as Director of Clinical Operations and Assistant Medical Director for FSSA and would not require her to recuse herself from matters that are critical to the performance of her duties at FSSA.

Ms. Keyes provides that Dr. Finnell understands that she is prohibited from disclosing confidential information to which she may have access to by virtue of her state employment in her outside position with IUHP. In addition, nothing in the information presented suggests that Dr. Finnell would use or attempt to use her state position for any unwarranted privileges or exemptions. Dr. Finnell must continue to ensure she does not use or attempt to use her official FSSA position in this manner.

Accordingly, the Commission finds that Dr. Finnell's continued outside employment position with IUHP at Riley would not create a conflict of interests for her under IC 4-2-6-5.5 despite her change in role from Director of Clinical Operations and Assistant Medical Director to Chief Medical Officer of FSSA.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Finnell from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Finnell from participating in any decisions or votes, or matters related to such decisions or votes, in which IUHP or IU Health would have a financial interest in the outcome.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify her ethics officer and appointing authority and seek an advisory opinion from the Commission or file a written disclosure statement.

Dr. Finnell will now be serving as Chief Medical Officer of FSSA and will be working a few clinics per month for IUHP at Riley. Dr. Finnell will serve as a contracted hourly employee through IU Health Physicians, which is affiliated with IU Health.

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

Ms. Keyes provides that FSSA's various divisions have active contracts with IU Health and related entities. Ms. Keyes 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. Keyes, Dr. Finnell, as Chief Medical Officer for FSSA, is not in a position to negotiate or sign these contracts.

Riley, IUHP and IU Health all serve Medicaid patients, and FSSA is the state agency responsible for administering the Medicaid program; however, Ms. Keyes provides that any decisions Dr. Finnell would make regarding Medicaid would be broad in scope and would affect all Medicaid providers uniformly. Ms. Keyes does not anticipate that Dr. Finnell would ever be in a position to participate in a decision or vote in which Riley or IUHP would have a unique financial interest.

Ms. Keyes provides, however, that should there be a situation whereby a decision would need to be made by Dr. Finnell in her role as Chief Medical Officer related specifically and solely to IUHP, IU Health or Riley, Dr. Finnell would be screened from participating in any decision or vote, or matter relating to that decision or vote. Further, should such a situation arise, FSSA's Deputy Secretary/Chief of Staff, Michael Gargano, would address any screened matter.

The Commission finds that Dr. Finnell does not have an identified potential conflict of interests at this time. Further, the Commission is satisfied that FSSA's proposed screening procedure would prevent Dr. Finnell from violating this rule if a potential conflict of interests was identified in the future.

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. Keyes provides that FSSA's various divisions have four active contracts with IU Health and its related entities, including IUHP.

Ms. Keyes provides that that in order to avoid any conflicts under IC 35-44.1-1-4 (the criminal conflict of interests statute), IUHP will pay Dr. Finnell on an hourly basis, and not use funds from these contracts with FSSA to pay Dr. Finnell. She notes that her fees may be paid from general Medicaid funds; such funds are not considered to be funds derived from a state contract.

The Commission finds that FSSA has taken the appropriate steps to ensure Dr. Finnell will not have a conflict of interests under both the Code and Indiana criminal code and that Dr. Finnell would not have a financial interest in a state contract that would create a conflict of interests.

D. Confidential information

Dr. Finnell 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. Finnell 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 IUHP. 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. Finnell is exposed to or has access to such confidential information in her new position as Chief Medical Officer for FSSA, she is prohibited not only from divulging that information but from ever using it to benefit any person, including her outside employer, in any manner.

E. Use of state property and Ghost employment

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

Ms. Keyes provides that Dr. Finnell understands that she may not use state time to work at her outside position, and that Dr. Finnell has no concerns about her continued ability to meet all state work hours. She further provides that Dr. Finnell has flexibility to step out if an emergency arises, and does charting at other times, outside of regular working hours. Dr. Finnell has not had any issues meeting her regular work hour requirements previously working those clinics.

To the extent that Dr. Finnell observes these provisions regarding her outside employment activities, her outside position would not violate these ethics laws.

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

V. Consideration of Waiver of Post-Employment Restrictions for Lindsey Mayes

Jerold L. Bonnet, General Counsel for the Indiana Secretary of State's office presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Todd seconded the motion which passed (4-0).

VI. Director's Report

State Ethics Director, Jen Cooper, indicated that OIG staff has issued 26 informal advisory opinions since the previous last meeting. The majority of these requests dealt with questions concerning conflicts of interests, use of state property, ghost employment, outside employment, post-employment and gifts.

She continued that registration is open for the 2021 Legal and Ethics Conference has been officially to be held on November 16, 2021. The Conference will be virtual this year and there should be three (3) hours of ethics CLE available once the application is submitted and approved.

Finally, Director Cooper noted that the new Ethics Training is still in progress with hopes for a roll-out in November.

VII. Adjournment

Commissioner Sanchez moved to adjourn the public meeting of the State Ethics Commission. Commissioner Todd seconded the motion which passed (4-0).

The public meeting adjourned at 10:27 a.m.