

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
November 10, 2022**

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, Sue Anne Gilroy, Rafael Sanchez, and John Krauss (via telephone). Office of Inspector General staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Mike Lepper, Special Agent; and Cindy Scruggs, Director of Administration.

Others present were Jessica Keyes, Ethics Officer, Family and Social Services Administration; Matheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Beth Green, General Counsel and Ethics Officer, Indiana Department of Workforce Development; Evan Bartel, General Counsel and Ethics Officer, Indiana Professional Licensing Agency; and Matt Balla, Board Member, Indiana Board of Pharmacy.

II. Adoption of Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the agenda, and Commissioner Sanchez seconded the motion, and the Commission passed the agenda via roll call vote (5-0).

Commissioner Gilroy moved to approve the Minutes of the October 13, 2022, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed via roll call vote (5-0).

III. Request for Formal Advisory Opinion

2022-FAO-017

Matt Balla, Board Member - Indiana Board of Pharmacy

Evan Bartel, Ethics Officer

Indiana Professional Licensing Agency

Prior to the presentation of this Formal Advisory Opinion request, Commissioner Sanchez stated for the record that he is acquainted with Mr. Balla and had worked with his wife who was a previous direct report. Prior to this meeting, Commissioner Sanchez sought guidance from State Ethics Director Sean Gorman regarding any possible conflict of interest the relationship might have with this Formal Advisory Opinion. While it was not believed that any conflict exists, Commissioner Sanchez deferred to the rest of the Commission on whether he should recuse himself from any discussion and abstain from voting. The remaining Commissioners had no objection to Commissioner Sanchez’s participation.

Evan Bartel serves as the Indiana Professional Licensing Agency's (PLA) Chief Legal Counsel and Ethics Officer. On behalf of PLA, Mr. Bartel requests a Formal Advisory Opinion from the Commission pursuant to IC 4-2-6-9(b)(1) regarding the sufficiency of a proposed screen due to a potential conflict of interests for Indiana Board of Pharmacy (Pharmacy Board) member Matt Balla.

Mr. Balla is a long-serving appointed member of the Pharmacy Board. The Pharmacy Board is a seven-member Board comprised of Governor appointees. PLA is the state executive branch agency that performs administrative functions, duties and responsibilities for the Pharmacy Board. In his role as a Pharmacy Board member, Mr. Balla is in a position to approve applications for pharmacy permits, pharmacy-controlled substance registrations, remote dispensing facility permits and remote dispensing facility-controlled substance registrations. Although PLA staff administratively perform the majority of these reviews and approvals, PLA staff present the applications to the Pharmacy Board for consideration and a vote when there are issues or concerns with an application.

Mr. Balla is currently employed as Vice President of Pharmacy at CarDon & Associates, Inc., (CarDon). CarDon is a family-owned company that owns, operates or manages senior living communities throughout central and southern Indiana. In his role at CarDon, Mr. Balla oversees the acquisition, integration and operation of CarDon's newly acquired pharmacies.

CarDon is currently in the process of acquiring full ownership of a long-term care pharmacy in Indiana, Skilled Care of Indiana (SCI). In Mr. Balla's role at CarDon, he is responsible for the change-of-ownership process, and he will be required to submit applications for various permits and registrations to the Pharmacy Board on CarDon's behalf.

Mr. Balla and the Pharmacy Board acknowledge that Mr. Balla maintains a financial interest in any Pharmacy Board votes on CarDon applications and that he has a potential conflict of interests because of his role on the Pharmacy Board and his position with CarDon.

In Mr. Bartel's request for this Formal Advisory Opinion, Mr. Bartel has submitted a proposed screen to address Mr. Balla's potential conflict of interests. The proposed screen establishes the following procedures:

1. PLA's Ethics Officer shall monitor Mr. Balla's involvement in any matter relating to CarDon or SCI to ensure that the screening procedures are followed;
2. If any matter related to CarDon or SCI is presented to the Pharmacy Board for a discussion or vote, Mr. Balla will recuse himself from the discussion and vote, as well as submit an "Ethics Disclosure Statement" to the Office of Inspector General (OIG);
3. Mr. Balla will not be permitted access to any confidential information concerning CarDon or SCI without the written approval of PLA's Ethics Officer;
4. PLA staff will screen Mr. Balla from any and all involvement in matters involving CarDon or SCI, including refraining from any discussion in Mr. Balla's presence that might be related to such matters; and
5. PLA's Ethics Officer will provide written notice to the OIG anytime the screening procedures are implemented.

Mr. Bartel is seeking the Commission's Formal Advisory Opinion regarding the sufficiency of the proposed screen in addressing Mr. Balla's potential conflict of interests in his Pharmacy Board duties.

The analysis stated the following:

Mr. Bartel's request for a Formal Advisory Opinion invokes consideration of the provisions of the Code pertaining to Conflicts of Interests and Confidential Information. The application of each provision is analyzed below.

A. Conflicts of Interests – Decisions and Votes

As a Pharmacy Board member, Mr. Balla is a special state appointee as defined by the Code. Under IC 4-2-6-9, a special state appointee is prohibited from participating in a decision or vote, or a matter relating to that decision or vote, if he/she has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The special state appointee;
- (2) Any of the special state appointee's immediate family members;
- (3) A business organization in which the special state appointee is serving as an officer, a director, a member, a trustee, a partner or an employee; or
- (4) Any person or organization with whom the special state appointee is negotiating or has an arrangement concerning prospective employment.

The Code defines "financial interest" in IC 4-2-6-1(a)(11) to include "an interest . . . in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . involving property or services . . ." The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

Mr. Bartel and Mr. Balla acknowledge that Mr. Balla's employer, CarDon, has a financial interest in the outcome of decisions or votes by the Pharmacy Board on matters concerning CarDon's pharmacies. The Commission finds that CarDon has a financial interest in licenses, permits, registrations and other transactions between the Pharmacy Board and CarDon. As a result, Mr. Balla is prohibited from participating in any decision or vote, or matter relating to a decision or vote, for the Pharmacy Board in which CarDon would have a financial interest.

Because Mr. Balla has identified a potential conflict of interests, he must follow the rule's notification requirements prescribed in IC 4-2-6-9(b) to avoid violating this rule. In addition to Mr. Balla's recusal from matters related to his employer, the rule requires that he notify PLA's appointing authority, and his ethics officer, Mr. Bartel, in writing and either (1) seek a Formal Advisory Opinion from the Commission or (2) file a written disclosure [form](#) with our office in accordance with IC 4-2-6-9's notification requirements.

Mr. Bartel requested the Commission's Formal Advisory Opinion as to the sufficiency of the proposed screen for Mr. Balla in this matter. The Commission finds that the screening

procedures that Mr. Bartel proposed are sufficient to address Mr. Balla's potential conflict of interests. The Commission advises Mr. Bartel to file the disclosure statement under IC 4-2-6-9(b)(2), including the details of the implemented screen, with the Commission.

B. Conflicts of Interests – Outside Employment

IC 4-2-6-5.5 prohibits state officers, state employees and special state appointees from:

- (1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- (2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state duties; or
- (3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities as these individuals are in a better position to determine whether a conflict of interests might exist between a special state appointee's state duties and his or her outside employment/professional activity. Based on the information provided by Mr. Bartel, PLA can successfully screen Mr. Balla from any matters involving CarDon without materially impairing his ability to serve on the Pharmacy Board.

Regarding subsection (a)(2), Mr. Balla confirmed for the Commission that he will not be required to and will not disclose any confidential Pharmacy Board information in his outside work with CarDon.

Regarding subsection (a)(3), Mr. Balla confirmed that he has not and will not use his official Pharmacy Board position to secure unwarranted privileges or exemptions for CarDon or its customers/clients that are not available to similarly situated businesses or individuals outside of state government.

So long as Mr. Balla's employment at CarDon does not trigger any of the above listed matters that IC 4-2-6-5.5 prohibits, that provision of the Code will not apply.

C. Confidential Information

IC 4-2-6-6 prohibits Mr. Balla from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature. So long as any compensation Mr. Balla receives does not result from

confidential information obtained through his role as a Pharmacy Board Member, his role at CarDon does not violate IC 4-2-6-6.

Further, 42 IAC 1-5-10 and 42 IAC 1-5-11 prohibit Mr. Balla from benefitting from, permitting another person to benefit from or divulging information of a confidential nature except as permitted by law. To the extent that Mr. Balla possesses information of a confidential nature by virtue of his position as a Pharmacy Board Member that could be used to benefit any person, including CarDon or its customer/clients, he will need to ensure that he complies with these rules.

Commissioner Finnerty moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion, which passed via roll call vote (5-0).

IV. Consideration of 2023 Public Meeting Dates

The Commission next considered proposed dates for the 2023 State Ethics Commission Public Meeting Dates. The dates have previously been set on the second Thursday of each month automatically.

Commissioner Sanchez moved for approval of the proposed 2023 meeting dates with no proposed changes. Commissioner Gilroy seconded the motion, which passed via roll call vote (5-0).

The approved dates are as follows:

- January 12
- February 9
- March 9
- April 13
- May 11
- June 8
- July 13
- August 10
- September 14
- October 12
- November 9
- December 14

V. Ethics Director's Report

State Ethics Director Sean Gorman reported that OIG has issued 16 IAOs since the October SEC meeting. Mostly dealing with Post-Employment, Outside Employment, COIs, and Gifts.

Director Gorman continued with an update on the State Ethics Training. The training is assigned to all state employees as of November 1, 2022 through the online training site utilized by SPD. Training is due to be completed by all employees by December 13, 2022. Special State Appointees are also required to take this ethics training but without access to SuccessFactors (the system used by SPD to assign and monitor employee education), assignment and verification of completion is handled differently. Agency heads and Ethics Officers were sent the link to the training hosted on the OIG website with suggestions for how to distribute and verify compliance. As in past 2-year training cycles, Agency heads will be required to certify compliance with the training requirement for employees and appointees associated with their agency. We are asking that this certification be provided to OIG by December 30, 2022.

Finally, Director Gorman announced that the OIG is working on establishing a series of Ethics Officer roundtable events for 2023 to provide an opportunity for of Ethics Officers from different agencies to discuss their roles, approaches, challenges, and questions with their peers. Director Gorman will be facilitating these discussions in order to bring back to OIG and/or the State Ethics Commission any issues, topics of particular concern, or questions that Ethics Officers might have. Since Ethics Officer is usually one of many hats that each of these individuals wears in their respective agencies, OIG is excited to try to provide an opportunity for them to focus on that role in collaboration with their peers. More information will be provided at future meetings.

VI. Adjournment

Commissioner Gilroy moved to adjourn the public meeting of the State Ethics Commission. Commissioner Sanchez seconded the motion, which passed via roll call vote (5-0).

The public meeting adjourned at 10:22 a.m.