

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
February 13, 2020**

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 included Katherine Noel, Chairperson; Corinne Finnerty; and Rafael Sanchez. Staff present included Lori Torres, Inspector General; Jennifer Cooper, State Ethics Director; Tiffany Mulligan, Chief Legal Counsel, Office of Inspector General; Luba Gore, Staff Attorney, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were Kathy Mills, Ethics Officer, Indiana Department of Environmental Management; Shane Hatchett, Chief of Staff, Indiana State Department of Health; Kimberly Jasper, Registered Nurse, Indiana Veterans’ Home; Joy Grow Chief Counsel and Ethics Officer (via telephone); Deana Smith, Ethics Officer, Indiana State Department of Health; Latosha M. Higgins, Managing Attorney & Ethics Officer, Family and Social Services Administration; Julie Reynolds, Director of Strategic Initiatives, Family and Social Services Administration; Cathleen Nine-Altevogt, Regulatory and Compliance Director and Adult Protective Services Director; Family and Social Services Administration; Dr. Lindsay Weaver, Chief Medical Officer, Indiana State Department of Health; Beth Green, General Counsel & Ethics Officer, Department of Workforce Development; Mattheus Mitchel, Compliance and Ethics Specialist, Indiana Department of Revenue; Tamera Glickman, Deputy General Counsel, Indiana Department of Administration; and, Amber Nicole Ying, Special Counsel/Director of Compliance and Ethics, Indiana Department of Revenue.

II. Adoption of Agenda and Approval of Minutes

Commissioner Finnerty moved to adopt the Agenda and Commissioner Sanchez seconded the motion which passed (3-0).

Commissioner Sanchez moved to approve the Minutes of the December 12, 2019 Commission Meeting and Commissioner Finnerty seconded the motion which passed (3-0).

III. Inspector General’s Report

Inspector General Lori Torres presented a report on the fourth quarter and year end of 2019. 103 Informal Advisory Opinions were issued in Q4 (compared to 74 issued in Q3 and 83 in Q4 of 2018). There were 83 requests for investigations in Q4 and 323 total for 2019 (compared to 61 in Q3, 73 in Q4 of 2018, and 341 total in 2018). Fifteen (15) new investigations were opened by OIG in Q4 and 55 total opened in 2019 (compared to 7 in Q3, 16 in Q4 2018, and 65 total in 2018).

Eight (8) investigations were closed by OIG in Q4 with 51 total in 2019 (compared to 15 in Q3, 15 in Q4 2018, and 52 total in 2018). 40 of 51 closed case reports are published on the website.

Regarding KPI's for Q4:

- KPI #1 - Number of informal advisory opinions (“IAO”s) requested:
Q4: 115
2019: 356 [includes withdrawn and no jurisdiction]
- KPI #2 - Average number of business days to provide an IAO:
Q4: 1.087
2019: 1.15
- KPI #3 - Number of recommendations made to reduce waste, inefficiency, fraud and improve integrity:
Q4: 7 recommendations in 1 confidential and 4 public reports.
2019: 41 recommendations in 20 reports.

IG Torres reported that the State Ethics Commission held 11 meetings in 2019:

- 8 Post-Employment Waivers heard and approved
- 18 Formal Advisory Opinions issued
- 2 formal complaints filed by the IG with the Commission
 - 2 resolved by settlement and received final commission approval
 - 2 settlement agreements on 2018 complaints received final approval by the Commission in 2019
- 1 policy approved, specifically a Limited Use of State Property Policy

Additionally, Ms. Torres introduced and welcomed Rafael Sanchez as the most recent Commissioner appointed to the State Ethics Commission by Governor Holcomb.

IV. Request for Formal Advisory Opinion

2020-FAO-001

Kim Jasper, Nursing Supervisor

Joy Grow, Chief Counsel and Ethics Officer

Indiana Veterans' Home

Joy Grow serves as Chief Counsel and Ethics Officer for the Indiana Veterans' Home (IVH). She is requesting a Formal Advisory Opinion on behalf of IVH employee Kim Jasper related to an outside employment opportunity with an IVH contractor.

Ms. Jasper works as a night shift nursing supervisor for IVH, and she works from 6:00 p.m. to 6:00 a.m. Ms. Jasper is interested in an outside employment position with Greater Lafayette Career Academy (GLCA). GLCA offers a Certified Nursing Assistant (CNA) course. GLCA plans to enter into a zero dollar contract with IVH that allows GLCA to offer clinical hours to its CNA students at IVH. By entering into this contract with GLCA, IVH hopes to recruit CNAs from GLCA's program once they receive their certification. GLCA employs its own instructors,

and IVH lets GLCA use IVH's facility (space and equipment). The students complete clinical training at the IVH facility from 12:00 to 12:30 p.m., Monday through Friday.

Ms. Jasper would like to work for GLCA, supervising the CNA students as they complete their clinical training at IVH. Ms. Jasper would not be working as an IVH employee when working for GLCA at the IVH facility. Ms. Jasper does not participate in any matters as an IVH employee that would impact GLCA. She also does not have contracting authority for IVH.

Ms. Grow is concerned that Ms. Jasper would likely be disclosing confidential information if she took the job with GLCA as she would have to share patient information that is confidential and protected under HIPAA. Ms. Grow notes that any GLCA employee supervising the students would need and have access to relevant patient information.

Ms. Grow requested an Informal Advisory Opinion from the Office of Inspector General (OIG) on December 16, 2019. The Informal Advisory Opinion issued to Ms. Grow recommended that IVH request a Formal Advisory Opinion from the Commission regarding whether Ms. Jasper's outside employment opportunity with GLCA would create any conflicts of interests for her under the Code.

The analysis stated the following:

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: (1) receiving compensation of substantial value when 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 or her official duties that his or 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 his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

A written advisory opinion issued by the Commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

The Commission generally defers to an agency's Ethics Officer regarding outside employment opportunities since it views him or her as being in the best 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 Ms. Grow provided, IVH does not believe that the responsibilities of serving as a clinical supervisor for GLCA would be inherently incompatible with Ms. Jasper's IVH responsibilities or require her to recuse herself from any matters that are critical to her role as a late night nurse supervisor.

Ms. Grow pointed out that Ms. Jasper would have to share confidential information, specifically IVH patient medical information, with the students she plans to supervise; however, any clinical supervisor GLCA hires for this role would have access to and would share the same confidential information with the students in this program.

The Commission finds that subsection (2) would not prohibit Ms. Jasper from being able to work as a clinical supervisor for the students in the CNA program through GLCA in addition to her IVH role.

The Commission confirmed that Ms. Jasper understands that she must not use or attempt to use her IVH position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside of state employment.

Based on all of the information provided, the Commission finds that Ms. Jasper's outside employment opportunity as a clinical supervisor with GLCA would not violate IC 4-2-6-5.5.

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Ms. Jasper 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 Ms. Jasper from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she is serving as an officer, a director, a member, a trustee, a partner or an employee has a financial interest in the matter.

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. . ."

A potential conflict of interests would arise for Ms. Jasper if she participates in any matter related to a decision/vote in which GLCA has a financial interest. This restriction goes beyond the actual decision/vote and prohibits her participation in any matter related to the decision/vote.

Ms. Grow provides that Ms. Jasper's IVH position does not include participation in any matters in which GLCA would have a financial interest in the outcome. Accordingly, Ms. Grow and Ms. Jasper have not identified a potential conflict of interests at this time.

The Commission finds that Ms. Jasper does not have an identified potential conflict of interests at this time. If Ms. Jasper's circumstances change and a potential conflict of interests is identified in the future, she must follow the disclosure requirements in IC 4-2-6-9(b), including notifying IVH's appointing authority and seeking an advisory opinion from or filing a written disclosure statement 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 any state agency. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have contracting responsibility for the contracting agency, provided certain statutory criteria are met.

IVH plans to enter into a contract with GLCA, but it will be a zero dollar contract. Under this contract, IVH will provide its facilities for GLCA’s CNA students to obtain clinical hours/experience in exchange for the opportunity to recruit these students to work for IVH as CNAs in the future.

The Commission finds that Ms. Jasper would likely have a financial interest in this contract, as her outside position with GLCA would not be possible without this agreement between IVH and GLCA.

Ms. Grow provides that Ms. Jasper has no contracting authority for the agency. Accordingly, the exception to this rule would apply to Ms. Jasper as long as she complies with the disclosure requirements in IC 4-2-6-10.5(b) and (c). In order to do so, Ms. Jasper must file the Conflict of Interests-Contracts Ethics Disclosure form with the OIG *before* the contract is executed. Ms. Grow provided that the contract is still in development and has not yet been executed.

Accordingly, the Commission finds that Ms. Jasper meets the requirements for the exception under this rule as long as she files a completed Conflict of Interests – Contract Ethics Disclosure form with the OIG prior to the execution of the contract between GLCA and IVH.

D. Confidential information

Ms. Jasper 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 Ms. Jasper 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. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

In this case, it does not appear that Ms. Jasper is accepting compensation from GLCA because of any IVH confidential information. Ms. Jasper would likely need to share confidential information, in the form of medical records, with the students she is supervising. The Commission noted that any supervisor serving in this position with GLCA would need to share this information, and determined that this rule would not prohibit Ms. Jasper from sharing such information with her students.

E. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Ms. Jasper 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. Likewise, 42 IAC 1-5-13 prohibits Ms. Jasper 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 shifts Ms. Jasper would work for her IVH position and the GLCA position would be different; however, Ms. Jasper must still ensure that she is not working on any GLCA-related work during her normal IVH shifts.

In terms of the prohibition on the use of state property, the facility she would be working in (and all of the equipment, supplies, etc., that she and the students would use) is state property. The Commission determined that such use of state property is for official state business due to the contract between IVH and GLCA to have CNA students train at the facility.

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

V. Request for Formal Advisory Opinion

2020-FAO-002

Julie Reynolds, Director of Strategic Initiatives

Latosha Higgins, Managing Attorney and Ethics Officer

Family and Social Services Administration

Commissioner Noel moved that the Commission decline to issue an opinion upon learning that the request involved past conduct. Commissioner Sanchez seconded the motion which passed (3-0).

VI. Request for Formal Advisory Opinion

2020-FAO-003

Cathleen Nine-Altevogt, Regulatory and Compliance Director and
Adult Protective Services Director

Latosha Higgins, Managing Attorney and Ethics Officer

Family and Social Services Administration

Latosha Higgins serves as Managing Attorney and Ethics Officer for the Indiana Family and Social Services Administration (FSSA). She is requesting a Formal Advisory Opinion on behalf of Cathleen Nine-Altevogt, an FSSA employee, regarding acceptance of a contest prize awarded by an FSSA grantee.

Ms. Nine-Altevogt is the Regulatory and Compliance Director and Adult Protective Services (APS) Director for FSSA's Division of Aging. Her duties include overseeing the APS state

program and ensuring division-wide compliance with federal and state legislation, rules and guidance. Ms. Nine-Altevogt does not have any contracting authority for FSSA.

In September 2019, Ms. Nine-Altevogt entered into the Infant and Toddler Access Challenge (Challenge), a public contest sponsored by Early Learning Indiana (ELI) that called for individuals to submit their ideas for improving Indiana's infant and toddler care shortage. She entered the Challenge because of her personal interest in the issue as a new mother. She did so on her own time using her own resources. Ms. Nine-Altevogt did not identify herself as a state employee when she entered the Challenge. She admits that some of her ideas were shaped by her work experience at the Division of Aging; however, the idea that she submitted for the Challenge was not based on confidential information. She submitted a suggestion that daycare providers could consider locations in assisted living or retirement communities because these communities might find co-locating to be a selling point for potential residents, and the daycare providers could have a built in potential workforce.

ELI is a child care provider that operates nine child care centers licensed and regulated by the FSSA Division of Family Resources, Bureau of Child Care (Bureau). Additionally, ELI currently has a total of 10 active agreements with FSSA. The Challenge was supported by a grant awarded to ELI. This grant is contract number 29002, a Preschool Development Grant, which is funded by the Bureau. Under this grant agreement, ELI oversees the Service Deliverable Area Agencies and provides training and technical support. Additionally, ELI provides support for community outreach and the Paths to Quality Program under the grant.

ELI was not aware that Ms. Nine-Altevogt was a FSSA employee until after they notified her that she had won a \$5,000 cash prize for her entry into the Challenge. Ms. Nine-Altevogt learned that she won one of the contest Challenge prizes on November 18, 2019. To date, Ms. Nine-Altevogt has not accepted the prize nor has she completed any of the forms ELI requested that she sign to claim her prize. Ms. Nine-Altevogt notified Ms. Higgins of the award on December 2, 2019. After discussing the potential conflict of interests and seeking an informal advisory opinion, Ms. Nine-Altevogt decided to request a formal advisory opinion to determine whether she could keep the prize if she obtained a gift waiver.

As a condition of receiving the \$5,000 cash prize, Ms. Nine-Altevogt would be required to execute an Infant and Toddler Access Challenge- Preschool Development Grant – Recipient Agreement (“Agreement”). The Agreement would require her to relinquish all of her rights to the idea she submitted to ELI and the State of Indiana. Additionally, she would be required to provide copies of all documents, assets and other documented intellectual property prior to the awarding of the cash prize. She would also be required to agree to participate in a discovery session, not to exceed one hour.

Ms. Nine-Altevogt was one of five winners selected. According to Natalie Brake, the Director of Capacity Building at ELI, a team of five ELI staff members evaluated the Challenge submissions. Per Ms. Brake, after the staff completed their evaluations, they submitted their recommendations to ELI leadership, who approved the awards. Neither FSSA nor Ms. Nine-Altevogt were involved in or consulted regarding the evaluation of the Challenge submissions or awarding of the prizes.

Ms. Nine-Altevogt knows that she is required to comply with the ethics laws regarding confidentiality and that she is prohibited from divulging confidential information if she is permitted to enter into an agreement with ELI and accept the prize.

The analysis stated the following:

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by any state agency. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. The Code defines “compensation” as “any money, thing of value or financial benefit conferred on, or received by, any person in return for services rendered or for services to be rendered.” This prohibition however does not apply to an employee that (1) does not participate in or have official contracting responsibility for the contracting agency and (2) files a disclosure form with the OIG *prior* to the contract’s execution.

The Bureau licenses and regulates ELI , and ELI was awarded FSSA’s Preschool Development Grant. ELI used FSSA’s Preschool Development Grant to fund the Challenge prize.

The Commission finds that the Challenge prize is compensation derived from the grant/contract between FSSA and ELI, and IC 4-2-6-10.5 would prohibit Ms. Nine-Altevogt from receiving the Challenge prize as compensation derived from the grant/contract between FSSA and ELI unless she (1) does not participate in or have contracting responsibilities for the contracting agency (FSSA); and (2) files a written disclosure with the OIG before the grant/contract is executed.

Based on the information provided, Ms. Nine-Altevogt does not have any contracting authority for FSSA and she was not involved in any way with FSSA’s award of the grant to ELI because it was done through another Division of FSSA and not the Division of Aging, where she is employed. As a result, she would be able to meet the requirements of subsection (1) of the exception to IC 4-2-6-10.5 because she does not participate in or have contracting responsibilities for FSSA; however, she would be unable to meet the requirements of subsection (2) of the exception to IC 4-2-6-10.5 because it requires her to file a written disclosure form with the OIG before the grant/contract is executed between the third party and the state agency and this grant/contract has already been executed.

Accordingly, the Commission finds Ms. Nine-Altevogt would have a financial interest in a state contract if she accepted the prize; such a financial interest is prohibited.

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

VII. Request for Formal Advisory Opinion

2020-FAO-004

Dr. Lindsay Weaver, Chief Medical Officer

Deana Smith, Ethics Officer

Indiana State Department of Health

Deana Smith is the Ethics Officer for the Indiana State Department of Health (ISDH). She seeks an opinion from the Commission on behalf of Dr. Lindsey Weaver, the new Chief Medical Officer for ISDH.

The Chief Medical Officer position is a clinical executive position that reports to the State Health Commissioner. The Chief Medical Officer's primary role is to provide the Commissioner, executive team and divisions with medical guidance, support and advocacy of agency initiatives based on best medical practices. As the Chief Medical Officer, Dr. Weaver will provide medical oversight, expertise and leadership to projects and operations within ISDH, including policy advising and program planning. Her duties will not include any contract administration, rulemaking or regulatory or compliance role.

Dr. Weaver has previously served as an assistant professor of clinical emergency medicine at the Indiana University School of Medicine and practiced emergency medicine at Methodist Hospital in Indianapolis. She is board certified in both emergency medicine and hospice and palliative care medicine.

Dr. Weaver would like to maintain (1) her outside employment with Indiana University (IU) Health Physicians as a supplemental or contract physician working at Methodist Hospital; (2) her appointment as a volunteer assistant professor at IU School of Medicine; and (3) a non-voting position as a member of the Indiana American College of Emergency Medicine Physicians, while employed as the Chief Medical Officer for ISDH. Each of these outside activities is explained in more detail below.

1. IU Health Physicians

Dr. Weaver would like to continue to work one shift per week in the emergency department at Methodist Hospital. Dr. Weaver believes that it is important for her to continue working in the emergency room to maintain her skills through patient contact because it will aid her in her performance as Chief Medical Officer for ISDH.

Dr. Weaver's medical malpractice insurance will be paid by IU Health Physicians as that is their standard practice. Dr. Weaver will pay her own licensing fees and certifications. Dr. Weaver will not serve in a supervisory or leadership role with Methodist Hospital or IU Health Physicians. Rather, she will serve as an independent contractor to Methodist Hospital through IU Health Physicians. She will not charge patients nor will she bill insurance. She will be paid by IU Health Physicians on an hourly basis.

IU Health Physicians is affiliated with IU Health, and ISDH's various divisions have six active contracts with IU Health, IU and related entities. The contracts are at the division level in ISDH, and the division directors are the owners of these contracts. Dr. Weaver, as Chief Medical Officer, would not be in a position to negotiate or sign these contracts. According to Dr. Weaver, to avoid a potential conflict under IC 35-44.1-1-4, IU Health Physicians will not use funds from these ISDH contracts to pay her; her fees will be paid from general patient revenue. Given that

Dr. Weaver has no leadership role with IU Health Physicians or IU Health and that she would only be staffing the emergency room once per week, this should ensure that there is not even an appearance that she is deriving a profit from or has a pecuniary interest in any of the IU Health contracts with the State.

Further, in her role at ISDH, Dr. Weaver would not be in a position to make regulatory, compliance or other decisions regarding specific providers. Any direction she 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. Weaver would make a decision that would have a unique impact on Methodist Hospital, IU Health Physicians, IU Health or their related entities. If the situation presented itself, ISDH would screen Dr. Weaver from participating in any such decision by having the Commissioner delegate full authority to another employee to handle such matters independently.

2. IU School of Medicine

Dr. Weaver would also like to continue with her appointment at the IU School of Medicine as a volunteer faculty member while employed by ISDH. Dr. Weaver is an assistant professor of clinical emergency medicine and would not be compensated in this position or be required to participate in any of the other duties expected of assistant professors; however, she will be required to continue to abide by the professional standards of the medical school to remain a faculty member in good standing.

3. Indiana Chapter of the American College of Emergency Medicine Physicians

Dr. Weaver would like to hold a non-voting position as a member of the Indiana Chapter of the American College of Emergency Medicine Physicians (the Association) while employed as the Chief Medical Officer for ISDH. She formerly held a voting position with the Indiana Chapter but relinquished it upon acceptance of state employment. The Association serves as the primary source for continuing medical education for emergency medical physicians across the State. Dr. Weaver will not participate in any of the Association's legislative or policy efforts. Her role as a non-voting member would be limited to hearing the issues that emergency medical physicians are encountering across the State and letting the other members know what the ISDH is currently working on at any given time.

Ms. Smith is requesting a Formal Advisory Opinion from the Commission addressing whether Dr. Weaver would have any conflicts of interests under the Indiana Code of Ethics if she were to engage in all three of these outside employment/professional activities while serving as the Chief Medical Officer for ISDH.

Dr. Weaver understands and agrees that she may not use state time to work at Methodist Hospital or engage in any of her outside professional activities. Additionally, she is confident that she will meet the 37.5 hour work-week requirement while also working a clinical shift each week.

The analysis stated the following:

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 when 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.

A written advisory opinion issued by the Commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

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 an employee's state duties and an outside employment/professional activity opportunity. Ms. Smith provides that ISDH supports Dr. Weaver's outside employment, and she does not believe any of Dr. Weaver's activities for her outside employers would create a conflict of interests for her under IC 4-2-6-5.5.

Based on the information provided, the Commission finds that Dr. Weaver's employment with Methodist Hospital/IU Physicians would not create a conflict of interests under this rule. Specifically, Dr. Weaver would work one shift per week in the emergency department at Methodist Hospital. Dr. Weaver will not serve in a supervisory or leadership role with Methodist Hospital or IU Health Physicians. She will serve as an independent contractor to Methodist Hospital through IU Health Physicians, and she will be paid by IU Health Physicians (through patient funds, not any state contract) on an hourly basis.

According to Ms. Smith, Dr. Weaver's responsibilities in treating patients during the weekly shift would not conflict with her responsibilities as the Chief Medical Officer at ISDH nor require her to recuse herself from matters that are critical to the performance of her duties as Chief Medical Officer.

Dr. Weaver's other outside employment/professional activities would not provide her with compensation of substantial value, thus IC 4-2-6-5.5(a) does not apply.

The Commission confirmed that Dr. Weaver would not have to disclose confidential information to which she may have access by virtue of her state employment in her work for any of the entities. Similarly, nothing in the information presented suggests that she would use or attempt to use her state position for any unwarranted privileges or exemptions. Dr. Weaver was already employed in or held these outside positions prior to becoming the Chief Medical Officer for ISDH.

Accordingly, based on all of the information provided, the Commission finds that Dr. Weaver's outside employment/professional activities 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. Weaver 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. Weaver from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she is serving as an officer, a director, a member, a trustee, a partner or an employee has a financial interest in the matter.

Accordingly, Dr. Weaver 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 or any of the organizations listed above have a financial interest in the outcome of the matter. Ms. Smith provides that Dr. Weaver, as Chief Medical Officer, would not be in a position to be involved in the six contracts in place between IU Health, IU and related entities. These contracts are owned by ISDH division directors, and the Chief Medical Officer does not negotiate, sign or administer such contracts.

Ms. Smith provides that Dr. Weaver is not in a position to make decisions regarding specific providers, and any direction she would provide ISDH regarding protocols, policies or procedures that might affect clinical specialists, hospital administrators and other providers would apply to all such stakeholders uniformly. Ms. Smith does not anticipate that Dr. Weaver would ever be in a position, as Chief Medical Officer, to participate in a decision or vote in which Methodist Hospital, IU Health Physicians, IU Health, IU School of Medicine or the Association would have a financial interest in the outcome.

Ms. Smith provides that if Dr. Weaver ever was in a position to participate in decisions or votes, or matters related to such decisions and votes, in which any of her outside employers had a financial interest in the outcome, ISDH would screen Dr. Weaver from participating in any such matters. The ISDH Commissioner would delegate full authority to another ISDH employee to handle such matters independently.

The Commission finds that Dr. Weaver does not have a potential conflict of interests under this rule at this time. If this should change, and Dr. Weaver identifies a potential conflict of interests, mere recusal or the internal reassignment of duties is not enough to satisfy the statutory requirements under this rule. IC 4-2-6-9(b) provides that a state employee who identifies a potential conflict of interests shall notify the person's appointing authority and seek an advisory opinion from the Commission or file a written disclosure statement with the OIG. Accordingly, if a potential conflict of interests arises for Dr. Weaver, she will need to ensure she meets the disclosure and notification requirements so as to avoid violating this rule.

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. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. 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. Smith provides that Dr. Weaver does not have authority to negotiate or sign contracts on behalf of ISDH. Ms. Smith further provides that Dr. Weaver has confirmed that she would not receive compensation from any ISDH contracts or grants for any of her outside positions. She would be paid hourly by IU Health Physicians for her weekly shift at Methodist Hospital, and she would be paid through patient funds, not any state contract. She will not be compensated for her other outside activities.

Accordingly, the Commission finds that Dr. Weaver would not have a financial interest in a state contract.

D. Confidential information

Dr. Weaver 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. Weaver 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. 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. Weaver is exposed to or has access to such confidential information in her position as the ISDH Chief Medical Officer, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including her outside employers in any manner.

E. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Dr. Weaver 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. Likewise, 42 IAC 1-5-13 prohibits Dr. Weaver 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. Weaver observes these provisions, her outside professional activities would not violate these ethics laws.

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

VIII. Director's Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 58 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

She further advised the deadline for the Annual Financial Disclosure Statement period was ending and that only 6 required filers had yet to submit their Disclosure Statement.

IX. Adjournment

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

The public meeting adjourned at 10:47 a.m.