

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
February 9, 2017**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:10 a.m. Members present included James N. Clevenger, Chairperson; Priscilla Keith; and Daryl Yost. Office of Inspector General staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Stephanie Mullaney, Staff Attorney/Compliance Officer; Tiffany Mulligan, Chief Legal Counsel; and Cindy Scruggs, Director of Administration.

Others present were Rachel Russell, Deputy Director/Ethics Officer, Indiana State Department of Health; Deanna Smith, Staff Attorney, Indiana State Department of Health; Adrienne Brune, Staff Attorney, Indiana State Department of Health; Hilari Sautbine, Staff Attorney, Indiana State Department of Health; Mark Tidd, Ethics Officer, Indiana Department of Transportation; Michelle Walker, former Department of Education employee; Lee Ann Kwiatkowski, Chief of Staff, Department of Education; Marsha Bugalla, General Counsel/Ethics Officer, Department of Education; Amy Marsh, former Department of Workforce Development employee; Steve Braun, Commissioner, Department of Workforce Development; Jeffrey Gill, General Counsel/Ethics Officer, Department of Workforce Development; Cyndi Carrasco, Deputy General Counsel/Ethics Officer, Governor’s Office; Jennifer Walthall, Secretary, Family & Social Services Administration; Allison Taylor, General Counsel/Ethics Officer, Family & Social Services Administration; Chelsea Smith, Ethics Officer/ALJ; Department of Homeland Security; Sylvia Watson, General Counsel/Ethics Officer, Indiana State Library; Joan Blackwell, Chief of Staff/Ethics Officer, Attorney General’s Office; Sarah Kamhi, Deputy General Counsel, Indiana Economic Development Corporation; Mark Wuellner, Deputy Chief of Staff/Gneral Counsel, Lt. Governor’s Office; and Adam VanOsdol, Indiana Education Insight.

II. Adoption of Agenda and Approval of Minutes

Chairman Clevenger noted that the Inspector General report would be moved out of executive session and into the last session of the public meeting. Commissioner Yost moved to adopt the agenda and Commissioner Keith seconded the motion which passed (3-0). Commissioner Keith moved to approve the minutes of the January 12, 2017 Commission meeting and Commissioner Yost seconded the motion which passed (3-0).

III. Consideration of Post-Employment Waiver

**For Michelle Walker, Former Director of Assessment
Presented by Lee Ann Kwiatkowski, Chief of Staff; and
Marsha Bugalla, General Counsel & Ethics Officer
Indiana Department of Education**

Ms. Bugalla and Dr. Kwiatkowski presented a post-employment waiver for Michelle Walker, the former Director of Assessment, Indiana Department of Education whose position was eliminated during the transition to Dr. Jennifer McCormick's administration. Ms. Bugalla stated that Dr. McCormick had approved this waiver and provided a summary of the waiver highlighting IDOE's reasons for presenting the waiver to the Commission. Ms. Bugalla, Dr. Kwiatkowski, and Ms. Walker answered the Commission members' questions on the matter.

After the Commission discussed the matter, Commissioner Yost moved to approve the Post-Employment waiver. Commissioner Keith seconded the motion which passed (3-0).

IV. Consideration of Post-Employment Waiver

**For Amy Marsh, former employee
Presented by Steve Braun, Commissioner; and
Jeff Gill, General Counsel & Ethics Officer
Indiana Department of Workforce Development**

Commissioner Braun and Mr. Gill provided a summary of the waiver highlighting DWD's reasons for presenting the waiver to the Commission. Commissioner Braun explained the DWD's reasons for granting the waiver and Mr. Gill explained how the waiver was in the public interest and answered the Commission's questions about the waiver.

After the Commission discussed the matter, Commissioner Keith moved to approve the Post-Employment waiver. Commissioner Yost seconded the motion which passed (3-0).

V. Consideration of Limited Personal Use of State Property Policy

**Presented by Cyndi Carrasco, Deputy General Counsel & Ethics Officer,
Office of Indiana Governor Eric Holcomb; and
Mark Wuellner, Deputy Chief of Staff & General Counsel
Office of Indiana Lt. Governor Suzanne Crouch**

Ms. Carrasco and Mr. Wuellner presented a revised Limited Personal Use of State Property Policy for the Offices of the Governor, First Lady, and Lt. Governor. The policy was revised because of the transition in administration and removes the previous policy's language allowing the former First Lady to conduct some personal business in the Governor's Residence.

After Ms. Carrasco answered the Commission's questions Commissioner Keith moved to approve the policy. Commissioner Yost seconded the motion which passed (3-0).

VI. Request for Formal Advisory Opinion

17-I-3 Dr. Jennifer Walthall, Secretary
Allison Taylor, General Counsel & Ethics Officer
Indiana Family and Social Services Administration

Ms. Taylor stated that she was requesting an advisory opinion on behalf of Dr. Jennifer Walthall, the newly appointed Secretary of FSSA to ensure that Dr. Walthall's outside employment at Riley Hospital for Children ("Riley") would be permissible under the Code of Ethics.

Dr. Walthall joins FSSA after serving as the Deputy Health Commissioner for the Indiana State Department of Health for two and a half years. She was also the Division Chief at Riley for 4 years, and prior to that she served as the Residency Program Director of Riley for 9 years. She has over 16 years of clinical experience and maintains Board Certification in Pediatrics and Emergency Medicine. She also has a Master's Degree in Public Health.

Dr. Walthall would like to work a weekly shift in the pediatric emergency room at Riley while she is serving as the Secretary of FSSA in order to maintain her clinical certification and continue her personal and professional mission of providing compassionate services to children.

Dr. Walthall proposes to work a weekly shift in the Riley emergency room on a consistent but alternating schedule. For example, during week one she will work in the emergency room from 10 a.m. to 7 p.m. on Tuesday. During week two, she will work from 3 p.m. to midnight on Tuesday. During week three she would be back to a shift from 10 a.m. to 7 p.m. on Tuesday, and the pattern continues. This schedule will allow her to spend a few hours at the FSSA office on the days where her shift begins at 10 a.m., but will allow her to spend almost a full day at the FSSA office on the Tuesdays when her shift starts at 3 p.m. As an employee of the State, Dr. Walthall will pay for her own medical malpractice insurance, licensing fees and certifications.

Riley first opened in 1924 and is the State's first hospital exclusively for children. Riley is nationally-ranked and has Indiana's only Level I Pediatric Trauma Center, Pediatric Burn Unit and Pediatric Dialysis Program. In her consulting role with Riley, Dr. Walthall will not serve in a supervisory or leadership role with the hospital. Instead, Dr. Walthall will serve as an independent contractor to Riley and will be paid by Riley on an hourly basis. Dr. Walthall will not charge patients nor will she bill insurance. The very nature of emergency room medicine is that the patients come to you, and the receiving physicians treat patients without regard to insurance, income or even the ability to pay. Ms. Taylor believes this fact in and of itself solidifies her opinion that Dr. Walthall's work in the emergency room is not inherently incompatible, and does not conflict in any relevant way, with her duties as Secretary.

Dr. Walthall understands and agrees that she may not use State time to work at Riley or see patients. She anticipates easily meeting the 37.5 hour work-week requirement despite time spent seeing patients. During emergency room shifts she will be available remotely by phone and email. The Riley campus is in very close proximity to the FSSA office.

FSSA has no direct contracts with Riley. However, Riley is a related entity of Indiana University (IU) Health and FSSA's various divisions have about 29 contracts with IU Health and related

entities. One grant from FSSA's Division of Mental Health and Addiction to IU totals \$339,000 over a two-year period and is for the operation of Riley's dual diagnosis clinic for adolescents. Ms. Taylor points out that these 29 contracts are all at the division level, meaning that the Division Directors are the owners of the contracts – Dr. Walthall will not be in a position to sign or negotiate these contracts. In order to avoid violating the State's ethics laws and to avoid a potential conflict under IC 35-44.1-1-4, Riley has agreed that neither State funds from these contracts nor funds from FSSA facilitated programs like Medicaid, will be used to pay Dr. Walthall's consulting fees. Ms. Taylor believes that this separation, coupled with the fact that Dr. Walthall has no leadership role with Riley and is simply staffing the emergency room once a week, should ensure that there is not even the appearance that Dr. Walthall is deriving a profit from, or has pecuniary interest in, any of the IU Health contracts with the State.

In terms of her daily duties at FSSA, IC 12-8-1.5-10.5 designates the Office of FSSA Secretary as the single state agency to administer the Medicaid program. In this role, the FSSA Secretary may make decisions affecting Medicaid providers; however, most if not all decisions of the Secretary or her office makes regarding Medicaid providers would apply to all providers (or groups of providers) uniformly. For example, any changes FSSA makes to the Medicaid fee schedule would apply to all Medicaid providers equally. Furthermore, although Riley serves Medicaid patients, it has little, if any, direct interaction with FSSA. Accordingly, it is unlikely that FSSA would make a decision that would have a unique impact on Riley or I U Health or related entities. However, if the situation presented itself, FSSA will screen Dr. Walthall from participating in any such decision by providing the FSSA Deputy Secretary full authority to handle such matters independently. Dr. Walthall successfully utilized a similar screen during her work with the Indiana State Department of Health.

On February 1, 2017, Dr. Walthall filed a Conflict of Interests – Decisions and Voting Ethics Disclosure Statement with the Office of Inspector General describing the potential conflict of interests she would have if she were to participate in votes or decisions regarding Medicaid providers. The Statement also describes the screen Ms. Taylor has established to ensure that Dr. Walthall will not participate in any Medicaid decisions that would uniquely affect Riley. If any such matters come before the Office of the FSSA Secretary, they will be handled independently by the FSSA Deputy Secretary.

Ms. Taylor believes that Dr. Walthall's outside employment would not violate any agency rule or regulation. Ms. Taylor's opinion is that this screen and the confirmation that IU will not pay Dr. Walthall with any state funds, should provide the proper assurance that her outside employment will not affect the integrity of her services to the State.

The advisory opinion stated the following analysis:

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. Taylor, Dr. Walthall's employment at Riley would not create a conflict of interests for her under this provision. Specifically, Ms. Taylor provides that Dr. Walthall would be practicing emergency pediatric medicine once a week, during a well-defined shift for Riley. She would not serve in a supervisory or leadership role with the hospital. She would be an independent contractor and will be paid on an hourly basis. According to Ms. Taylor, Dr. Walthall's responsibilities in treating patients during the weekly shift would not conflict with her responsibilities as the Secretary of FSSA, and the Riley shift would not require her to recuse herself from matters that are critical to the performance of her duties as Secretary of FSSA.

Moreover, Ms. Taylor confirmed that Dr. Walthall would not be required to disclose confidential information that she may have access to by virtue of her state employment. 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. Walthall worked at Riley prior to becoming Secretary of FSSA and will not charge patients or bill insurance for her services.

Accordingly, the Commission finds that Dr. Walthall's outside employment with Riley 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. Walthall 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. Walthall from participating in any decision or vote, or matter relating to that decision or vote, if she or a business organization which employs her has a financial interest in the matter.

Dr. Walthall will be serving as the Secretary of FSSA and will also be employed as an independent contractor by Riley. Riley is a related entity of IU Health. Accordingly, Dr. Walthall 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, Riley, or IU Health would have a financial interest in the outcome.

Riley does not have any direct contracts with FSSA, but it receives funding from an FSSA contract with IU Health. In addition, IU Health has 20 contracts with FSSA. Ms. Taylor advises that Dr. Walthall is not in a position to negotiate or sign contracts because the contracts are handled at the Division level. Accordingly, it is unlikely she would ever be required to participate in decisions regarding these contracts. Ms. Taylor offered that FSSA would inform the Division leaders to not send any contracts pertaining to Riley or

IU Health to the Secretary in order to ensure that she will not participate in any of these contracts.

In addition, FSSA is the state agency responsible for administering the Medicaid program. Riley and other IU Health-affiliated facilities serve Medicaid patients. Ms. Taylor provided that any decisions that Dr. Walthall would make regarding Medicaid would be broad in scope and would affect all Medicaid providers uniformly. Ms. Taylor does not anticipate that Dr. Walthall would ever be in a position to participate in a decision or vote in which Riley, or IU Health, would have a unique financial interest.

However, to ensure that Dr. Walthall does not participate in any decisions or votes in which Riley or IU Health would have a financial interest, FSSA has developed a screening process whereby any matters in which a decision could uniquely affect Riley, IU Health, or IU Health-related entities would be delegated to the Deputy Secretary. Further, any contracts involving Riley, IU Health or IU Health-related entities and the Office will be assigned to and/or negotiated by the Deputy Secretary.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify their Ethics Officer and Appointing Authority, and seek an advisory opinion from the Commission or file a written disclosure statement. In addition to this request for a formal advisory opinion, Dr. Walthall has filed a Conflict of Interests –Decisions and Voting Ethics Disclosure Statement with the Office of Inspector General. The disclosure statement identifies the potential conflict of interest, describes the screen established by Ms. Taylor and includes her notification to her appointing authority, all in accordance with the requirements in IC 4-2-6-9(b).

The Commission finds that Dr. Walthall would have a potential conflict of interests if she were to participate in decisions or votes, or matters related to such decisions or votes, that would uniquely affect Riley or IU Health. The Commission is satisfied with Dr. Walthall's disclosure of the potential conflict of interests, through the Conflict of Interests –Decisions and Voting Ethics Disclosure Statement filed with the Office of Inspector General, and the screen developed by FSSA to ensure she does not violate 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. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met. The term "official responsibility" has been interpreted by the Commission as contracting responsibilities.

Ms. Taylor provides that Riley does not have any direct contracts with FSSA, but IU Health has about 29 contracts with FSSA, one of which provides funding to Riley. However, Ms. Taylor has affirmed that Dr. Walthall would not have a financial interest in

any of these contracts or any other state contracts. Specifically, Riley has agreed that neither state funds from any of its contracts nor funds from FSSA facilitated programs like Medicaid, will be used to pay Dr. Walthall's consulting fees. Accordingly, the Commission finds that Dr. Walthall would not have a financial interest in a state contract through her position at Riley and would not be in violation of this rule.

D. Confidential information

Dr. Walthall 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. Walthall 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 Riley. 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. Walthall is exposed to or has access to such confidential information in her position as Secretary of FSSA, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including Riley, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Dr. Walthall 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. Walthall 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. Walthall observes these provisions regarding her employment with Riley such outside professional activity would not violate these ethics laws.

The Commission found that Dr. Walthall's outside employment with Riley Hospital for Children would not create conflict of interests for her under the Code of Ethics.

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

VII. Director's Report

Ms. Cooper stated that OIG staff issued 21 informal advisory opinions since the last Commission meeting and that the majority of these opinions dealt with the ethics rules on conflict of economic interests, outside employment, post-employment, gifts, and confidential information. Ms. Cooper advised that the Financial Disclosure Statement filing period ended on February 1, 2017 and the OIG staff was in the process of logging all of the disclosures and ensuring compliance with the requirement to file. She estimated that the OIG had received 2000 Financial Disclosure Statements during the filing period. Ms. Cooper also stated that OIG staff was tracking several bills currently being considered by the General Assembly; she will provide an update on any relevant bills that move forward at the next Commission meeting.

VIII. Inspector General's Report

Inspector General Torres thanked the Commission for allowing her to make minor changes to the Commission meetings, including the new meeting room. Inspector Torres reported that criminal charges had been filed recently based on OIG investigators' work. The OIG investigated a case involving service provider vendors for the Indiana Department of Child Services. Based on the OIG's investigation and probable cause affidavits presented to the Lake County Prosecutor, criminal charges were filed against six individuals.

IV. Adjournment

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

The Public Meeting adjourned at 11:15 a.m.