

**42 IAC 1-5-5 Outside employment (IC 4-2-6-5.5)**  
**IC 4-2-6-6 Compensation resulting from confidential information**  
**42 IAC 1-5-6 Conflicts of Interests (IC 4-2-6-9)**  
**42 IAC 1-5-7 Prohibition against financial interest in contract (IC 4-2-6-10.5)**  
**42 IAC 1-5-10 Benefiting from confidential information**  
**42 IAC 1-5-11 Divulging confidential information**

The Ethics Officer for the Indiana Professional Licensing Agency (PLA) sought advice on behalf of a member of the Indiana Board of Pharmacy regarding outside employment/professional activities while serving as a member of the Board while his employer has a financial interest in acquiring a long-term pharmacy care company. A proposed screen is presented to the Commission for consideration in addressing the Board Member's potential conflict of interests in his Pharmacy Board duties. The Commission finds that a potential conflict of interests exists for the role as a Pharmacy Board Member, in that his employer has a financial interest in any Pharmacy Board actions regarding the employer's pharmacies. The Commission further finds that the screening procedures proposed are sufficient to address the potential conflict of interests and that a disclosure shall be filed with the Commission outlining all screening procedures.

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The Indiana State Ethics Commission (Commission) issues the following Formal Advisory Opinion concerning the State Code of Ethics (Code) pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

**BACKGROUND**

Chief Legal Counsel and Ethics Officer (Ethics Officer) for the Indiana Professional Licensing Agency's (PLA) requested 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 (Board Member).

The Board Member 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 Board Member, he 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.

The Board Member 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, the Board Member 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 the Board Member'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.

The Board Member and the Pharmacy Board acknowledge that the Board Member 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.

The Ethics Officer's has submitted a proposed screen to address the Board Member's potential conflict of interests. The proposed screen establishes the following procedures:

1. PLA's Ethics Officer shall monitor the Board Member'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, the Board Member will recuse himself from the discussion and vote, as well as submit an "Ethics Disclosure Statement" to the Office of Inspector General (OIG);
3. The Board Member 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 the Board Member from any and all involvement in matters involving CarDon or SCI, including refraining from any discussion in the Board Member'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.

The Ethics Officer is seeking the Commission's Formal Advisory Opinion regarding the sufficiency of the proposed screen in addressing the Board Member's potential conflict of interests in his Pharmacy Board duties.

### ISSUE

1. Does the proposed screen sufficiently address the Board Member's potential conflict of interests under the Code?
2. What other issues, if any, would arise for the Board Member given his position on the Pharmacy Board and his position with CarDon?

### RELEVANT LAW

#### **IC 4-2-6-5.5 Conflict of interest; advisory opinion by commission**

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

(1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.

(2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.

(3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

(b) 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).

#### **IC 4-2-6-6**

##### **Present or former state officers, employees, and special state appointees; compensation resulting from confidential information**

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

#### **IC 4-2-6-9**

##### **Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

- (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
  - (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (2) File a written disclosure statement with the commission that:
- (A) details the conflict of interest;
  - (B) describes and affirms the implementation of a screen established by the ethics officer;
  - (C) is signed by both:
    - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
    - (ii) the agency ethics officer;
  - (D) includes a copy of the disclosure provided to the appointing authority; and
  - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

**42 IAC 1-5-10 Benefiting from confidential information**

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

**42 IAC 1-5-11 Divulging confidential information**

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

**ANALYSIS**

The Ethics Officer'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, the Board Member 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.

The Ethics Officer and the Board Member acknowledge that the Board Member'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, the Board Member 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 the Board Member 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 the Board Member's recusal from matters related to his employer, the rule requires that he notify PLA's appointing authority, and his ethics officer 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.

The Ethics Officer requested the Commission's Formal Advisory Opinion as to the sufficiency of the proposed screen for the Board Member in this matter. The Commission finds that the screening procedures proposed are sufficient to address the Board Member potential conflict of interests. The Commission advises the Ethics Officer 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 the Ethics Officer, PLA can successfully screen the Board Member from any matters involving CarDon without materially impairing his ability to serve on the Pharmacy Board.

Regarding subsection (a)(2), the Board Member 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), the Board Member 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 the Board Member'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 the Board Member 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 the Board Member 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 the Board Member 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 the Board Member 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.

## **CONCLUSION**

The Commission finds that a potential conflict of interests exists for the Board Member in his role as a Pharmacy Board Member, in that his employer, CarDon, has a financial interest in any Pharmacy Board actions regarding CarDon's pharmacies.

The Commission further finds that the screening procedures that the Ethics Officer proposed are sufficient to address the Board Member's potential conflict of interests. The Commission advises that the disclosure statement under IC 4-2-6-9(b)(2), including the details of the implemented screen, shall be filed with the Commission.

Respectfully Submitted,

Sean Gorman  
State Ethics Director