



# INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: OFFICE OF THE INDIANA ATTORNEY GENERAL  
TITLE: CONTINGENCY FEE CONTRACT  
CASE ID: 2023-10-0396  
DATE: October 27, 2023

*After examination and review, the Office of the Inspector General (OIG) by Inspector General David Cook reports as follows:*

The purpose of this report is to fulfill the statutory requirements of Ind. Code §4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review proposed contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics, set out in Ind. Code 4-2-6 and 42 IAC 1-5, or any statute or agency rule concerning conflict of interests.

On October 27, 2023, the Office of the Indiana Attorney General (OAG) notified the OIG that it wished to enter into a contingency fee contract with Cooper & Kirk, PLLC (Cooper & Kirk). The OAG explains that Cooper & Kirk will assist the State of Indiana in investigating and pursuing claims against individuals or healthcare providers (defendants) that perform gender transition medical procedures in breach of state law, standards of care or standards of professional responsibility as well as the defense of Indiana's laws prohibiting physicians from providing minors with puberty blockers, hormones, and surgery for purposes of gender transitions.

According to the OAG's proposed contract with Cooper & Kirk, the parties agreed to contingency fees of zero (0%) for an aggregate amount collected of less than two million dollars (\$2,000,000). For any aggregate amount collected in the amount of two million dollars (\$2,000,000) or more, the contract provides that the State will pay the following contingency fees: (1) twenty-five percent (25%) of any recovery exceeding two million dollars (\$2,000,000) and that is not more than ten million dollars (\$10,000,000); (2) twenty percent (20%) of any recovery exceeding ten million dollars (\$10,000,000) but not more than fifteen million dollars (\$15,000,000); (3) fifteen percent (15%) of any recovery exceeding fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000); or (4) ten percent (10%) of any recovery exceeding twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000); or (5) five percent (5%) of any recovery exceeding twenty-five million dollars (\$25,000,000).

Pursuant to IC 4-6-3-2.5 (g), the aggregate contingency fee may not exceed fifty million dollars (\$50,00,000) excluding reasonable costs and expenses, regardless of the number of lawsuits filed or the number of private attorneys retained to achieve recovery.

Pursuant to Ind. Code §4-6-3-2.5(b), an agency is required to make a written determination before entering a contingency fee contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code §4-6-3-2.5(c). Those factors are as follows:

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the legal matter in question.
- (2) The time and labor required to conduct the litigation.
- (3) The novelty, complexity and difficulty of the questions involved in the litigation.

- (4) The expertise and experience required to perform the attorney services properly.
- (5) The geographic area where the attorney services are to be provided.

The OAG made such a determination and considered all the factors outlined in the statute.

In the OAG's written determination, the OAG explains that Coppers & Kirk will handle cases from the OAG Consumer Protection Division (CPD) specifically the Consumer Litigation Section. CPD currently is staffed with nine attorneys and has approximately 550 pending litigation matters on behalf of the State; therefore, the OAG finds that additional resources and expertise are needed to ensure Indiana's interests in pursuing defendants who perform gender transaction medical procedures in violation of Indiana law are held accountable. The OAG also finds that the State's needs are best served by the efficient and specialized services of a third-party specialty firm. The OAG explains that this litigation requires a detailed understanding of medical standards of care, federal and state disclosure requirements, and litigation relating gender clinic investigations. Defendants are sophisticated medical corporations and practitioners. The OAG writes that Cooper & Kirk has an extensive history litigating medical regulations, engaging high profile companies, and litigating novel constitutional claims and has built an established practice assisting governmental entities at the state level in these matters. Finally, the OAG writes that Cooper & Kirk has the resources to manage claims pending in multiple venues around the State and nationwide.

The OAG has determined that Cooper & Kirk does not employ any state employees, including the OAG personnel involved in contracting decisions. Furthermore, no OAG employee or immediate family member has any financial interest in Cooper & Kirk. Likewise, no OAG employee or OAG immediate family member has any financial interest in the contract itself. Finally, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or a sole proprietor. To the best of the OAG's knowledge, neither Cooper & Kirk nor any member of Cooper & Kirk has a

conflict of interests that would violate either the Code of Ethics or any ethics rules of the Indiana Code.

The OAG also writes that if the OAG determines that a matter referred to Cooper & Kirk requires the use of outside legal counsel, the OAG will ensure that whichever counsel is chosen also meets these ethical criteria.

Based on the information provided and after careful review and examination, the OIG finds that entering into this contingency fee contract with Copper & Kirk, PLLC will not violate the Indiana Code of Ethics or any statute or agency rules concerning conflict of interests. This report is issued in compliance with the above noted statutory requirements.

Dated: October 27, 2023.

APPROVED BY:

A handwritten signature in cursive script that reads "David Cook". The signature is written in black ink and is positioned above a horizontal line.

David Cook, Inspector General