

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
May 11, 2023**

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. Office of Inspector General (OIG) 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; Mark Mitchell, Director of Investigations; Mike Lepper, Special Agent; Sam Stearley, Special Agent; and JJ Fajt, Special Agent.

Others present were Matthew Gerber, Ethics Officer, Family and Social Services Administration; Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Rachael Ehlich, OPS Director, Office of the Governor; Richard Brown, Executive Director, Indiana Department of Correction; Emily Fajardo, Executive Assistant, Indiana Department of Correction; Elliot Anderson, Chief of Staff, Indiana Department of Correction; Beth Green, General Counsel, Indiana Department of Workforce Development; Jon McDonald, Ethics Officer, Indiana Criminal Justice Institute; Bill Anthony, Deputy Attorney General, Office of Attorney General; and Dr. Frank Messina, Director of Clinical Operations, Family and Social Services Administration.

II. Adoption of Agenda and Approval of Minutes

Commissioner Krauss moved to adopt the agenda, Commissioner Sanchez seconded the motion, and the Commission passed the agenda (5-0).

Commissioner Sanchez moved to approve the Minutes of the April 13, 2023, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (4-0). Commissioner Krauss abstained from voting due to his absence at the April meeting.

III. Request for Formal Advisory Opinion

2023-FAO-004

Elliot Anderson, Ethics Officer
Indiana Department of Correction

Elliot Anderson serves as the Chief of Staff and the Ethics Officer for the Indiana Department of Correction (DOC). Mr. Anderson requests the Commission’s formal advisory opinion on behalf of DOC to determine the Ethics Code’s implications for DOC employees pursuing outside employment opportunities with DOC contractors while maintaining DOC employment.

After hearing Mr. Anderson’s presentation, the Commission discussed the matter and indicated that it would be inappropriate to rule on the matter as it potentially involves the Commission’s

retroactive determination regarding DOC employees working outside of their state employment for DOC vendors..

Commissioner Krauss moved to decline to issue a Formal Advisory Opinion, and Commissioner Finnerty seconded the motion, which passed (5-0). The Commission recommended that DOC seek a legislative remedy to the outside employment questions.

IV. Request for Formal Advisory Opinion

2023-FAO-005

Dr. Frank Messina, Director of Clinical Operations for Office of Medicaid Policy & Planning

Matthew Gerber, Ethics Officer

Family and Social Services Administration

Matthew Gerber is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Mr. Gerber is requesting the Commission's formal advisory opinion on behalf of Dr. Frank Messina, the Director of Clinical Operations for FSSA's Office of Medicaid Policy and Planning (OMPP). Specifically, Mr. Gerber is requesting an opinion from the Commission regarding Dr. Messina's proposed post-state employment opportunity with Eskenazi Hospital.

Dr. Messina previously sought a formal advisory opinion from the Commission (2022-FAO-005) to determine the ethical implications of his continued employment with Eskenazi Hospital (Eskenazi), Indiana University Health (IU Health) and the Indiana University School of Medicine (IU School of Medicine) after beginning his role at FSSA. Mr. Gerber provides that Dr. Messina has adhered to the Commission's requirements that he screen himself from participation in any matters in which Eskenazi, Indiana University Health Physicians (IU Health Physicians) or IU Health would have a unique financial interest.

As the Director of Clinical Operations for OMPP, Dr. Messina's duties include providing medical oversight, expertise and leadership to projects and operations within OMPP. He also works with FSSA's Pharmacy Team and the Coverage and Benefits Team, and he occasionally assists the Program Integrity Team. The Program Integrity Team is primarily responsible for reviewing suspected cases of fraud and abuse and making recommendations regarding Medicaid providers. In addition to those duties, Dr. Messina also participates in rulemaking and vendor procurement activities at OMPP. Those activities generally apply to all Medicaid providers.

Dr. Messina has been offered the position of Medical Director of Transitions of Care with Eskenazi and would like to accept the offer and begin employment on August 1, 2023, or sooner if possible. In his proposed role at Eskenazi, Dr. Messina would occasionally treat patients in the Emergency Department, which could include the treatment of Medicaid patients. Eskenazi contracts with IU Health for professional physician services, which would provide the source of his compensation for patient care in the Emergency Department; however, ninety percent of his proposed role will

be administrative in nature, including acting as a physician advisor on the Eskenazi Utilization Review Committee.

Based on information provided to the Commission, IU Health Physicians pays Dr. Messina on an hourly basis for his work at Eskenazi, rather than Dr. Messina billing patients or insurance. As Dr. Messina will be providing patient care in the Emergency Department, this could potentially include Medicaid patients similar to any other physician providing medical services for IU Health Physicians. His compensation would not be tied to the charges and collections that he generates or the payer mix of the patients for which he cares; however, his fees may be paid from general Medicaid funds.

Dr. Messina remains on faculty with the IU School of Medicine. Dr. Messina took an unpaid leave of absence while maintaining his faculty appointment during his tenure at FSSA. Dr. Messina would like to return to full time employment with the IU School of Medicine where he would teach medical and physician assistant students at their Department of Emergency Medicine.

Eskenazi and IU Health Physicians are Indiana Medicaid enrolled providers maintaining agreements with FSSA and which receive Medicaid reimbursement. Eskenazi has five active contracts with FSSA's Division of Mental Health and Addictions (DMHA). DMHA also certifies Eskenazi's community health center. IU Health Physicians is affiliated with IU Health and maintains five contracts with FSSA, none of which are administered by OMPP. In his role at FSSA, Dr. Messina is not the owner or administrator of any contracts with FSSA and does not believe he has made any discretionary decisions affecting the outcome of the negotiation or nature of the administration of any contract with Eskenazi Health or IU Health.

In Dr. Messina's role at FSSA, he does not provide regulatory or license oversight on behalf of FSSA for Eskenazi Health, IU Health or the IU School of Medicine. Dr. Messina's proposed post-employment opportunities with Eskenazi and IU Health would not include any lobbying activities. He also understands that he is prohibited from representing Eskenazi, IU Health or the IU School of Medicine with any particular matter in which he personally and substantially participated during his employment at FSSA.

Dr. Messina also understands his obligation to protect confidential information learned through his work at FSSA and is aware that he is prevented from divulging any confidential information or allowing anyone, including Eskenazi and IU Health Physicians, to benefit from it.

Dr. Messina is also an appointed member of the Indiana Medical Licensing Board (MLB) and plans to continue to serve in that role after leaving his position at FSSA. The MLB consists of seven (7) members and grants licenses to physicians, osteopathic physicians, telehealth providers, postgraduate trainees, teaching permits and non-ECFMG training permits. The MLB oversees waiver of certain licensing requirements and monitors compliance with the provisional licenses the MLB issues as a result. Those seeking licensing bring individual licensing requirement matters directly to the MLB.

The MLB also oversees allegations of unprofessional conduct that are brought as complaints by the Indiana Attorney General's Office. Those allegations can range from general unprofessional conduct, alcohol or substance abuse and pending criminal charges or convictions. The MLB is charged with the responsibility of disciplining licensees who have violated practice standards, acted dishonestly or acted unethically. As a result, MLB board members are asked to vote to terminate, suspend or restrict licenses of individual practitioners. The standard of those votes is whether, by a preponderance of the evidence, the individual presents a danger to the public by his/her continued practice of medicine and, therefore, whether MLB should terminate, suspend or restrict the individual's license.

As a member of the MLB, Dr. Messina does not believe his decisions or votes financially benefit any of his proposed employers directly, as the MLB's decisions affect individual physicians and other practitioners' licenses, and the MLB ensures those in the profession maintain professional standards while practicing in an honest and ethical manner.

Mr. Gerber is seeking the Commission's formal advisory opinion regarding the application of any of the rules in the Code to Dr. Messina's proposed post-employment with Eskenazi and IU School of Medicine, as well as any implications under the Code for his continued service with the MLB.

The analysis stated the following:

Mr. Gerber's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Post-employment, Conflicts of Interests, Use of State Property and Benefitting from and Divulging Confidential Information. The application of each provision to Dr. Messina is analyzed below.

A. Post-employment

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Dr. Messina from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, as Dr. Messina plans to leave state government and will be a former employee for the purposes of this rule, he is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

Based on the information provided, Dr. Messina would not be engaging in any lobbying activities in his positions at Eskenazi or the IU School of Medicine. To the extent that Dr. Messina does not engage in executive branch lobbying for one year after leaving state employment, his post-

employment opportunity at Eskenazi and his return to teaching at the IU School of Medicine would not violate this provision of the post-employment rule.

Second, Dr. Messina is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

Eskenazi and IU Health Physicians are Indiana Medicaid enrolled providers maintaining agreements with FSSA and which receive Medicaid reimbursement. Eskenazi has five active contracts with FSSA's Division of Mental Health and Addictions (DMHA). IU Health Physicians is affiliated with IU Health and maintains five contracts with FSSA, none of which are administered by OMPP. In his role at FSSA, Dr. Messina is not the owner or administrator of any contracts with FSSA and does not believe he has made any discretionary decisions affecting the outcome of the negotiation or nature of the administration of any contract with Eskenazi Health or IU Health.

Dr. Messina has worked at least peripherally on some contracts while at FSSA. He provided that one of the medical directors who reported to him at FSSA is a contractor for FSSA under a contract between OMPP and University Medical Diagnostic Associates, which is affiliated with IU Health. Dr. Messina's involvement is limited to validating hours worked and authorizing payment. Dr. Messina also identified a pilot project funded by OMPP with Indiana University regarding complex case management. This contract predated his tenure at FSSA and his involvement with that project is limited to validating services provided and authorizing reimbursement.

Based on the information provided, Dr. Messina's involvement in the contracts between OMPP and University Medical Diagnostic Associates and between OMPP and Indiana University do not constitute the negotiation or administration of a contract where he was in a position to affect the outcome of the negotiation or the nature of the administration of such contracts.

Third, Dr. Messina is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Mr. Gerber provides that Dr. Messina has not made any regulatory or licensing decisions in his position with FSSA that directly applied to Eskenazi, IU Health or the IU School of Medicine.

Dr. Messina has not made any regulatory or licensing decisions in his position at FSSA that directly applied to Eskenazi, IU Health, the IU School of Medicine, or any of these entities' parents or subsidiaries.

Fourth, Dr. Messina is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee.

The information presented to the Commission does not suggest that Eskenazi has extended an offer for his prospective new role in an attempt to influence Dr. Messina in his capacity as a state employee.

Accordingly, the Commission finds that the cooling off period of the post-employment rule would not prohibit his intended employment opportunity with Eskenazi nor his resuming teaching activities at the IU School of Medicine immediately upon leaving state government.

Finally, Dr. Messina is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Dr. Messina would be prohibited from representing or assisting Eskenazi, the IU School of Medicine, or any other person, in a particular matter in which he personally and substantially participated as a state employee.

Dr. Messina has not identified any particular matters that he worked on in his role at FSSA that he will be required to work on in his role at Eskenazi or the IU School of Medicine.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Messina from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Messina from participating in any decision or vote, or matter relating to that decision or vote, if a business organization with whom he is negotiation or has an arrangement concerning prospective employment or in which he serves as an employee has a financial interest in the matter.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority in writing and either seek an advisory opinion from the Commission or file a written disclosure statement.

Dr. Messina maintains an active screen at FSSA, which was part of his disclosure statement filed under this rule on April 28, 2022. The screen prohibits Dr. Messina from participating in any

decisions or votes, or matters related to decisions or votes, at FSSA in which Eskenazi, IU Health Physicians or IU Health have a financial interest. As such, he has complied with the requirements in IC 4-2-6-9 for any potential conflict of interests that exists between his FSSA employment and his arrangement concerning prospective employment with Eskenazi, IU Health Physicians or IU Health.

In his continued role at the MLB, Dr. Messina may potentially be in a position to participate in a decision or vote, or matter related to a decision or vote, in which Eskenazi, IU Health Physicians, IU Health or IU School of Medicine would have a unique financial interest.

The Commission advised Dr. Messina to work with the Professional Licensing Agency's ethics officer to identify any potential conflicts of interests in his role at MLB, and to implement a screen and file a new disclosure with the Commission relevant to his role at the MLB should the MLB or Dr. Messina identify a potential conflict of interests.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a special state appointee may not knowingly have a financial interest in a contract made by an agency. This prohibition however does not apply to a special state appointee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Mr. Gerber provides that Eskenazi has five active contracts with FSSA's DMHA, and FSSA's divisions have five active contracts with IU Health. Although Dr. Messina plans to leave employment at FSSA, he will continue to be subject to the Code's requirements due to his retained position as a special state appointee on the MLB.

Mr. Gerber and Dr. Messina provided that IU Health Physicians pays Dr. Messina hourly for his Emergency Department work, and Dr. Messina does not bill his patients or insurance directly. Dr. Messina's Emergency Department work would potentially include Medicaid patients similar to any other physician providing medical services for IU Health Physicians. His services may result in payment to his employer paid from general Medicaid funds; however, under these circumstances such funds are not considered to be derived from a state contract.

Based on the information provided, Dr. Messina does not have a financial interest in a state contract that would create a conflict of interests under this rule or under the Indiana criminal code, nor has he identified any potential conflict of interests in his proposed post-employment with Eskenazi and IU School of Medicine.

D. Confidential information

Dr. Messina 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. Messina 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, such as IU Health. 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. Messina has acquired or maintains access to such confidential information obtained in his role at FSSA or the MLB, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including any of his outside employers, in any manner.

E. Use of state property

42 IAC 1-5-12 prohibits Dr. Messina 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.

Dr. Messina cannot use state property, such as his state email, state phone or state computer for activities related to his outside employment with Eskenazi and the IU School of Medicine in order to comply with the use of state property rule (IC 4-2-6-17).

To the extent that Dr. Messina observes these provisions regarding his post-employment activities, his outside positions would not violate these ethics laws.

Commissioner Sanchez moved to approve the Commission’s findings, and Commissioner Krauss seconded the motion, which passed (5-0).

V. Ethics Director’s Report

State Ethics Director Sean Gorman reported that since the last Ethics Director’s Report in April, 24 Informal Advisory Opinions had been issued regarding application of the gifts rule, post-employment issues, outside employment/professional activities issues, and related potential conflicts of interest. There was also an increase in the amount of gifts rule issues as compared to previous months outside of the holiday season.

Director Gorman continued that the General Assembly’s first 2023 session has concluded since the last Commission meeting. There were a few items to note from the session as it relates to the OIG and State Ethics Commission.

Rulemaking: HB 1623 was signed into law and makes several procedural changes to the administrative rulemaking process. For example, the timeframe for the sunset provision that requires agencies to readopt rules at least every seven years has been reduced to 5 years. There are some changes to the public hearing and comment periods for administrative rule adoption,

including requirements that such public hearings be webcast. OIG and SEC maintain several administrative rules but for those rules last readopted in 2018, we have until 2025, and for those last readopted in 2019, the law gives agencies until 2026 before the 5-year sunset clock sets. There are several agencies involved in implementing these new changes and OIG will ensure that we stay updated on process changes as this law is implemented.

Live Streaming public meetings: As noted in previous Commission meetings, HB 1167 amends Indiana's Open Door Law to require the live streaming and provision of archived recordings of public meetings such as SEC meetings. This law was signed by the Governor but has an effective date of July 1, 2025. OIG will continue to work on assessing the equipment, software and process changes that will be required to implement this new law.

Confidentiality of Office of Inspector General Informal Advisory Opinions: In an 11th hour move during the state budget bill's conference committee, Lawmakers inserted a provision that makes the Inspector General's informal advisory opinions confidential. This provision applies retroactively. Informal advisory opinions are already treated as confidential pursuant to administrative rule 42 IAC 1-8-1 and the Public Records Law. OIG does not believe the law change impacts the way the IG handles the IAO process.

Director Gorman told the Commission that the next Ethics Officers Roundtable meeting would be held on May 23, 2023.

Finally, the Commission was reminded that the Office of Inspector General's annual Auditor and Investigator Conference is set for Thursday, June 8, 2023, between 1:00 and 4:30 pm at the Indiana Government Center South – Conference Center Auditorium. With speakers from the U.S. Department of Justice, the U.S. Environmental Protection Agency's office of inspector general, Indiana's Auditor of State, a County Deputy Prosecutor, and more. There will not be a remote attendance option for this event, but all are invited to attend. Registration was opened on May 5th.

VI. Adjournment

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

The public meeting adjourned at 10:50 a.m.



IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Indiana Economic Development Corporation (IEDC) I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to **Julie Heath** in her post-employment with Indiana University.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

- A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of
(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):

IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.

- B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

As the IEDC VP of Entrepreneurial Ecosystems, Julie had decision making authority regarding the entities with which the IEDC contracted within the particular division of the IEDC she oversaw.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Duties to be performed include developing and implementing programs to support and accelerate entrepreneurial and commercialization activities at Indiana University, with the primary goal to increase student and faculty entrepreneurship.



- 3. Please explain whether the prospective employment is likely to involve substantial contact with the employee’s former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

The prospective employment is unlikely to involve substantial contact with the former agency.

- 4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

Yes, the prospective employment is beneficial to Indiana. Increasing entrepreneurship at Indiana University is a core component of the university's new strategic direction (Plan 2030), which includes service to the State of Indiana.

- 5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

The economic hardship to the prospective employee would be moderate/considerable in nature if denied.

C. Signatures

- 1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.

Robert J. Paglia

Robert Paglia

Aug 2, 2023

DATE

- 2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).

Phillip Fowler

Phil Fowler

Indiana
Economic Development Corp.

Aug 2, 2023

DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY

Approved by State Ethics Commission

Katherine Noel, Chair, State Ethics Commission

Date

Mail to:

Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202

OR

Email scanned copy to: info@ig.in.gov

Upon receipt you will be contacted with details regarding the presentation of this waiver to the State Ethics Commission.



Eric J. Holcomb
Governor

Lindsay M. Weaver, MD, FACEP
State Health Commissioner

July 27, 2023

Indiana State Ethics Commission
Office of the Inspector General
315 West Ohio Street, Room 104
Indianapolis, IN 46202

RE: IC 4-2-6-11 Post-employment Waiver

Indiana State Ethics Commission:

As the Appointing Authority of the Indiana Department of Health, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Ms. **Blaire Viehweg** in her post-employment with the **Insurance Institute of Indiana**.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of *(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):*

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.

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- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. *(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):*

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Ms. Viehweg serves as the Deputy Director of Legislative and External Affairs at the Indiana Department of Health. This position does not involve decision-making authority over contracts or rules. In this role, her responsibility has been to provide information to the leadership team to help them inform decisions, she has not had direct involvement in decision-making or policies. She serves as a messenger, ensuring that information regarding decisions and their rationale are accurately conveyed to relevant stakeholders.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

The position with the Insurance Institute of Indiana includes lobbying, relationship building, attending legislative events, developing and maintaining relationships with key Indiana Department of Insurance and Family and Social Services Administration personnel, attending meetings at IDOI and FSSA, and maintaining relationships with these state agencies.



3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

The position with the Insurance Institute in Indiana will involve contact with the Indiana Department of Insurance and the Family and Social Services Administration. There is no expectation that the job will involve lobbying efforts or substantial contact with the Indiana Department of Health. Should the unlikely occasion arise when contact with the Indiana Department of Health would be involved, Ms. Viehweg understands that she would need to be screened out of any such activity by her prospective employer until the 365 day "cooling off" period would have expired.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

This role would allow Ms. Viehweg to develop relationships with key stakeholders, such as insurance providers, government agencies, and healthcare organizations. Her experience in health can bring valuable expertise to this industry. By leveraging her knowledge and skills, the new collaboration can foster effective partnerships, and enhance the overall health landscape for individual Hoosiers and their communities. Working for a trade association, such as the Indiana Insurance Institute, is a natural progression for someone who is pursuing a career in advocacy. Her knowledge and experience in this arena will help improve general understanding of public health, government-funded healthcare, and intersection with contemporary events.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

A denial would result in a substantial economic hardship. Ms. Viehweg's prospective position with the Institute offers her the opportunity to experience remarkable professional growth. There are currently no advancement opportunities at the Department that would offer Ms. Viehweg similar growth and experience.



Eric J. Holcomb
Governor

Lindsay M. Weaver, MD, FACEP
State Health Commissioner

July 27, 2023

Ms. Katherine Noel, Chair
Indiana State Ethics Commission
315 W Ohio Street, Room 104
Indianapolis, IN 46202

Subject: Waiver of post-employment restriction for Blaire Viehweg

Dear Ms. Noel:

As the State Health Commissioner, I am writing to you to express my support and approval of the Indiana Department of Health's (IDOH) waiver of post-employment restrictions for Blaire Viehweg's proposed employment with the Insurance Institute of Indiana.

I regret that I am unable to appear in person to present the waiver. Unfortunately, I have scheduling conflicts that cannot be altered. I understand that IC 4-2-6-11(g) requires the state appointing authority authorizing the waiver to present it to the Commission, and I greatly appreciate your granting my request for this alternative arrangement in advance of the meeting on August 10, 2023. Deputy Health Commissioner and Chief Strategy Officer Amy Kent will attend the Commission meeting on my behalf. Ms. Kent works closely with Blaire and can effectively represent the Department in this matter.

I fully support and approve this waiver. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lindsay Weaver'.

Lindsay Weaver, MD, FACEP
State Health Commissioner

cc: Indiana Office of Inspector General

To **promote**, **protect**, and **improve** the health and safety of all Hoosiers.



Eric Holcomb, Governor
State of Indiana

Office of General Counsel
402 W. WASHINGTON STREET, ROOM W451, MS27
INDIANAPOLIS, IN 46204-2744

July 26, 2023

Ethics Commission
Office of the Inspector General
315 West Ohio Street, Room 104
Indianapolis, Indiana 46202
Via Email: info@ig.in.gov

RE: Request for Formal Advisory Opinion for Timothy D. McFarlane

Dear Chairperson Noel and Members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Dr. Timothy D. McFarlane, requests a Formal Advisory Opinion from the State Ethics Commission regarding application of the State Code of Ethics regarding a post employment opportunity for Dr. McFarlane.

Dr. McFarlane is currently employed with FSSA as the Chief Data Officer. As Chief Data Officer, his responsibilities include supporting enterprise data warehouses for the Supplemental Nutrition Assistance Program (SNAP)/Temporary Assistance for Needy Families (TANF) and Medicaid data analytics; designing, developing and implementing data governance strategy to support data-driven culture; conducting research studies and program evaluation to measure and improve service delivery and policy implementation; overseeing components of state and federal reporting for the Office of Medicaid Policy and Planning; collaborating with state agencies to improve the use of health data in support of operational and performance monitoring; and providing technical assistance to FSSA divisions for data initiatives.

Dr. McFarlane is not a signatory on any agency contracts and was not involved in the negotiation or administration of any active contracts with one exception. Dr. McFarlane initiated and signed a change order to a Managed Service Provider contract with Resultant, LLC. Dr. McFarlane does not have regulatory or licensing authority in his current position.



Dr. McFarlane plans to leave state employment to join the Data and Analytics consulting firm Delineate, LLC (“Delineate”). Delineate was founded in 2022 and does not currently have any active or historical contracts with the State of Indiana. Dr. McFarlane’s position will be to guide the technical aspects of solutions developed by the company and does not include lobbying for Delineate.

Delineate currently provides 3 employees to aFit Staffing, Inc for the purpose of temporary staffing with Indiana’s Managed Service Provider, CAI. Dr. McFarlane was not involved in the selection and hiring or day-to-day activities of these staff. Rather, the Deputy Chief Data Officer and Data Science Supervisor – who report to Dr. McFarlane – are responsible for these tasks.

FSSA Data & Analytics is focused on creating a robust talent pipeline for the State of Indiana. This includes hosting interns, fellows, pre-doctoral and pos-doctoral students, and early career data professionals from around the state, including academic, non-profit, and private sectors. FSSA, along with the Indiana Office of Technology, maintain a partnership with Brooksource, a contract-to-hire and direct placement company. The intention of the program is to train early careerists in the practice of public sector data analytics and convert to full-time state employment.

As Chief Data Officer, Dr. McFarlane does not participate in the selection of candidates or oversee any day-to-day activities. This is completed by the Deputy Chief Data Officer and Data Science Supervisor. Two contracted employees had trouble with Brooksource and expressed a desire to leave the company to the Data Science Supervisor. Having grown dependent on their contributions to the agency, the Data Science Supervisor made the decision to continue contracting the two as temporary staff through aFit Staffing using Indiana’s Managed Service Provider (CAI). aFit Staffing subsequently chose to establish a sub-contract with Delineate for these two individuals. The Data Science Supervisor and Deputy Chief Data Officer posted, interviewed, selected, and hired a temporary staff position for a Data Engineer to Indiana’s Managed Service Provider (CAI) to complete work on behalf of the Office of Medicaid Policy and Planning. The CAI contract is also with aFit Staffing, who subsequently chose to sub-contract with Delineate. Like other contracted positions, Dr. McFarlane does not participate in the selection or day-to-day responsibilities of this employee.

Dr. McFarlane understands that he is prohibited from representing or assisting a person in a particular matter involving the state if he personally and substantially participated in that matter as a state employee, even if he receives no compensation for the representation or assistance.

Dr. McFarlane further understands the duty to maintain confidential information learned through his employment with the State of Indiana, and that he is prevented from divulging confidential information or allowing anyone, including but not limited to Delineate from benefitting from same.

Based on the information above, I would request a determination by the Ethics Commission regarding Dr. McFarlane's post employment opportunity. Dr. McFarlane sought an informal advisory opinion from the Office of the Inspector General as an initial step in this process, and that opinion is attached hereto as "Exhibit A". Thank you for your consideration.

Cordially,



Matthew A. Gerber
Ethics Officer
Family and Social Services Administration

From: [Gorman, Sean M](#)
To: [Gerber, Matthew](#)
Subject: 3ncrypt Ethics Informal Advisory Opinion; Gerber (McFarlane); FSSA; Post-employment
Date: Wednesday, July 12, 2023 3:30:30 PM

Matthew,

Thank you for reaching out for ethics guidance and for providing additional information. We understand that you serve as Deputy General Counsel and the agency Ethics Officer for Indiana's Family and Social Services Administration (FSSA). You requested this informal advisory opinion on behalf of FSSA employee Dr. Timothy D. McFarlane for ethics advice regarding Dr. McFarlane's proposed post-employment activities.

Based on the information you provided, Dr. McFarlane serves as Chief Data Officer at FSSA. In that role he supports enterprise data warehouses for the Supplemental Nutrition Assistance Program/Temporary Assistance for Needy Families (TANF) and Medicaid data analytics. Dr. McFarlane is responsible for FSSA's data governance strategy. He also oversees components of state federal reporting for the Office of Medicaid Policy and Planning and provides technical assistance to FSSA divisions for data initiatives.

You explain that Dr. McFarlane is planning a post-state employment opportunity with Delineate, LLC (Delineate), a data and analytics consulting firm. In his proposed role at Delineate, Dr. McFarlane will be guiding technical aspects of solutions developed by Delineate. You further provide that Dr. McFarlane will not be engaging in executive branch lobbying in his prospective post-state employment position. You note that you and Dr. McFarlane have discussed this matter and neither of you anticipate his working on any projects or matters for Delineate that he worked on while with the State.

You provide that Delineate does not currently have any active or historical contracts with the State of Indiana. You write that FSSA utilizes three contract workers from Delineate through Indiana's Managed Service Provider, CAI (CAI). CAI maintains a contract with aFit Staffing (aFit), which provides the contract workers through aFit's subcontract with Delineate. You explain that these three contract workers at FSSA are Delineate employees.

Dr. McFarlane does not participate in the selection of the three Delineate employees that FSSA utilizes and does not oversee those individuals' day-to-day activities. Rather, FSSA's Deputy Chief Data Officer and Data Science Supervisor, who both report to Dr. McFarlane, are responsible for directly supervising the three contract workers.

You write that Dr. McFarlane has no regulatory or licensing duties as part of his role at FSSA and was not involved in the negotiation of any active contracts, with one exception: Dr. McFarlane initiated and signed a change order to a Managed Service Provider contract with Resultant, LLC.

You request this informal advisory opinion to determine the Code of Ethics' (Code) implications of Dr. McFarlane's proposed post-state employment with Delineate.

Dr. McFarlane's proposed post-employment plans primarily invoke consideration of IC 4-2-6-11, which is the post-employment rule; IC 4-2-6-9, which is the rule on conflicts of interests, decision and voting; and IC 4-2-6-6, 42 IAC 1-5-10 and 42 IAC 1-5-11, which are the rules on confidentiality. We included all relevant rules and definitions at the end of this opinion for

your reference.

1. Post-employment

The post-employment rule consists of two separate limitations: a “cooling off” period and a particular matter restriction. Furthermore, this rule prohibits Dr. McFarlane from accepting employment with Delineate if it is offered to influence him in his official capacity as a state employee.

A. The “cooling off” period

This prohibition, commonly referred to as the cooling off or revolving door period, prevents Dr. McFarlane from accepting employment: 1) as a lobbyist, 2) from an employer with whom Dr. McFarlane engaged in the negotiation or administration of a contract or grant on behalf of any state agency and was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration, or 3) from an employer for whom Dr. McFarlane made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary, until the lapse of 365 days from when he leaves state employment.

Regarding subsection 1), a lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration (IDOA). Based on the information you provided, Dr. Farlane’s position with Delineate would not involve executive branch lobbying. Accordingly, this portion of the cooling off period would not apply.

Regarding subsection (2), you provide that Delineate does not and has not maintained a contract with FSSA or the State of Indiana. As such, subsection (2) of the rule would not prohibit Dr. McFarlane’s post-employment opportunity with Delineate.

Also based on the information you provided, subsection (3) would not prohibit Dr. McFarlane’s proposed role at Delineate because he did not make any regulatory or licensing decisions that directly applied to Delineate or to a parent or subsidiary of Delineate.

Furthermore, nothing in the information provided indicates that a position with Delineate has been offered to Dr. McFarlane to influence him in his official capacity as an FSSA employee. **Therefore, Dr. McFarlane could immediately begin employment with Delineate upon leaving state employment.**

B. The particular matter restriction

Additionally, Dr. McFarlane is subject to the post-employment rule’s “particular matter” restriction. This restriction prevents him from working on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract or grant, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project.

The term “particular matter” does not include the proposal or consideration of a legislative

matter or the proposal, consideration, adoption or implementation of a rule or an administrative policy or practice of general application. The particular matter restriction is not limited to 365 days, but instead extends for the entire life of the matter at issue, which may be indefinite. Please note that this restriction would not prevent Dr. McFarlane from working on any new matters that involve FSSA and Delineate in the future.

You have not identified a particular matter that may apply to his post-employment opportunity with Delineate. You note that you and Dr. McFarlane have discussed the particular matter restriction and you do not anticipate his working on any projects or matters for Delineate that he worked on while with the State. As such, this restriction should not present a problem for him, but if he has any questions regarding his work after reviewing the twelve matters listed above, he is encouraged to follow up with our office.

2. IC 4-2-6-9 - Conflicts of Interests Related to Decisions and Votes

Because Dr. McFarlane is still employed by the State, he should also keep in mind IC 4-2-6-9, which pertains to conflicts of interests; decisions and voting. This rule prohibits him from participating in any decisions or votes, or any matter related to those decisions or votes, if he has knowledge that certain persons have a financial interest in the outcome of the matter, including himself and any person or organization with whom he is negotiating or has an arrangement concerning prospective employment.

The State Ethics Commission (Commission) has determined that employment negotiations begin when there is a back-and-forth exchange, such as the scheduling of a job interview or offer of employment. It is unclear whether employment negotiations have begun between Dr. McFarlane and Delineate, but if and when employment negotiations begin, this rule is implicated.

Based on the information you provided, Dr. McFarlane supervises individuals who in turn supervise the work of the three contract workers who are Delineate employees. Dr. McFarlane's position above the three Delineate employees in FSSA's chain of command creates at least the appearance of a potential conflict of interests given his intention to work for Delineate, even if it does not rise to the level of a conflict of interests under this rule because he has not yet entered into employment negotiations. He should be aware that once employment negotiations have begun, if he is in a position to participate in matters related to decisions or votes in which Delineate may have a financial interest, then he will need to follow the steps in IC 4-2-6-9(b) to avoid violating this rule.

Please note that when a potential conflict of interests under this rule is identified, mere recusal from the decision or vote is not enough. **The rule also requires that Dr. McFarlane notify both FSSA's appointing authority and you, as FSSA's 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 disclosure form will include the screen that will be in effect with respect to Dr. McFarlane's participation at FSSA in any matters involving Delineate or its employees for any remaining time he is employed at FSSA. As FSSA's ethics officer, you will document and affirm the establishment of the screen as part of the disclosure form. If he does not accept an employment offer from Delineate, then the screen can be terminated.

Please let us know if you have any questions about this process.

3. IC 4-2-6-6, 42 IAC 1-5-10 and 42 IAC 1-5-11 - Confidential Information

Dr. McFarlane should also be aware of IC 4-2-6-6, which prohibits him from accepting any compensation from any employment, transaction or investment which was entered into or made as a result of material information of a confidential nature. So long as compensation from employment with Delineate does not result from information of a confidential nature, any such post-employment would not violate IC 4-2-6-6.

Finally, Dr. McFarlane will also want to keep in mind the ethics rules pertaining to confidential information (42 IAC 1-5-10 and 42 IAC 1-5-11). These rules prohibit him 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 he would possess information of a confidential nature by virtue of his position at FSSA that could be used to benefit any person, including Delineate, he will need to ensure that he complies with these rules.

Thank you again for submitting your question to our office. Please let us know if you or Dr. McFarlane have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as we understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to our attention.

Sincerely,

Sean Gorman
Office of Inspector General

IC 4-2-6-1 Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

...

(2) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a council, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic set up as an instrumentality of the state and a private, nonprofit, government related corporation. The term does not include any of the following:

- (A) The judicial department of state government.
- (B) The legislative department of state government.
- (C) A state educational institution.

(D) A political subdivision.

...

(4) "Assist" means to:

(A) help;

(B) aid;

(C) advise; or

(D) furnish information to;

a person. The term includes an offer to do any of the actions in clauses (A) through (D).

...

(7) "Compensation" means 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, whether by that person or another.

...

(9) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation.

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. 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.

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under [IC 5-14-3-4\(a\)](#);

(ii) a public agency has the discretion not to disclose under [IC 5-14-3-4\(b\)](#) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

IC 4-2-7-1 Definitions

Sec. 1. The following definitions apply throughout this chapter:

...

(5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration.

IC 4-2-6-11 One year restriction on certain employment or representation; advisory opinion; exceptions; waivers; disclosure statements; restrictions on inspector general seeking state office

Sec. 11. (a) As used in this section, "particular matter" means any of the following:

(1) An application.

(2) A business transaction.

(3) A claim.

(4) A contract.

(5) A determination.

(6) An enforcement proceeding.

(7) An investigation.

(8) A judicial proceeding.

(9) A lawsuit.

(10) A license.

(11) An economic development project.

(12) A public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) A former state officer, employee, or special state appointee may not accept employment or receive compensation:

(1) as a lobbyist;

(2) from an employer if the former state officer, employee, or special state appointee was:

(A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and

(B) in a position to make a discretionary decision affecting the:

(i) outcome of the negotiation; or

(ii) nature of the administration; or

(3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;

before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

(1) employment; or

(2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of the individual's duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

(1) employment of;

(2) consultation by;

(3) representation by; or

(4) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to the following:

(1) A special state appointee who serves only as a member of an advisory body.

(2) A former state officer, employee, or special state appointee who has:

(A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and

(B) any contract that:

(i) the former state officer, employee, or special state appointee may have negotiated or administered before the two (2) years preceding the beginning of employment or consulting negotiations; and

(ii) is no longer active.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. A waiver must satisfy all of the following:

(1) The waiver must be signed by an employee's or a special state appointee's:

(A) state officer or appointing authority authorizing the waiver; and

(B) agency ethics officer attesting to form.

(2) The waiver must include the following information:

(A) Whether the employee's prior job duties involved substantial decision making authority over policies, rules, or contracts.

(B) The nature of the duties to be performed by the employee for the prospective employer.

(C) Whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.

(D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.

(E) The extent of economic hardship to the employee if the request for a waiver is denied.

(3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.

(4) The waiver must be limited to an employee or a special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c).

The commission may conduct an administrative review of a waiver and approve a waiver only if the commission is satisfied that the information provided under subdivision (2) is specifically and satisfactorily articulated. The inspector general may adopt rules under [IC 4-22-2](#) to establish criteria for post employment waivers.

(h) Subsection (b) applies, subject to waiver under subsection (g), to a former state officer, employee, or special state appointee who:

(1) made decisions as an administrative law judge; or

(2) presided over information gathering or order drafting proceedings; that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

(i) A former state officer, employee, or special state appointee who forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section must file a disclosure statement with the commission not later than one hundred eighty (180) days after separation from state service. The disclosure must:

(1) be signed by the former state officer, employee, or special state appointee;

(2) certify that the former state officer, employee, or special state appointee is not an employee of the entity; and

(3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

(j) The inspector general may not seek a state elected office before the elapse of at least three hundred sixty-five (365) days after leaving the inspector general position.

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.

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.

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.

Sean Gorman

Indiana State Ethics Director
Office of the Inspector General
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
317-234-4108

www.in.gov/ig

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From: Gerber, Matthew <Matthew.Gerber@fssa.IN.gov>

Sent: Tuesday, July 11, 2023 10:53 AM

To: Gorman, Sean M <SGorman@ig.IN.gov>

Subject: Fwd: Form Submission - Advice

Sean-

Looks like you have the relationship correct!

Tim provided some additional notes as well:

Thanks

MG

Get [Outlook for iOS](#)

From: McFarlane, Timothy D <Timothy.Mcfarlane@fssa.IN.gov>

Sent: Monday, July 10, 2023 4:39 PM

To: Gerber, Matthew <Matthew.Gerber@fssa.IN.gov>

Subject: RE: Form Submission - Advice

He got it right. There's a contract between CAI and aFit and aFit subcontracted to Delineate. These individuals are Delineate employees.

That said, I think it's important to consider two things:

1. they are temporary staff. So any influence I theoretically could have on this relationship ends with my employment.
2. I am not benefiting financially from their employment with FSSA.

Thank you,
Tim

Timothy D. McFarlane, PhD, MPH
Chief Data Officer

Division of Strategy and Technology
Indiana Family and Social Services Administration
100 N. Senate Ave., Rm. N200
Indianapolis, IN 46204
O | 317.232.7309
M | 317.416.8390
Email | timothy.mcfarlane@fssa.in.gov

-----Original Message-----

From: Gerber, Matthew <Matthew.Gerber@fssa.IN.gov>
Sent: Monday, July 10, 2023 4:35 PM
To: McFarlane, Timothy D <Timothy.Mcfarlane@fssa.IN.gov>
Subject: FW: Form Submission - Advice

Timothy-

I have another follow up question for you:

-----Original Message-----

From: Gorman, Sean M <SGorman@ig.IN.gov>
Sent: Monday, July 10, 2023 3:55 PM
To: Gerber, Matthew <Matthew.Gerber@fssa.IN.gov>
Subject: RE: Form Submission - Advice

Hi Matthew,

Can you walk me through the relationship between Delineate and the contract workers that are supervised by individuals who report to Dr. McFarlane? I was a little unclear in reading this about why they are involved in a contract with the second staffing firm. If I understand it correctly, FSSA is going through CAI, who contracts with aFit, who contracts with Delineate for the 3 contract

workers? I hope you can help make sense of this arrangement for me so our guidance can accurately reflect it.

Feel free to call if that is easier.

Thanks, Sean

Sean Gorman
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-----Original Message-----

From: Gerber, Matthew <Matthew.Gerber@fssa.IN.gov>
Sent: Monday, July 10, 2023 1:46 PM
To: Gorman, Sean M <SGorman@ig.IN.gov>
Subject: FW: Form Submission - Advice

Sean-

Please see Timothy's reponses below.

Also, Timothy and I spoke at length about "particular matters" and given his position, we could not think of an application, business transaction, claim, contract, etc. that he would have worked on as part of his FSSA role that he would be asked to work on for Delineate.

Thanks
MG

-----Original Message-----

From: McFarlane, Timothy D <Timothy.Mcfarlane@fssa.IN.gov>

Sent: Monday, July 10, 2023 1:35 PM

To: Gerber, Matthew <Matthew.Gerber@fssa.IN.gov>

Subject: RE: Form Submission - Advice

Matthew - in order as asked:

1. No parent or subsidiaries.
2. No I do not have any regulatory or licensing authority in my position.
3. No I do not have any particular matters from my work with the State that I could not work on with Delineate.

Thank you,
Tim

Timothy D. McFarlane, PhD, MPH
Chief Data Officer

Division of Strategy and Technology
Indiana Family and Social Services Administration
100 N. Senate Ave., Rm. N200
Indianapolis, IN 46204
O | 317.232.7309
M | 317.416.8390
Email | timothy.mcfarlane@fssa.in.gov

-----Original Message-----

From: Gerber, Matthew <Matthew.Gerber@fssa.IN.gov>

Sent: Monday, July 10, 2023 1:24 PM

To: McFarlane, Timothy D <Timothy.Mcfarlane@fssa.IN.gov>

Subject: FW: Form Submission - Advice

Timothy -

The IG has asked to clarify a few issues. Please see those questions below.

Does Delineate have a parent company or subsidiaries?

Did you have regulatory or licensing authority over any and all?

Are there any "particular matters" that you worked on with the State that you could not work on for Delineate?

Thanks
MG

-----Original Message-----

From: Gorman, Sean M <SGorman@ig.IN.gov>
Sent: Monday, July 10, 2023 1:03 PM
To: Gerber, Matthew <Matthew.Gerber@fssa.IN.gov>
Subject: FW: Form Submission - Advice

Hi Matthew,

Can you confirm that Dr. McFarlane made no regulatory or licensing decisions in his role at FSSA that applied to Delineate or a parent or subsidiary of Delineate?

In Dr. McFarlane's proposed role, would he be working on any matters on which he has worked on behalf of FSSA? If so, explain what those matters would be.

Thank you!

Sean

Sean Gorman
Indiana State Ethics Director
Office of the Inspector General
315 W. Ohio Street, Room 104
Indianapolis, IN 46202
317-234-4108

www.in.gov/ig

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-----Original Message-----

From: noreply@in.accessgov.com <noreply@in.accessgov.com>
Sent: Friday, July 7, 2023 2:32 PM
To: IG Info <info@ig.IN.gov>; Mulligan, Tiffany M <TMulligan@ig.IN.gov>; Cook, David (IG)

<DaCook@ig.IN.gov>; Baker, Nathaniel P <NBaker@ig.IN.gov>; Gorman, Sean M
<SGorman@ig.IN.gov>

Subject: Form Submission - Advice

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FORM DETAILS

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First Name: Matthew

Last Name: Gerber

Email: matthew.gerber@fssa.in.gov

Phone: (317) 232-1246

State Agency: OGC FSSA

Description of Your State Occupation: Deputy General Counsel and Ethics Officer

What is your ethics question? I am the submitting this request for an informal advisory opinion on behalf of FSSA Employee Dr. Timothy D. McFarlane regarding a post employment opportunity with Delineate, LLC. Dr. McFarlane has provide the following information regarding his current and future employment:

Current title: Chief Data Officer

Current responsibilities:

- support enterprise data warehouses for the Supplemental Nutrition Assistance Program (SNAP)/Temporary Assistance for Needy Families (TANF) and Medicaid data analytics; • design, develop and implement data governance strategy to support data-driven culture; • conduct research studies and program evaluation to measure and improve service delivery and policy implementation.
 - Oversee components of state and federal reporting for the Office of Medicaid Policy and Planning;
 - collaborate with state agencies to improve the use of health data in support of operational and performance monitoring; and • provide technical assistance to FSSA divisions for data initiatives.
- Dr. McFarlane is not a signatory on any agency contracts and was not involved in the negotiation of any active contracts with one exception. Dr. McFarlane initiated and signed a change order to a Managed Service Provider contract with Resultant, LLC.

Post-employment opportunity: Dr. McFarlane plans to leave state employment to join the Data and Analytics consulting firm Delineate, LLC. Delineate was founded in 2022 and does not currently have any active or historical contracts with the State of Indiana. Dr. McFarlane will be guiding technical

aspects of solutions developed by Deliniate, LLC.

Dr. McFarlane will not be participating in any lobbying activities for Delineate.

Sharing as FYI to be thorough:

Delineate currently provides 3 employees to aFit Staffing, Inc for the purpose of temporary staffing with Indiana's Managed Service Provider, CAI. Dr. McFarlane was not involved in the selection and hiring or day-to-day activities of these staff. Rather, the Deputy Chief Data Officer and Data Science Supervisor – who report to Dr. McFarlane – are responsible for these tasks.

FSSA Data & Analytics is focused on creating a robust talent pipeline for the State of Indiana.

This includes hosting interns, fellows, pre-doctoral and post-doctoral students, and early career data professionals from around the state, including academic, non-profit, and private sectors.

FSSA, along with the Indiana Office of Technology, maintain a partnership with Brooksource, a contract-to-hire and direct placement company. The intention of the program is to train early careerists in the practice of public sector data analytics and convert to full-time state employment. As Chief Data Officer, Dr. McFarlane does not participate in the selection of candidates or oversee any day-to-day activities. This is completed by the Deputy Chief Data Officer and Data Science Supervisor.

Two contracted employees had trouble with Brooksource and expressed a desire to leave the company to the Data Science Supervisor. Having grown dependent on their contributions to the agency, the Data Science Supervisor made the decision to continue contracting the two as temporary staff through aFit Staffing using Indiana's Managed Service Provider (CAI). aFit Staffing subsequently chose to establish a sub-contract with Delineate, LLC for these two individuals. The Data Science Supervisor and Deputy Chief Data Officer posted, interviewed, selected, and hired a temporary staff position for a Data Engineer to Indiana's Managed Service Provider (CAI) to complete work on behalf of the Office of Medicaid Policy and Planning. The CAI contract is also with aFit Staffing, who subsequently chose to sub-contract with Delineate. Like other contracted positions, Dr. McFarlane does not participate in the selection or day-to-day responsibilities of this employee.

*FSSA Ethics Officer Matthew Gerber independently verified that Delineate, LLC has no active contracts with FSSA via the Contract Repository for FSSA.