

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
April 13, 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; and Rafael Sanchez. 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; and Mike Lepper, Special Agent.

Others present were Jessica Keyes, Ethics Officer, Family and Social Services Administration; Matheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Amie Durfee, Deputy General Counsel, Indiana Department of Workforce Development; Chris Serak, Ethics Officer, Indiana Department of Transportation; George Dremonas, Ethics Officer, Indiana Department of Financial Institutions; Evan Bartel, General Counsel, Indiana Professional Licensing Agency; James French, Ethics Officer, Indiana Department of Environmental Management; Rachel Russell, Ethics Officer, Indiana Department of Child Services; Christine MacDonald, Internal Affairs Officer, Indiana Department of Child Services; Dr. David Geeslin, Superintendent; Indiana School for the Deaf; Jeremy Hawk, Ethics Officer, Indiana School for the Deaf; and Anna Ruble, Interpreter, Indiana School for the Deaf.

**II. Adoption of Agenda and Approval of Minutes**

Commissioner Sanchez moved to adopt the agenda, Commissioner Gilroy seconded the motion, and the Commission passed the agenda (4-0).

Commissioner Gilroy moved to approve the Minutes of the March 9, 2023, Commission Meeting, and Commissioner Sanchez seconded the motion, which passed (4-0).

**III. Consideration of Agency Limited Use of State Property/Resources Policy  
**Presented by Rachel Russell, Ethics Officer, Indiana Department of Child Services****

Rachel Russell, Ethics Officer for the Indiana Department of Child Services presented a Limited Use of State Property/Resources Policy to the Commission for approval.

After discussion, Commissioner Gilroy moved to approve the Limited Use of State Property/Resources Policy and Commissioner Finnerty seconded the motion which passed (4-0).

#### **IV. Request for Formal Advisory Opinion**

2023-FAO-003

Dr. David Geeslin, Superintendent/CEO

Jeremy Hawk, Ethics Officer

Indiana School for the Deaf

Dr. David Geeslin serves as Superintendent and Chief Executive Officer for the Indiana School for the Deaf (ISD). Dr. Geeslin also serves as a Board Member for the Indiana Deaf Children Foundation (IDCF), a 501(c)(3) charitable organization. Based on the information provided, ISD established IDCF exclusively for the benefit of ISD, as IDCF will provide funding to enhance academic, social and cultural opportunities for deaf children.

ISD instituted a new policy, effective March 30, 2023, titled “Standards for the Indiana School for the Deaf Employees Who Perform Work on Behalf of the Foundation” (ISD Policy). The ISD Policy allows for the use of ISD employees’ time and state-owned resources to participate in fundraising efforts on behalf of IDCF. The ISD Policy permits certain ISD employees to serve on the IDCF Board of Directors, provide administrative support to IDCF and engage in fundraising activities on behalf of IDCF. The ISD Policy specifies that these activities are part of the authorized employees’ official state duties.

Dr. Geeslin explains that ISD’s relationship with IDCF is similar to that of the Indiana Destination Development Corporation (IDDC) and the Indiana Destination Development Foundation (Foundation). The Commission issued [2022-FAO-010](#) related to the IDDC’s relationship with the Foundation. In that opinion, the Commission noted that the legislators who sponsored the creation of the IDDC intended to introduce legislation to allow the IDDC to create the Foundation. The Commission noted that the General Assembly passed such legislation during the 2023 legislative session.

During Dr. Geeslin’s presentation to the Commission, he stated that public schools have foundations to help raise funds for the schools. He also stated that ISD would seek legislative approval for the creation of IDCF and the use of state resources and personnel for IDCF business.

On behalf of ISD, Dr. Geeslin requested the Commission’s formal advisory opinion on the applicability of the Code to ISD’s use of state property and employees to carry out IDCF’s fundraising and administrative activities.

The analysis stated the following:

Dr. Geeslin’s request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Use of State Property, Ghost Employment and Gifts. The application of each provision to ISD employees is analyzed below.

*A. Use of State Property and Ghost Employment*

IC 4-2-6-17, the use of state property rule, prohibits a state officer, employee or special state appointee from using state materials, funds, property, personnel, facilities or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that the Commission has approved.

Likewise, 42 IAC 1-5-13, the ghost employment rule, prohibits a state officer, employee or special state appointee from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

If performing certain work for IDCF is part of an ISD employee's official duties, then the work would not implicate either the use of state property or ghost employment rules. If performing certain work for IDCF is not part of an ISD employee's official duties, then it would implicate these rules.

Based on the information provided, IDCF was created exclusively for the benefit of ISD as it will provide funding to enhance academic, social and cultural opportunities for deaf children. The ISD Policy permits certain ISD employees to serve on the IDCF Board of Directors, provide administrative support to IDCF and engage in fundraising activities on behalf of IDCF. The ISD Policy specifies that these activities are part of the authorized employees' official state duties.

Based on the information provided in ISD's formal advisory opinion request and during testimony provided in the public meeting, the Commission determined that ISD currently does not have specific statutory authority for creation of IDCF. The Commission highly encourages ISD to seek legislative approval for creation of IDCF in the future.

The Commission finds that ISD may utilize ISD resources and personnel for the fundraising and administrative support activities supporting IDCF, as outlined in the ISD Policy, with the understanding that ISD would pursue and secure legislation to formally recognize ISD's creation and use of IDCF to support ISD functions.

So long as ISD employees who use state time and state property to perform work for IDCF do so in accordance with the ISD Policy, such activities would not violate the use of state property and ghost employment rules.

*B. Gifts Rule*

The Gifts rule prohibits state employees from knowingly soliciting or accepting any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from:

- 1) a person who has a business relationship with the employee's agency; or

- 2) a person who is seeking to influence an action by the employee in his or her official capacity.

Based on the information provided, ISD created IDCF exclusively for the benefit of ISD to provide funding of enhanced academic, social and cultural opportunities for deaf children. Pursuant to prior formal advisory opinions issued by the Commission, the Gifts rule does not prohibit an agency from accepting gifts. As a result, so long as gifts are made for the benefit of IDCF or ISD as an agency and not for any individual employees or appointees, IDCF or ISD could accept donations without violating the Gifts rule. Also, ISD employees cannot solicit donations from persons with a business relationship with ISD or from any person seeking to influence an action by the ISD employee in his/her official capacity.

The ISD Policy identifies several positions as Authorized Employees who can engage in fundraising activities on behalf of IDCF. The ISD Policy specifically prohibits the solicitation of any person or entity that has a business relationship with ISD. The Commission finds that the ISD Policy is sufficient to protect employees from violating the Gifts rule.

Commissioner Sanchez moved to approve the Commission's findings, and Commission Chair Noel seconded the motion, which passed (3-1).

#### **V. Ethics Director's Report**

State Ethics Director Sean Gorman reported that the OIG is continuing to monitor relevant legislative items in the General Assembly's first 2023 session. Director Gorman also provided that OIG staff will be monitoring the legislative session for any proposed bills that may impact OIG or SEC concerns. He went on to state that changes to the State's Open Door Law which will require public meetings to be livestreamed is expected to be signed by Governor Holcomb. The effective date of the law will be July 1, 2025.

Director Gorman continued that since the last Ethics Director's Report in March, 14 Informal Advisory Opinions have been issued concerning the usual issues regarding application of the gifts rule, post-employment issues, outside employment/professional activities issues, and related potential conflicts of interest.

Finally, Director Gorman reported that during the 1st quarter of 2023, OIG had 52 total requests for Informal Advisory Opinions, issuing 43. OIG attorneys frequently have to reach out and request additional information from a requester to obtain additional information in order to analyze the potential issues under the Ethics Code, and in this process sometimes individuals decide they no longer wish to pursue our guidance. During this first quarter, OIG attorneys have taken an average of 1.9 business days to issue the informal advisory opinion from the time that we have the information necessary to complete our analysis.

**VI. Adjournment**

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

The public meeting adjourned at 10:29 a.m.



**STATE OF INDIANA  
Department of Correction**

Indiana Government Center—South

**Eric J. Holcomb**  
Governor

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Phone: (317) 232-5711 • Fax: (317) 232-6798 • Website: [www.in.gov/idoc/](http://www.in.gov/idoc/)

**Christina Reagle**  
Commissioner

*Sent Via Email Only to [info@ig.in.gov](mailto:info@ig.in.gov)*

April 28, 2023

Indiana Ethics Commission  
315 West Ohio Street, Room 104  
Indianapolis, IN 46202

Re: Indiana Department of Correction's Request for Formal Advisory Opinion

Dear Commissioners,

The Indiana Department of Correction (IDOC), by its designated Ethics Officer, is seeking the issuance of a formal advisory opinion by the Indiana State Ethics Commission (the "Commission") to determine whether IDOC employees can comply with the requirements of IC 4-2-6-10.5 and 35-44.1-1-4 while pursuing employment opportunities with one or more entities with which the agency contracts for correctional services.

I. IDOC Overview

IDOC operates twenty-one adult and juvenile facilities across the state, along with ten parole districts, through which it supervises and serves approximately 23,000 incarcerated individuals, 300 adjudicated delinquents, and 4,900 parolees. For this significant undertaking, IDOC employs over 5,500 agency staff and 1,800 contractors, and it receives support from hundreds more intermittent volunteers.

One of the biggest challenges faced by IDOC is attracting and retaining sufficient qualified staff to meet the needs of Indiana's highest security prisons, several of which are currently operating with custody staffing vacancy rates exceeding 30%. Relatively low unemployment throughout the state has created a highly competitive atmosphere, meaning that IDOC finds itself competing against other law enforcement entities and correctional service providers for a limited number of qualified applicants. The distance of many of the agency's facilities from major metropolitan areas is also a significant barrier to staffing.

To help deliver services to the incarcerated and paroled populations, IDOC maintains a variety of contracts with correctional services providers, the most significant of which are for the delivery of comprehensive healthcare, education, and food services (collectively, "Corrections Vendors"). For FY 2021-2022 and FY2022-2023, the agency received annual appropriations of more than \$160 million to pay for those services, and it is currently contracted with Centurion Health of Indiana LLC (Contract # D25-22-54061),

Aramark Correctional Services (Contract # 64161), and Ivy Tech Community College of Indiana (Contract # 54274).

From time to time, IDOC employees have sought outside employment with Corrections Vendors for a variety of reasons, including additional training and professional growth opportunities, evaluating new career paths, and, most often, to supplement income from low hourly wage rates. Historically, the agency has authorized this type of outside employment, provided it was conducted in compliance with relevant policies, rules, and statutes, to incentivize employee retention and bolster the delivery of critical services. However, in the wake of the 2015 revisions to IC 4-2-6-10.5, IDOC did not request from the Commission a formal advisory opinion as to the continuation of this practice, an oversight it now seeks to rectify.

## II. Hypothetical Scenario and Application of IC 4-2-6-10.5

IDOC acknowledges that a request of the Commission for a formal advisory opinion “must relate to an actual set of circumstances that applies to the requesting party.” 40 IAC 2-2-1(b). As stated above, IDOC has in the past authorized employees to work for Corrections Vendors, though the circumstances have varied, as have the positions and responsibilities. A hypothetical scenario is as follows:

IDOC employs an individual to work as a Correctional Officer at Wabash Valley Correctional Facility in Carlisle, Indiana, a town with a population of approximately 550, located in Sullivan County. The officer earns \$22.00 per hour, the recently increased starting wage for IDOC employment. The officer also wants to supplement IDOC wages by working a second job off shift, as is common in the public safety sector. However, outside employment opportunities are limited by the location of the facility, so the officer desires to work part-time in the facility for IDOC’s correctional food service vendor, 10-20 hours each week, earning \$14-16 per hour.

IDOC executed its contract with the food service vendor two years before the officer began working for the agency. The part-time position entails serving food to the facility’s incarcerated population and cleaning certain areas of the facility utilized by the vendor’s staff. The officer is not involved in food service contracting responsibilities for the agency or vendor, and the duties of the respective positions are not inherently incompatible.

While this scenario does not violate IC 4-2-6-5.5 (assuming there is also compliance with (a)(2)-(3)), IDOC understands that it may conflict with the current requirements of IC 4-2-6-10.5, which prohibits state employees from knowingly having a financial interest in a contract made by an agency. The prohibition does not apply to an employee who (1) does not participate in or have contracting responsibility for the agency, and (2) files a written statement with the inspector general before the employee executes the contract with the state agency. IC 4-2-6-10.5(b).

Previously, the Commission has found that state employees have a financial interest in their outside employers’ state contracts if their compensation is derived from or tied to those contracts. *See, e.g.*, Formal Advisory Opinions 2018-FAO-002; 09-I-13; and 09-I-11. The Commission has also recently held that an employee who is unable to comply with the requirement in IC 4-2-6-10.5(b)(2) due to the timing of a contract’s execution will not be exempted from the prohibitive effect of the statute. *See* Formal Advisory Opinion 2020-FAO-003.

As applied to the scenario described above, the Commission's opinion in 2020-FAO-003 would appear to prohibit the employee from working for the food service vendor because the contract between the agency and the vendor was executed prior to the employee seeking out the part-time employment opportunity (and prior to the beginning of their employment with the agency). Therefore, the employee could never comply with the written disclosure requirement in (b)(2), although they were not involved in any way with either party at the time of the contract's execution.

### III. Request for Review and Opinion on IC 4-2-6-10.5

IDOC is seeking the Commission's review of a potential conflict between the verbiage in the statute, which requires the filing of a written statement "before the *state officer, employee, or special state appointee executes the contract* with the state agency," and the application of the statute to an engagement in which the state employee is not a participant in the contracting process on behalf of either party. IC 4-2-6-10.5(b)(2) (emphasis added). On its face, the statute appears intended to limit an individual's ability to drive the parties together into a financial relationship from which the individual will benefit. Less likely, perhaps, is the expectation that the technical application of (b)(2) would prohibit an individual from working part-time for a service provider with which the State is engaged if that individual has no ability to dictate the terms of the engagement, nor the nature or extent of their financial interest derived from it.

IDOC's ultimate goal is to secure from the Commission a conclusive statement about the breadth of the application of IC 4-2-6-10.5. If the Commission interprets the statute to prohibit secondary employment in the situation described above, IDOC will ensure that any future requests are denied and any that may have existed since the revision of the statute are terminated. Alternatively, if the Commission determines that the purpose of the statute is not to prohibit this form of secondary employment, then the agency will carry out any technical requirements imposed by the Commission to ensure legitimacy and transparency in the process.

Should it be the latter, an option is to require any agency employee seeking this type of outside employment to submit a written statement to the Office of the Inspector General disclosing information necessary to evaluate the propriety of the employment (e.g., current role at IDOC, offered role at vendor, position-based responsibilities, compensation, etc.) in a reasonable time prior to beginning the employment, along with written approval from IDOC's Ethics Officer following an evaluation of the relevant rules and statutes. With respect to any relationship that may exist at the time the Commission's opinion is issued, IDOC could file collectively the required information for any employees who are currently engaged in such a practice pursuant to the agency's prior authorization. IDOC could also incorporate formally any such requirement into its internal policies and the terms of its contracts with Corrections Vendors, so as to ensure that the procedure is received as a mandate.

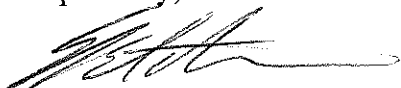
### IV. Application of IC 35-44.1-1-4 and Request for Opinion

If the Commission determines that outside employment for Corrections Vendors does not violate IC 4-2-6-10.5, nor any other section of IC 4-2-6, IDOC is also requesting the Commission's review of IC 35-44.1-1-4 and an opinion as to its application. Presumably, an opinion from the Commission as described in Section III above would satisfy the conditions set forth in IC 35-44.1-1-4(c)(5), but should the Commission require other steps to be taken to protect the agency's employees from criminal prosecution, the agency and its employees will follow them.



On behalf of the Indiana Department of Correction and its employees, thank you for your time and attention to this matter. I will look forward to attending the Commission's meeting on May 11, 2023, and I will be happy to provide any additional information to the Office of the Inspector General prior to the meeting.

Respectfully,

A handwritten signature in black ink, appearing to read 'E. Anderson', with a long horizontal flourish extending to the right.

Elliot Anderson  
Chief of Staff and Ethics Officer  
Indiana Department of Correction

CC: State Ethics Director  
Office of Inspector General



Eric Holcomb, Governor  
State of Indiana

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

May 1, 2023

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

*RE: Request for Formal Advisory Opinion for Dr. Frank Messina*

Dear Chairperson Noel and Members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Dr. Frank Messina, 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. Messina to return to work with employers who are contractors with FSSA.

FSSA believes it to be in the State of Indiana’s interest to hire the best and brightest physicians for work in state government. Ultimately those physicians may determine to return to the private sector to continue the work they are licensed to do.

Dr. Messina has been the Director of Clinical Operations for the Office of Medicaid Policy and Planning (“OMPP”) since February 7, 2022. As Director of Clinical Operations for OMPP, Dr. Messina’s duties include providing medical oversight, expertise and leadership to projects and operations within OMPP and reports to the Medicaid Director. Dr. Messina’s position oversees all clinical operations within OMPP.

Shortly after starting his current position with OMPP, Dr. Messina sought a Formal Advisory Opinion from the Ethics Committee, which was issued March 10, 2022 (2022-FAO-005), to determine the ethical implications, if any, of his continued employment with Eskenazi Hospital, IU Health and IU School of Medicine and has adhered to that advisory opinion’s requirements that he screen himself from participation in any matters in which Eskenazi, IU Health Physicians or IU Health would have a unique financial interest.

Dr. Messina works with the Pharmacy Team, led by a Pharmacy Director, and the Coverage and Benefits Team. Dr. Messina occasionally assists the Program Integrity Team when the medical



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director is unavailable. The Program Integrity Team is primarily responsible for reviewing suspected cases of fraud and abuse and making recommendations regarding Medicaid Providers.

Dr. Messina also participates in rule-making and vendor procurement activities at OMPP. Any rule update he participated in would have applied to all Medicaid Providers generally and any of his participation in vendor procurement, including the procedures and processes of choosing vendors, applied to all Medicaid Providers generally.

Dr. Messina has been offered the position of Medical Director of Transitions of Care with Eskenazi Hospital, and he would like to accept that offer of employment and begin work there August 1, 2023, or sooner if possible.

As Medical Director of Transitions of Care, Dr. Messina would occasionally treat patients in the Emergency Department, which could include the treatment of Medicaid patients. Eskenazi Health contracts with IU Health for professional physician services, which would provide his payment for patient care in the Emergency Department. Ninety percent (90%) of his position would be administrative, including acting as a “physician advisor” on the Eskenazi Utilization Review Committee determining appropriate levels of patient care, prior authorizations and denials from all payors for hospital services.

As Medical Director of Transitions of Care, Dr. Messina would also be involved in medical directorship for case managers and social workers, supporting disposition planning and the transfer of patients to and from Eskenazi Hospital.

Dr. Messina remains on faculty with Indiana University School of Medicine. Dr. Messina took an unpaid leave absence but maintained his faculty appointment while working for OMPP. Dr. Messina would like to return to full time employment with Indiana University School of Medicine, as well, in their Department of Emergency Medicine where he would teach medical and physician assistant students as well as resident physicians in training.

Dr. Messina is also a member of the Indiana Medical Licensing Board and plans to continue in that role, as well.

Eskenazi Health and IU Health Physicians are Indiana Medicaid enrolled Providers. Each have Indiana Health Coverage Program agreements with FSSA and receive Medicaid reimbursement. Eskenazi Health has five (5) active contracts with FSSA, and the Division of Mental Health and Addictions (“DMHA”) specifically. DMHA also certifies Eskenazi Health’s community health center. IU Health Physicians is affiliated with Indiana University Health (“IU Health”) and FSSA’s divisions have five (5) active contracts with IU Health. None of the IU Health contracts are with OMPP. The contracts with Eskenazi Health and IU Health Physicians are at the divisional level, none of which are with OMPP, and the FSSA divisions have ownership of the contracts.

Dr. Messina is not the owner or administrator of any contracts with FSSA or OMPP 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. He does not

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provide regulatory or license oversight on behalf of FSSA or OMPP for Eskenazi Health, IU Health or the IU School of Medicine.

Dr. Messina's role with Eskenazi Health and IU Health would not include any lobbying activities. Dr. Messina understands that he is prohibited from representing or assisting Eskenazi Health, IU Health or the IU School of Medicine in any particular matter involving the State of Indiana if he personally and substantially participated in the matter during his state employment.

Dr. Messina 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 Eskenazi Health and IU Health Physicians, from benefitting from same.

Based on the information above, I would request a determination by the Ethics Commission regarding Dr. Messina's post employment opportunity. Dr. Messina 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  
Indiana Family and Social Services Administration

## EXHIBIT A

**From:** Mader, Mark E <[MMader@ig.IN.gov](mailto:MMader@ig.IN.gov)>

**Sent:** Thursday, April 6, 2023 4:13 PM

**To:** Keyes, Jessica K <[Jessica.Keyes@fssa.IN.gov](mailto:Jessica.Keyes@fssa.IN.gov)>

**Subject:** 3ncrypt Informal Advisory Opinion Keyes (Messina); FSSA; Post-Employment (Cooling Off Period)

Jessica,

Thank you for contacting our office for ethics advice. We understand that you are requesting an informal advisory opinion for Dr. Frank Messina in your capacity as general counsel and ethics officer at the Family and Social Services Administration (FSSA). You tell us Dr. Messina has an opportunity to return to his previous employment with Eskenazi Health, Indiana University School of Medicine (IUSM) and Indiana University Health (IU Health). According to our research, IU Health is a non-profit institution and is unrelated to Indiana University (IU) except for a licensing agreement, which permits IU Health to use the IU name.

You note that Dr. Messina requested a Formal Advisory Opinion (FAO) from the State Ethics Commission (Commission) in 2022 ([2022-FAO-005](#)) regarding possible conflicts of interests for his outside employment with these institutions and that FSSA implemented a screen pursuant to the FAO's instructions. Dr. Messina is interested in determining whether there are any post-employment issues related to his return to his previous employers.

Dr. Messina tells us that he has been offered a position as the Medical Director of Transitions of Care with Eskenazi Health and plans to leave state employment to begin that position as of August 1, 2023, or possibly sooner. Dr. Messina notes that he will be returning to the same position that he held prior to accepting his current position with FSSA as Physician and Director of Clinical Operations (DCO) with FSSA's Office of Medicaid Policy and Planning (OMPP). Currently, Dr. Messina provides medical oversight, expertise and leadership to projects and operations within OMPP. Dr. Messina reports to the Medicaid Director of OMPP. In addition to those duties described above, Dr. Messina's position also oversees all clinical operations within OMPP and those performed by Managed Care Entities (MCEs).

Dr. Messina's additional duties include working with FSSA's Pharmacy Team, a Coverage and Benefits Team and the Program Integrity Team, which reviews suspected cases of fraud and abuse and makes recommendations regarding Medicaid providers. Dr. Messina also participates in rulemaking and vendor-procurement services on matters applicable to all Medicaid providers generally.

Dr. Messina reports that he has continued as a faculty member of IUSM and is currently on an unpaid leave of absence. Upon his post-employment, he will revert to being an active faculty member, and part of his salary will be paid through IU as it was before state employment. As an IUSM faculty member in the Department of Emergency Medicine, he will have responsibilities to teach medical and physician assistant students as well as "resident" physicians in training.

The remainder of his salary will be paid through IU Health as it was before. He will provide patient care (clinically) in the Eskenazi Emergency Department (ED) as he did prior to state employment. Eskenazi Health contracts with IU Health for professional physician services for the Eskenazi ED. He notes the compensation for his employment by IU Health in the Eskenazi ED will likely include treating Medicaid patients, which would be paid from general Medicaid funds.

As DCO, Dr. Messina supervises employees that use FSSA contracts in their daily work; however, he tells us he does not participate in the procurement nor management of these contracts. Dr. Messina describes his supervisory role regarding these contracts as validating the services provided and authorizing reimbursement. Dr. Messina pointed out that Eskenazi Health has four active contracts with FSSA, specifically with FSSA's Division of Mental Health and Addiction (DMHA). Dr. Messina also notes that IU Health Physicians is affiliated with IU Health and other FSSA divisions have five active contracts with IU/IU Health. The contracts with Eskenazi and IU/IU Health are at the division level, and none are with OMPP. Other FSSA divisions have ownership of these contracts.

Dr. Messina tells us, in reference to contract issues, that he has not negotiated any contracts directly; however, he states that he has overseen and approved time relating to some contracts. He points out that one of the medical directors who reports to him is a contractor for whom OMPP pays University Medical Diagnostic Associates (UMDA) for her time and that UMDA is affiliated with IU Health. He notes that *she has had this arrangement for over eight years* predating his employment with the State. He validates her hours worked and authorizes reimbursement as did his predecessor. Similarly, IU has a pilot project on complex case management that OMPP approved to be funded that predated his employment. His involvement, like that of the prior DCO, is in validating services provided and authorizing reimbursement.

Dr. Messina specifically references that he was involved in helping draft the scope of work, request for proposals and the proposed evaluation processes for two contracts: An authorization/utilization management contract to manage Medicaid fee for service members and a new contract for a MCE to oversee OMPP's new long-term services and supports program called "Pathways to Aging". Neither of these two projects would have had bids from Eskenazi Health, IUSM or IU Health/IU Health Physicians. Dr. Messina notes that any vendor's procedures and processes, and any scope of work that he influenced pertains to all Medicaid providers globally and not specifically to any one entity including Eskenazi Health, IU Health or IUSM.

Dr. Messina also told us he is a board member of the Indiana Medical Licensing Board (MLB), which he plans to continue in his post-employment.

Dr. Messina's inquiry primarily invokes consideration of the following Code of Ethics (Code) rules: IC 4-2-6-11, the post-employment rule; IC 4-2-6-9, the conflicts of interests related to decisions and votes rule; and IC 4-2-6-6, 42 IAC 1-5-10 and 42 IAC 1-5-11, the confidentiality rules. We have included the relevant definitions and rules at the end of this opinion.

## **1. IC 4-2-6-11- Post Employment**

The post-employment rule (IC 4-2-6-11) consists of two separate limitations: a “cooling off” period and a particular matter restriction.

A. The “cooling off” period

The first prohibition, commonly referred to as the cooling off or revolving door period, prevents a state employee from accepting employment: (1) as a lobbyist, (2) from an employer with whom the employee engaged in the negotiation or administration of a contract 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 the state employee 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 the state employee leaves state employment. In addition, a state employee is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer’s purpose is to influence the state employee in his or her official capacity as a state employee.

Regarding subsection (1), Dr. Messina would not be able to work as an executive branch lobbyist for one year after leaving state employment. Nothing in the information he provided indicates that he will serve as a lobbyist or perform any actions as a lobbyist in Indiana on behalf of these entities. Accordingly, it is unlikely that this portion of the cooling off period would apply to his post-employment opportunity. If Dr. Messina will have contact with state agencies in his post-employment, we encourage him to review IDOA’s [Executive Branch Lobbying Manual](#) to learn about the types of interactions with members of the executive branch, including FSSA, that are considered executive branch lobbying. **So long as Dr. Messina does not engage in any executive branch lobbying activities during the cooling off period, the lobbying restriction would not prohibit him from engaging in his post-employment opportunity.**

**Also, based on the information Dr. Messina provided, it does not appear that subsection (3) would apply to his potential positions with Eskenazi Health, IU Health or IUSM because he has not made any regulatory or licensing decisions in his position as DCO for OMPP that directly applied to any of the entities for which he plans to work or for those entities’ parents or subsidiaries.**

Regarding subsection (2), Dr. Messina states there are no potential contract issues that he has negotiated directly at OMPP; however, he has overseen and approved time relating to some contracts which individuals he supervises use in their daily work. He states that he was not directly involved in their procurement or management. His only involvement in these matters consists of validating services provided and authorizing reimbursement. He also reported that IU had a pilot project on complex case management that OMPP approved to be funded that predated his employment. He notes his involvement is validating services provided and authorizing reimbursement.

The State Ethics Commission (Commission) is the ultimate authority on the Code, and it has broadly interpreted the meaning of “administration” of a contract in the past. For example, in Formal Advisory Opinion [13-I-37](#), the Commission found that a state employee administered a

contract when she worked directly with the vendor, along with other employees, to fulfill the vendor's duties/deliverables set forth in the contract.

Whether Dr. Messina's involvement in validating services provided and authorizing reimbursement constitutes administering a contract on behalf of FSSA is a decision that is best left to the Commission. This is a very fact-sensitive question, and we cannot be certain how the Commission would decide this matter. As DCO, the Commission likely will find that Dr. Messina is in a position to affect the nature of the contract's administration.

**As a result, we recommend Dr. Messina seek a formal advisory opinion from the Commission to get a public and final determination on his potential post-employment opportunity, specifically regarding whether his involvement with the IU pilot project would trigger the cooling-off period and restrict him from working for IUSM for one year after leaving state employment.** For your convenience, we have included instructions for submitting a request for a formal advisory opinion from the Commission on our website: <http://www.in.gov/ig/2334.htm>.

**Dr. Messina also has the option to seek a post-employment waiver from FSSA's appointing authority.** A post-employment waiver would waive application of the post-employment rule and allow him to start with Eskenazi Health, IU Health and IUSM immediately upon leaving state employment. FSSA's appointing authority and Dr. Messina would need to present this waiver to the Commission for approval at one of its monthly meetings prior to starting employment. The requirements for a post-employment waiver are set out in IC 4-2-6-11(g).

**The next Commission meeting is May 11, 2023, and to request a formal advisory opinion for the May meeting, Dr. Messina must submit his request for a formal advisory opinion or post-employment waiver no later than May 1, 2023.**

B. The particular matter restriction

The second prohibition, commonly referred to as the "particular matter" restriction, prevents Dr. Messina from working on the twelve types of matters listed in IC 4-2-6-11(a) if he personally and substantially participated in the matter as a state employee. These matters are 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 statute specifically excludes "the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application" from the definition of particular matter. 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*.

As DCO for FSSA OMPP, Dr. Messina has likely personally and substantially participated in an application, a business transaction, a claim, a contract, a determination, an enforcement proceeding and/or an investigation. Accordingly, he would be prohibited from representing or assisting Eskenazi Health, IU Health, IU or any other person in any *of these matters* or other particular matter in which he personally and substantially participated as a state employee. So



long as Dr. Messina does not represent or assist a person on a particular matter in which he personally and substantially participated, this provision should not present an issue for him.

Please note that this restriction would not prevent him from working on any new matters for Eskenazi Health, IU Health/IU Health Physicians, IUSM/IU or anyone else that involve FSSA OMPP.

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

IC 4-2-6-9 prohibits a state employee from participating in any decision or vote, or matter related to that decision or vote, if the employee has knowledge that various persons may have a “financial interest” in the outcome of the matter, including (1) the state employee himself/herself; (2) an immediate family member; (3) a business organization in which the employee is serving as an officer, director, a member, a trustee, a partner or an employee; and (4) any person or organization with whom the state employee is negotiating 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 Commission has determined that employment negotiations begin when there is a back-and-forth exchange. The information that Dr. Messina provided indicates that he is returning to his former employers on or before August 1, 2023. Accordingly, employment negotiations have begun for purposes of this rule. Until such time as Dr. Messina leaves state employment, the screen the Commission directed FSSA to establish in 2022-FAO-005 regarding the business relationships Eskenazi Health and IU Health/IU Health Physicians have with FSSA remain in place and restrict Dr. Messina from participating in any decision or vote, or any matter related to such decision or vote, in which Eskenazi Health and IU Health/IU Health Physicians have a financial interest.

Pursuant to the rule’s notification requirements, FSSA has also filed a Conflicts of Interests – Decisions and Votes disclosure form with our office. So long as Dr. Messina continues to abstain from matters relating to Eskenazi Health, IU Health/ IU Health Physicians during the remainder of his state employment, he will be in compliance with IC 4-2-6-9 and its notification requirements regarding these entities.

You write that Dr. Messina will return to being an active faculty member of IUSM when he leaves state employment. You also write that he currently validates services and authorizes payments on the IU pilot project. As such, he likely has a potential conflict of interests regarding IUSM and IU, and he should recuse himself from participating in any matters related to IUSM and IU during the remainder of his time with FSSA. As you know, mere recusal from such matters is not enough. Dr. Messina also must notify FSSA’s appointing authority and 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 that includes IUSM and IU in accordance with IC 4-2-6-9’s notification requirements. This could be a new disclosure form or an addition to his previously filed disclosure form.

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

Dr. Messina should keep in mind the ethics rule pertaining to confidential information found at IC 4-2-6-6. IC 4-2-6-6 prohibits a state employee 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 Dr. Messina receives from Eskenazi Health, IUSM or IU Health does not result from information of a confidential nature that he learned in his position with FSSA, any such post-employment would not violate IC 4-2-6-6.

Finally, Dr. Messina 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 a state employee 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 Dr. Messina would possess information of a confidential nature by virtue of his position at FSSA that could be used to benefit any person, including Eskenazi Health, IU Health/IU Health Physicians, IU/IUSM or their patients, students, or colleagues, he will need to ensure that he complies with these rules.

### **4. IC 4-2-6-17 and 42 IAC 1-5-13 - Use of State Property and Ghost Employment**

Rules relating to the use of state property (42-IAC 1-5-12) and ghost employment (42 IAC 1-5-13) referenced in Dr. Messina's Formal Advisory Opinion remain in effect until such time as Dr. Messina leaves state employment. These rules prohibit Dr. Messina from using state time or state property; such as his state computer, email account or phone; for anything other than state business during the remainder of his time with the State.

### **5. Service on the MLB**

Dr. Messina indicates he would like to continue as an appointed board member of the MLB when he leaves state employment. As a MLB board member, Dr. Messina is a special state appointee. As a special state appointee, Dr. Messina remains subject to the Code. Although we focused this informal advisory opinion on Dr. Messina's post-employment questions, Dr. Messina may request an informal advisory opinion regarding any restrictions that may apply to him as a special state appointee due to his continuing membership on the MLB. Should Dr. Messina pursue a Formal Advisory Opinion from the Commission regarding his post-employment activities, he may consider requesting the Commission's guidance regarding any Code implications for his MLB role in light of his post-employment activities. If he requests a Formal Advisory Opinion regarding his role as a special state appointee on the MLB, we encourage him to provide additional details regarding his role on the MLB and whether he would be in a position to participate in any matters in which his outside employers (Eskenazi Health, IU Health or IUSM) would have a financial interest.

Thank you again for submitting your inquiry. Please us know if you or Dr. Messina 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 an informal advisory opinion, 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,

Mark Mader  
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:

(1) "Advisory body" means an authority, a board, a commission, a committee, a task force, or other body designated by any name of the executive department that is authorized only to make nonbinding recommendations.

...

(5) "Business relationship" includes the following:

(A) Dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:

(i) a pecuniary interest in a contract or purchase with the agency; or

(ii) a license or permit requiring the exercise of judgment or discretion by the agency.

(B) The relationship a lobbyist has with an agency.

(C) The relationship an unregistered lobbyist has with an agency.

(6) "Commission" refers to the state ethics commission created under section 2 of this chapter.

(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.

...

(18) "Special state appointee" means a person who is:

(A) not a state officer or employee; and

(B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:

(i) is authorized by statute or executive order; and

(ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.

#### **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 4-2-6-10.5 Prohibition against financial interest in contract; exceptions; disclosure statement; penalty for failure to file statement**

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

- (1) does not participate in or have contracting responsibility for the contracting agency; and
- (2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

- (1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.
- (2) An affirmation that the contract:
  - (A) was made after public notice and, if applicable, through competitive bidding; or
  - (B) was not subject to notice and bidding requirements and the basis for that conclusion.
- (3) A statement making full disclosure of all related financial interests in the contract.
- (4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.
- (5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

- (1) fails to file a statement required by rule or this section; or
- (2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

#### **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**

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. (Office of the Inspector General; 42 IAC 1-5-10; filed Dec 7, 2005, 2:45 p.m.: 29 IR



1210; readopted filed Aug 14, 2012, 11:00 a.m.: 20120912-IR-042120281RFA; readopted filed May 4, 2018, 11:26 a.m.: 20180530-IR-042180159RFA)

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

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law. (Office of the Inspector General; 42 IAC 1-5-11; filed Dec 7, 2005, 2:45 p.m.: 29 IR 1210; readopted filed Aug 14, 2012, 11:00 a.m.: 20120912-IR-042120281RFA; readopted filed May 4, 2018, 11:26 a.m.: 20180530-IR-042180159RFA)

**IC 4-2-6-17 Use of state property for other than official business; exceptions; violations**

Sec. 17. (a) Subject to [IC 4-2-7-5](#), a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than 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. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

Mark Mader  
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FORM DETAILS

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First Name: Jessica

Last Name: Keyes

Email: jessica.keyes@fssa.in.gov

Phone: (317) 234-3884

State Agency: FSSA

Description of Your State Occupation: Ethics Officer

What is your ethics question? I am writing on behalf of Dr. Frank Messina regarding a post-employment opportunity to go back to his previous job with Eskenazi/IU School of Medicine/IU Health. Dr. Messina presented to the State Ethics Commission last year, and also submitted a screen related to outside employment involving these entities. Please do not hesitate to contact me with any questions. Thank you!

Describe your State Occupation:

My current title with the Office of Medicaid Policy and Planning (OMPP) in the Family and Social Services Agency (FSSA) is Physician and Director of Clinical Operations. My duties include providing medical oversight, expertise and leadership to projects and operations within OMPP. I report to the Medicaid Director. My position oversees all clinical operations within OMPP and as performed by the Managed Care Entities.

Additionally, I work with FSSA's Pharmacy Team, led by a Pharmacy Director, and a Coverage and Benefits Team. My team also works with the Program Integrity Team. The Program Integrity Team at OMPP is primarily responsible for reviewing suspected cases of fraud and abuse and making recommendations regarding Medicaid providers.

I have participated in rule-making and vendor procurement activities in my current position. These activities were on matters applicable to all Medicaid providers generally. There are contracts that those I supervise renew and use in their daily work that I have not been directly involved in procuring or managing. My involvement, like that of the Director of Clinical Operations before me, is in validating services provided and authorizing reimbursement.

What is your ethics question:

I have been offered a position as the Medical Director of Transitions of Care with Eskenazi hospital and plan to leave state employment to begin that position as of August 1, 2023 or sooner if that is best for the State. I am asking for an informal advisory opinion that there is not a post-employment ethics issue or other statutory reason I would not be able to work in this new position which involves Eskenazi Health, Indiana University and IU Health.

I have an offer from Eskenazi Health to return to the same position I had before coming to work for the State. I have continued as a faculty member of the IU School of Medicine (IUSM), currently on an unpaid leave of absence. I will revert to an active faculty member and part of my salary will be paid through Indiana University as it was before. As an IUSM faculty member in the Department of Emergency Medicine, I will have responsibilities to teach medical and physician assistant students as well as "resident" physicians in training.

The remainder of my salary will be through IU Health again as it was before. I will perform 0.1 FTE taking care of patients (clinically) in the Eskenazi Emergency Department as I did before. Eskenazi contracts with IU Health for professional physician services like mine will be in the Emergency Department. As I will be providing patient care in the Emergency Department, this will include Medicaid patients similar to any other physician providing medical services for IU Health Physicians. My compensation would not be tied to the charges and collections that I generate or the payer mix of the patients for which I care; however, some of my fees may be paid from general Medicaid funds. I will not bill patients or insurance directly.

The bulk of my time, 0.9 FTE, will be for administrative services provided to Eskenazi Health. Those will include acting as the main one of 2 “physician advisors” on the Eskenazi utilization review committee. I will be participating in various utilization review functions including determinations of appropriate levels of care for patients in Eskenazi Hospital and I will manage prior authorizations and denials from all payors for hospital services. “All payors” will include Indiana Medicaid fee for service as well and the managed care entities for patients on various Indiana Medicaid programs. I may be asked to again chair the Eskenazi delegated credentialing committee (various payors delegate to this committee to credential providers in their network providing services at Eskenazi Health). I will also provide medical directorship for Eskenazi case managers and social workers including assisting with disposition planning. As the medical director for care transitions, I will also be involved in patients transferring into Eskenazi from other facilities and out from Eskenazi to other facilities. I will also be a member of various other Eskenazi committees including the clinical services oversight committee and the trauma committee.

I am currently a member of the Indiana Medical Licensing Board and plan to continue in this role.

I presented to the State Ethics Commission and prepared and filed a screen related to my outside employment with Eskenazi and IU Health (on or about April 28, 2022). I understand that there is a cooling off period for 365 days for 1) executive branch lobbying; 2) if I engaged in the negotiation or administration of contracts with the employer; and 3) if I made regulatory or licensing decisions that directly applied to the employer. I also understand that there is a particular matter post-employment restriction that extends to the life of the matter, not just 365 days.

In my work with the state, any decisions I made or contributed to regarding providers were not specific to Eskenazi/IU Health, but were broadly applied to all entities/clinicians. In my work with the program integrity team, pursuant to the screen, I asked colleagues to make decisions and weigh in regarding any provider who had ties to Eskenazi/IU Health. Furthermore, the reviews conducted by the Program Integrity Team usually concern the actions of an individual and not an entity; therefore, there were no decisions that would have a unique impact on IU Health Physicians, Eskenazi or their related entities.

I have participated in rule-making and vendor procurement activities in my current position. These activities were on matters applicable to all Medicaid providers generally. As stated in my petition to the State Ethics commission 2022-FAO-005 dated March 10, 2022, I have screened myself from the only issue (related to Pharmacy) that involved Eskenazi Health directly. Any rule update I helped inform during my time as a state employee has been applicable to all Medicaid Providers generally.

I was involved in helping draft the scope of work and request for proposals for a new vendor to manage the prior authorization and utilization management functions for the Medicaid fee for

service members as the previous vendor's contract was ending. I was involved in the proposal evaluation process used to choose the new vendor. That vendor's procedures and processes, and any scope of work I influenced, pertains to all Medicaid providers globally and not specifically to any one entity including Eskenazi Health, IU Health or the IU School of Medicine. I was also involved in the proposal evaluation process to award a new contract to a managed care entity to oversee OMPP's new managed long term services and supports program called "Pathways to Aging". That process is completed and the MCE's have been announced. Neither the prior authorization/utilization management nor Pathways to Aging processes would have had bids from Eskenazi or IU School of Medicaid/IU Health Physicians.

As to potential contract issues, there are none that I have negotiated directly, however, I have overseen and approved time relating to some contracts. One of the medical directors who reports to me is a contractor for whom OMPP pays "University Medical Diagnostic Associates" for her time. UMDA is affiliated with IU Health. She has had this arrangement for over 8 years predating my employment with the State. My involvement, like that of the Director of Clinical Operations before me, is in validating her hours worked and authorizing payment. Similarly, Indiana University has a pilot project on complex case management that was approved to be funded by OMPP that predated my employment. My involvement, like that of the Director of Clinical Operations before me, is in validating services provided and authorizing reimbursement. Eskenazi and IU Health Physicians are Indiana Medicaid enrolled Providers. Each have Indiana Health Coverage Program provider agreements with FSSA and receive Medicaid reimbursement. Eskenazi (Health and Hospital Corporation of Marion County) has four active contracts with FSSA, specifically with FSSA's Division of Mental Health and Addiction (DMHA). DMHA also certifies Eskenazi's community mental health center. IU Health Physicians is affiliated with IU Health. FSSA's divisions have five active contracts with Indiana University/IU Health. The contracts with Eskenazi and Indiana University/IU Health are at the division level, and none are with OMPP. The FSSA divisions have ownership of the contracts.

In summary, I will be returning to my previous position, the skills for which I was recruited by the State and which I was able to apply to Indiana Medicaid more globally. None of my State activities will allow me to personally benefit from my employment with either Eskenazi Health, Indiana University or IU Health nor were any of my activities of direct benefit to these entities. I also understand that I am not to share or benefit from confidential information learned through state employment. What post-employment concerns, if any, should be addressed prior to my leaving the state?



Eric Holcomb, Governor  
State of Indiana

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

May 5, 2023

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

*RE: Request for Formal Advisory Opinion for Dr. Frank Messina – Addendum*

Dear Chairperson Noel and Members of the Ethics Commission:

Dr. Frank Messina noted in his May 1, 2023 Request for Formal Advisory Opinion that he is a member of the Indiana Medical Licensing Board (“MLB”) and would like to continue in that role. Dr. Messina would like to extend his request regarding application of the State Code of Ethics to his position on the MLB as well.

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. They oversee waiver of certain licensing requirements and monitor compliance with the provisional licenses they issue as a result. Those individual licensing requirement matters are brought to the MLB by those seeking licensing directly.

The MLB also oversees allegations of unprofessional conduct which 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, 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 a license should be terminated, suspended or restricted.



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

Because of this important work done on the behalf of his profession and the citizens of Indiana, Dr. Messina would like to continue to work with the MLB. Thank you for your consideration.

Cordially,

A handwritten signature in blue ink, appearing to read "M. Gerber", with a large, sweeping flourish at the end.

Matthew A. Gerber  
Ethics Officer  
Family and Social Services Administration



