

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
September 14, 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; 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; Doreen Clark, Staff Attorney; Mike Lepper, Special Agent; Jason Fajt, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Beth Green, General Counsel, Indiana Department of Workforce Development; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Bart Herriman, Commissioner, Natural Resources Commission; Elizabeth Gamboa, Ethics Officer, Natural Resources Commission; Chris Serak, Ethics Officer, Indiana Department of Transportation; Josh Brandle, Legal Analyst, Indiana Department of Revenue; Matthew Gerber, Ethics Officer, Indiana Family and Social Services Administration; Jillean Battle, Chief Deputy Treasurer, Indiana Office of the Treasurer; and David Bausman, General Counsel, Department of Natural Resources.

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 (4-0).

Commissioner Sanchez moved to approve the Minutes of the August 10, 2023, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (4-0).

III. Request for Formal Advisory Opinion

2023-FAO-007

Bart Herriman, Commission Member

Elizabeth Gamboa, Ethics Officer

Indiana Natural Resources Commission

Bart Herriman is a special state appointee, appointed by the Governor of Indiana to serve on the Natural Resources Commission (NRC). The NRC serves as the ultimate authority for the Indiana Department of Natural Resources (DNR).

Pursuant to IC 4-21.5-3 and 312 IAC 3-1, an administrative law judge (ALJ) employed by the NRC conducts evidentiary hearings and issues non-final orders in matters before the NRC. Parties to such hearings may object to the non-final order issued by the ALJ, invoking a process whereby

parties' objections are set for discussion at a public meeting conducted by the NRC's Administrative Orders and Procedures Act (AOPA) Committee (Committee). The Committee is comprised of three NRC Commissioners, one of which is currently Mr. Herriman.

Upon review of materials for an AOPA Committee meeting set for August 9, 2023, Mr. Herriman discovered that an attorney employed by the law firm (Firm) at which Mr. Herriman is a partner had entered an appearance in a case before the AOPA Committee. Mr. Herriman ceased his review of the case materials and notified the AOPA Committee, the NRC and the NRC's ethics officer, Elizabeth Gamboa. Mr. Herriman recused himself from participating in the August 9, 2023, AOPA Committee meeting.

On August 10, 2023, Mr. Herriman filed a disclosure statement with the Commission outlining the potential conflict of interests. The disclosure statement describes the implementation of a screen established by Ms. Gamboa. In further accordance with the requirements of a disclosure statement outlined in IC 4-2-6-9 (b)(2), Mr. Herriman and Ms. Gamboa signed the disclosure statement and provided it to the NRC's appointing authority, Bryan Poynter.

Pursuant to the screening plan documented in the disclosure statement, Mr. Herriman will require all attorneys at the Firm to report any potential conflicts that could arise as it pertains to his role as a special state appointee. Mr. Herriman will notify the NRC's Hearings Division staff by email of any matters involving the Firm's attorneys that could potentially come before the AOPA Committee. Upon the scheduling of a hearing before the AOPA Committee, NRC's Hearings Division will notify the AOPA Committee of any potential conflicts, and Mr. Herriman will recuse himself from participating in any matters before the AOPA Committee involving cases in which a conflict has been identified.

Mr. Herriman is seeking the Commission's FAO regarding the sufficiency of his disclosure statement and screening plan under the Code.

Mr. Herriman's request for a FAO invokes consideration of the provisions of the Code pertaining to conflicts of interests in decisions and votes. The application of this provision to Mr. Herriman's circumstances is analyzed below.

Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Mr. Herriman 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 Mr. Herriman from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which he serves as an officer, director, member, trustee, partner or employee has a financial interest in the matter.

IC 4-2-6-9(b) requires that a special state appointee 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 with the Commission.

In this case, Mr. Herriman has both notified the NRC's ethics officer and appointing authority and has filed a written disclosure statement.

The Commission does not address whether a potential conflict of interests exists under this rule such that it would require Mr. Herriman's disclosure, recusal and screen from AOPA Committee matters in which parties are represented by attorneys from Mr. Herriman's Firm.

The Commission finds that the screen established under the written disclosure statement filed by Mr. Herriman is sufficient to address any potential conflict of interests between Mr. Herriman's Firm and Mr. Herriman's role as a special state appointee, should such potential conflicts arise. The Commission further commends Mr. Herriman for his actions in identifying a potential concern under the Code and for taking immediate steps to address any appearance of impropriety in the performance of his duties on the AOPA Committee.

The Commission suggests that, in addition to recusing himself from participation in AOPA Committee hearings involving parties represented by attorneys employed at Mr. Herriman's Firm, Mr. Herriman may consider physically removing himself from attendance at such a hearing if practicable.

The Commission notes that, irrespective of the applicability of the Code and measures that the Code may require, as a licensed attorney in the State of Indiana, Mr. Herriman remains subject to the requirements outlined in the Indiana Rules of Professional Conduct. The Commission advises Mr. Herriman that the Indiana Supreme Court Disciplinary Commission offers ethics opinions to active attorneys in good standing regarding the Indiana Rules of Professional Conduct.

Commissioner Krauss to approve the Commission's findings, and Commissioner Finnerty seconded the motion, which passed (4-0).

IV. Request for Formal Advisory Opinion

2023-FAO-008

Ashley Taylor, former state employee
Indiana Department of Transportation

Ashley Taylor is a former state employee, serving from June 2018 to August 2022 as an Environmental Manager 2 for the Indiana Department of Transportation (INDOT) and as the North Region Environmental Biologist for the Indiana Department of Natural Resources (DNR).

Ms. Taylor left state employment on August 18, 2022. She is currently employed as an environmental specialist at Lochmueller Group (Lochmueller), a consulting firm.

As part of Ms. Taylor's previous job duties at DNR, she reviewed early coordination letters regarding various local and state projects. This process included her recommendations regarding minimizing impact to the environment based on the nature of the proposed project. For example, she provided recommendations specific to a bridge replacement project to allow wildlife passage and to minimize impact to the waterway.

Ms. Taylor's recommendations were included as part of the formal environmental response (ER) letter, which is included as part of a project's National Environmental Policy Act (NEPA) environmental documentation. The recommendations that Ms. Taylor provided were derived from a list of standard recommendations by project type. Such recommendations become commitments on a proposed project. Although Ms. Taylor provided the recommendations via DNR's ER letter, most (but not necessarily all) recommendations are covered by the Indiana Department of Transportation's (INDOT) standard specifications and have been identified by INDOT as commitments that shall not be included as part of the NEPA document.

Ms. Taylor also reviewed Construction in a Floodway (CIF) permit applications in her role at DNR.

Ms. Taylor has identified a particular project that she worked on at DNR (INDOT Des. No. 1700025), involving U.S. 41 in Lake County (U.S. 41 Project), which serves as the basis for this FAO request. At her previous role at DNR, she reviewed the ER letter and provided the "Fish & Wildlife Comments" section of the ER letter as part of the early coordination process for the U.S. 41 Project.

Lochmueller was not initially involved in this project but is currently working to enter into a contract for the project. Ms. Taylor notes that the recommendations she provided via the DNR's ER letter are not legally binding, and only conditions listed on an approved CIF permit are legally binding. Ms. Taylor provides that she did not review the CIF permit application for the U.S. 41 Project, and she does not believe an application for one has been submitted yet.

Ms. Taylor asks whether her review of the U.S. 41 Project's ER letter and the provision of Fish & Wildlife recommendations for the DNR's ER letter constitutes personal and substantial participation in the public works project such that the post-employment rule's particular matter restriction would prohibit her potential involvement in the U.S. 41 Project on behalf of Lochmueller.

Ms. Taylor's request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Post-employment and Confidential Information. The application of each provision to Ms. Taylor's circumstances 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.

1. The "cooling off" period

The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Taylor from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances.

As it has been more than 365 days since she left state employment, Ms. Taylor is no longer subject to the provisions of the cooling off period under the Code's post-employment rule.

2. The particular matter restriction

The second prohibition under the post-employment rule, commonly referred to as the "particular matter" restriction, prevents a former state employee from working on the twelve types of matters listed in IC 4-2-6-11(a) if he/she 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 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*.

Ms. Taylor's participation in the U.S. 41 Project was limited to reviewing the ER letter and authoring the "Fish & Wildlife Comments" section of the ER letter. Ms. Taylor did not have wide discretion in choosing the recommendations listed in the Fish & Wildlife Comments of the ER letter, as they are drawn from a list of recommendations that DNR maintains, and which are determined by project type. The recommendations included in DNR's ER letter are not binding. If a project moves forward and a CIF permit is deemed necessary, DNR would look to recommendations provided in the ER letter to include as conditions in a CIF permit; however, Ms. Taylor did not participate in the review of a CIF permit for the U.S. 41 Project prior to leaving state employment.

The Commission finds that the U.S. 41 Project in Lake County is a public works project subject to the particular matter restriction of the Code's post-employment rule. The Commission further finds that Ms. Taylor personally participated in the U.S. 41 Project by reviewing and providing content for DNR's ER letter during the early coordination process.

Although Ms. Taylor's participation in the early coordination process for the U.S. 41 Project was personal, the Commission finds that it was not substantial; therefore, the Code does not prohibit Ms. Taylor from assisting Lochmueller or any other person with the U.S. 41 Project in her post-state employment activities.

B. Confidential information

IC 4-2-6-6 prohibits Ms. Taylor 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 Lochmueller. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent Ms. Taylor has acquired such confidential information obtained in her role at DNR or INDOT, she is prohibited not only from divulging that information, but from ever using it to benefit any person, including Lochmueller, in any manner.

Commissioner Krauss to approve the Commission's findings, and Commissioner Sanchez seconded the motion, which passed (4-0).

V. **Request for Formal Advisory Opinion**

2023-FAO-009

Amy Borland, former state employee

Indiana Department of Natural Resources

Amy Borland is a former state employee, having previously served in the Indiana Department of Natural Resources' (DNR) Division of Historic Preservation and Archaeology (DHPA) from January 2001 to April of 2023. In her role at DNR, Ms. Borland was responsible for the planning, implementing and execution of the Indiana Historic Sites and Structures Inventory.

During her tenure at DNR, Ms. Borland started the planning for a Marion County survey that DNR planned for 2025. Prior to leaving state employment, she worked for approximately three months on preliminary mapping of current historic districts in Marion County's Center Township and noted areas where further investigation would be necessary to identify new historic districts. She did not progress to the point of identifying proposed new historic districts.

After Ms. Borland's preliminary work on Marion County's Center Township survey, but prior to leaving state employment, the Indiana Department of Transportation (INDOT) approached DNR about funding and coordinating a potential 2024-2026 Marion County survey project (Project), identifying existing and new historic districts in Marion County. Ms. Borland did no further work on Marion County historic district mapping at DNR following INDOT's proposal.

After leaving state employment Ms. Borland started employment in April of 2023 for Gray & Pape (Firm), a cultural resources management firm. She is employed as an architectural historian/principal investigator.

The Firm is likely to bid on the Project. This public works project will be offered for bid by the INDOT in October of 2023. The Project involves the completion of planning, surveying and recording of historic resources in six Marion County townships, including Center Township. The Project will involve considerable interaction with DHPA. If the Firm bids and is selected for the Project, it will provide one qualified professional at DHPA for the duration of the Project to plan, oversee, review and approve records. The Firm and its qualified professional would identify potential historic districts in the six Marion County townships for DHPA review and approval and will coordinate extensively with INDOT and DHPA.

Ms. Borland, as the sole architectural historian in the Firm working in Marion County, would play a key role in the Project if the Firm is selected.

Ms. Borland requested the Commission’s Formal Advisory Opinion on the application of the Code to her potential role at the Firm as it relates to the Project.

Ms. Borland’s request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Post-employment and Confidential Information. The application of each provision to Ms. Borland’s circumstances 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.

1. The “cooling off” period

The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Borland from accepting employment from an employer for 365 days from the date that she left state employment under various circumstances.

The Commission notes that Ms. Borland left state employment in April of 2023 and began work at the Firm that same month.

As Ms. Borland had already accepted employment at the Firm within the 365-day cooling-off period, the Commission declines to retroactively analyze the applicability of this provision of the post-employment rule.

2. The particular matter restriction

The second prohibition under the post-employment rule, commonly referred to as the “particular matter” restriction, prevents a former state employee from working on the twelve types of matters listed in IC 4-2-6-11(a) if he/she 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 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*.

The Project is a public works project, and therefore a particular matter, as contemplated by the Code’s post-employment rule. As such, Ms. Borland would be prohibited from assisting the Firm or any other party on the Project in her post-state employment activities if she personally and substantially worked on the same particular matter as a state employee.

Ms. Borland provides that her participation in the preliminary work leading up to the Project was limited to the initial mapping of current historic districts in Marion County, Center Township and

noting areas where further investigation would be necessary to identify new historic districts. Ms. Borland worked on the Marion County, Center Township mapping for approximately three months during her state employment and did not work any further on the matter following INDOT's proposal to DNR to fund and coordinate the Project. The Project's scope extends beyond Center Township to include other townships in Marion County.

The Commission finds that the Marion County survey work that Ms. Borland performed at DHPA is a part of the same particular matter as the Project. The expansion of the scope of the Marion County mapping to include additional townships and INDOT's assumption of funding and project coordination duties do not change the matter's character; therefore, the Marion County survey work is part of the same particular matter as the Project under the Code's post-employment rule.

The Commission further finds that Ms. Borland's work on the Project as a state employee was both personal and substantial; therefore, she is prohibited from assisting the Firm or any other person with the Project, unless the Commission were to approve a waiver granted by DNR's Appointing Authority pursuant to IC 4-2-6-11(g). The Commission further notes that unless a waiver is issued and approved by the Commission, Ms. Borland is prohibited from assisting the Firm or any other person with the Project in her post-state employment activities for the entire life of the Project.

B. Confidential information

IC 4-2-6-6 prohibits Ms. Borland 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 the Firm. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

The Commission notes that if Ms. Borland has acquired such confidential information obtained in her role at DHPA, she is prohibited not only from divulging that information but from ever using it to benefit any person, including the Firm, in any manner.

Commissioner Krauss to approve the Commission's findings, and Commissioner Sanchez seconded the motion, which passed (4-0).

VI. Ethics Director's Report

State Ethics Director Sean Gorman provided the following information to the State Ethics Commission:

INFORMAL ADVISORY OPINIONS:

20 IAOs have been issued since the August 10, 2023 meeting, involving primarily the same issues that we often see: Post employment and moonlighting in outside employment or professional activities. We received a few gifts rule questions as well.

OUTREACH:

OIG provided ethics presentations to the Indiana Commission on the Social Status of Black Males. The Ethics Officer for the Indiana Civil Rights Commission, under which that Board exists, reached out and asked for information to be presented to the Commission members at their regular meeting in particular regarding conflicts of interests in contracts as they were preparing to release a grant opportunity. This Board has a handful of dedicated positions for Indiana lawmakers, to whom we have previously determined are not subject to the Code of Ethics even in their dual roles.

OIG also provided a general ethics presentation to the Indiana State Public Retirement Systems' (INPRS) agency wide meeting. Received positive feedback.

We conducted our third ethics officer roundtable event on August 22, 2023.

OIG provided an ethics presentation to all staff in two sessions for the agencies within the Lieutenant Governor's office: Indiana State Department of Agriculture (ISDA), Indiana Housing and Community Development Authority (IHCDA), and the Indiana Office of Community and Rural Affairs (OCRA). Lt. Governor Crouch has announced her candidacy for governor, and we were asked to focus specifically on the rule regarding political activity.

Should the Commission have any suggestions for further outreach possibilities, please let me know as I think it is a critical part of my role to assist in increasing awareness of the Code of Ethics and to get people to thinking about how it may apply to them and to stress the availability of resources the OIG can offer.

VII. Adjournment

Commissioner Krauss moved to adjourn the public meeting of the State Ethics Commission. Commissioner Sanchez seconded the motion, which passed (4-0).

The public meeting adjourned at 11:08 a.m.



Eric J. Holcomb
Governor

Lindsay M. Weaver, MD, FACEP
State Health Commissioner

October 2, 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 Debra Franco in her post-employment with Larris-IFY Home Care.

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.
- 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.

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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. Franco served as the Nurse Surveyor Area Supervisor in the Home and Community-Based Care Division at the Indiana Department of Health before retiring in August 2023. This position did not involve decision-making authority over contracts. Ms. Franco supervised a surveyor team in an area that included survey activity of Larris-IFY Home Care (Larris). In this role, she would have had some decision-making authority over survey activity and helped decide which federal and state tags were appropriate to cite during surveys. The resulting tags would be considered in determining Larris-IFY Home Care's eligibility for federal programs and enforcement activity by IDOH. However, Ms. Franco did not have final decision-making authority over tags or enforcement activity. Final decisions would be determined by the program director and division director supervising Ms. Franco. Larris was last surveyed by Ms. Franco and her team in May 2021.

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

The position Ms. Franco hopes to secure with Larris-IFY Home Care would involve chart review, quality assessment and performance improvement activities on a part-time basis, (two days a week).

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:

Ms. Franco's proposed position with Larris will not involve any contact with IDOH surveyors or involvement in survey activity at the agency. Ms. Franco 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. Additionally, if the employment waiver is approved IDOH will provide a formal written notification to Ms. Franco and Larris that Ms. Franco must be screened out of contact with IDOH on all regulatory matters during the "cooling off" period.

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:

Ms. Franco has extensive experience with Home Health Agencies and compliance with state and federal regulations. Her work reviewing charts and performing improvement activities would likely improve the quality of care for clients of Larris in addition to improving the record keeping for this agency. This additional oversight at Larris provides an overall benefit for the public by improving the services they provide to the community.

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

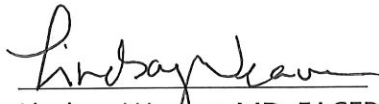
A denial would result in a substantial economic hardship. Ms. Franco is currently dealing with a health condition and requires this additional income to pay for costly medications not covered by her health insurance.

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.


Lindsay Weaver, MD, FACEP

10/02/2023
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).


Erin R. Elam

10/02/2023
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



Eric J. Holcomb
Governor

Lindsay M. Weaver, MD, FACEP
State Health Commissioner

October 2, 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 Deborah Franco

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 Deborah Franco's proposed employment with the Insurance Institute of Indiana.

I regret that I am unable to appear in person to present the waiver. 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 October 12, 2023. Chief of Staff Shane Hatchett will attend the Commission meeting on my behalf.

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

Sincerely,

A handwritten signature in black ink that reads 'Lindsay Weaver'.

Lindsay Weaver, MD, FACEP
State Health Commissioner

cc: Indiana Office of Inspector General

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Indiana
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Health



Eric J. Holcomb
Governor

Lindsay M. Weaver, MD, FACEP
State Health Commissioner

October 2, 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 Dr. Guy Crowder

Dear Chairperson Noel and members of the Ethics Commission:

The Indiana Department of Health ("IDOH"), on behalf of Dr. Guy Crowder, requests a Formal Advisory Opinion from the State Ethics Commission addressing whether it would be a conflict of interest for Dr. Crowder to continue his outside employment with Franciscan Health as a Travel Medical Physician in Direct Patient Care and international volunteer work while employed as the Chief Medical Officer for IDOH.

Dr. Crowder will join IDOH after serving Medical Director of Employee Health and Travel Medicine at Franciscan Health and the Franciscan Physician. He is board certified in family medicine and holds certifications in clinical tropical medicine and traveler's health. Dr. Crowder is scheduled to begin his work at IDOH on November 6, 2023.

The Chief Medical Officer position is a clinical executive position that reports to the State Health Commissioner. The Chief Medical Officer's primary role is to provide the Commissioner, executive team and divisions with medical guidance, support and advocacy of agency initiatives based on best medical practices. As the Chief Medical Officer, Dr. Crowder will provide medical oversight, expertise and leadership to projects and operations within the Agency, including policy advising

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and program planning. His duties will not include any contract administration or rulemaking.

Dr. Crowder would like to continue to work one shift per week in the direct patient care department at Franciscan Health while employed as the IDOH Chief Medical Officer. Dr. Crowder believes that it is important for him to continue working in the travel medicine clinic to maintain his skills through patient contact because it will aid him in his performance as Chief Medical Officer.

Dr. Crowder's medical malpractice insurance will be paid by Franciscan Health as that is their standard practice. Dr. Crowder will pay his own licensing fees and certifications. Furthermore, he will not serve in a supervisory or leadership role with Franciscan Health. Rather, he will serve as a intermittent/as-needed employee provider for Franciscan Health and Franciscan Physician Network. Dr. Crowder will be paid hourly by Franciscan. Although patients will be charged and insurance will be charged for his services, Dr. Crowder's compensation will not be dependent on patient billing.

Franciscan Health is affiliated with the Franciscan Health Foundation and IDOH's various divisions have seven active contracts with the Franciscan Health Foundation. The contracts are at the division level in IDOH. The division directors are the owners of the contracts. Dr. Crowder, as Chief Medical Officer, would not be in a position to negotiate or sign these contracts. Per Dr. Crowder, to avoid a potential conflict under IC 35- 44.1-1-4, Franciscan Health will not use funds from these contracts with IDOH to pay him; his fees will be paid from general patient revenue. Given that Dr. Crowder has no leadership role with Franciscan Health and that he would only be seeing patients one shift per week, this should ensure that there is not even an appearance that he is deriving a profit from, or has a pecuniary interest in any of the Franciscan Health partner's contracts with the State.

Dr. Crowder would not be in a position to make decisions regarding specific providers and any direction he would provide regarding protocols, policies or procedures that might impact external stakeholders would apply to all clinical specialists, hospital administrators, and any other providers uniformly. Therefore, it is unlikely IDOH would make a decision that would have a unique impact on Franciscan Health, Franciscan Physician Network, Franciscan Health Foundation, or their related entities. If the situation presented itself, IDOH would screen Dr.



Crowder from participating in any such decision by having the Commissioner delegate full authority to another executive employee to handle such matters independently.

Dr. Crowder would also like to continue with his participation in medical mission trips while employed by IDOH. Dr. Crowder has historically participated in one to two of these mission trips each year. During these trips, Dr. Crowder volunteers his time to see patients in a clinic setting. To participate in these trips, he generally partners with international health organizations or universities but pays his own expenses. Dr. Crowder understands that if he were to accept any type of travel expenses for this volunteer work that he would need to communicate with the agency's ethics officer to ensure there are no violation of the Gift Rule.

Dr. Crowder understands and agrees that he may not use State time to work at Franciscan Health. Additionally, he is confident that he will meet the 37.5 hour work-week requirement despite seeing working a clinical shift each week. This is consistent with other clinical employees in state government who continue to practice in the private sector to maintain training and expertise.

Based on the information presented, I and agency leadership do not believe that Dr. Crowder's outside employment activities would be incompatible with his duties as Chief Medical Officer. Rather, Dr. Crowder's outside employment activities will help maintain and build upon his professional skills such that he may better be able to meet the essential functions of his position as Chief Medical Officer, including identifying opportunities to collaborate and develop clinical integration initiatives with other stakeholders in the State to achieve effective and affordable outcomes and participating as a spokesperson to the public and health care professionals.

Sincerely,

Erin R. Elam
Staff Attorney and Ethics Officer
Indiana Department of Health

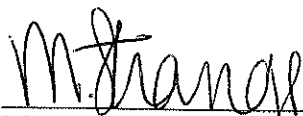
STATE OF INDIANA) INDIANA STATE ETHICS COMMISSION
) SS:
COUNTY OF MARION) CASE NO: 2023-05-0181

IN RE THE MATTER OF MYRANDA STRANGE,
Respondent.

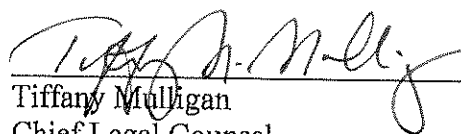
AGREED SETTLEMENT

1. Respondent admits to the facts as alleged in the complaint filed herein by the Inspector General and admits to violations of two provisions of the Indiana Code of Ethics: Ind. Code § 4-2-6-5.5, the outside employment rule, and Ind. Code § 4-2-6-9, the conflicts of interests related to decisions and votes rule. (See Ethics Complaint filed on the 18th day of September 2023, attached hereto as Exhibit A.)
2. Respondent agrees to pay a fine in the amount of two thousand four hundred dollars (\$2,400). The State Ethics Commission (Commission) will not impose any further penalties under Ind. Code § 4-2-6-12. Respondent shall make payment to the "Indiana State Ethics Commission" in the amount of two thousand four hundred dollars (\$2,400) within three hundred and sixty-five (365) days from the date that the Commission accepts this agreement. Respondent shall make monthly payments of at least two hundred dollars (\$200) a month due by the first of each month, until the Respondent pays the fine in full.
3. The parties acknowledge that this agreement reflects the entire agreement between the parties, that approval of these terms by the Commission shall result in the final disposition of this proceeding, and that Respondent is waiving an alternative statutory right to a public hearing as provided in Ind. Code § 4-2-6-4 to contest the complaint.

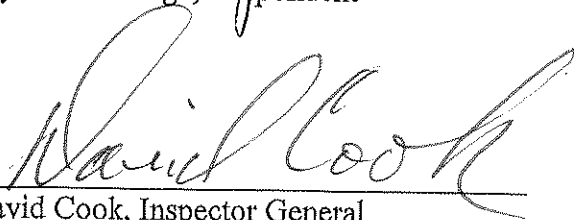
Dated this 27th of September, 2023.



Myranda Strange, Respondent



Tiffany Mulligan
Chief Legal Counsel
Office of the Inspector General



David Cook, Inspector General

Approved this _____ day of _____, 2023, by the State Ethics Commission in a public meeting by a vote of _____ to _____.

State Ethics Commission Chair