

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
August 8, 2024**

**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; and Rafael Sanchez. Office of Inspector General (OIG) staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff, Chief Legal Counsel; Regan Perrodin, State Ethics Commission Director; Elaine Vullmahn, Staff Attorney; Hope Blankenberger, Staff Attorney; Mark Mitchell, Director of Investigations; Mike Lepper, Special Agent; Sam Stearley, Special Agent; Jason Fajt, Special Agent; Mark Day, Special Agent; and Nathan Baker, Legal Assistant.

Others present were Matthew Gerber, Ethics Officer, Family and Social Services Administration; Leslie Lugo, OMPP Director of Pharmacy, Family and Social Services Administration; Joseph Heerens, General Counsel & Ethics Officer, Office of the Governor; Kelly Dignin, Executive Director, Integrated Public Safety Commission; Mattheus Mitchel, Compliance and Ethics Specialist, Indiana Department of Revenue; Dan Thomas, Senior Counsel, Indiana Department of Revenue; and, Amie Durfee, Deputy General Counsel, Indiana Department of Workforce Development.

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

Commissioner Sanchez moved to adopt the agenda. Commissioner Finnerty seconded the motion, and the Commission passed the agenda (3-0).

Commissioner Sanchez moved to approve the Minutes of the July 11, 2024, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (3-0).

**III. Consideration of Waiver of Post-Employment Restrictions for Kelly Dignin**

Joseph Heerens, General Counsel and Ethics Officer for the Office of the Governor, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Sanchez moved to approve the Waiver, and Commissioner Finnerty seconded the motion, which passed (3-0).

**IV. Request for Formal Advisory Opinion**

2023-FAO-004

Leslie Lugo, Director of Pharmacy – Office of Medicaid Policy and Planning  
Matthew Gerber, Ethics Officer  
Family and Social Services Administration

Matthew Gerber is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Mr. Gerber is requesting the Commission’s FAO on behalf of Ms. Leslie Lugo, Director of Pharmacy for FSSA’s Office of Medicaid Policy and Planning (OMPP). Specifically, Mr. Gerber is requesting an opinion from the Commission regarding Ms. Lugo’s proposed post-state employment opportunity with Mercer Health and Benefits, LLC (Mercer).

As Director of Pharmacy, Ms. Lugo’s duties include overseeing both Fee-For-Service (FFS) and Managed Care Entities (MCEs) administration of the Medicaid Pharmacy Benefit; setting policy for all matters regarding the drug benefit; and overseeing and administering OMPP Boards and Committees.

Mercer has offered Ms. Lugo a position as a consultant in Mercer’s Government Division. In this role Ms. Lugo would assist other states in the administration of their pharmacy benefit program and would develop and write white papers on topics of note to Medicaid. The role would not intersect with Indiana in any way for at least one year, and her work would not involve lobbying.

On July 11, 2024, FSSA filed an Ethics Disclosure Statement for Conflicts of Interests – Decisions and Voting with the Commission on Ms. Lugo’s behalf because Ms. Lugo was engaged in employment discussions with Mercer. The Disclosure Statement includes a screen that prohibits Ms. Lugo from participating in decisions or votes or related matters in which Mercer has a financial interest. The screen further prohibits Ms. Lugo from assisting any future employers, including Mercer, with any matter she personally and substantially participated in while employed by FSSA and OMPP. The screen additionally prohibits Ms. Lugo from disclosing or otherwise relying on any confidential information.

In her role as Director of Pharmacy, Ms. Lugo interacted with Mercer on two specific projects. First, she participated in the MCE Pharmacy Benefit Gap Analysis that began on September 1, 2021, and was scheduled to end January 1, 2022. OMPP renewed the contract for an additional year, so that the contract expired on January 31, 2023. Second, she participated in obtaining Mercer’s assistance and project management of a conversion of the State Uniform Preferred Drug List (SUPDL). OMPP obtained the contract by special procurement. The contract began August 26, 2022, and ended June 30, 2024. There has been no work completed on this contract since September 2023, and OMPP did not renew or extend the contract.

Ms. Lugo was the signatory on both contracts. Mr. Gerber writes that Ms. Lugo did not negotiate the contracts, as OMPP created them both by special procurement and not through the traditional Request for Proposal process. Further, Mercer only offered a straight rate for their services and did not allow the State to negotiate a different rate. Ms. Lugo initiated the special procurement and justification for the contracts. Mercer set the contract terms for both projects including scope of work and deliverables. Mercer provided a PowerPoint presentation for the purpose of the MCE Pharmacy Benefit Gap Analysis contract, and Mercer was in an advisory capacity on the SUPDL contract and kept meeting minutes as project manager.

As Director of Pharmacy, Ms. Lugo monitored Mercer's performance on both contracts. Ms. Lugo could have recommended amendments, modifications, sanctions or termination, but only other FSSA employees had the authority to take such action as Ms. Lugo did not have the authority to make any unilateral decisions.

On behalf of Ms. Lugo, Mr. Gerber is seeking the Commission's FAO regarding the application of any of the rules in the Code to Ms. Lugo's proposed post-employment opportunity with Mercer.

Mr. Gerber's request for a FAO invokes consideration of the provisions of the Code pertaining to Conflicts of Interests, Post-employment and Benefitting from and Divulging Confidential Information. The application of each provision to Ms. Lugo's situation is analyzed below.

*A. Conflict of interests - decisions and votes*

IC 4-2-6-9(a)(1) prohibits Ms. Lugo from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits Ms. Lugo from participating in any decision or vote, or matter relating to that decision or vote, if the business organization with whom she is negotiating or has an arrangement concerning prospective employment has a financial interest in the matter.

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

FSSA filed an Ethics Disclosure Statement for Conflicts of Interests – Decisions and Voting on Ms. Lugo's behalf. The Disclosure Statement includes a screen that prohibits Ms. Lugo from participating in decisions or votes or related matters in which Mercer has a financial interest. The screen further prohibits Ms. Lugo from assisting any future employers, including Mercer, with any matter she personally and substantially participated in while employed by FSSA and OMPP. The screen additionally prohibits Ms. Lugo from disclosing or otherwise relying on any confidential information. As such, she has complied with the requirements in IC 4-2-6-9 for any potential

conflict of interests that exists between her FSSA employment and her employment negotiations and arrangement concerning prospective employment with Mercer.

### *B. Post-employment*

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

First, Ms. Lugo is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration. Based on the information provided, Ms. Lugo would not be engaging in any lobbying activities in her position at Mercer, and her role would not intersect with Indiana for at least one year. Thus, Ms. Lugo’s post-employment opportunity at Mercer would not violate this provision of the post-employment rule.

Second, Ms. Lugo is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. Based on the information presented to the Commission, it does not appear that Ms. Lugo has not made a regulatory or licensing decision that directly applied to Mercer or its parent or subsidiary, therefore this prohibition would not apply.

Third, Ms. Lugo is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer’s purpose is to influence her in her official capacity as a state employee. The information presented to the Commission does not suggest that Mercer has extended an offer for Ms. Lugo’s prospective new role in an attempt to influence Ms. Lugo in her capacity as a state employee.

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

Ms. Lugo interacted with Mercer on two specific contracts. She was the signatory on both contracts, and she initiated the special procurements and the justifications. Additionally, she monitored Mercer’s performance on both contracts and could have recommended amendments,

modifications, sanctions or termination; however, only other FSSA employees would have had the authority to take any such action.

The Commission has found, in the past, that a state employee administered a contract when she worked directly, along with other members of her agency, with the contractor to fulfill the contractor's duties and deliverables set forth in the contract. *See* [13-I-37](#). The Commission further found that the same state employee was in a position of authority to make discretionary decisions when she could escalate matters to the Agency Head, who was the ultimate decision-maker for the contract. *Id.*

Similarly, the Commission finds Ms. Lugo (1) engaged in the negotiation or administration of a contract on behalf of FSSA and (2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract. The Commission finds that even though FSSA created the contract through a special procurement, Ms. Lugo engaged in the negotiation of the contract with Mercer, and her position allowed her to make decisions affecting the outcome of the negotiation. Therefore, the post-employment rule's cooling off period would apply to Ms. Lugo's intended employment opportunity with Mercer, and she may not begin such employment for 365 days after her separation from state employment.

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

In this instance, Ms. Lugo would be prohibited from representing or assisting Mercer, or any other person in a particular matter in which she personally and substantially participated as a state employee. Ms. Lugo understands that both contracts would qualify as particular matters, and that she may never represent or assist a person in those matters as she personally and substantially participated in both matters.

Therefore, the Commission finds the two contracts to be "particular matters" on which Ms. Lugo may never represent or assist any person for the life of those contracts.

### *C. Confidential information*

Ms. Lugo is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Ms. Lugo 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 an organization, such as Mercer. 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. Lugo has acquired or maintains access to such confidential information obtained in her role at FSSA, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including Mercer or its clients, in any manner.

Commissioner Finnerty moved to approve the Commission’s findings, and Commissioner Sanchez seconded the motion, which passed (3-0).

#### **V. Consideration of Final Report**

In the Matter of Zachary Eugene Rutherford  
Case Number 2023-11-0432

State Ethics Commission Director Regan Perrodin presented the Final Report regarding the Agreed Settlement in the Matter of Zachary Eugene Rutherford for final approval. The Final Report was signed by Commissioners present at the meeting.

#### **VI. State Ethics Director’s Report**

Regan Perrodin, State Ethics Commission Director, provided the following information to the State Ethics Commission:

The OIG has issued 16 Informal Advisory Opinions (IAOs) since the July Ethics Commission meeting, mostly relating to issues on post-employment, conflicts of interests, and outside employment.

OIG is actively working on promulgating the civil penalties rule and on readopting title 42 of the Indiana Administrative Code. We’ve had some pre-reviews. We will keep you posted as this process moves forward. I expect to have significant updates at our next meeting.

Last month, Tiffany Mulligan mentioned that we would begin working on our biennial ethics training that we provide to state employees, officers, and special state appointees every two years.

This year's training will roll out on September 6 with a deadline of October 18. We're releasing it a little earlier this year because there are helpful reminders for this time leading up to the election. When it's released, either Tiffany or myself will send Commissioners the training to complete.

OIG also continues to provide in-person outreach and training.

Finally, the OIG's Legal and Ethics Conference is scheduled for the afternoon of November 19, 2024. More information will be on the OIG website.

## **VII. Adjournment**

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

The public meeting adjourned at 10:22 a.m.