

**OHIO BUREAU OF WORKERS' COMPENSATION
BOARD
GOVERNANCE GUIDELINES**

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INTRODUCTION AND PURPOSE

The Ohio Bureau of Workers' Compensation ("BWC") is a state agency that provides medical and compensation benefits to Ohio employees for work-related injuries, diseases and deaths. Ohio employers pay premiums for these benefits to Ohio's State Insurance Fund and/or its ancillary funds: Disabled Workers' Relief Fund, Coal-Workers' Pneumoconiosis Fund (CWPF), Public Work-Relief Employees Compensation Fund (PWREF), the Marine Industry Fund (MIF), and the Administrative Cost Fund (ACF). In addition to benefits paid, the BWC makes available and provides loss prevention services to Ohio employers. Ohio's workers' compensation system has the largest exclusive state fund in the nation and is the second largest underwriter of workers' compensation insurance in the country. Also, the BWC oversees compliance with statutes and rules of employers who choose to self-insure. There is also oversight of the Self-insured Employers Guaranty Fund (SIEGF) which provides payment for workers who were injured while working for self-insured employers who are now bankrupt.

The BWC Board of Directors ("Board") was created by Ohio law and its authority and responsibilities are set forth in detail in the Ohio Revised Code.¹ The primary areas of Board focus are to establish the overall administrative policy of the BWC, to review the progress of the BWC in meeting its cost and quality objectives and to provide advice and consent regarding actions proposed by the BWC Administrator, who is responsible for the management of the day-to-day operations of the agency.² The Board operates in collaboration with other state entities, including the Office of the Attorney General, the Inspector General, the Workers' Compensation Council, Workers' Compensation Board of Directors Nominating Committee, the Industrial Commission, and the Ombuds Office.

The Board and its members have fiduciary responsibilities to the BWC. A fiduciary is a person having a duty, created by an undertaking, to act *primarily for the benefit of another* in matters connected with that undertaking. The monies paid into the workers' compensation funds "constitute a trust fund for the benefit of employers and employees."³ The members of the BWC Board are obligated by law to adhere to the highest standards of judgment and care when making decisions or taking actions that may affect the financial integrity and soundness of the workers' compensation funds.⁴ In order to properly discharge the Board's fiduciary responsibilities, the Board should be guided by three primary considerations with respect to matters that come before it: (1) the provisions of Ohio law that directly impact the Board's activities; (2) the duty of loyalty to protect the workers' compensation funds and to act in good faith and in the interests of all the stakeholders of the BWC, taken as a whole; and (3) the duty of care in ensuring that all Board decisions and actions are the result of an informed deliberative process in which the significant information items relevant to the proposed decision or action are identified and considered by the Board.

Accordingly, it is incumbent upon the Board to operate with the integrity appropriate to its fiduciary duties as it oversees the business of BWC. The Board aspires to implement the best practices of corporate governance and to incorporate all significant developments in this area into its policies and procedures. The Board has adopted the measures set

forth in this document to describe the governance structure and guidelines by which the Board shall conduct its business. It is the intention of the Board to review these guidelines at least annually.

BOARD COMPOSITION AND RESPONSIBILITIES

The BWC Board of Directors consists of eleven (11) members. Board members are appointed by the Governor of Ohio from a list of candidates prepared by the Workers' Compensation Board of Directors Nominating Committee and with the advice and consent of the Ohio Senate. It is provided by statute that one member of the Board shall be a representative of employees; two members of the Board shall be representatives of employee organizations; three members of the Board shall be representatives of employers with one of the three representing self-insuring employers; two members of the Board shall be investments and securities experts; one member of the Board shall be a certified public accountant (CPA); one member of the Board shall be an actuary; and one member of the Board shall represent the public.⁵ The Governor of Ohio selects the Chair of the Board of Directors.

Initially, the employee representative, one of the employer representatives, and the public representative served a one year term. Currently, another employer representative, one of the employee organization representatives, one of the investment and securities expert and the CPA representative are serving a two year term, expiring in 2009. The third employer representative, the other employee organization representative, the other investment and securities expert, and the actuary representative serve a three year term, expiring in 2010. At the expiration of these initial terms, the subsequent terms of office are three years. There are no term limits. Ohio law sets forth detailed procedures for the filling of vacancies occurring as a result of the expiration of a Board member's term of office or otherwise.⁶

Board members shall aspire to maintain the highest ethical standards and integrity in fulfilling their responsibilities, and shall demonstrate a willingness to act on and be accountable for Board decisions. Members shall strive to utilize their diverse backgrounds, talents and experiences to provide wise, informed and thoughtful counsel to BWC management. Members shall demonstrate loyalty and commitment to the success of the BWC. It is expected that members may hold differing points of view on issues before the Board and are encouraged to express their points of view. Regardless of their particular points of view, members shall at all times act in the best interests of the BWC and its stakeholders as a whole. Members shall devote an appropriate amount of effort in preparation for meetings, participate fully in the activities of the Board and its Committees, and shall strive to be prompt and regular in attendance at Board and Committee meetings. Board members shall be compensated for their attendance at Board and Committee meetings, and shall be reimbursed for all reasonable and necessary expenses while engaged in the performance of their duties, all as provided by statute.⁷

Under Ohio law,⁸ the Board's responsibilities include the following:

- establish overall administrative policy for BWC;
- review BWC's progress in meeting cost and quality objectives, and its compliance with the Ohio Revised Code;
- submit an annual report to the Ohio General Assembly, the Governor, and the Workers' Compensation Council regarding BWC operations and progress;
- review all independent financial audits of BWC;
- study issues as requested by the Governor or the Administrator;
- contract with an actuarial firm, outside investment consultant and independent fiduciary counsel to assist the Board in fulfilling its duties;
- review investment policy annually, approve investment policy changes for BWC, prohibit investments that are contrary to Board-approved investment policy, vote to open investment classes, and adopt rules establishing due diligence standards for BWC employees to follow when investing in an open investment class and establish policies and procedures to review and monitor the performance and value of each investment class;
- submit an annual report on the performance and value of BWC investments to the Governor and the Ohio General Assembly;
- advise and consent on rules that BWC wishes to pursue;
- meet with the Governor of Ohio annually to discuss the Administrator's performance;
- develop and participate in an education program for the Board members;
- submit the education program to the Workers' Compensation Council for approval;
- contract with an actuarial consultant to prepare an annual actuarial report, an actuarial investigation of employers' experience and injured workers' benefits every five years (by 2012), and actuarial analysis of legislation expected to have measurable financial impact on the system; and
- contract with an independent auditor to conduct a fiduciary performance audit of BWC's investment program at least once every ten years (by 2017).

Annually the Board shall design and oversee a process for the evaluation of the Administrator's performance and shall also establish prospective performance objectives for the Administrator for the coming fiscal year. For the fiscal year that ended June 30, 2008, the first review period for which these Governance Guidelines were in effect, the Board designed a process for the Administrator's evaluation that included (i) a review by the Governance Committee of the Specific Performance Objectives contained in the Administrator's Flexible Performance Agreement with the Governor, as well as leadership attributes that the Board believes are important to an overall evaluation of the Administrator's performance, (ii) the development of an evaluation form to be completed by all qualified Directors⁹ with respect to the Administrator's evaluation, (iii) the review by the Board of the compilation of all Director responses to the evaluation form, (iv) the review, comment and finalization of a draft Summary Evaluation Report prepared by the Governance Committee with the assistance of fiduciary counsel, revised to reflect input from individual Board members, and (v) the discussion of the Summary Evaluation Report first with the Administrator and then with the Governor at a meeting of the Board for that purpose.

As part of this process, the Board established performance objectives for the Administrator for the coming year. At the end of the review year, the Board will examine the Administrator's actual performance against the Board's objectives as well as the Governor's objectives. It is contemplated that the foregoing process will serve as a template for future annual Board evaluations of the Administrator's performance.

In general, the Board is responsible for approving the strategic direction proposed by BWC management. In order to approve any such plans, it is necessary and appropriate for the Board to develop a depth of knowledge regarding BWC operations that shall enable the Board to analyze the effectiveness and feasibility of the strategic proposals of the Administrator. In addition, the Board shall monitor the performance of BWC as it works to fulfill the business approach adopted by the agency. As the Board monitors BWC performance, it shall be necessary for the Board to review and approve BWC's financial objectives, plans and actions, as well as reviewing and approving any transactions not in the ordinary course of business. To enable successful fulfillment of BWC objectives, the Board shall ensure that BWC is structured to encourage ethical behavior, to require compliance with the law, and that sound accounting principles, actuarial standards and auditing practices are instituted.

In exercising their fiduciary responsibilities, Board members shall be guided by the specific provisions of Ohio law relative to the Board and the BWC. To assist the Board in fulfilling its fiduciary responsibilities, the Board shall retain independent fiduciary counsel.¹⁰ BWC shall obtain fiduciary liability insurance for the Board.

The Board of Directors may be required to provide information to the Workers' Compensation Council as it fulfills its duties. Such information shall be provided with all due speed. The Board of Directors shall provide its annual report, as well as its actuary report to the Workers' Compensation Council. The Board shall submit its education program to the Workers' Compensation Council for approval. The Workers' Compensation Council is a separate entity from the BWC Board of Directors. It was statutorily created to review the overall soundness of the workers' compensation system, and to analyze any proposed legislation that might affect the workers' compensation system.

BOARD PROCEDURES

Board of Directors' Meetings:

The Board of Directors conducts its business through open and public meetings in compliance with the Ohio Open Meetings Act. Members of the public and press are invited to attend these meetings. Advance notice of the time and place of all meetings shall be provided to the media and shall be posted on BWC's web site. Notice shall be provided subject to a test of reasonableness. Minutes of all Board and Committee open public meetings shall be taken and maintained. Robert's Rules of Order is generally followed at both Board and Committee meetings. The Chair of the Board presides at

Board meetings. In the event that the Chair is unable to attend, the Vice Chair of the Board shall conduct the Board meeting.

Conduct at Meetings:

A Board member desiring to speak shall address the Board Chair and, upon recognition by the Board Chair, shall confine discussion to the issue before the Board and shall avoid discussion of personalities, indecorous language, and shall refrain from personal attacks or verbal abuse. A Board member, once recognized, shall not be interrupted while speaking unless called to order by the Board Chair, unless a point of order is raised by another Board member, or unless the speaker chooses to yield to questions from another member. If a Board member is called to order while speaking, that member shall cease speaking immediately until the question of order is determined. If ruled to be in order, the member shall be permitted to proceed. If ruled to be not in order, the member shall remain silent or make additional remarks in accordance with the rules of the Board.

A Board member desiring to question a BWC staff member shall address such questions to the Board Chair, the Administrator or the appropriate Board Committee Chair. Such person shall be entitled either to answer the inquiries or to designate some member of the BWC staff for that purpose. Board members shall treat with respect members of the BWC staff, who shall observe the same rules of decorum as the BWC Board members.

Whenever possible, motions and amendments to motions should be in writing and distributed to all Board members prior to the Board and Committee meetings.

Minutes of Board Meetings and Committee Meetings

The minutes record the formal actions taken by the Board and Committees and a summary of important reports and discussions. Minutes should contain appropriate details of the meetings, and should reflect the Board's fulfillment of applicable fiduciary standards of conduct. In its decision-making processes, the Board shall give thoughtful attention to the issues before it; the minutes shall indicate the full consideration given by the Board. The minutes should also demonstrate the Board's adherence to its own Governance Guidelines. Board members may request that specific comments be included in the minutes. Minutes should usually be reviewed and voted on for approval at the next subsequent Board meeting. Therefore, the minutes shall be furnished to the Board members in the next subsequent Board package. Once approved, the minutes constitute the official record of the Board's actions and decisions.

Agenda Development & Distribution

The Board Chair, in cooperation with the Administrator and/or the Board Liaison, shall prepare the agenda for the Board meeting. Ample opportunity shall be given for any Board member to submit suggestions or requests for agenda topics to the Board Chair. A week prior to each regular Board meeting informational material shall be delivered to the Board, including a preliminary agenda and supporting documents to be considered at the meeting. This same process shall be followed for Committee meetings. A Board member may request that an agenda item be deferred, removed or added by making the request to the Board or Committee Chair. The request to defer, remove or add an agenda item shall be considered by the Board or Committee Chair and implemented where

practical. Should the Board member's request to defer, remove or add an agenda item be refused, and the Board member is dissatisfied with the result, the Board member may make a motion to have the Committee or the full Board consider the request by vote.

Rules/New Business Submittal Process

Generally, BWC staff should submit proposed rules and new business items to the Board Liaison at least two weeks prior to the upcoming Board meeting or Committee meeting. It is recognized that unforeseen circumstances may prevent such advance submission. For issues concerning the various Committees, the Board Chair, with the advice and consent of the Committee Chair, shall determine whether issues are presented to the Board for resolution.

Subject to the Board's discretion, information regarding major policy initiatives or substantial rule changes that may be contemplated by BWC should be submitted for the agendas of the Board and its Committees for a "first reading," and subsequent reporting by the committee chair to the full Board. The first reading will occur after a "lead Director" has reviewed the material prepared by the staff. The first reading provides the Board and its Committees members the opportunity to obtain background information, ask questions from BWC staff members, and engage in discussion regarding the topics that are under consideration. If desired by the Board, the same major policy initiative or substantial rule change can be considered again at a later meeting for possible approval.

Administrator's Report

At the Board's monthly meeting, the Administrator shall regularly provide a report. This agenda item provides an opportunity for the Administrator to present information on issues of interest to the Board and others.

Reports by Board Committees

At the Board's monthly meeting, the Committee Chairs shall regularly provide a report of the activities of the Committees. This agenda item enables Committee Chairs or designated representatives to report any actions or pending actions taken by Committees and to request Board approval of Committee recommendations as appropriate.

Executive Session

Consistent with Ohio law¹¹, the Board and its Committees may move to go into Executive Session (i.e. exclude the public from attendance) under a limited set of circumstances by stating the reason for the executive session and taking a roll call vote. The proper purposes for Executive Session are to discuss any of the following issues:

- personnel (to consider appointment, employment, performance evaluation, dismissal, discipline, promotion, demotion or compensation of a public employee or official, or to consider the investigation of charges or complaints against a public employee or official);
- property (to consider the purchase or sale of property if disclosure of the information would result in a competitive advantage to the other side);
- court action (to discuss pending or imminent court action with legal counsel);
- collective bargaining (to prepare for, conduct or review collective bargaining strategy);

- confidential matters (to discuss matters required to be kept confidential by federal law, rules or state statute); and
- security arrangements (to discuss details of security arrangements and emergency response protocols where disclosure could be expected to jeopardize the security of the Board of Directors).

No action or any votes may be taken in Executive Session. A motion is required to come out of executive session, with a roll call vote taken in public. Any voting on matters discussed in Executive Session shall be taken in public session. Attendance at Executive Sessions is limited to Board members and others invited by the Board Chair or Committee Chair as necessary.

Committee Meetings

Committee meetings are conducted as often as determined necessary by majority vote of the Board of Directors. Only members of the Committee may participate in voting on Committee matters. All members of the Board may attend and participate in discussion at Committee meetings. The Committee Chair shall develop the agenda for the Committee meetings. Ample opportunity shall be given for any Board member to submit suggestions or requests for agenda topics to the Committee Chair. Committee agendas and supporting documents shall be provided to the Board and appropriate BWC staff prior to the Committee meeting. Minutes of Committee meetings shall include identification of Committee members and other Board members present, agenda items and official actions taken by the Committee. Committee minutes shall follow all the requirements for minutes for the full Board meetings, as noted above in “Minutes of Board Meetings and Committee Meetings.”

Communication Guidelines

As a general rule, it is the Board’s position that the BWC Administrator, or BWC management appointed for such purpose by the Administrator, speaks for the agency as a whole.

Members of the public can provide written submission of comments to BWC’s website at OhioBWC.com. Comments on pending legislation should be limited to those necessary to conduct the business of the Board of Directors. Comments beyond that should be directed to members of the Ohio General Assembly or the Workers’ Compensation Council. The Chair of the Board of Directors reserves the right to limit comments from the public during meetings.

Communications received directly by Board members shall be forwarded to the Board Liaison. The Board member receiving such communication shall work with the Board Liaison to prepare the appropriate response. The Board Liaison shall be responsible for retention of the Board’s public records and communications with the public. The Board Liaison shall follow state law and BWC policies for records retention.

Public Input Process

The Administrator, in consultation with the Board, shall annually create a plan for public forums to solicit views from the public on various issues, to be held periodically throughout the coming year. Each public forum shall address a topic or topics deemed by the Administrator to be of interest to BWC stakeholders. Members of the public shall be

provided notice of and have an opportunity to provide comments and/or register to speak at such forums. The Administrator may also invite certain stakeholders with an interest in the topic to speak. Written comments provided during the meeting shall be posted on the BWC web page.

Director Education Program¹²

The Board of Directors shall develop an education program for its members with the oversight of the Governance Committee. The education program shall contain an orientation component for newly appointed members, as well as a continuing education component for members who have served at least one year. For orientation of new members, information regarding all activities of BWC shall be provided, as well as information regarding the roles of the Board and its Committees. The Board Liaison shall schedule new members for briefing sessions with other Board members, Board legal counsel, as well as BWC staff. The briefing sessions and ongoing education curriculum shall cover the following topics:

- information about Board member duties and responsibilities;
- information concerning injured worker compensation and benefits paid under Chapters 4121, 4123, 4127, and 4131 of the Ohio Revised Code;
- summary of HB 100 legislation and amendments thereto;
- Ohio ethics statutes and rules, BWC ethics policy, and all ethics opinions from the Ohio Ethics Commission concerning Board members;
- fiduciary responsibility including memorandum from fiduciary counsel;
- governance processes and responsibilities;
- BWC Administrator and agency goals and objectives (e.g. “Restoring Operational Excellence” for fiscal year 2008-09);
- Administrator evaluation process;
- Board self-assessment process;
- Concepts of actuarial soundness;
- Investments;
- Budgeting and financial reporting;
- Auditing processes and procedures;
- any other topic reasonably related to the duties of the Board.

The Board of Directors shall submit the education program it develops to the Workers’ Compensation Council for approval. All sessions, classes, and other events for the education program developed by the Board and approved by the Workers’ Compensation Council shall be held in the State of Ohio. At least annually, both the Director of the Ethics Commission as well as Board fiduciary counsel shall be invited to address the Board on their respective areas of subject matter expertise.

BOARD COMMITTEES – COMPOSITION AND RESPONSIBILITIES

By law¹³, the Board of Directors shall establish three Committees: the Audit Committee, the Actuarial Committee, and the Investment Committee. Additional Committees may be established by the Board of Directors as needed. Currently, the Board of Directors has established a Governance Committee in addition to the statutorily mandated Committees. Generally, the appointment of Committee members shall be considered every year as new Board members are appointed. Any change to a Committee appointment shall be approved by the majority vote of the Board.

The Committee Chairs shall conduct Committee meetings. In the absence of a Committee Chair, the Vice Chair of the Committee shall preside over the Committee meeting. Additional detail regarding the Board's Committees, including the roles and responsibilities of all Committees, are further defined by the Committee Charters, as approved by the Committees and adopted by the Board. Each Charter shall be reviewed and updated as necessary on an annual basis. The Charters of the Board's Committees are attached hereto as Exhibit A.

Audit Committee

The Audit Committee shall consist of a minimum of five members. One member shall be the appointed certified public accountant member of the Board. The Board, by majority vote shall appoint four additional members to serve on the Audit Committee and may appoint additional members, who may or may not be Board members, as the Board determines necessary. Members of the Audit Committee serve at the pleasure of the Board and the Board, by majority vote, may remove any member except the member of the Committee who is the certified public accountant member of the Board.

The Audit Committee performs several functions mandated by law. It makes recommendations to the Board regarding the accounting firm that performs BWC's annual audits.¹⁴ It also recommends to the Board the accounting firm(s) that the Board uses when conducting the fiduciary performance audit of BWC's investment program¹⁵, and other management and financial audits that the Board may deem necessary¹⁶ under R.C. §4121.125. The Audit Committee reviews the results of each annual audit and management review, assessing and developing appropriate courses of action to correct any problems that may arise. The Audit Committee also monitors the implementation of any action plans it creates, and reviews all internal audit reports on a regular basis. The committee follows the process as described in the "Board Procedures" section of this document. The Audit Committee also oversees the annual and biennial agency budget process by providing initial review to BWC budget materials prior to Board review and approval. Finally, the Audit Committee assists the Board in providing oversight of the integrity of BWC's financial statements.

Actuarial Committee

The Actuarial Committee consists of a minimum of five members. One member shall be the appointed actuary member of the Board. The Board, by majority vote, shall appoint four additional members. The Board may also appoint additional members who may or may not be on the Board. Members of the Actuarial Committee serve at the pleasure of the Board and the Board, by majority vote, may remove any member except the member of the Committee who is the actuary member of the Board.

The Actuarial Committee performs several functions mandated by law. It recommends actuarial consultants for the Board to use for actuarial analysis of BWC funds. In addition, the Actuarial Committee reviews the calculations on rate schedules and performance prepared by the actuarial consultants retained by the Board.

Investment Committee

The Investment Committee consists of a minimum of five members. Two of the members shall be the members of the Board who serve as the investment and securities experts on the Board. The Board, by majority vote, shall appoint three additional members to serve on the Investment Committee and may appoint additional members, either from the Board or someone not on the Board. Each additional non-Board member appointed shall have at least one of the following qualifications: a) experience managing another state's pension or workers' compensation funds; or b) expertise that the Board determines is needed to make investment decisions. Members of the Investment Committee serve at the pleasure of the Board and the Board, by majority vote, may remove any member except the members of the Committee who are the investment and securities expert members of the Board.

The Investment Committee performs several functions mandated by law. It develops the investment policy for BWC, and submits it to the Board for approval. The Investment Committee must assure that BWC invests in accordance with its investment policy, and that the best possible return on investment is achieved while protecting the solvency of the State Insurance Fund. The Investment Committee monitors implementation by BWC of the investment policy. It recommends an outside investment consultant for the Board. Finally, the Investment Committee reviews the performance of BWC's Chief Investment Officer and the investment consultants retained by BWC.

Governance Committee

The Governance Committee was established by the Board of Directors under its authority to create additional Committees as it deemed necessary.¹⁷ The Governance Committee consists of a minimum of five members. One member is the Chair of the Board of Directors. Members of the Governance Committee serve at the pleasure of the Board of Directors; members may be added or removed by a majority vote of the Board.

The Governance Committee is responsible for developing governance policies and advising as to best governance practices for the Board. The Governance Committee assists in the establishment of the Board's annual prospective performance goals and objectives for the Administrator and coordinates and facilitates the process for the Board's annual performance evaluation of the Administrator. The Governance

Committee is responsible for the initial review of rules with the exception of actuarial ratemaking rules and other rules specific to another committee. In addition, it facilitates the annual Board's Self-Assessment Process, oversees the Board's educational programs, recommends the selection of independent fiduciary counsel to the Board for its approval, and makes recommendations to the Board Chair for the Vice Chair of the Board, Committee Chairs, Vice Chairs of the Committees, and Committee memberships.

BOARD GOVERNANCE -- GENERAL

Ethics

The Board of Directors is committed to following ethical standards that promote the integrity of the workers' compensation system in Ohio. The Board is charged to comply fully with all federal and state laws, rules, regulations and policies applicable to the BWC. In particular, it is necessary that Board members become familiar with the applicable ethics requirements in order to ensure compliance with them. These requirements include the provisions of the Ohio Revised Code, the Governor's Executive Orders addressing ethics, and the opinions of the Ohio Ethics Commission pertaining to the BWC Board of Directors, as identified in Exhibit B hereto. Copies of these opinions are available upon request to the BWC Legal Counsel or the Board's legal counsel at the Attorney General's office.

The Board is also subject to BWC's Code of Ethics, as found in the BWC Employee Handbook. To meet its obligations under Ohio law, each Board member shall submit to the Board's legal counsel at the Attorney General's office a copy of the annual Financial Disclosure Statement, required by the Ohio Ethics Commission. The BWC Legal Counsel and the Board's legal counsel at the Attorney General's office shall review the statements for potential conflicts of interest. In keeping with the guidance of the Ethics Commission, the Board shall give broad interpretation to the requirements to report any other board membership, fiduciary relationship, business or other association when completing the annual Financial Disclosure Statement. The Board views the requirements of Ohio law and BWC policy with respect to ethics as a minimum measure for its standard of conduct. It is the aspiration of the Board to perform its duties in accordance with the highest ethical standards.

To adhere to these standards, the Board's Directors must avoid conflicts of interest. A conflict of interest is a situation in which a Director has professional or personal interests that compete with the interests of BWC. Because each Director has a duty of loyalty to BWC, a conflict of interest should not be permitted to breach that duty. To avoid any potential conflict each Director should determine if there is a possibility of an actual conflict of interest or the appearance of a conflict of interest with any issues coming before the Board. If there is an actual conflict of interest or even the appearance of a conflict of interest the Director should recuse himself/herself from participating in any

way in the decision, including discussions, of the issue creating the conflict of interest or appearance of a conflict of interest. The Director should state for the record the reason for the conflict of interest or appearance of a conflict of interest, and excuse himself/herself from the Committee or Board table for the duration of discussion and possible voting on the issue that created the conflict of interest or the appearance of a conflict of interest. Finally, the record should indicate that the Director in question did not participate in any way on the matter for which he/she recused himself/herself.

Board Oversight Process Guidelines

In order for the Board to fulfill its fiduciary responsibilities regarding oversight of the BWC, it must receive accurate and reliable information from the Administrator and BWC staff. Further, the Board must do its part in promoting the provision of quality information by making sure that measures are in place to ensure, to the extent practicable, that it is receiving the best information available. A related responsibility of the BWC, as an Ohio state governmental agency, is to develop, implement, and enforce policies and procedures that prevent or reduce the risk of wrongful acts and omissions by its officers and employees. In furtherance of the Board's oversight role, the Board has regularly scheduled meetings in which information exchange between it and BWC takes place. In addition, Charters have been established for all Committees and the Governance Committee was created to oversee governance issues. Furthermore, information exchange between the Board and the Inspector General's ("IG") office has been established. The Board Chair shall periodically contact the IG to invite sharing of information regarding IG investigations relative to the BWC. It was acknowledged in this connection that, in some cases, the IG may not be able to share information due to the confidentiality and other constraints imposed by statute on the IG's office. The Board Oversight Process Guidelines are attached hereto as Exhibit C.

As detailed in its charter, the Audit Committee is the arm of the Board that has the formal responsibility of interacting with the Auditor of State and other agencies or within the Ohio and federal governmental systems. In the event there is an internal BWC investigation which is not referred to the deputy IG, and the Administrator has determined that there is no need for confidentiality with respect to such matter, the Audit Committee shall be informed of such matter at a regular meeting. If there is a need for confidentiality, as determined by the Administrator, in consultation with the Board Chair, the Audit Chair shall be informed of such matter, and the Audit Chair shall make a judgment as to whether or not there is a need to inform others on the Board regarding the investigation. The policy underlying this procedure is that, in any such event, either the Board, the Board Chair, or the Audit Chair shall know what is occurring.

Referral Process for Wrongdoing

The Board of Directors is fully committed to the detection, investigation and prevention of wrongdoing at BWC. In the event a Board member receives information concerning possible wrongdoing at BWC, it is the member's obligation to promptly notify the Board Chair and the Administrator of the information so that the matter can be fully investigated and handled. In some instances, matters may be referred to the IG's office for investigation.

The Board of Directors shall comply with BWC's Employee Handbook regarding requirements for the reporting of wrongdoing. In addition, the Board shall also follow the Governor of Ohio's requirements for the reporting of wrongdoing, as contained in the memorandum from the Governor's Chief Legal Counsel Kent Markus dated October 11, 2007, which is attached hereto as Exhibit D.

BWC staff is responsible for keeping the Board of Directors fully informed of investigations and their outcomes. To this end, the Administrator shall provide updates to the Board as necessary. In some instances, updates regarding investigations of wrongdoing shall be provided in executive session, as permitted by Ohio law.

Whistleblowing

R.C. § 124.341 establishes the procedures and responsibilities incumbent upon all state agency employees with respect to the reporting of wrongdoing, as well as the responsibilities of supervisory personnel within state agencies with respect to whistleblowing occurrences, including referral of the report to the appropriate authority and the protection of the whistleblower. The Board shall similarly follow such procedures and observe the requirements of Ohio law regarding whistleblowing.

Oversight Process for Legislatively Required Reports

There are several reports mandated by law that the Board of Directors must submit to various bodies. In order to coordinate the preparation, review and release of these reports, the Board has asked the Governance Committee to assume appropriate oversight and assign responsibility for completion. Generally speaking, no Board of Director reports that are required by statute may be released without express Board review and approval. The Governance Committee of the Board provides general oversight of this process. However, the committees with specific expertise with respect to a report will provide the supervision necessary for completion. The various committees will work with BWC staff, review the report product, and provide any feedback necessary for finalization of the documents to be released. The timetables for completion of these reports shall be established by the committee responsible for the report, so long as any mandatory due dates can be met. A document detailing the division of responsibility and accountability for each report, as well as a general timetable for completion has been established called "Board of Directors Schedule of Mandatory Reports," which has been adopted by the Board of Directors and is attached hereto as Exhibit E.

Board Self-Assessment Process

Although not required by Ohio law, the Board of Directors shall engage in a yearly self-assessment process for the purpose of continuous self-improvement. This process provides an occasion for input from all Board members regarding their opinion on a range of Board issues, including receipt of information, discussion and decision-making. The objective is for the Board to take time to be introspective and then use the self-assessment process to be proactive in recommending action steps to continuously develop the Board's processes and effectiveness. The self-assessment will assist the Board members to identify opportunities for improvement, as well as past areas of success. The self-assessment will contain a balance of both objective and subjective observations. The

self-assessment process shall be evaluated on a yearly basis to ensure continued relevancy of all questions posed.

Draft reviewed 022508, Governance Committee

Revised 022708

Approved as edited 022908; Board of Directors

Annual Review, Revision & Approval 112108, Board of Directors

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- ¹ Ohio Revised Code Section 4121.12 (F)
- ² Ohio Revised Code Section 4121.121 (B)
- ³ Ohio Revised Code Section 4123.30
- ⁴ Ohio Attorney General Opinion No. 89-033 (1989)
- ⁵ Ohio Revised Code Section 4121.12 (A)
- ⁶ Ohio Revised Code Section 4121.12 (C)
- ⁷ Ohio Revised Code Section 4121.12 (D)
- ⁸ Ohio Revised Code Section 4121.12 (F)
- ⁹ Ohio Ethics Commission Opinion dated July 30, 2007 provides that a Director who receives compensation to represent clients on matters before the BWC is disqualified from any matters before the Board that directly affect an individual official or employee of the BWC. For example, a Director who is an attorney representing clients before BWC is disqualified from participating in the evaluation of the Administrator's performance.
- ¹⁰ Ohio Revised Code Section 4121.12 (F) (6) (c)
- ¹¹ Ohio Revised Code Section 121.22
- ¹² Ohio Revised Code Section 4121.12(F)(16)
- ¹³ Ohio Revised Code Section 4121.129
- ¹⁴ Ohio Revised Code Section 4123.47
- ¹⁵ Ohio Revised Code Section 4121.125(I)
- ¹⁶ Ohio Revised Code Section 4121.125(B)
- ¹⁷ Ohio Revised Code Section 4121.12 (G) (2)

Exhibit A

OBWC Board of Directors Audit Committee Charter

Purpose

The Audit Committee has been established to assist the Board of Directors of the Ohio Bureau of Workers' Compensation in fulfilling its fiduciary oversight responsibilities through:

- providing oversight of the integrity of financial reporting process;
- ensuring compliance with legal and regulatory requirements;
- monitoring the design and effectiveness of the system of internal control;
- confirming external auditor's qualifications and independence; and
- reviewing performance of the internal audit function and independent auditors.

In order to constitute the will of the Board of Directors, Committee actions must be ratified or adopted by the Board of Directors to become effective.

Membership

The Committee shall be composed of a minimum of five (5) members. One member shall be the appointed certified public accountant member of the board. The Board, by majority vote, shall appoint four additional members to serve on the Audit Committee and may appoint additional members, who may or may not be Board members, as the Board determines necessary. Members of the Audit Committee serve at the pleasure of the board and the board, by majority vote, may remove any member except the member of the committee who is the certified public accountant member of the board.

Each committee member will be independent from management. The Chair and Vice Chair is designated by the Board, based on the recommendation of the Board Chair. The Board Chair if not a member is an ex-officio member, shall not vote if his/her vote will create a tie vote when serving as ex-officio.

The Committee Chair will be responsible for scheduling all meetings of the Committee and providing the Committee with a written agenda for each meeting. The Committee will have a staff liaison designated to assist it in carrying out its duties.

Meetings

The Audit Committee shall meet at least nine (9) times annually, or as frequently as needed and will provide activity reports to the Board of Directors. The Committee will invite members of management, external auditors, internal auditors and/or others to attend meetings and provide pertinent information, as necessary. A quorum shall consist of a majority of the Committee members. Committee meetings will be conducted according to Robert's Rules of Order. The Committee will have a staff liaison designated to help it carry out its duties.

Duties and responsibilities

The Audit Committee shall have responsibility for the following:

1. Oversight of the integrity of the financial information reporting process:
 - a. Review with management and the external auditor significant financial reporting issues and judgments made in connection with the preparation of the financial statements.
 - b. Review with management and the external auditor the results of the audit.
2. Review all internal audit reports on regular basis.
3. Review results of each annual audit and management review; if problems exist, assess appropriate course of action to correct, and develop action plan. Monitor implementation of any action plans created to correct problems noted in annual audit.
4. Serve as the primary liaison for Bureau of Workers' Compensation Board of Directors and providing a forum for handling all matters related to audits, examinations, investigations or inquiries of the Auditor of State and other appropriate State or Federal agencies
5. Develop an oversight process to assess the adequacy and effectiveness of internal controls and provide the mechanisms for periodic assessment of system of internal controls on an ongoing basis.
6. Oversee the assessment of internal administrative and accounting controls by both the external independent financial statement auditor and internal auditor.
7. Consult on the appointment and/or removal of the Chief of Internal Audit and have oversight on the work of the Internal Audit Division.
8. Ensure the independence of the external auditor and approve all auditing, other attestations services and pre-approve non-audit services performed by the external auditor.
9. Review the internal financial statements upon the request of a committee member or BWC staff.
10. Review management's biennial appropriation requests and recommend approval to the Board.
11. Receive and review reports from management regarding the status of appropriations bills.
12. Review and recommend to the Board the proposed annual fiscal year Administrative Cost budget prepared by management. Also, advise the Board of any adjustments made to the proposed budget.
13. At least once every 10 years, have an independent auditor conduct a fiduciary performance audit of BWC's investment program, policies and procedures. Provide a copy of audit to the Auditor of State. (RC 4121.125(D), effective 2007)
14. After every meeting, report to the Board of Directors of the Bureau of Workers' Compensation on all activities, findings and recommendations of the Committee.
15. Establish policies and procedures to function effectively.
16. Recommend to the Board an accounting firm to perform the annual audit required under RC 4123.47. Recommend an auditing firm for the Board to use when conducting audits under RC 4121.125.
17. Retain and oversee consultants, experts, independent counsel, and accountants to advise the Committee on any of its responsibilities or assist in the conduct of an investigation.

18. Seek any information it requires from employees—all of whom are directed to cooperate with the Committee's requests, or the requests of internal or external parties working for the Committee. These parties include, but are not limited to internal auditors, all external auditors, consultants, investigators and any other specialists working for the Committee.
19. Coordinate with the other Board Committees on items of common interest, especially discussions and decisions concerning the net asset policy.
20. At least annually, this charter must be reviewed by the Audit Committee and any proposed changes submitted to the Governance Committee and to the Board for approval.
21. At least annually, meet with General Counsel and Chief of Internal Audit to review BWC Code of Ethics to ensure that it is adequate and up-to-date. Report on review and recommended changes, if necessary, to the Board.
22. The Committee by majority vote may create a subcommittee consisting of one or more Directors on the Committee. In consultation with the chair, other board members may be appointed to the subcommittee as appropriate. The subcommittee shall have a specific purpose. Each subcommittee shall keep minutes of its meetings. The subcommittee shall report to the Board of Directors through the Committee. The Committee by majority vote may dissolve the subcommittee at any time.

Audit Committee Charter.doc
Draft 092607
Review & Approved 112107, Ken Haffey, Chair
Revised 012408
Revised 012508
Revised 092408
Annual Review and Revision 112108

OBWC Board of Directors Actuarial Committee Charter

Purpose

The Actuarial Committee has been established to assist the Ohio Bureau of Workers' Compensation Committee Board of Directors in fulfilling its responsibilities through:

- monitoring the actuarial soundness and financial condition of the funds and reviewing rates, reserves and the level of net assets
- monitoring the integrity of the actuarial audit process
- monitoring compliance with legal and regulatory requirements
- monitoring the design and effectiveness of the actuarial studies
- confirming external actuarial consultants' qualifications and independence
- reviewing any independent external actuarial work product

In order to constitute the will of the Board of Directors, Committee actions must be ratified or adopted by the Board of Directors to become effective.

Membership

The Committee shall be composed of a minimum of five (5) members. One member shall be the appointed actuary member of the Board. The Board, by majority vote shall appoint four additional members. The Board may also appoint additional members who may or may not be on the Board. Members of the Actuarial Committee serve at the pleasure of the Board and the Board, by majority vote, may remove any member except the member of the committee who is the actuary member of the Board.

Each committee member will be independent from management. The Chair and Vice Chair are designated by the Board, based on the recommendation of the Board Chair. The Board Chair, if not a member, is an ex-officio member and shall not vote if his/her vote will create a tie vote when serving as ex-officio.

The Committee Chair will be responsible for scheduling all meetings of the Committee and providing the Committee with a written agenda for each meeting. The Committee will have a staff liaison designated to assist it in carrying out its duties.

Meetings

By majority vote the Committee will recommend to the Board of Directors its meeting schedule. There shall be not less than nine (9) meetings each year. Reports shall be made to the Board after each meeting. The Committee also has the authority to convene additional meetings, as circumstances require. The Committee will invite members of management, external actuarial firms, internal actuarial staff and/or others to attend meetings and provide pertinent information, as necessary. Committee meetings will be conducted according to Robert's Rules of Order. A quorum will be a majority of the Committee members.

Duties and Responsibilities

The Actuarial Committee shall have responsibility for the following:

1. Recommending actuarial consultants for the Board to use for the funds specified in the Ohio Revised Code.
2. Reviewing the calculation of rate schedules prepared by the actuarial consultants with whom the Board contracts.
3. Reviewing administrative code rules regarding rate making for recommendation to the Board.
4. Supervising for the Board's consideration the preparation of an annual report of the actuarial valuation of the assets, liabilities and funding requirements of the state insurance funds to be submitted to the Workers' Compensation Council and the Senate and House.
5. Coordinating with other Board Committees on issues of common interest.
6. At least once every five (5) years, contracting for an actuarial investigation of experience of employers; mortality, service and injury rate of employees; and payment of benefits in order to update the assumptions on the annual actuarial report. (RC 4121.125(F), effective 2007)
7. Arranging for an actuarial analysis prepared of any legislation expected to have measurable financial impact on the system, within 60 days after introduction of the legislation.
8. Consulting in the appointment of and overseeing the work of any actuarial firm engaged by Ohio Bureau of Workers' Compensation to complete actuarial studies.
9. Recommending retention and oversight of consultants, experts, independent counsel and actuaries to advise the Committee on any of its responsibilities or assist in the conduct of an investigation.
10. Seeking any information it requires from Bureau employees – all of whom are directed to cooperate with the Committee's requests, or the request of internal or external parties working for the Committee. These parties include the internal actuaries, all external actuaries, consultants, investigators and any other specialties working for the Committee.
11. Making recommendations to the Board of Directors of the Ohio Bureau of Workers' Compensation for Board decisions.
12. At least annually, reviewing this charter and submitting any proposed changes to the Governance Committee and to the Board for approval.
13. Creating, by majority vote, a subcommittee consisting of one or more Directors on the Committee. In consultation with the Chair, other Board members may be appointed to the subcommittee as appropriate. The subcommittee shall have a specific purpose. Each subcommittee shall keep minutes of its meetings. The subcommittee shall report to the Board of Directors through the Committee. The Committee by majority vote may dissolve the subcommittee at any time.

OBWC Board of Directors Investment Committee Charter

Purpose

The purpose of the Investment Committee is to ensure that the assets of the Ohio Bureau of Workers' Compensation (OBWC) are effectively managed in accordance with the laws of the State of Ohio, and the Ohio Bureau of Workers' Compensation Statement of Investment Policy and Guidelines. The Investment Committee:

- assists the Board of Directors in the review and oversight of the State Insurance Fund and each Ancillary Fund (collectively the Funds) assets; and
- develops and monitors the implementation of the BWC's investment policy.

In order to constitute the will of the Board of Directors, Committee actions must be ratified or adopted by the Board of Directors to become effective.

Membership

The Committee shall be composed of a minimum of five (5) members. Two of the members shall be the members of the Board who serve as the investment and securities experts on the Board. The Board, by majority vote, shall appoint three additional members to serve on the Investment Committee and may appoint additional members, either from the Board or someone not on the Board. Each additional non-Board member appointed must have at least one of the following qualifications: a) experience managing another state's pension funds or workers' compensation funds; or b) expertise that the Board determines is needed to make investment decisions.

The Chair and Vice Chair are designated by the Board, based on the recommendation of the Board Chair. The Board Chair, if not a member, is an ex-officio member and shall not vote if his/her vote will create a tie vote when serving as ex-officio.

Members of the Investment Committee serve at the pleasure of the Board and the Board, by majority vote, may remove any member except the members of the Committee who are the investment and securities expert members of the Board.

Meetings

The Investment Committee will meet at least nine (9) times annually; additional meetings may be scheduled as the Committee or its chairperson deem advisable. The Investment Committee is governed by the same rules regarding meetings, notice, quorum and voting requirements as are applicable to the Board. Committee meetings will be conducted according to Robert's Rules of Order. A quorum at any Investment Committee meeting will consist of a majority of the Committee members.

The Chair of the Committee will be responsible for establishing the agendas for the meetings of the Committee. An agenda, together with information/background materials, will be sent to members of the Committee prior to each meeting. Minutes for all meetings of the Committee will be prepared to document all actions of the Committee's discharge of its responsibilities. The Committee will have a staff liaison designated to help it carry out its duties.

Duties and Responsibilities

The Investment Committee is charged with overseeing all investment-related matters and activities of the BWC. The Committee evaluates proposals requiring Board action and makes recommendations for consideration by the Board. The Committee shall:

1. Develop and recommend the strategic asset allocation and investment policy for the Funds and submit to the Board for approval. Periodically review the investment policy in light of any changes in actuarial variables, market conditions, etc. and make recommendations for any changes, as appropriate to the Board for approval. Assist the Board to assure that the investment policy is reviewed and approved at least annually, published, and copies are made available to interested parties.
2. Evaluate and recommend an outside investment consultant to assist the Investment Committee in its duties. Submit a contract with the recommended investment consultant to the Board for approval.
3. Review the annual report on the investment performance of the funds and the value of each investment class and submit to the Board for approval. Once approved, this report must be submitted to the Governor, the president and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives.
4. Provide advice and consent to the Administrator on the appointment of the Chief Investment Officer.
5. Recommend investment counsel to the Board for engagement.
6. Recommend to the Board for approval the criteria and procedures for the selection of the Investment Managers and General Partners. Approve the final selection, funding and termination of all Investment Managers and General Partners.
7. Monitor implementation of the investment policy by the Administrator and the Chief Investment Officer. Review performance of the Chief Investment Officer and any investment consultants retained by the BWC to assure compliance with the investment policy and effective management of the Funds.
8. Develop and recommend rules on due diligence standards for employees of BWC to follow when investing in each asset class. Develop and recommend policies and procedures to review and monitor the performance and value of each asset class. Submit these recommendations to the Board for approval.
9. Monitor and review the investment performance of the Funds on a quarterly basis to determine achievement of objectives and compliance with this investment policy.
10. Recommend prohibited investments, on a prospective basis, the Committee finds to be contrary to the investment objectives of the Funds and submit to the Board for approval.
11. Recommend the opening and closing of each investment class and submit to the Board for approval.
12. Report all activities/recommendations to the Board following each meeting of the Investment Committee.
13. Coordinate with other Board committees on items of common interest.
14. At least annually, review this charter and submit any proposed changes to the Governance Committee and to the Board for approval.
15. Create, by majority vote, a subcommittee consisting of one or more Directors on the Committee. In consultation with the Chair, other Board members may be appointed to the

subcommittee as appropriate. The subcommittee shall have a specific purpose. Each subcommittee shall keep minutes of its meetings. The subcommittee shall report to the Board of Directors through the Committee. The Committee by majority vote may dissolve the subcommittee at any time.

InvestmentCommitteeCharter.doc
Draft 092607
Review & Approved 112107, Bob Smith, Chair
Revised 012408
Revised 092408
Annual Review and Revision 112108

OBWC Board of Directors Governance Committee Charter

Purpose

The Committee shall assist the Ohio Bureau of Workers' Compensation Board of Directors in fulfilling its oversight responsibilities relating to developing and implementing sound governance policies and practices. The Committee is responsible for:

- reviewing and recommending to the Board the adoption of governance guidelines and committee charters;
- overseeing compliance with federal and state laws, regulations, policies and ethical requirements;
- developing a process for the Board's assessment of its performance and the performance of Board committees;
- overseeing the process for orientation of new Board members and the continuing education program for all Board members;
- making recommendations for Board Vice-Chair, Committee Chairs and Vice-Chairs and Director assignments to Board committees for the Chair's consideration; and
- coordinating processes and procedures for the Administrator's annual performance review.

In order to constitute the will of the Board of Directors, Committee actions must be ratified or adopted by the Board of Directors to become effective.

Membership

The Committee shall be composed of a minimum of five (5) members. One member shall be the Chair of the Ohio Bureau of Workers' Compensation Board of Directors. The Chair and Vice-Chair of the Governance Committee are designated by the Board based on the recommendation of the Board Chair.

The Committee Chair will be responsible for scheduling all meetings of the Committee and providing the Committee with a written agenda for each meeting. The Committee encourages all Board members to attend its meetings. The Governance Committee is a standing committee of the Ohio Bureau of Workers' Compensation (BWC) Board of Directors. The Committee will have a staff liaison designated to assist it in carrying out its duties. This Board liaison will be responsible for all communication, handling of responses and public record requests of the Board.

Meetings

The Committee shall meet at least four times annually or more frequently as it shall determine is necessary to carry out its duties and responsibilities. The Committee Chair will schedule regular meetings; additional meetings may be held at the request of two or more members of the Committee, or the Chair of the Board. A majority of the members shall constitute a quorum.

Committee meetings will be conducted according to Robert's Rules of Order. At least one meeting shall be in executive session for the purpose of the performance review of the Administrator.

Duties and Responsibilities

In carrying out its oversight responsibilities, the Committee shall:

1. At least annually review the Board's Governance Guidelines and the charters of the Board's standing committees, and making such recommendations as the Committee determines necessary, appropriate, and consistent with HB 100, including recommendations concerning the structure, composition, membership and function of the Board and its committees, subject to Board approval.
2. Make recommendations for Board Vice-Chair, Committee Chairs and Vice-Chairs, and Director assignments to Board committees for the Chair's consideration and the Board's approval.
3. Develop and coordinate the annual self-assessment of the Board and its Committees.
4. Make recommendations to the Board for retaining fiduciary counsel.
5. Oversee the process for all statutorily required reports of the Board for submission to the Governor, General Assembly or the Workers' Compensation Council.
6. Oversee compliance with laws, regulations, policies and ethical requirements.
7. Oversee the BWC orientation process for newly appointed members of the BWC Board and assist the Board in its implementation. The Committee shall also regularly assess the adequacy of and need for additional continuing Director education programs. At a minimum, the education components must meet the requirements of RC 4121.12(F)(16). These requirements include: orientation for new members; continuing education for those Board members who have served for more than one year; Board member duties and responsibilities; injured worker compensation and benefits; ethics; governance processes and procedures; actuarial soundness; investments; and any other subject matter the Board believes is reasonably related to the duties of a Board member.
8. Assist in the establishment of the Board's annual prospective performance goals and objectives for the Administrator; coordinate and facilitate the process for the Board's annual performance evaluation of the Administrator.
9. Consult with the Administrator and recommend to the Board the appointment of the Superintendent of Safety and Hygiene.
10. Act as the lead committee for rule review and changes with the exception of actuarial rules or other rules specific to an existing committee. Will follow the process for rule review as outlined in the Governance Guidelines.
11. Make reports to the Board following its meetings.
12. Coordinate with other Board committees on issues of common interest.
13. Perform such other duties required by law or otherwise as are necessary or appropriate to further the Committee's purposes, or as the Board may from time to time assign to the Committee.

14. Create by majority vote a subcommittee consisting of one or more Directors on the Committee. In consultation with the Chair, other Board members may be appointed to the subcommittee as appropriate. The subcommittee shall have a specific purpose. Each subcommittee shall keep minutes of its meetings. The subcommittee shall report to the Board of Directors through the Committee. The Committee by majority vote may dissolve the subcommittee at any time.

Draft reviewed Oct. 4, 2007 and Oct. 14, 2007
Approved as edited 112107; Alison Falls, Chair
Revised 012308
Revised 092408
Annual Review and Revision 112108

Exhibit B

OHIO ETHICS COMMISSION

Ann Marie Tracey, *Chair*
Ben Rose, *Vice Chair*



8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
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Web site: www.ethics.ohio.gov

David E. Freel, *Executive Director*

February 4, 2008

Marsha P. Ryan
Ohio Bureau of Workers' Compensation
30 West Spring Street
Columbus, OH 43215-256

Dear Ms. Ryan:

On September 14, 2007, the Ohio Ethics Commission received your letter requesting an advisory opinion. In your letter, you explained that three members of the Bureau of Workers' Compensation (BWC) Board of Directors (Board), William Lhota, James Matesich, and Kenneth Haffey have asked for guidance about the Ohio Ethics Law and related statutes as they apply to the Board members' various business relationships. Because the facts as they pertain to Mr. Lhota and Mr. Matesich give rise to the same issues under the Ethics Law, this advisory opinion will be limited to addressing the restrictions that apply to them.

You state that William Lhota is the Chairman of the BWC Board and also serves on the Executive Committee (Committee) for the Ohio Chamber of Commerce (Chamber). You state that the Committee makes recommendations on budget and policy issues but does not directly address matters concerning workers' compensation.

You state that James Matesich serves as a Board Member and Treasurer for the Wholesale Beer & Wine Association of Ohio (Association). He has one year remaining in his term and he anticipates that he will serve a two-year term as the Association's vice-president. The Association has a workers' compensation group for premium matters but does not vote on whether to maintain workers' compensation group members. The Association's Third Party Administrator (TPA) provides the Association with semi-annual reports and marketing materials regarding its group-rating program. The TPA makes decisions regarding group membership.

Brief Answer

The Ethics Law, as described more fully in this opinion, does not prohibit either Mr. Lhota or Mr. Matesich from serving with the Board and a private organization. However, the law does condition each board member's actions on the Board as those actions directly affect the private organization. For example, R.C. 102.03(D) prohibits either Board member from participating in any matter before the BWC that would result in a definite and direct benefit to the interests of the organization with which he has a fiduciary connection, such as matters on which the organization has expressed a position.

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BUREAU OF WORKERS' COMP.
ADMINISTRATION

Soliciting, Accepting, and Securing Things of Value—R.C. 102.03(D) and (E)

R.C. 102.03(D) and (E) read:

- (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

A BWC Board member is a "public official" subject to R.C. 102.03(D) and (E). Ohio Ethics Commission Advisory Opinion No. 93-002. A beneficial or detrimental economic impact that an organization would realize as a definite and direct result of BWC Board decisions is a thing of value under R.C. 102.03. R.C. 1.03 and 102.01(G); Adv. Ops. No. 90-002 and 90-012.

A thing of value can manifest a substantial and improper influence upon a public official or employee with respect to his or her duties if it could impair the official's or employee's objectivity and independence of judgment in the performance of his or her statutorily prescribed duties. Adv. Op. No. 90-012. The application of R.C. 102.03(D) and (E) depends on the facts and circumstances presented. Adv. Op. No. 97-002.

The Commission has explained that R.C. 102.03(D) and (E) do not, per se, prohibit a public official from serving as an officer or board member of a private organization whose members are individuals subject to regulation by the agency. However, when a public official has a fiduciary relationship to a private organization, the law limits the official's conduct in matters affecting the organization. Adv. Op. No. 90-012.

The Commission determined that, when a public official also serves as an officer or board member of a professional association, his objectivity and independence of judgment would be impaired in decisions affecting the interests of the professional organization and its members. Adv. Op. No. 90-012; see also Adv. Op. No. 85-012. In particular, the Commission noted that the public official was prohibited from participating in any matters that would directly benefit the interests of the organization, including those matters on which the organization has taken a position. Compare R.C. 102.03(J) (a public official who is merely a member of a religious, benevolent, fraternal, or professional organization is not prohibited from participating in matters before the agency that affect the organization, while an official with a fiduciary relationship to the organization is prohibited from participating in matters that affect the organization's interests).

Mr. Lhota serves on the Executive Committee of the Chamber; Mr. Matesich serves as a board member and officer of the Association. Each has a fiduciary relationship to the private organization he serves. Both the Chamber and the Association, as employers regulated by BWC, and the members of each organization, are interested in matters that could be affected by BWC Board decisions. Because of his fiduciary relationship to the organization he serves, R.C. 102.03(D) prohibits each Board member from participating in any matter before the BWC Board that would result in a definite and direct benefit to the organization's interests, including any matter on which the organization has expressed a position in any way. Where an organization board votes or makes a determination on a matter, directs staff to lobby or speak on its behalf on the matter, or otherwise makes its position on the matter known, it has expressed a position on the matter, regardless of whether the position is communicated by the board or staff of the organization.

R.C. 102.03(E) is also applicable to both Board members. The Chamber and the Association are interested in matters before the BWC Board. Therefore, R.C. 102.03(E) prohibits each Board member from receiving any compensation from the organization he serves, unless the Board member is able to fully withdraw from consideration of any matter before the Board that would result in a definite and direct benefit to the organization's interests, including matters on which the organization has expressed a position. Adv. Op. No. 90-012.

Specific Conflict of Interest Prohibition—R.C. 4121.126

While it is not within the Commission's jurisdiction, the Ethics Commission directs the attention of the Board members to R.C. 4142.126, a specific conflict of interest restriction applicable to members of the Board and other officials and employees of the Board and BWC. R.C. 4121.126 provides that no Board member, or employee of the Board or BWC shall: "have any direct or indirect interest in the gains or profits of any investment made by the administrator of workers' compensation or shall receive directly or indirectly any pay or emolument for the member's or employee's services."

Other Relevant Restrictions

If either Board member represents the private organization that he serves before state agencies, he would be subject to R.C. 102.04(A), which provides that no person appointed to any board of the state shall:

[R]eceive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

R.C. 102.04(A) would prohibit a BWC Board member from receiving compensation from a private organization for personally lobbying on behalf of the organization on a matter that is before the Board. There is no exception to this prohibition. If either Board member would be asked to represent the organization he serves before any other state agency, R.C. 102.04(A) would prohibit him from accepting compensation for the service unless he can meet the exception in Division (D). Adv. Op. No. 2007-03 (attached). In order to meet the exception, the Board member would be required to file a statement disclosing his activities and agreeing to disqualify himself from matters before the Board that affect any officials or employees of the agency before which he is representing the organization.

The BWC Board members are also subject to the “Revolving Door” statute, R.C. 102.03(A)(1), which reads:

No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

(Emphasis added.) R.C. 102.03(A)(1) prohibits each BWC Board member, during his service on the Board, from representing the private organization that he serves, or any other person, before any public agency on any matter in which he personally participated as a BWC Board member. Representation includes any formal or informal appearance before, or written or oral communication with, any public agency, on behalf of any person. R.C. 102.03(A)(5).

“Personal participation” includes “decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion,” and includes supervision or general oversight of other public officials or employees. R.C. 102.03(A)(1); Adv. Op. No. 91-009. The term “matter” includes “any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments.” R.C. 102.03(A)(5) (emphasis added.) For example, a policy or directive issued by the BWC Board would be a “matter” on which the Board members personally participated.

Finally, the Board member should note R.C. 102.03(B), which prohibits a public official or employee from disclosing or using confidential information acquired in the performance of his public duties. Each BWC Board member is prohibited from disclosing or using any confidential information he acquired through his service on the BWC Board. There is no time limit for this restriction. Adv. Op. No. 89-009.

Conclusion

The Ethics Law, as described more fully in this opinion, does not prohibit either Mr. Lhota or Mr. Matesich from serving with the Board and a private organization. However, the law does condition each board member's actions on the Board as those actions directly affect the private organization. For example, R.C. 102.03(D) prohibits either Board member from participating in any matter before the BWC that would result in a definite and direct benefit to the interests of the organization with which he has a fiduciary connection, such as matters on which the organization has expressed a position.

The Ohio Ethics Commission approved this informal advisory opinion at its meeting on November 28, 2007, subject to final review and approval by Commission members. The opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any questions or desire additional information, please contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney

Enclosures: Advisory Opinions No. 90-012 and 2007-03
Blank R.C. 102.04(D) Statements (2)



OHIO ETHICS COMMISSION
THE ATLAS BUILDING
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Advisory Opinion
Number 90-012
August 16, 1990

Syllabus by the Commission:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of the Respiratory Care Board from soliciting, accepting, or using the authority or influence of his official position to secure anything of value from a professional organization whose members are regulated by the Respiratory Care Board;
- (2) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of the Respiratory Care Board from soliciting, accepting, or using the authority or influence of his official position to secure a position as an officer, board member, member of a special committee of, or lobbyist for, a professional respiratory care organization if he would receive compensation, a fee, or anything else of value for such service;
- (3) Division (D) of Section 102.03 of the Revised Code prohibits a member of the Respiratory Care Board who serves as an officer or board member of a professional organization from participating in any matter on which the organization has taken a position or which would directly benefit the interests of the organization, even though he receives no compensation for serving as an officer or board member of the organization;
- (4) Division (D) of Section 102.03 of the Revised Code prohibits a member of the Respiratory Care Board who serves a professional organization as a lobbyist or who serves on a special committee from participating in deliberations, voting, or otherwise using his official position with regard to a matter where he has assumed a particular responsibility in the organization with regard to that subject matter or has advocated a position as a lobbyist for the professional organization;
- (5) Division (B) of Section 102.03 of the Revised Code prohibits a Respiratory Care Board member who serves a professional organization as a board member or officer, or in some other capacity from disclosing or using confidential information he has acquired in his official duties, or taking any action on behalf of the organization if he will base his action on confidential information acquired in his official duties.

* * *

In your letter to the Ethics Commission you ask whether the Ohio Ethics Law and related statutes prohibit a member of the Respiratory Care Board (Board) from serving as an officer or board member of a national or state professional respiratory care organization, serving on the organizations' special committees, or being a state registered lobbyist for the organizations in light of the fact that the Board has the statutory authority and responsibility to regulate the profession. You state that the professional organizations promote the interests of respiratory care professionals by adopting standards for the practice of the profession and lobbying for the introduction of legislation or support of pending legislation which the organizations determine is beneficial to the profession.

The Ohio Respiratory Care Board is a statutorily created state board with the duty to regulate the practice of respiratory care within the state. See R.C. 4761.03. The Board consists of five individuals appointed by the Governor with the advice and consent of the Senate; three members of the Board are required to be respiratory care professionals, one is required to be a physician licensed to practice in the state, and one member represents the public. See R.C. 4761.02. Three organizations within the state, the Ohio State Medical Association, the board of directors of the Ohio Society for Respiratory Care, Inc., and the American Lung Association of Ohio may submit to the Governor nominees to be considered in making appointments to the Board. Id. The Governor must consider these nominees in making the appointments. Id. The Board is responsible for the examination, re-examination, and licensure of respiratory care professionals and the establishment of standards for educational programs required for licensure and license renewal. See R.C. 4761.03(A)-(D). The Board is also responsible for the discipline of persons engaged in the unauthorized, negligent, incompetent, or unethical practice of respiratory care, or engaged in conduct or activity which is prohibited by statute, or orders and rules of the Board. See R.C. 4761.09 and R.C. 4761.10.

You first ask whether a member of the Respiratory Care Board may serve as an elected officer or board member of a national or state professional respiratory care organization.

Division (D) of Section 102.03 of the Revised Code provides:

- (D) No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

The term "public official or employee" is defined for purposes of R.C. 102.03 to include any person who is appointed to a public agency. See R.C. 102.01(B). The term "public agency" is defined to include any board of the state. See R.C. 102.01(C). Therefore a member of the Respiratory Care Board is a "public official or employee" for purposes of R.C. Chapter 102, and subject to the prohibitions therein. See generally Ohio Ethics Commission Opinions No. 80-004, 85-012, and 90-009. The term "anything of value" is defined for purposes of R.C. 102.03 in R.C. 1.03 to include money and every other thing of value. See R.C. 1.03, 102.01(G).

R.C. 102.03(D) prohibits a public official or employee from using the authority or influence of his official position to secure anything of value, for himself or any other party, that is of an improper character. See Advisory Opinions No. 80-007, 85-006, 86-003, 86-007, 88-004, and 89-006. The Ethics Commission has held that R.C. 102.03(D) prohibits a public official or employee from using the authority or influence of his office or employment to secure anything of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with, the public agency with which he serves, or where the thing of value could impair the official's or employee's objectivity and independence of judgment with respect to his official actions and decisions for the agency which he serves. See Advisory Opinions No. 79-002, 80-004, 84-009, 84-010, 87-006, 87-009, and 89-006.

The Ethics Commission addressed the issue whether a member of a state regulatory board may serve as an officer or board member of a professional organization whose members are regulated by his board in Advisory Opinion No. 85-012. The Commission held that R.C. 102.03(D) did not per se prohibit a member of a state licensing board from serving as an officer or board member of a state professional organization but that it conditioned the board member's official conduct, holding:

An officer or board member of the state professional association would be in a policy-making position and would have a clear interest in a favorable decision from the state licensing board on matters in which the association is interested. If the member were to participate in discussions or vote on such matters before the state licensing board, he would be using his official position to secure something of value for himself as an officer or board member of the state professional association, which would be of such character as to have a substantial and improper influence on him with respect to his official duties. Therefore, Division (D) of Section 102.03 of the Revised Code prohibits a member of a state licensing board who is an officer or board member of a state professional association from participating in deliberations, voting or otherwise using his official position with regard to any matter before the board on which the state professional association has filed comments or taken a formal position. (Emphasis added).

Advisory Opinion No. 85-012 was rendered before Am. Sub. H.B. 300, 116th Gen.A. (1986) (eff. September 17, 1986) amended R.C. 102.03(D). Prior to the enactment of Am. Sub. H.B. 300, R.C. 102.03(D) prohibited a public official or employee from using the authority or influence of his office or employment to secure anything of value for himself if the thing of value were of such character as to manifest a substantial and improper influence upon him with respect to his duties. See Advisory Opinion No. 88-004. Am. Sub. H.B. 300 amended R.C. 102.03(D) to delete the requirement that the thing of value be for the public official or employee himself, thus broadening the scope of the prohibition of R.C. 102.03(D). Id. The Commission has held that a public official is prohibited by R.C. 102.03(D), as amended by Am. Sub. H.B. 300, from voting, discussing or otherwise participating in any matter that would benefit an organization which he serves as an officer or board member, since the relationship between the public official and the organization he serves in a fiduciary capacity is such that his objectivity and independence of judgment as a public official could be impaired. See Advisory Opinions No. 88-005 and 89-005. See also R.C. 102.03(J) (discussed below).

Am. Sub. H.B. 300 also enacted Division (E) of Section 102.03, which reads as follows:

- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

Division (E) of Section 102.03 of the Revised Code does not require that a public official or employee use the authority or influence of his office to secure the thing of value, but prohibits a public official or employee from merely soliciting or accepting anything of value where the thing of value could manifest a substantial and improper influence upon him with respect to his official duties. See generally Advisory Opinions No. 89-006 and 90-009.

The Ethics Commission has held that R.C. 102.03(E) prohibits a public official or employee from soliciting or accepting anything of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with, the public agency with which he serves, or where the receipt of such a thing of value could impair his objectivity and independence of judgment with regard to his official decisions and responsibilities. See Advisory Opinions No. 86-011, 89-006 and 90-009. Therefore, the issue becomes whether the holding of Advisory Opinion No. 85-012 that a member of a state licensing board is not per se prohibited from serving as an officer or board member of a professional organization is still applicable in light of the enactment of R.C. 102.03(E) by Am. Sub. H.B. 300.

As explained above, the Respiratory Care Board regulates, and stands in a position of authority over, practitioners of respiratory care within the state. It is apparent that state and national professional respiratory care organizations which represent such practitioners are interested in matters which the Respiratory Care Board has the statutory responsibility to regulate. Therefore, R.C. 102.03(D) and (E) prohibit a Board member from accepting, soliciting, or using the authority or influence of his office to secure anything of value from professional respiratory care organizations. See Advisory Opinion No. 90-009. See also Advisory Opinions No. 80-004, 85-012 and 87-006 (payments of honoraria, conference registration fees, travel, meal and lodging expenses and the compensation received from private outside employment are things of value for purposes of R.C. 102.03). Therefore, a Board member is prohibited by R.C. 102.03(E) from serving as an officer or board member of a professional, respiratory care organization if he would receive compensation, a fee, or anything else of value for such service. Division (D) would prohibit a Board member from using his official authority or influence to secure a position as an officer or board member of a professional organization if he would receive compensation or anything else of value for such service.

R.C. 102.03(J), which was enacted by Am. H.B. 610, 118th Gen.A. (1990) (eff. July 10, 1990) and provides an exemption to the prohibitions of 102.03(D) and (E), reads as follows:

For purposes of divisions (D), (E), and (F) of this section, the membership of a public official or employee in an organization shall not be considered, in and of itself, to be of such a character as to manifest a substantial and improper influence on him with respect to his duties. As used in this division, "organization" means a professional organization that

exempt under subsection 501(A) and described in subsection 501(C) (3), (4), (8), (10), or (19) of the "Internal Revenue Code of 1986." . . . This division does not apply to a public official or employee who is an employee of an organization, serves as a trustee, director, or officer of an organization, or otherwise holds a fiduciary relationship with an organization. This division does not allow a public official or employee who is a member of an organization to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use his official position with regard to the interests of the organization on the matter if he has assumed a particular responsibility in the organization on the matter or if the matter would affect his personal, pecuniary interests. (Emphasis added.)

However, the exemption provided by R.C. 102.03(J) is not applicable in the instant situation since the Board member would be serving the professional care organization in a fiduciary capacity as an officer or board member.

The issue remains, however, whether R.C. 102.03 would prohibit a Board member from serving as an officer or board member of a professional organization where he has not used the authority or influence of his official position to secure such a position and also does not receive or waives compensation for his service with the organization. The Ethics Commission has held that a position which does not provide any compensation or other thing of value does not constitute "anything of value" for purposes of R.C. 102.03. See Advisory Opinion No. 88-002. If elected board members or officers of professional organizations do not receive compensation for their service, then holding such a position would not constitute "anything of value" for purposes of R.C. 102.03. Therefore, in such a situation R.C. 102.03 would not prohibit a Board member from accepting a position as an officer or board member of a state or national professional organization.

However, as explained above, R.C. 102.03(D), as amended by Am. H.B. 300, prohibits a public official from using the authority or influence of his position to secure anything of value for an organization which he serves in a fiduciary capacity. A favorable decision from a state regulatory board is a thing of value for purposes of R.C. 102.03. See Advisory Opinions No. 85-012 and 90-002. It is possible that a professional organization and the Board may take different positions regarding the development of policies and standards for the profession, the introduction or support of legislation, the enactment, interpretation, or application of orders or rules adopted by the Board, or a determination made by the Board in a particular case regarding a member of the professional organization. A professional organization and the members which it represents would have a definite and direct interest in a favorable decision from the state licensing board which regulates the profession. A member of the Respiratory Care Board who served as an officer or board member of a professional organization would be in a position where his official actions could have a direct effect upon the professional organizations' interests. The relationship between such a Board member and the professional organization could affect his objectivity and independence of judgment in making recommendations or decisions with regard to the interests of the professional organization and the members which it represents. Therefore, R.C. 102.03(D) prohibits a Board member who serves as an officer or board member of a professional organization from participating in any matter on which the organization has taken a position or which would directly benefit the interests of the organization, even though he receives no compensation for serving as an officer or board member of the organization. See also

It is apparent that the Board and professional organizations serve different interests. As discussed above, the responsibility of the Board is to protect the public safety and welfare through the regulation of the profession, see generally Nesmith v. State, 101 Ohio St. 158 (1920), while the function of professional organizations is to promote the interests of the members of the profession. As further noted, the Board and professional organizations may take different positions on various issues, and it is apparent that professional organizations will be interested in matters pending before the Board on a regular, ongoing basis. Therefore, as recognized in Advisory Opinion No. 85-012:

[I]t would create the appearance of impropriety for a member of a state licensing board to serve as an officer or board member of a state professional association whose members are regulated by the board.

You have also asked whether a Board member may chair or serve on special committees of a professional organization. You state that the national respiratory care professional organization has a joint review committee which surveys and approves schools which provide respiratory care educational programs. The Board has the statutory duty to adopt standards for respiratory care education programs which must at least be equal to the standards developed by the American Medical Association in cooperation with the joint review committee for respiratory care education. See R.C. 4761.03(A)(3). You also state that a state professional organization has a standing legislative committee that monitors and lobbies for state health care legislation and has established a political action committee to lobby for legislation to promote respiratory care.

As stated above, R.C. 102.03(E) prohibits a Board member from accepting anything of value from a respiratory care professional organization. Therefore, if the Board member would receive compensation, a fee, or anything else of value for chairing or serving on a professional organization special committee, then R.C. 102.03(E) would prohibit such service. However, if chairing or serving on a special committee does not result in the payment of compensation for such service, then holding such a position would not constitute "anything of value" for purposes of R.C. 102.03 and such service by a Board member would not be prohibited by R.C. 102.03(E).

A Board member who chairs or serves on a special committee is, however, subject to the conditions imposed by R.C. 102.03(D), even though he receives no compensation. The Ethics Commission has held that R.C. 102.03(D) prohibits a public official or employee who is a member in an organization from participating in deliberations, voting, or otherwise using his official position with regard to a matter where he has assumed a particular responsibility in the organization with regard to that subject matter. See Advisory Opinion No. 89-005. See also 102.03(J). The Commission has also held that R.C. 102.03(D) prohibits a public official or employee from reviewing, in his official capacity, work he has performed in his private capacity. See Advisory Opinions No. 78-004, 79-007, 82-001, 83-001, and 84-004.

If a Board member chairs or serves on a legislative committee, a PAC, or the joint review committee, then he would assume a particular responsibility in the organization regarding issues and matters which directly concern the Board. As stated above, R.C. 102.03(D) prohibits a public official from participating in deliberations, voting, or otherwise using his official position with regard to a matter where he has assumed a particular responsibility in the organization with regard to that subject matter.

respect to his official actions and decisions. For example, as stated above, the Respiratory Care Board must adopt standards for respiratory care education programs. If a Board member were to review and approve, in his official capacity, education programs in Ohio which he had surveyed and approved in his private capacity as a member of the joint review committee, then he would be subject to an inherent conflict of interest and divided loyalties such that his independence and objectivity of judgment could be impaired with regard to his official decisions and responsibilities. See Advisory Opinion No. 88-009.

Therefore, R.C. 102.03(D) prohibits a Board member, who serves on a special committee of a professional organization or a PAC, from reviewing, or participating in deliberations, voting, or otherwise using his official position with regard to a matter, where he has assumed a particular responsibility in the organization with respect to that subject matter while serving with the committee. As explained above, a Board member, by chairing or serving on a special committee would assume a particular responsibility in the professional organization with regard to that subject matter and therefore the exemption provided by R.C. 102.03(J) would not apply. R.C. 102.03(J) states that "this division does not allow a public official or employee who is a member of an organization to participate, formally or informally, in deliberations, discussions, or voting on a matter or to use his official position with regard to the interests of the organization on the matter if he has assumed a particular responsibility in the organization on the matter."

You have also asked if a Board member may serve as a state registered lobbyist for a professional organization. Your attention is directed to R.C. 102.04(A) which reads:

Except as provided in division (D) of this section, no person elected or appointed to an office of or employed by the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts, shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

R.C. 102.04(A) would prohibit a Board member from receiving compensation from a professional organization for personally lobbying on behalf of the professional organization on a matter that is before the General Assembly, the Respiratory Care Board, or other agency of the state. See Advisory Opinion No. 78-007. Division (D) of Section 102.04 provides an exception to the prohibitions of Division (A) and is available to nonelected officials and public employees, who wish to render services on matters pending before agencies other than their own. See Advisory Opinion No. 89-006 (describing exception). Under no circumstances, however, may the Board member represent a professional organization before the Respiratory Care Board. See Advisory Opinion No. 89-016. There is no exception to this prohibition. Id. Further, as stated above, R.C. 102.03(E) also prohibits the Board member from receiving any compensation from a professional organization. Also, R.C. 102.03(D) prohibits a Board member from participating on any matter in which he has advocated a position as a lobbyist, even if he receives no compensation for his services.

Such representation is further conditioned by R.C. 102.03(A) which provides, in pertinent part:

No present or former public official or employee shall, during his public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which he personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion . . .
. As used in this division, "matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. As used in this division, "represent" includes any formal or informal appearance before, or any written or oral communication with any public agency on behalf of any person. (Emphasis added.)

R.C. 102.03(A) prohibits a Board member, during his service on the Board and for one year after leaving his position, from representing a professional organization before any public agency, including the Respiratory Care Board, on any matter in which he had personally participated as a Board member. See Advisory Opinion No. 79-007.

A Board member occupies a position of great visibility in the profession such that lobbying on behalf of a professional organization may create the appearance of impropriety by injecting the prestige of his public office into his private activities for the professional organization. A Board member acting as a lobbyist may create the impression that such lobbying on behalf of the professional organization represents the official views and interests of the Board.

Division (B) of Section 102.03 reads:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

A Respiratory Care Board member is prohibited from disclosing confidential information to a professional organization, its members, or any other party, or from using such confidential information without appropriate authorization. No time limitation exists for this prohibition and it is effective while the Board member serves and after he leaves the Respiratory Care Board. See Advisory Opinion No. 88-009. A Respiratory Care Board member who serves a professional organization as a board member or officer, or in some other capacity is prohibited by R.C. 102.03(B) from taking any action on behalf of the organization if he will base such action on confidential information acquired in his official duties.

The Commission is aware that members of state boards . . .

concerning that profession. See Advisory Opinion No. 90-009. However, a public official or employee owes his first responsibility to the exercise of the public trust; this responsibility must not be impaired by the official's concern for a professional organization which he serves in some capacity. R.C. 102.03 is designed to prevent the creation of any situation which may impair the objectivity and impartiality, and therefore the effectiveness, of a public official or employee in the exercise of his public responsibilities. See generally Advisory Opinion No. 89-014 and 90-001. All public officials and employees must accept necessary restrictions to avoid any possible interference with the responsibilities of public office. See Advisory Opinions No. 89-010 and 90-009.

This advisory opinion is based on the facts presented, and is rendered only with regard to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code.

Therefore, it is the opinion of the Ethics Commission, and you are so advised, that: (1) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of the Respiratory Care Board from soliciting, accepting, or using the authority or influence of his official position to secure anything of value from a professional organization whose members are regulated by the Respiratory Care Board; (2) Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a member of the Respiratory Care Board from soliciting, accepting, or using the authority or influence of his official position to secure a position as an officer, board member, or member of a special committee of, or lobbyist for, a professional respiratory care organization if he would receive compensation, a fee, or anything else of value for such service; (3) Division (D) of Section 102.03 of the Revised Code prohibits a member of the Respiratory Care Board who serves as an officer or board member of a professional organization from participating in any matter on which the organization has taken a position or which would directly benefit the interests of the organization, even though he receives no compensation for serving as an officer or board member of the organization; (4) Division (D) of Section 102.03 of the Revised Code prohibits a member of the Respiratory Care Board who serves a professional organization as a lobbyist or who serves on a special committee from participating in deliberations, voting, or otherwise using his official position with regard to a matter where he has assumed a particular responsibility in the organization with regard to that subject matter or has advocated a position as a lobbyist for the professional organization; and (5) Division (B) of Section 102.03 of the Revised Code prohibits a Respiratory Care Board member who serves a professional organization as a board member or officer, or in some other capacity from disclosing or using confidential information he has acquired in his official duties, or taking any action on behalf of the organization if he will base his decision on confidential information acquired in his official duties.


David L. Warren, Chairman
Ohio Ethics Commission

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David E. Freel, *Executive Director*

INFORMATION SHEET: ADVISORY OPINION NO. 2007-03 **STATE BOARD MEMBER PAID FOR SERVICES BEFORE STATE AGENCIES**

What is the question addressed in the opinion?

Can members of state boards or commissions be paid to perform services on matters before their own boards or commissions? What about matters before other state agencies?

What is the answer in the opinion?

No. R.C. 102.04(A) prohibits any member of a state board or commission from accepting compensation, from any person, for services he or she is personally performing on a matter before the board or commission he or she serves. If the matter is before any state agency *other than* the one the board or commission member serves, he or she may be able to meet an exception in the law. R.C. 102.04(D) provides that, if the matter is before a different state agency, a state board or commission member can meet the exception by filing a statement disclosing his or her activities. The board or commission member must also refrain from participating in matters before the state agency he or she serves that affect officials or employees of the other state agency.

What is the purpose of answering the question in an advisory opinion?

Some members of state boards and commissions are asked to represent clients or perform work on matters that are before state agencies. For example, lawyers, architects, engineers, lobbyists, consultants, and other professionals may either appear on behalf of clients, or perform work for clients, on matters that are before state agencies.

To whom do the conclusions in this opinion apply?

While the opinion specifically involves board or commission members, the conclusions apply to any state official or employee who may personally render services on matters before state agencies. The exception does not apply to elected officials.

How and when did the opinion become effective?

The opinion became effective upon acceptance by the Commission.

For More Information, Please Contact:

David E. Freel, Executive Director, or
Jennifer A. Hardin, Chief Advisory Attorney

**THIS SHEET IS PROVIDED FOR INFORMATION PURPOSES ONLY.
IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2007-03 IS ATTACHED.**

OHIO ETHICS COMMISSION

Sarah M. Brown, *Chairman*
Robert Browning, *Vice Chairman*



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David E. Freel, *Executive Director*

Advisory Opinion
Number 2007-03
September 26, 2007

Syllabus by the Commission:

- (1) R.C. 102.04(A) prohibits a member of a state board or commission from receiving compensation for services he or she performs personally on a matter that is *before the board or commission on which he or she serves*;
- (2) R.C. 102.04(A) prohibits a member of a state board of commission from receiving compensation for services he or she performs personally on a matter that is before a state agency *other than* the one he or she serves *unless*, before rendering the services, he or she files the statement described in the exception;
- (3) In the statement, the board or commission member must declare that he or she will not participate in any matter before the board or commission involving any official or employee of the state agency where the matter on which he or she personally renders services is pending;
- (4) This restriction applies to all state officials or employees, including all members of state boards and commissions. A comparable restriction applies to local public officials and employees.

* * * *

The Ohio Ethics Commission has been asked whether the Ohio Ethics Law and related statutes prohibit a member of a state board or commission (“board”) from receiving compensation to perform services on matters pending before other state boards, commissions, or agencies.

Brief Answer

R.C. 102.04(A) prohibits a member of a state board from receiving compensation for services he or she seeks to perform personally on matters *before the board he or she serves*. However, an exception in R.C. 102.04(D) allows a board member to be paid to perform services personally on a matter *before an agency other than* the board he or she serves, as long as all of the requirements of the exception can be met.

Board Members Representing Clients before State Agencies—R.C. 102.04(A)

Ohio's Ethics Law includes restrictions on state board members receiving compensation to represent clients before state agencies. R.C. 102.04(A). R.C. 102.04(A) provides that, unless he or she can meet the exception in R.C. 102.04(D), no person elected or appointed to an office of, or employed by, any agency of the state shall:

[R]eceive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

A state board member is "appointed to an office" of the state and subject to this restriction. R.C. 102.01(B) and (C); Ohio Ethics Commission Advisory Opinion No. 93-010. "Compensation" is defined as "money, thing of value, or financial benefit," and would include salary, payments, and other benefits from clients, customers, or others. R.C. 102.01(A); Adv. Op. No. 92-006.

Personally rendering services includes, but is not limited to, representing, advising, preparing non-ministerial documents for, or consulting with, any person. Adv. Op. No. 75-006. Examples are: (1) negotiating or discussing matters with agency personnel or contractors; (2) appearing at an agency meeting or hearing; and (3) preparing pleadings or documents to be filed with or submitted to an agency. Adv. Op. No. 87-009. A person would be personally rendering services if he or she prepared and submitted, to a state agency, any grant or investment proposals, contract bid packages, responses to requests for proposals, or any other submission for financial support for a client or customer.¹ Individual board members who would be subject to the restriction in R.C. 102.04(A) include, but are not limited to, those who are also attorneys, engineers, architects, consultants, and lobbyists.

A matter is "before" a state agency when it is "being considered by, decided by, or in the presence of or under the official purview of" the state agency. Adv. Op. No. 76-009. See also Adv. Ops. No. 75-006 and 92-006. The prohibition of R.C. 102.04(A) applies even if the affected public official is not appearing before the agency on the matter. Adv. Op. No. 75-025.

The prohibition is intended to serve the public interest in effective, objective, and impartial government by prohibiting a state official or employee from using the influence of his or her position on behalf of clients. Adv. Ops. No. 89-014, 90-012, and 90-002. All public officials and employees must accept necessary restrictions to avoid any likely interference with the responsibilities of the public positions they hold. See Adv. Ops. No. 89-010 and 90-012.

¹ However, the law specifically provides that the performance of *ministerial functions* are not prohibited by R.C. 102.04(A), including, but not limited to: the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents. R.C. 102.04(F).

Application of Restriction and Exception

In effect, R.C. 102.04(A) prohibits a member of a state board from receiving compensation for activities such as making an appearance, preparing filings or other documents for, or personally performing any other services on any matter that is being considered or adjudicated by *any* state agency, *unless* the board member meets the statutory exception in R.C. 102.04(D).² For example, an Ohio Dietetics Board member who is a lawyer is prohibited from receiving compensation for personally representing clients on matters before the Ohio Civil Rights Commission, the Ohio Bureau of Workers' Compensation, or the Ohio Industrial Commission. Adv. Op. No. 93-010.

R.C. 102.04(D) provides an exception to this prohibition for board members who are not elected.³ There are two elements to the exception:

- (1) The matter on which the board member is rendering services is pending before an agency *other than* the one with which he serves; and
- (2) Prior to rendering the services, the board member files a statement with: (a) the board on which he or she serves ("Agency A"); (b) the state agency before which the matter is pending ("Agency B"); and (c) the Ohio Ethics Commission.⁴

The board member must file a statement for each year he or she is rendering services on matters before the board. Adv. Op. No. 93-010.

On the statement, the board member must declare that he or she will not participate as a board member in any matter before Agency A if the matter involves an official or employee of Agency B. Adv. Op. No. 92-006. The board member is not required to withdraw from matters that affect Agency B as a whole or classes of employees from Agency B. Adv. Op. No. 89-006. The disqualification requirement will remain in place for two years from the date of the most recently filed statement. Adv. Op. No. 93-010. R.C. 102.04(E) prohibits any person who files, or is required to file, the statement from failing to disqualify himself or herself from matters before the board that affect officials or employees of the agency handling the matter on which he or she is performing services. Both R.C. 102.04(A) and 102.04(E) are first-degree misdemeanors. R.C. 102.03(F).

² R.C. 102.04(A) does not apply to services provided on matters before state courts.

³ For example, R.C. 102.04(D) would not apply to the members of the state Board of Education who are elected.

⁴ The board or commission member must disclose: (a) his or her name and address; (b) the names and addresses of the two public agencies involved; and (c) a brief description of the pending matter and the services that he or she will render personally. R.C. 102.04 (D)(2). The form is available on the Ohio Ethics Commission Web site.

By removing a state board member who is being paid to provide services in a private capacity on matters before another state agency from considering issues affecting personnel of the other agency, the General Assembly has significantly reduced the likelihood that the board member can use his or her public position to secure benefits for a client. The requirement in the exception protects against the improper use of influence.

For example, a person appointed to the State Personnel Board of Review (SPBR) who wants to be paid to provide services personally on matters pending before the Medical Board is required to file the R.C. 102.04(D) statement with SPBR, the Medical Board, and the Ethics Commission. If a matter involving any official or employee of the Medical Board were to come before SPBR, the affected board member would be required to disqualify himself or herself from that matter.

Application of the Restriction

While this opinion considers the application of R.C. 102.04 to state board members, the statute and this opinion apply to any non-elected state official or employee. For example, R.C. 102.04(A) prohibits an employee of the Department of Commerce from receiving compensation from anyone other than the Department to personally render lobbying services before the General Assembly, unless he or she is able to meet the exception in R.C. 102.04(D). The exception does not apply to elected state officials.

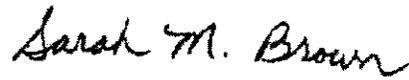
There is also a comparable provision that applies to officials and employees of local public agencies. R.C. 102.04(C). An official or employee of a local public agency is prohibited from receiving compensation for services on matters before the agency, unless the official or employee can meet the R.C. 102.04(D) exception. For example, R.C. 102.04(C) prohibits an architect who serves as a member of a city commission from receiving compensation for services on matters before any board, commission, or other agency of the city. Adv. Op. No. 96-002. If the matter is pending before a city agency other than the commission on which the architect serves, he or she can meet the exception by filing the statement and disqualifying from matters affecting personnel of the other agency.⁵

The application of this advisory opinion is based on the facts. It is limited to questions arising under Chapter 102, and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is opinion of the Ohio Ethics Commission, and you are so advised, that: (1) R.C. 102.04(A) prohibits a member of a state board or commission from receiving compensation for services he or she performs personally on a matter that is *before the board or commission on which he or she serves*; (2) R.C. 102.04(A) prohibits a member of a state board or commission from receiving compensation for services he or she performs personally on a matter that is before a state agency *other than* the one he or she serves *unless*, before rendering

⁵ The exception does not apply to elected local officials.

the services, he or she files the statement described in the exception; (3) In the statement, the board or commission member must declare that he or she will not participate in any matter before the board or commission involving any official or employee of the state agency where the matter on which he or she personally renders services is pending; and (4) This restriction applies to all state officials or employees, including all members of state boards and commissions. A comparable restriction applies to local public officials and employees.



Sarah M. Brown, Chairman
Ohio Ethics Commission

R.C. 102.04(D) STATEMENT

Required by the Ohio Ethics Law under Section 102.04(D) of the Revised Code

1. Name of Public Official or Employee: _____
Home Address: _____

2. Name of your Public Agency: _____
Agency Address: _____

3. Name of Public Agency before which the matter is pending or with which business is to be conducted (note that the exception provided by R.C. 102.04(D) does not extend to matters pending before your own agency or business to be conducted with your own agency):

Agency Address: _____

4. Brief description of the pending matter and of the personal services to be rendered before the agency listed in number 3, or brief description of the goods or services to be purchased by the agency listed in number 3:

5. Declaration—I hereby disqualify myself for a period of two years from any official participation as an official or employee of:

(Agency as listed in number 2)
in any matter involving any public official or employee of:

(Agency before which matter is pending or with which business is to be conducted as listed in number 3)

Signature: _____ Date: _____

NOTE: Copies of this statement must be filed with the public agencies designated in numbers 2 and 3 above, and with the Ohio Ethics Commission, 8 East Long Street, 10th Floor, Columbus, Ohio 43215. Please refer any questions to the Ohio Ethics Commission—(614) 466-7090.

Sarah M. Brown, *Chairman*
Robert Browning, *Vice Chairman*



8 East Long Street, 10th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7090
Fax: (614) 466-8368
Web site: www.ethics.ohio.gov

David E. Freel, *Executive Director*

FAX

Date: July 30, 2007
Pages: 14 (includes cover sheet)

To: Candace Jones
Department of
Development

Phone: 466-7611
Fax: 728-4920

From: Jennifer A. Hardin
Ohio Ethics Commission

Phone: (614) 466-7090
Fax: (614) 466-8368

Remarks Urgent For Your Files Reply ASAP Please Comment

Enclosed with Fax:

Advisory Opinion re: Bureau of Workers' Compensation Board of Directors

Hard-copy will be hand-delivered this afternoon.

Please call with any questions.

Sarah M. Brown, *Chairman*
Robert Browning, *Vice Chairman*



8 East Long Street, 10th Floor
Columbus, Ohio 43215
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David E. Freel, *Executive Director*

July 30, 2007

Candace M. Jones
Chief Legal Counsel & Ethics Officer
Ohio Department of Development
77 South High Street, 29th Floor
Columbus, Ohio 43215

Dear Ms. Jones:

On June 28, 2007, the Ohio Ethics Commission received your letter requesting an advisory opinion. You have asked whether the Ethics Law and related statutes prohibit attorneys who represent employers or injured workers in workers' compensation matters from serving as members of the newly created Bureau of Workers' Compensation (BWC) Board of Directors (Board).

In a second letter, received by the Commission on July 9, 2007, you asked whether individuals are prohibited from serving on the Board if they are associated with Third Party Administrators (TPAs) or Managed Care Organizations (MCOs) doing business with BWC. This later question raises more significant issues under the Ethics Law because of the application of the public contract law, R.C. 2921.42. The Commission will answer it in a separate opinion.

In reviewing the questions you pose, the Commission is mindful of the two areas of past failures of the BWC and its oversight body: insider self-dealing and oversight mismanagement. The Commission's determination is made more pressing because of the expanded administrative role that the Board of Directors must now perform with respect to the functions of BWC.

Brief Answer

As explained more fully below, an attorney who represents employers or injured employees in workers' compensation matters is prohibited from serving on the Board unless he or she: (1) files the statement described in R.C. 102.04(D); and (2) is able to withdraw from matters before the Board that directly affect any official or employee of BWC. For example, the Board member would be prohibited from participating, in any manner, in the Board's assessment of the performance of the Administrator.

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Any Board member is prohibited from using his or her position in any fashion to influence the BWC Administrator or staff on matters that directly affect his or her clients. If a Board member who is an attorney representing employers or injured employees experiences an unusual increase in his or her legal business because of his or her membership on the Board, additional questions under the Ethics Law may be raised. Notwithstanding these questions, Board members who are also attorneys representing employers or injured employees need to be acutely aware that the public may perceive that they or their clients are receiving undue advantages solely because of membership on the Board. This will be discussed in greater detail below.

Facts

By way of history, you have explained that the General Assembly enacted Amended Substitute House Bill 100 (Am. Sub. H.B. 100). Among other things, Am. Sub. H.B. 100 replaced the prior BWC Oversight Commission with a new BWC Board of Directors. You have noted that the change was made by amending the statutory provision establishing the Oversight Commission into a provision establishing the Board of Directors. R.C. 4121.12, the section that enables the Board, was effective immediately when the act became law (June 10, 2007). Sec. 612.03.

The Board is composed of eleven members appointed by the Governor with the advice and consent of the Senate. R.C. 4121.12 (A). As it relates to your question, the members of the Board are:

1. An individual who, on account of his or her previous vocation, employment, or affiliations, can be classed as a representative of employees;
2. Two individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of employee organizations. Of these two, one shall be a member of the executive committee of the largest statewide labor federation;
3. Three individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of employers. Of these three, one shall be a representative of self-insuring employers. The other two shall be representatives of employers who participate in the state workers' compensation fund (state fund employers), one representing employers with fewer than one hundred workers and one representing employers with more than one hundred workers.

R.C. 4121.12(A). The other five Board members are two investment and securities experts, one actuary, one accountant, and one individual representing the public. Id.

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You have explained that, on the Workers' Compensation Oversight Commission, there were two "employee representative" positions. Historically, there has been a well-established practice of appointing individuals to both of these positions including attorneys who regularly represent injured workers in workers' compensation matters. Attorneys who represent injured workers in these matters could have occasion to present matters to BWC staff for decision.

BWC Board of Directors—Powers and Authority

The powers and duties of the Board are set forth in R.C. 4121.12(F). Among other things, the Board is empowered to:

- (1) Establish the overall administrative policy for BWC;
- (2) Review the progress of BWC in meeting its cost and quality objectives and complying with its statutory objectives;
- (3) Submit an annual report to the President of the Senate, the Speaker of the House of Representatives, the Governor, and the Workers' Compensation Council¹ including an evaluation of the cost and quality objectives of the BWC and a statement of net assets and any changes in net assets;
- (4) Review all independent financial audits of the BWC;
- (5) Study BWC issues as requested by the BWC Administrator or Governor;
- (6) Approve the investment policy development by the Board's investment committee;
- (7) Review and publish the investment policy annually;
- (8) Prohibit investments contrary to the investment policy approved by the Board;
- (9) Vote to open or close any investment classes, adopt rules for employees of the BWC to follow when investing in the investment class, and submit a report to the Governor and legislative leaders on the performance and value of each investment class;

¹ The Council is charged with reviewing the soundness of the workers' compensation system and legislation involving or affecting the workers' compensation system. R.C. 4121.75. There are eleven council members, of whom six are legislators and five are individuals appointed jointly by the president of the senate and the speaker of the house. The council has no authority related to the daily operations or oversight of BWC.

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- (10) Provide advice and consent on administrative rules, the duties and authority conferred on the Administrator, and the rules the Administrator adopts for the health partnership program and qualified health plan; and
- (11) Meet with the Governor annually to discuss the Administrator's performance of his or her statutorily prescribed duties.

Bureau of Workers' Compensation—Powers and Authority

BWC is created by R.C. 4121.121. R.C. 4121.121(A) provides that BWC shall be administered by the Administrator of Workers' Compensation (Administrator), appointed by the Governor. The Administrator is responsible for the management of BWC and for the discharge of all administrative duties imposed on him or her. R.C. 4121.12(B). The Administrator shall perform all acts and exercise all authorities and powers, discretionary or otherwise, that are required of or vested in BWC or any of its employees by statute, except for the acts and the exercise of authority and power that is required of and vested in the Board of Directors or the Industrial Commission. R.C. 4121.121(B)(1).

The Administrator's functions include, among other duties, employing, directing, and supervising all BWC employees required in connection with the statutory duties of BWC; reorganizing the work of the sections, departments, and offices of BWC to achieve the most efficient performance of its functions. R.C. 4121.121(B)(2) and (3). The Administrator may enter into contracts for and purchase supplies, services, materials, and equipment, and construction or improvements on any buildings under the control of BWC. R.C. 4121.121(B)(8) and (9).

With respect to the Board, the Administrator is required to prepare and submit specified information to the Board, including information related to rules for classifications of occupations or industries, premium rates and contributions, and rating, rate revisions, and merit rating. R.C. 4121.121(B)(5). The Administrator is required to prepare and submit an annual budget to the Board for approval. R.C. 4121.121(B)(10).

From a review of Am. Sub. H.B. 100, it appears that some of the most significant differences between the former Oversight Commission and the newly created Board involve the BWC administrative and investment policies. Formerly, the Administrator was empowered to establish the overall administrative policy for the BWC in the performance of its statutorily mandated duties. As a result of the amendments, the authority to establish the overall administrative policy of the BWC now resides with the Board. R.C. 4121.12(F)(1). Another significant change involves the compensation paid to the officials. Members of the Oversight Commission received no more than eighteen thousand dollars each year for service on the Commission; members of the Board receive no more than sixty thousand dollars each year for service on the Board and its committees. R.C. 4121.12(D).

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Prior to the amendments in Am. Sub. H.B. 100, the Administrator was also empowered to exercise his or her investment powers in accordance with the investment "objectives, policies, and criteria established by the" Oversight Commission. As a result of the amendments, the Administrator is empowered to exercise his or her investment powers in accordance with the "investment policy approved by" the Board. R.C. 4121.121(B)(7).

State Board Members Representing Clients Before State Agencies—R.C. 102.04(A)

Within Ohio's Ethics Law are restrictions on state officials and employees, including those serving on state boards and commissions, representing clients before state agencies. R.C. 102.04(A) provides:

Except as provided in division (D) of this section, no person elected or appointed to an office of . . . [any] board . . . of the state, excluding the courts, . . . shall receive or agree to receive directly or indirectly compensation other than from the agency with which he serves for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter that is before the general assembly or any department, division, institution, instrumentality, board, commission, or bureau of the state, excluding the courts.

A member of the Board is "appointed to an office" of a board of the state, subject to R.C. 102.04(A). See R.C. 4121.12(F) (before "entering upon the duties of office" a Board member shall take an oath of office and file a required bond with the Secretary of State) and (H) (if any member of the Board is convicted of or pleads guilty to certain criminal violations, his or her "office" shall be deemed vacant).

"Compensation" is defined as "money, thing of value, or financial benefit." R.C. 102.01(A). A member of the Board will receive compensation of \$2500 per month for each month in which the member attends one or more meetings of the Board, and an additional \$2500 per month for any month in which the member attends one or more meetings of any committee of the Board on which he or she serves, not to exceed \$60,000 annually. R.C. 4121.12(D). R.C. 102.04(A) prohibits any Board member from receiving any additional money, thing of value, or financial benefit for any services he or she renders personally on any case, proceeding, or other matter before any state entity. The salary, payments, and partnership distributions an attorney receives from his or her clients or law firm fall within the definition of compensation. See Ohio Ethics Commission Advisory Opinion No. 92-006.

"Rendering of services" includes performing any services such as representing, advising, or consulting with a client or employer. Adv. Op. No. 75-006. For example, an attorney who, on behalf of a client, is preparing pleadings and other documents to be filed with a public agency, negotiating or discussing matters with agency personnel or contractors, or appearing at agency meeting or hearing is rendering services for the client. Adv. Op. No. 87-009.

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A case, proceeding, application, or other matter is "before" a state agency when it is "being considered by, decided by, or in the presence of or under the official purview of" the state agency. Adv. Op. No. 76-009. See also Adv. Ops. No. 75-006 and 92-006. Notably, the prohibition of R.C. 102.04(A) applies whenever the matter on which the state official is providing services is before a state agency, not merely when the affected public official is actually appearing before the agency. Adv. Op. No. 75-025. In other words, R.C. 102.04(A) prohibits the state official from personally rendering any services on a matter that is being considered or adjudicated by any state agency, even if the official does not personally appear before the agency on behalf of his or her client. Adv. Op. No. 92-006.

Application to Board Members

Except as provided in R.C. 102.04(D), discussed below, R.C. 102.04(A) prohibits any member of the Board from accepting compensation, from a client, law firm, or any other person, for any personal services he or she is rendering on matters before the Board, BWC, the Industrial Commission, or any other state department, board, commission, agency, or other instrumentality. This restriction applies regardless of the subject matter on which the official is providing services. For example, the restriction applies to a Board member representing clients on workers' compensation matters that are before BWC or the Industrial Commission, but also applies to a Board member representing clients on utility matters before the Public Utilities Commission of Ohio or taxation matters before the Board of Tax Appeals.²

Exception—R.C. 102.04(D)

R.C. 102.04(D) provides a broad exception to this prohibition. The exception would apply to a member of the Board, as a public official appointed to a non-elective office, if the Board member can meet two requirements:

- (1) The agency . . . before which the matter that involves the rendering of his services is pending, is an agency *other than* the one with which he serves;
- (2) Prior to rendering the personal services . . . , he files a statement with the appropriate ethics commission, with the public agency with which he serves, and with the public agency before which the matter is pending.

Along with his or her name and address, and the addresses of the two public agencies involved, the filer must disclose a brief description of the pending matter and of the personal services that he or she will render on the matter. R.C. 102.04(D)(2).

² R.C. 102.04(A) does not generally prohibit a Board member's law firm from receiving compensation for rendering services for clients before the Board, BWC, or other state agencies. Adv. Op. No. 92-006.

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To protect against the potential misuse of influence, the filer is also required to declare, on the annual statement, that he or she will disqualify himself or herself from participating, as a public official, in any matter involving an official or employee of the agency before which the matter is pending. *Id.* The person must disqualify himself or herself for two years from the date of the most recently filed statement. *Id.* R.C. 102.04(E) emphasizes the requirement that any public official who files the statement required to meet this exception shall disqualify himself or herself from those matters described on the statement.

An attorney who represents employees or employers on workers' compensation matters is providing personal services on matters before BWC, the Industrial Commission, or the courts. R.C. 102.04(A) prohibits members of the Board from providing personal services on matters before any state agency. The exception in R.C. 102.04(D) can apply when the Board member is providing personal services on matters before any agency "other than" the one with which he or she serves.

Application of Exception

Two separate statutes establish the Board and BWC. R.C. 4121.12 (Board) and 4121.121 (BWC). While the Board is "connected" with and has considerable authority over BWC, the members of the Board are neither officers nor employees of BWC.³ The Board is connected with and has a regulatory role over BWC and the BWC Administrator. The Board reviews, with either its full or partial membership, the performance of the Administrator, and shares its review with the Governor. While the two agencies have significant overlapping authority, the enabling statutes for the Board and BWC reveal two separate public entities. The Board has no authority related to administration or adjudication on specific workers' compensation claims. R.C. 4123.5111. Appeals of claims decisions made by BWC go to either BWC Hearing Officers or the Industrial Commission rather than to the Board. R.C. 4123.511(B)-(I). Appeals of Industrial Commission orders shall be filed with the Court of Common Pleas in the county with jurisdiction over the claim. R.C. 4123.512.

Therefore, a person who is an attorney representing employees or employers on workers' compensation matters is representing his or her clients on matters that are before BWC, and may be before the Industrial Commission or the courts. However, those matters are not before the Board. For that reason, an attorney who serves on the Board can meet the first requirement in the R.C. 102.04(D) exception.

³ R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract entered into by or for the use of any public agency with which he or she is "connected." Therefore, while the Board and BWC are not the same agency for purposes of R.C. 102.04, other provisions of the law will limit the private activities of Board members that directly involve the Board or BWC. Because this issue is not presented in the question answered, it will not be discussed further in this opinion.

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In order to meet the full exception, the Board member must file the statement described in R.C. 102.04(D), describing the matters on which he or she is performing personal services before another state agency. If the Board member is an attorney who receives compensation to represent clients on more than one case before another state agency, he or she is not required to file a statement describing each of the cases. Adv. Op. No. 93-010. As long as the Board member files an annual statement disclosing that he or she is receiving compensation for personal services on matters before the other agency, the Board member has met the requirement in R.C. 102.04(D)(2). Id.

The final requirement that the Board member must meet is disqualification. The Board member must disqualify himself or herself, as a public official, from participating in any matters that affect any official or employee of the other agency. In other words, if a Board member receives compensation to represent clients on matters before BWC, he or she would be required to disqualify himself or herself from any matters before the Board that directly affect an individual official or employee of the BWC.

The Board member is not required to withdraw from matters that affect BWC as a whole, or classes of BWC employees. Adv. Op. No. 89-006. However, if any matter before the Board were to affect the interests of an individual BWC official or employee, the Board member would be required to comply with the disqualification statement.

One circumstance where disqualification would be required, taken from the duties of the Board, is the required annual meeting with the Governor to discuss the Administrator's performance of the duties specified by statute. R.C. 4121.12(F)(15). The Governor is the appointing authority for the Administrator. R.C. 4121.12(I) provides that, for purposes of the open meetings law (R.C. 121.22(G)(1)), the meeting "shall be considered a meeting regarding the employment of the Administrator." A meeting that involves his or her employment and requires a discussion of the past year's job performance is a matter that directly affects the Administrator's individual interests and, therefore, presents significant potential for conflict for a Board member who represents clients on BWC matters. For that reason, in order to comply with the exception in R.C. 102.04(D), a Board member who receives compensation to perform personal services on matters before BWC will be required to withdraw from any discussion, deliberation, recommendation, rendering of advice, or other activities in preparation for the meeting described in R.C. 4121.12(F)(15) and from participating in the meeting itself.

Substantial and Improper Influence—R.C. 102.03(D) and (E)

R.C. 102.03(D) and (E) provide:

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- (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

A member of the Board is a public official subject to these restrictions. R.C. 102.01(B) and (C). The term "thing of value" includes money and every other thing of value. Compensation received from outside employment or service is considered a thing of value. Adv. Op. No. 96-004. In addition, the beneficial or detrimental economic impact of a decision by a public entity is a thing of value for purposes of R.C. 102.03. Adv. Ops. No. 85-012, 90-002 and 90-012.

In some cases, R.C. 102.03(D) and (E) prohibit a person from serving in a public position because there is a significant conflict between the public duties he or she would be required to perform and his or her private interest. When a public official is engaged in compensated employment, the compensation he or she receives could manifest a substantial and improper influence on him or her if matters before the public agency would definitely and directly affect his or her outside employer. Adv. Op. No. 2007-01. A public official who is an attorney in private practice is prohibited from soliciting, or using his or her position to secure, anything of substantial value for his or her law firm, law partners, or clients he or she is representing. Adv. Op. No. 90-008. In these situations, the official's objectivity and independence of judgment can be impaired because of the definite and direct benefit or detriment to his or her outside employer, business partners, or client. Id.

In the situation you have described, R.C. 102.03(D) and (E) would prohibit any attorney serving as a member of the Board from participating in matters before the Board that have a definite and direct affect on the Board member, his or her law firm, and clients he or she is representing. He or she is prohibited from soliciting, or using the Board position to secure, a favorable decision or action by Board officials or employees on matters that directly affect these parties. He or she is required to withdraw from participating in, in any manner, in matters relating his or her law firm, partners, or clients that arise before the Board.

However, when the General Assembly configured the composition of the Board, it specifically required that members of the Board represent the interests of employers and employees regulated by BWC or the Board. These representatives, in many cases, have current ties to regulated parties.

Candace M. Jones
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In similar situations, the Commission has concluded that, when the General Assembly mandates that a public board shall include individuals who are regulated by the board, or have other connections with regulated parties, it has legislatively determined that some members of the board must be directly knowledgeable about the area under regulation in order to effectively govern. Adv. Op. No. 92-009. The need for this expertise counterbalances the conflicts of interest the board member will face when issues before the Board generally affect the regulated class of individuals he or she represents. Id. However, the potential for conflicts of interest is ever present and remains subject to scrutiny under the Ethics Law.

In these circumstances, while the law does not prohibit the individuals from serving on regulatory boards, R.C. 102.03 (D) and (E) and other statutes under the Commission's jurisdiction prohibit board members from voting, discussing, or otherwise using the authority or influence of their official position, formally or informally, with regard to matters that would result in a definite and direct substantial gain or benefit to the board member, his or her family member and business associates, or clients he or she is representing. Adv. Op. No. 90-008 and 90-009. The law does not prohibit the board members from participating in general matters that affect all or a significant part of the regulated community. Id. However, where a matter before the board would only affect the board member, his or her business associates, or parties he or she represents, or directly affect them in a unique or differential manner than other regulated parties, the board member is prohibited from participating in the matter. Id.

Additional issues will be raised under the Ethics Law and related statutes for a Board member who is an attorney representing employers or injured employees, if the Board member experiences an unusual increase in his or her legal business because of his or her membership on the Board. The Ethics Law prohibits a member of the Board who is an attorney representing employers or injured employees from using his or her position in any way to influence the Administrator or staff of BWC with respect to specific claims or other matters that affect his or her clients, or using or advertising his or her Board membership in order to secure clients. Adv. Op. 96-004. Board members who are attorneys representing employers or injured employees should be acutely aware that the public may perceive that they or their clients are receiving undue advantages solely because of their membership of the Board. While this public perception does not present a violation of the law, all Board members should be aware of it. Members of the Board who are attorneys representing clients before BWC should also consult the Rules of Professional Conduct and their application by the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court on these issues.

Therefore, R.C. 102.03(D) and (E) do not prohibit attorneys representing employers and employees on workers' compensation matters from serving on the Board. However, R.C. 102.03(D) and (E) prohibit the Board members from participating in matters where they, their law firms or partners, or clients they represent, will be affected in a way that is unique or differential from the way the matter affects all other similarly situated employers or employees.

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Confidential Information—R.C. 102.03(B)

Division (B) of Section 102.03 of the Revised Code provides:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by him in the course of his official duties which is confidential because of statutory provisions, or which has been clearly designated to him as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

R.C. 102.03 (B) prohibits a Board member, from disclosing or using, without proper authorization, information acquired in the course of his or her official duties that either is confidential by statutory provision or has been clearly designated as confidential when such designation is warranted and necessary for the proper conduct of government business. It is important to note that no time limit exists for this prohibition and it is effective during Board service and after the Board member leaves office. See Adv. Ops. No. 81-002 and 88-003.

Other Matters

As noted above, while the Board and BWC are two separate entities, the Board has regulatory authority over BWC. Further, because of the significant links between the Board and BWC, and the scope of the Board's authority (e.g. setting administrative policy for the Board), a member of the Board is subject to additional limits regarding his or her outside relationships with companies that are doing business with BWC, even if the companies are not doing business directly with the Board. While your question does not specifically involve these kinds of outside relationships, all of the Board member should be aware of the pitfalls that can arise from dual relationships, and that service on the Board may limit their outside business and investment activities. Members of the Board are encouraged to contact the Commission for further guidance on these issues.

For example, the public contract law would prohibit a member of the Board from having an interest in a contract entered into by the Board or BWC. R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract that is "entered into by or for the use of the . . . governmental agency . . . with which he is connected." (Emphasis added.) To be "connected" with an agency is to be related to, or associated with, that entity. Adv. Op. No. 87-002.

A member of the Board would be "connected" with both the Board and BWC. (R.C. 102.04 does not use the phrase "with which he is connected" and thus requires a different statutory interpretation.) R.C. 2921.42(A)(1) would also prohibit a member of the Board from authorizing or using his or her position to secure a public contract, which would include a BWC

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contract, if the Board member, a family member, or a business associate would have an interest in the contract.

The Commission also notes that, as reflected in protections contained in the Ethics Law and BWC statutes, the public expects that the Administrator and staff of BWC who process employees' claims must treat all claimants fairly. BWC personnel cannot give preferential treatment to the employer or employee clients of any member of the Board of Directors. R.C. 4121.122(A) and (C) also reiterate this responsibility:

- (A) The administrator of workers' compensation, for employees of the bureau of workers' compensation . . . may discipline, suspend, demote or discharge any employee for misfeasance, malfeasance, or nonfeasance. In the case of any deputy administrator, or of any employee assigned to the investigation or determination of claims, and [sic] finding of the administrator . . . that such person is not efficient, impartial, or judicious, if supported by any evidence and not promoted by personal, political, racial, or religious discrimination shall be accepted as a fact justifying the action taken by the administrator.

- (C) The administrator . . . shall . . . adopt rules setting forth procedures designed to eliminate outside influence on bureau . . . employees, produce an impartial workers' compensation claims handling process, and avoid favoritism in the claims handling process.

Conclusion

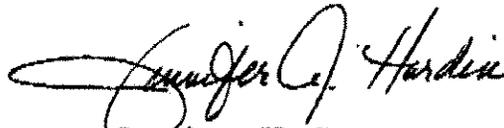
As explained more fully above, an attorney who represents employers or injured employees in workers' compensation matters is prohibited from serving on the Board unless he or she: (1) files the statement described in R.C. 102.04(D); and (2) is able to withdraw from matters before the Board that directly affect any official or employee of BWC. For example, the Board member would be prohibited from participating, in any manner, in the Board's assessment of the performance of the Administrator.

Any Board member is prohibited from using his or her position in any fashion to influence the BWC Administrator or staff on matters that directly affect his or her clients. If a Board member who is an attorney representing employers or injured employees experiences an unusual increase in his or her legal business because of his or her membership on the Board, additional questions under the Ethics Law may be raised. Notwithstanding these questions, Board members who are also attorneys representing employers or injured employees need to be acutely aware that the public may perceive that they or their clients are receiving undue advantages solely because of membership on the Board.

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The Ohio Ethics Commission approved this informal advisory opinion at its meeting on July 26, 2007. The opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules. If you have any questions or desire additional information, please feel free to contact this Office again.

Sincerely,



Jennifer A. Hardin
Chief Advisory Attorney

cc: Members of the Commission
David E. Freel, Executive Director, Ohio Ethics Commission
Kent Markus, Chief Counsel for Governor Ted Strickland
Marsha P. Ryan, Administrator, Bureau of Workers' Compensation

Exhibit C

Board of Directors

Ohio Bureau of Workers' Compensation

Oversight Process Guidelines

Introduction

In order for the Board to fulfill its fiduciary responsibilities regarding oversight of the Bureau of Workers' Compensation (BWC), it must receive accurate and reliable information from the Administrator and BWC staff. Further, the Board must do its part in promoting the provision of quality information by making sure that measures are in place to ensure, to the extent practicable, that it is receiving the best information available. The legal precedent applicable to corporate boards in the private sector is exemplified by the holding of the Delaware Chancery Court in the Caremark case, which suggests that, in order to properly discharge its oversight responsibilities, the Board should take appropriate steps to ensure, to the extent practicable, the quality of the information received regarding the entity.¹

A related responsibility of the BWC, as an Ohio state governmental agency, is to develop, implement, and enforce policies and procedures that prevent or reduce the risk of wrongful acts and omissions by its officers and employees.²

Ohio Law

As the board of a governmental agency, the BWC Board does not have the same control over the entity it governs that, for example, the board of directors of a private corporation would have with respect to the entity. Ohio law provides for the Office of Inspector General, whose statutory responsibility is to conduct investigations into matters involving any Ohio state governmental agency or official.³ Further, Ohio law provides for a Deputy Inspector General to be assigned to the BWC, one of only two Ohio state government agencies to which such an assignment has been mandated by law.⁴ The Inspector General may not be permitted to share information with the Board or the Administrator with respect to investigations that are ongoing or in process; however, the Inspector General is required to (a) consult with state agencies and advise them in developing, implementing, and enforcing policies and procedures that will prevent or reduce the risk of wrongful acts and omissions by their state officers or state employees; and (b) after detecting a wrongful act or omission, review and evaluate the relevant policies and procedures of the state agency in which the wrongful act or omission occurred, and advise the state agency as to any changes that should be made in its policies and procedures so as to prevent recurrences of similar wrongful acts or omissions.⁵

Information learned by the Inspector General in the course of investigations involving the BWC may be relevant to the Board in fulfilling its oversight responsibility. In this connection, it has been suggested that an informal arrangement be made with the Inspector General that provides for the sharing of relevant information with the Board Chair as the Inspector General may deem appropriate (see "Additional Reporting Procedures – Office of the Inspector General," below).

The purpose of these Oversight Process Guidelines is to summarize the measures that the BWC Board has put in place to promote the provision of quality information to the Board and to identify the processes that are in place which are not within the Board's control but which are designed to prevent or reduce the risk of wrongful acts and omissions by BWC officers or employees.

Board and Committee Structure and Meetings

The recent steps that the new Board has taken in furtherance of its oversight responsibilities include:

- The Board and its standing statutory Committees, being the Actuarial, Audit and Investment Committees, shall meet monthly..
 - The Administrator shall attend each Board meeting and those specific Committee meetings as requested by the Board Chair or the appropriate Committee Chair.
 - The BWC staff appropriate for the matters scheduled for discussion shall be available to be present at and/or participate in meetings of the Board and its Committees at the request of the Board Chair or the appropriate Committee Chair to the Administrator.
 - The Chief Legal Officer of the BWC and a representative of the Attorney General's office shall attend each Board meeting and those specific Committee meetings as requested by the Board Chair or the appropriate Committee Chair.
- Charters for each of the standing statutory Committees of the Board, setting forth the specific responsibilities of each Committee, have been prepared, discussed and adopted by each Committee and ratified by the Board.
- The Board has formed a Governance Committee, the responsibilities of which include: advising the Board Chair as to the utilization of best practices in corporate governance; the retention of fiduciary counsel to the Board; and the coordination with the Administrator of educational sessions for the new Board members as to the workings and administration of the BWC and their fiduciary responsibilities as members of the BWC Board.
- Independent fiduciary counsel to the Board has been appointed and reports to the Board Chair and the Governance Committee. Fiduciary counsel was requested to make and has made a presentation to the Board regarding the fiduciary duties of Board members. Fiduciary counsel is available to address matters relative to the fiduciary duties of the Board and its members at the direction of the Board Chair and/or the Governance Committee.

BWC Internal Compliance Resources and Procedures

Internal Auditor. The BWC has an Internal Audit Division headed by the Internal Auditor. The Internal Auditor reports to the Administrator on a weekly basis and at least monthly to the Board's Audit Committee.

Ethics Officer. There is an Ethics Officer for the BWC. The Ethics Officer is responsible for educating staff members regarding ethics issues to ensure compliance with the BWC Ethics Policy. The BWC Code of Ethics and Gift Acceptance Policy are contained in the BWC Employee Handbook. Further, there is an email address monitored by the Ethics Officer to which BWC employees can send questions and receive responses regarding ethics matters (Ethics4BWC@bwc.state.oh.us). The Ethics Officer, with support from the BWC Legal Division, also responds to ethics questions posed by staff members and is also BWC's liaison with the Governor's Office on ethics issues.

Complaint Process; Deputy Inspector General. There is a process within the Bureau for the receipt, handling and investigation of employee complaints of suspected wrongdoing as well as complaints from persons outside the BWC. This process and the follow-up on complaints received are supervised by the Deputy Inspector General dedicated to the BWC who reports directly to the Inspector General.

Coordination. The Internal Auditor, Ethics Officer and Deputy Inspector General share information and coordinate activities as appropriate. The Ethics Officer also leads the BWC Special Investigations Unit,⁶ which has regular communication with the onsite Deputy Inspector General.

Additional Reporting Procedures

Office of the Inspector General

Fiduciary counsel to the Board was requested to review the statutory powers of the office of the IG and determine whether and to what extent the office of the IG has preempted the Board's responsibility with respect to investigations regarding wrongdoing within the BWC. The Ohio legislature has established an office of deputy IG which is given specific investigative powers by statute with respect to allegations of wrongdoing at the BWC. In that connection, counsel also advised that the duties of the Board are to cooperate with the deputy IG with respect to any such investigation. Counsel further noted that Ohio law is silent with respect to the specific responsibility of the BWC Board to establish, maintain and oversee a proactive investigative program, independent of the Administrator or the deputy IG, targeted to internal wrongdoing.

Accordingly, in keeping with the Board's oversight responsibilities, the Board Chair shall periodically contact the IG to invite sharing of information regarding IG investigations relative to the BWC. It was acknowledged in this connection that, in some cases, the IG may not be able to share information due to the confidentiality and other constraints imposed by statute on the IG's office.

Audit Committee

The Audit Committee Charter provides that the Audit Committee “Will serve as the primary liaison for the BWC Board and provide a forum for handling of matters related to audits, examinations, investigations or inquiries of the Auditor of State and other appropriate State or Federal Agencies.” (Charter at Item 4.) Accordingly, the Audit Committee is the arm of the Board that has the formal responsibility of interacting, on behalf of the Board, with the Auditor of State and other agencies or within the Ohio and federal governmental systems.

In the event there is an internal BWC investigation which is not referred to the deputy IG, and the Administrator has determined that there is no need for confidentiality with respect to such matter, the Audit Committee may be informed of such matter at a regular meeting. If there is a need for confidentiality, as determined by the Administrator, in consultation with the Board Chair, the Audit Chair shall be informed of such matter, and the Audit Chair shall determine whether and when it would be appropriate to inform others on the Board. The policy underlying this procedure is that, in any such event, either the Board or the Board Chair and Audit Chair will know what is occurring.

Procedures for Notification of Employee Wrongdoing and/or Suspected Illegal Activity

The Governor's office has distributed a memorandum dated October 11, 2007, regarding procedures for all state agencies with respect to notification of employee wrongdoing and/or suspected illegal activity, and that the BWC has incorporated the procedures set forth therein within the BWC's internal procedures.

Whistleblowing

Ohio Revised Code Section 124.341 provides for the procedures and responsibilities of all state agency employees with respect to the reporting of wrongdoing, as well as the responsibilities of supervisory personnel within state agencies with respect to whistleblowing occurrences, including referral of the report to the appropriate authority and the protection of the whistleblower.

¹ *Stone v. Ritter*, 911 A.2d 362 (Del. 2006), citing *In Re Caremark Int'l Inc. Derivative Litigation.*, 698 A.2d 959, 971 (Del. Ch. 1996)

² ORC Section 121.45 (A)

³ ORC Section 121.42

⁴ ORC Section 121.52

⁵ ORC Sections 121.42 (I) and (J)

⁶ ORC Section 121.131

Exhibit D



TED STRICKLAND
GOVERNOR
STATE OF OHIO

TO: Department / Agency Directors and Chief Legal Counsels
FROM: Kent Markus
Chief Legal Counsel
DATE: October 11, 2007
SUBJECT: Procedures for Notification of Employee Wrongdoing and/or Suspected Illegal Activity

The purpose of this Memorandum is to set forth the procedures to be followed when illegal activity and/or wrongdoing by any state employee or official is suspected. This policy sets forth the procedures for processing such matters and provides for the careful, expeditious handling of all allegations and claims made against state employees. The procedure does not affect the rights and obligations set forth in any Collective Bargaining Agreement and/or any Statutory Notification Requirements. Any questions concerning the application of the procedures described below to a particular situation should be directed to:

Jose A. Torres
Deputy Legal Counsel
Office of the Governor
77 South High Street, 30th Floor
Columbus, OH 43215
614.644.0095
Jose.Torres@governor.ohio.gov

I. Definitions:

- “Department” as used in this Memorandum shall include all agencies, offices, boards, commissions and similar entities directly responsible to the Governor, and/or whose members are appointed by the Governor.
- “Director” as used in this Memorandum shall include all directors or other heads of any department and their designees.

- “Illegal Activity” as used in this Memorandum includes fraud, theft, assault and other violations of local, state and/or federal law, including violations of state ethics laws, committed or in the process of being committed, by a state employee on any property owned or leased by the state or during the course of executing official duties.
- “Wrongdoing” as used in this Memorandum includes a serious act or omission, committed by a state employee on any property owned or leased by the state or during the course of executing official duties. Wrongdoing is conduct that is not in accordance with standards of proper governmental conduct and which tends to subvert the process of government, including, but not limited, to gross violations of departmental or agency policies and procedures, executive orders, and acts of mismanagement, serious abuses of time, and other serious misconduct. For purposes of this reporting procedure, wrongdoing does not include illegal or suspected illegal activity. Likewise, wrongdoing does not include activity that is most appropriately handled through the department’s human resources personnel.
- “Chief Legal Counsel” as used in this Memorandum includes the Chief Legal Counsel at each of the departments and their designees.
- “Director of Public Safety” as used in this Memorandum includes his/her designee.

II. **Emergency Procedure:**

1. Whenever it appears that any alleged illegal activity was committed, or is in the process of being committed, and an *immediate* law enforcement response is *necessary* to protect life, physical safety, property and/or preserve evidence, the State Highway Patrol’s Office of Investigative Services should be the first police agency to be notified. No employee will be disciplined if the call is made to 911 instead of the Highway Patrol number. However, a faster response will be received in many cases by calling the State Highway Patrol first.
2. In central Ohio, the State Highway Patrol should be called at (614) 752-0234 during normal business hours. After hours, call (614) 466-2660. In other areas of the state, reports should be directed to the local State Highway Patrol post. Attached is the list of local State Highway Patrol posts addresses and telephone numbers. A trooper will be dispatched to start an investigation. An Illegal Activity written notice, as outlined in section III, shall also be prepared and submitted.
3. If an emergency procedure is not necessary, the procedure outlined in Section III should be used instead.

III. Illegal Activity Procedure:

1. Any state employee that becomes aware of suspected non-emergency illegal activity shall immediately notify the Director or the Chief Legal Counsel of the department for which the reporting employee works.
2. Although the departments and agencies are reminded of their duty to comply with the whistleblower statutes Ohio R.C. § 124.341 and Ohio R.C. §4113.52, employees who report conduct that they believe is illegal or unethical should have a reasonable factual basis for believing that improper activities have occurred, and should provide as much specific information as possible to allow for proper assessment of the nature, extent, and urgency of the incident.
3. When a Director or Chief Legal Counsel of a department is notified or becomes aware of suspected or alleged illegal activity by any employee, the Director or the Chief Legal Counsel of the department shall notify the Chief Legal Counsel to the Governor and the Director of the Ohio Department of Public Safety as soon as possible in writing. To the extent possible, said written notice shall include:
 - a. Activity believed to be illegal
 - b. What action/investigation, if any, has been taken by the department
 - c. Where the activity occurred
 - d. Name of the person to be investigated
 - e. Time frame in which the activity is believed to have occurred
 - f. How and when the agency learned of the activity
 - g. Agency contact person

Attached is an example of the suggested format for this notification

4. Upon the receipt of a written notice of suspected illegal activity, the Director of the Ohio Department of Public Safety and the Chief Legal Counsel to the Governor will confer to determine how to proceed with the investigation. The Director of the Ohio Department of Public Safety and the Chief Legal Counsel to the Governor will involve the Inspector General, the State Highway Patrol, the Ethics Commission, the State Auditor and/or any other law enforcement authority deemed appropriate. The Director of the Ohio Department of Public Safety or the

Chief Legal Counsel to the Governor will notify the reporting department of this action.

5. Because a criminal investigation may be necessary, the department in question should not conduct an internal investigation unless and until specifically directed to do so by the Chief Legal Counsel to the Governor or the Director of the Ohio Department of Public Safety. Administrative inquiries must give way to criminal investigations and no one suspected of illegal activity should be approached, disciplined or placed on administrative leave without clearance from the office of the Chief Legal Counsel to the Governor or the Director of the Ohio Department of Public Safety.

IV. Serious Wrongdoing Procedure:

1. Whenever any state employee becomes aware of wrongdoing by any state employee, that employee shall immediately notify the Director or the Chief Legal Counsel of the department for which the reporting employee works. The notification may be either oral or written.
2. When a Director or Chief Legal Counsel of a department becomes aware of suspected wrongdoing by any employee, the Office of the Inspector General should be contacted directly, as soon as possible. To the extent possible, said written notice shall include:
 - a. Alleged Wrongdoing
 - b. What action/investigation, if any, has been taken by the department
 - c. Where the activity occurred
 - d. Name of the person to be investigated
 - e. Time frame in which the activity is believed to have occurred
 - f. How and when the agency learned of the activity
 - g. Agency contact person

Attached is an example of the suggested format for this notification

3. If appropriate, the Inspector General will then initiate an investigation or will involve The State Highway Patrol, the Ethics Commission, the State Auditor and/or any other law enforcement authority deemed appropriate.

4. A copy of the written notification shall be sent to the Chief Legal Counsel to the Governor and the Director of the Ohio Department of Public Safety.

V. Additional Procedures:

1. Any reporting employee may also contact the Inspector General and file a written complaint or file a complaint using the Inspector General's anonymous hotline at (800) 686-1525 in the case of wrongdoing or non-emergency illegal activity.
2. If the Governor or any member of his immediate staff, a Department Director and/or Chief Legal Counsel, is suspected of illegal activity or wrongdoing, the Inspector General should be contacted directly. The Inspector General will then initiate the appropriate investigation.
3. The normal procedure for notification to the Chief Legal Counsel to the Governor or the Director of the Ohio Department of Public Safety is suspended in the cases covered by Section V.2.

VI. Designations

1. Kent Markus has designated Deputy Legal Counsel, Jose A. Torres, to receive all communications on his behalf with respect to this memorandum.
2. Any Director or Chief Legal Counsel who delegates responsibilities under this Memorandum to a designee, should inform the Director of Public Safety and Jose A. Torres.

VII. Record Keeping:

1. The reporting department shall keep a record of the cases reported by the department. To the extent possible, this record should include an updated status of the investigation. The investigating entity shall notify the Director of Public Safety, the Chief Legal Counsel to the Governor and the reporting department when the illegal activity investigation is completed.
2. All records pertaining to an active investigation are confidential law enforcement investigatory records pursuant to R.C. § 149.43 (A)(1)(h).

CONFIDENTIAL MEMORANDUM

To: Henry Guzman, Director
Ohio Department of Public Safety

Jose A. Torres, Deputy Legal Counsel to the Governor
Office of the Governor

From: (Director or Chief Legal Counsel)

Date:

Subject: Notification of Employee Suspected Illegal
Activity (Department Case Number, if any)

1. Activity believed to be illegal: [be specific]
2. What action/investigation, if any, has been taken by the agency:
3. Where the activity occurred:
4. Name of the person to be investigated:
5. Time frame in which the activity is believed to have occurred:
6. How and when the agency learned of the activity:
7. Agency contact person:

CONFIDENTIAL MEMORANDUM

To: **Thomas P. Charles, C.I.G. -- Inspector General**
Office of the Inspector General

CC: Henry Guzman, Director
Ohio Department of Public Safety

Jose A. Torres, Deputy Legal Counsel to the Governor
Office of the Governor

From: (Director or Chief Legal Counsel)

Date:

Subject: Notification of Employee Suspected Wrongdoing (Department Case Number, if any)

1. Activity believed to be wrongdoing: [be specific]
2. What action/investigation, if any, has been taken by the agency:
3. Where the activity occurred:
4. Name of the person to be investigated:
5. Time frame in which the activity is believed to have occurred:
6. How and when the agency learned of the activity:
7. Agency contact person:

Exhibit E

**Board of Directors
Schedule of Mandatory Reports**

	Board Report	Staff Member	Responsible Committee/ Month	Final Delivery Date	Submit To
1	Education Program Approval	Berno/Concilla	Governance/ May	June, 2008- completed	WCC
2	Annual Actuarial Report by Oliver Wyman <i>includes</i>	J. Pedrick	Actuarial/Sept	9/1/2008 (per HB 100) requesting date change	standing legislative committees with primary responsibility for WC legis., WCC
	At least once yearly actuarial audits of all funds arranged by Administrator	J. Pedrick	Audit/ongoing	Covered in Wyman Reports	Audit Committee and (at cost) to the public
3	Comprehensive Report of BWC Operations <i>includes</i>	T. Valentino	Audit/ September (audited)	Oct/Nov pending release by the State Auditor	Gov, Sen. Pres, Speaker and WCC
	Annual Report on the performance & value of each investment class	T. Valentino	Investment/August (pre-audit)	Oct/Nov pending release by the State Auditor	Gov, 4 legislative caucus leaders
	Administrator's Annual Report of BWC & IC operations, info from preceding year	T. Valentino	Audit/October	Oct/Nov pending release by the State Auditor	Governor and for public view
	Directed by Administrator, Supt of Safety & Hygiene's annual report on purpose & amount of expenditures, research results and investigations.	T. Kielmeyer	Audit/September	Oct/Nov pending release by the State Auditor	Governor
	The Comprehensive Annual Report will be submitted to the Gov, legislative leaders, standing committees for WC legislation, WCC, & LSC, & the public				
4	Actuarial Analysis of Legislation	J. Pedrick	Actuarial/ongoing	60 days after introduction	LSC, standing legislative committees with primary responsibility for WC legis., WCC
5	Review of Actuarial Assumptions used in Annual Actuarial Audit	J. Pedrick	Actuarial/October	At least once by Nov. 1, 2012, every 5 years after	Standing legislative committees with primary responsibility for WC legis., WCC
6	Fiduciary Performance Audit of BWC Investment Program	Chief Auditor	Audit/Investment	At least once every 10 years	Auditor of State