# Exhibit A

| Name | Expertise | Term Expires |
|---|---|---|
| | | |
| Charles A. Bryan | Actuary | 6/12/10 |
| David Lee Caldwell | Employee Organization Representative (AFL-CIO Executive Committee) | 6/12/12 |
| Alison Falls | Investment/Securities | 6/12/10 |
| Kenneth M. Haffey | CPA | 6/12/12 |
| James W. Harris | Employee Organization Representative | 6/12/10 |
| James A. Hummel | Employer Representative (State Fund employer with more than 100 employees) | 6/12/11 |
| William J. Lhota | Employer Representative (Self-insuring employer) | 6/12/10 |
| Jim Matesich | Employer Representative (State Fund employer with fewer than 100 employees) | 6/12/12 |
| Thomas R. Pitts | Employee representative | 6/12/11 |
| Larry Price | Public Member | 6/12/11 |
| Robert C. Smith | Investment/Securities | 6/12/12 |

# Exhibit B

Policies and Procedures for Public Forums
Board of Directors
Ohio Bureau of Workers' Compensation

The Board of Directors of the Ohio Bureau of Workers' Compensation is committed to providing an opportunity for members of the public to share information directly with the Board of Directors. They will also solicit comments and suggestions for the efficient and effective administration of the bureau and its programs. Public forums will be scheduled on a regular basis.

I. Purpose

The purpose of this policy is to encourage public comment in a fair, consistent and informative manner.

II. Coverage

This policy, upon approval by the Board of Directors, shall remain in effect until such time as it is altered, modified, or rescinded by the Board.

III. Procedure

a. Anyone desiring to speak at the public forum is encouraged to register in advance of the meeting. Electronic advance registration will be available, or participants may register in person up to 15 minutes after the forum begins.
b. Every effort will be made to call the speakers in the order in which they registered.
c. Speakers will be allotted between 3 and 5 minutes, depending on the number of registrants and the time available. The Board chair has the authority and the discretion to adjust the time allocation.
d. Speakers should direct any questions during their testimony to the Chair, who may, at the Chair's discretion, solicit response from the appropriate staff person.
e. Directors with permission of the Chair may ask questions of the speaker to clarify the presentation.
f. The Chair has the authority and discretion to invite experts to speak during the public forum in lieu of or in addition to public testimony.

IV. Post Forum

As appropriate, staff will inform Directors within two weeks of the forum of actions taken to address concerns raised by presenters.

# Exhibit C

**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, 2009- completed | WCC |
| 2 | **Annual Actuarial Report by Oliver Wyman** | J. Pedrick | Actuarial/Sept | Sept./October | standing legislative committees with primary responsibility for WC legis., WCC |
| | ***includes*** | | | | |
| | 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** | T. Valentino | Audit/ September (audited) | Oct/Nov pending release by the State Auditor | Gov, Sen. Pres, Speaker and WCC |
| | ***includes*** | | | | |
| | Annual Report on the performance & value of each investment class | Bruce Dunn and 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 |

# Exhibit D

**Net Asset Policy**
**Ohio Bureau of Workers' Compensation**
**Board of Directors**

BWC requires a prudent level of net assets to protect the fund against financial and operational risks that may threaten the ability to meet future obligations. These financial and operational risks include, but are not limited to, the following:

- Uncertainty in the ultimate amount and timing of future payments on known claims;
- Legislative and court actions that may affect future operations;
- Substantial catastrophic events, either through acts of nature or acts of man;
- Significant market fluctuations resulting in material changes in the valuation of the investment portfolio; and
- Economic factors impacting BWC's ability to collect premiums.

In an effort to maintain a solvent and stable state fund, BWC should maintain a sufficient level of net assets to handle these risks.

**Business Rationale**

- Adoption of a net asset policy will enable the organization to maintain prudent funded net assets to support the financial strength of the State Insurance Fund and maintain stability in premium costs.
- Adoption of a net asset policy will enable the organization to fulfill the statutory requirements of maintaining a solvent state fund while keeping premiums as low as possible.
- Adoption of a net asset policy with guidelines provides flexibility in decision-making with respect to options such as premium credits or surcharges.

**Methodology**

- Should use methodology supported by customized metrics to calculate key results used in measuring funding adequacy.
  - Funding Ratio is defined as funded assets divided by funded liabilities (funded assets= cash, investments, and current receivables less deposits and current payables; funded liabilities=reserves for unpaid claims and funded claim expenses, excluding any risk margin, discounted at a rate as approved by the Board of Directors).
  - Net Leverage Ratio is premium income plus reserves for compensation and compensation adjustment expense divided by net assets.

**Guiding Principles**

- Sound fiscal principles would dictate the need to maintain sufficient assets to meet current and future obligations. Therefore, as a matter of

policy, the minimum guideline for a funding ratio should never be below 1.00.

- Should reflect the unique characteristics of the Ohio system. We have less stress on premiums and have more flexibility on the level of liabilities than a private carrier. The guidelines also reflect the statutory obligation to maintain a solvent fund with the lowest possible premiums.

**The Net Asset policy**

- Should incorporate the concept of ranges to be responsive to changes and to maintain a degree of stability in operating results over time.
- Should incorporate appropriate options for premium credits or surcharges, if metrics indicate excessive or inadequate financial reserves.
- Should enable BWC to make limited peer comparisons.
- Should be tailored to each fund where a material amount of a fund's obligations are funded, as opposed to pay-as-you-go (Pay-as-you-go funds include the DWRF I and II, SIEGF and ACF).
- Should include consideration of risks associated with estimates inherent in financial reporting including, but not limited, to medical inflation, discount rate, and portfolio market valuation.

The following steps should be taken when establishing guidelines for the funding ratio and net leverage ratio:

1. The Administrator, with approval from the BWC Board of Directors, should establish guidelines for a Funding Ratio and a Net Leverage Ratio.
2. The guidelines for a Funding Ratio and a Net Leverage Ratio should be monitored as a component of the monthly Enterprise Report (or comparable financial report).
3. Deviations from the established guidelines shall be reported monthly and evaluated at least annually. At least annually, the Administrator, in conjunction with the appropriate senior executives, should prepare a recommendation to address variations from the guidelines.
4. The Administrator shall present these recommendations to the Board of Directors for review and approval.
5. The Board of Directors shall review guidelines for the Funding Ratio and Net Leverage Ratio on an annual basis.

**Policy Guidelines**

| Review Date | Funding Ratio Guideline | Net Leverage Ratio Guideline |
|---|---|---|
| | | |
| July 31, 2009 | 1.02 to 1.35 | 3.0:1 to 8.0:1 |
| | | |

| | | |
|---|---|---|
| | | |

**Historical State Insurance Fund Information***

| FY Ended June 30 | Net Assets (in millions) | Funding Ratio | Net Leverage Ratio |
|---|---|---|---|
| 2000 | $6,644,827 | 1.552 | 2.1555 |
| 2001 | $4,643,351 | 1.373 | 3.1594 |
| 2002 | $1,886,585 | 1.148 | 8.3538 |
| 2003 | $417,937 | 1.029 | 39.8767 |
| 2004 | $644,444 | 1.044 | 26.4196 |
| 2005 | $507,491 | 1.038 | 34.4908 |
| 2006 | $1,278,845 | 1.091 | 13.5202 |
| 2007 | $2,080,045 | 1.144 | 8.2621 |
| 2008 | $2,206,923 | 1.152 | 7.9323 |
| 2009 | $2,456,xxx | 1.14 | 8.22 |
| Policy Guidelines | | | |
| 2010 | | 1.02 to 1.35 | 3.0:1 to 8.0:1 |

*Net asset policy with Guidelines adopted by the Board of Directors in July 2009. Data previous to 2009 is for historical purposes only.

Audit Committee: Reviewed and approved July 30, 2009, Ken Haffey, Chair
Board of Directors: Reviewed and approved July 31, 2009, Bill Lhota, Chair

# Exhibit E

## Process for Development of the Reserve Discount Rate

Workers' compensation claims are generally paid over a period of several years. A reserve for compensation is set based on the total of all estimated amounts that will be paid in future years on reported claims and claims incurred but not reported. BWC's practice is to discount the reserve to reflect the time value of money (one dollar of future claims liability can be paid by setting aside less than one dollar today due to expected investment earnings).

BWC has been discounting reserves for at least 30 years. Since 1997, BWC has established a practice to review and evaluate the current discount rate on an annual basis using a documented approach. The approach relies on GASB 10. Prior to FY 2006, BWC performed this evaluation at the time of the actuarial audit. In FY 2006, BWC began its current practice of performing the evaluation in conjunction with the rate making process for private employers. This results in better matching of the ratemaking and reserving processes. The discount rate is utilized for rate making purposes effective July 1. The discount rate is utilized for auditing the reserve for compensation and compensation adjustment expense effective June 30.

Under Ohio Revised Code 4121.121(B)(1) the Administrator has the responsibility to establish a discount rate. Every March, the Administrator presents the discount rate decision to the Board for review, discussion and concurrence.

The business rationale and methodology and guiding principles for the establishment of the discount rate are:

Business Rationale

- The discount rate recognizes the economic benefit of the time value of money. It is an appropriate accounting treatment that recognizes that benefit. However, the discount rate does not create income.
- The discount rate enables the organization to present a prudent picture of its liabilities that is consistent with economic forces and BWC's mission to provide benefits for injured workers at the lowest possible cost while maintaining a solvent state insurance fund.

Methodology and Guiding Principles

- Should use a methodology supported by accounting and actuarial literature, especially the provisions of Governmental Accounting Standards Board (GASB) Statement No. 10 ("Accounting and Financial Reporting for Risk Financing and Related Insurance Issues") and Actuarial Standard of

Practice No. 20 ("Discounting of Property and Casualty Loss and Loss Adjustment Expense Reserves") as approved by the Actuarial Standards Board.

  - GASB 10 requires an examination of past portfolio performance, historical payment patterns and settlement rates
  - Actuarial Standard of Practice #20 requires that explicit provisions for risk accompany reserve discounting and suggests the uncertainty in the timing and amounts of future payments be considered along with historical payment patterns
  - Both standards recommend consideration of a risk-free investment yield
- Should be established with a long term view to reduce volatility in BWC's balance sheet and premiums
- Should not exceed highly probable investment returns over long periods of time
- Should enable management to focus on business enterprise goals
- Should be reviewed annually

The Administrator completes the following steps to establish the discount rate:

1. Meets with the Chief Actuarial Officer, Chief Investment Officer, Chief Fiscal and Planning Officer and other senior executives as appropriate to review reserves, investment returns, and cash flow needs
2. Follows the Actuarial Standard of Practice #20 concerning discounting
3. Follows the Government Accounting Standards Board Statement 10
4. Considers the following questions:
   - Is it consistent with BWC's practice of establishing a conservative discount rate?
   - Is it consistent with industry standards?
   - Is there a decreasing or increasing return on BWC's investment portfolio?
   - Are there changes in BWC's investment strategy?
   - What are the trends of risk free investment yields?
   - Do we anticipate changes in the financial markets?
5. Administrator presents a recommendation and rationale to the Board for review, discussion and concurrence

**Discount Rate Assumptions used in actuarial audits and rate indications**

| Evaluation Date | Discount Rate |
|---|---|
| | |
| 12/1991-12/1996 | 7.00% |
| 12/1997 | 6.75% |
| 6/1998 | 6.50% |
| 6/1999 | 6.25% |
| 6/2000 – 6/2001 | 6.00% |
| 6/2002 | 5.80% |
| 6/2003 – 6/2004 | 5.50% |
| 6/2005 – 6/2006 | 5.25% |
| 6/2007 | 5.00% |
| 6/2008 | 5.00% |

Approved by BWC Board of Directors
February 20, 2009
April 30, 2009

# Exhibit F

# OHIO ETHICS COMMISSION

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

**David E. Freel**, *Executive Director*

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

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.

**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
8 EAST LONG STREET, SUITE 1200
COLUMBUS, OHIO 43215-2940
(614) 466-7090

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 this 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 Commision 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 is tax

> 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 R.C. 102.03(J).

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 positon 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 a matter which secures a thing of value for any party where the relationship between the official and the party is such that the official's objectivity and independence of judgment could be impaired with

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 then 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 for 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 appearence 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 are appointed due to their professional expertise and that knowledgeable individuals who are dedicated to serving or promoting the interests of their profession may be involved in various activities

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

# OHIO ETHICS COMMISSION

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## 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 <u>any</u> 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

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IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2007-03 IS ATTACHED.**

# OHIO ETHICS COMMISSION

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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.

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[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).

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[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 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

[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

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*

David E. Freel, *Executive Director*

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

# 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*

David E. Freel, *Executive Director*

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

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.

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.

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 Council[1] 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.

(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).

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.

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.

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.

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:

(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.

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.

**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

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.

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

## 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.

Ben Rose, *Chair*
Shirley Mays, *Vice Chair*
Merom Brachman
Betty Davis
Steven Dettelbach
Ann Marie Tracey

David E. Freel,
*Executive Director*

**OHIO ETHICS COMMISSION**
**8 East Long Street, 10th Floor**
**Columbus, Ohio 43215**
**Telephone: (614) 466-7090**
**Fax: (614) 466-8368**

**www.ethics.ohio.gov**

September 18, 2009

Bureau of
Workers' Compensation
SEP 22 2009
Chief Legal Officer

James A. Barnes
Chief Legal Officer and General Counsel
Ohio Bureau of Workers' Compensation
30 West Spring Street, 10th Floor
Columbus, Ohio 43215-2940

Dear Mr. Barnes:

On July 17, 2009, the Ohio Ethics Commission received your letter requesting an advisory opinion on behalf of James Hummel, a member of the Bureau of Workers' Compensation (BWC) Board of Directors (Board). You have asked whether the Ethics Law and related statutes prohibit the Board member from doing business with RiskControl 360, a company affiliated with a Managed Care Organization (MCO) that participates in BWC's Health Partnership Program (HPP).

**Brief Answer**

As explained more fully below, the BWC Board member is not prohibited from doing business with a company affiliated with an MCO that participates in BWC's HPP, provided that neither the Board member nor his company would have an interest in BWC's contract with the MCO. Furthermore, the Board member would not be prohibited from participating in matters that would affect the MCO, unless those matters would also definitely and directly affect his private employer or RiskControl 360.

**Facts**

In your letter, you explained that the Board member is the Vice President of Human Resources for Lauren International, a manufacturer that employs more than 500 people in Ohio. The Board member's responsibilities include safety and workers' compensation related issues. The Board member is also the Vice President of Lauren Innovations, a subsidiary of Lauren International that provides corporate applications and resources for health, wellness, safety and preparedness products and services. Lauren Innovations offers a software product called NaviGate. The Board member receives a monetary bonus from the percentage of sales of the NaviGate software.

RiskControl 360, which provides risk management and safety consulting services to self-insured and state-fund employers, wants to offer the NaviGate software to its clients. RiskControl 360 is a sister company to CareWorks of Ohio Ltd., an MCO that does business with BWC. RiskControl 360 and CareWorks are two separate but affiliated legal entities under the CareWorks Family of Companies.

**Public Contract Restrictions—R.C. 2921.42(A)(1), (A)(3), and (A)(4)**

Because BWC's acquisition of services from a MCO is a public contract, it must be determined whether your question raises issues under the public contract law, R.C. 2921.42(A)(1), (A)(3), and (A)(4). R.C. 2921.42(I)(1)(a); Ohio Ethics Commission Advisory Opinion No. 89-006. A BWC Board member is a "public official" subject to R.C. 2921.42 which provides that no public official shall knowingly:

> (1) Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest;
>
> (3) During the public official's term of office or within one year thereafter, occupy any position of profit in the prosecution of a public contract authorized by the public official or by a legislative body, commission, or board of which the public official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;
>
> (4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected.

See R.C. 4121.12; Adv. Op. No. 93-002.

The restrictions in R.C. 2921.42(A)(3) and (4) prohibit BWC Board member from profiting from or having an interest in a contract entered into by the BWC Board. However, it is the BWC Administrator, rather than the Board, that is authorized to enter into contracts with MCOs, Third Party Administrators, and other service providers. R.C. 4121.121(B). The MCO's contract is with BWC, rather than with the BWC Board. BWC and the BWC Board are two separate public agencies. Because the BWC Board does not authorize, or enter into, contracts with MCOs, R.C. 2921.42(A)(3) is not applicable to your question.

While BWC and the BWC Board are not the same agency for purposes of R.C. 2921.42(A)(3), there are numerous and significant links between them. R.C. 2921.42(A)(4) prohibits a BWC Board member from having an interest in a contract entered into by any other public entity to which he is "connected." The word "connected" is not defined in R.C. 2921.42. However, the Ethics Commission has noted, in Advisory Opinion No. 87-002, that "common usage indicates that to be 'connected with' something is to be related to, or associated with, that entity."

As described in R.C. 4121.12(F), the BWC Board has broad authority over the investment and overall administrative policy of BWC. Among other things, the Board is empowered to: establish the overall administrative policy for BWC; review and evaluate the progress of BWC in meeting its cost and quality objectives and complying with its statutory objectives; review all independent financial audits of the BWC; adopt rules for employees of the BWC to follow when investing in the investment class; provide advice and consent on administrative rules, the duties and authority conferred on the Administrator, and the rules the Administrator adopts for the HHP and qualified health plan; and meet with the Governor annually to discuss the Administrator's performance of his or her statutorily prescribed duties.

Therefore, a BWC Board member is "connected" with BWC. See generally, Adv. Ops. No. 89-012 and 89-004. As a result, a BWC Board member is prohibited from having an interest in public contracts entered into by or for the use of the BWC Board *and* by or for the use of BWC. BWC's acquisition of a MCO's services is a public contract entered into by and for the use of BWC.

An "interest" that is prohibited under R.C. 2921.42 must be definite and direct in nature and may be financial or fiduciary. As the vice president of human resources for Lauren International and the vice-president for Lauren Innovations, the BWC Board member has a fiduciary and financial interest in the contracts of both companies. Also, as an executive of Lauren International, the Board member has an interest in the contracts of the company's other subsidiaries.

Therefore, because of the Board member's financial and fiduciary interest in the company, R.C. 2921.42(A)(4) would prohibit Lauren International or any of its subsidiaries from selling goods or services to, or for the use of, the BWC Board or BWC. In the situation you have described, neither the Board member nor his employer is doing business with BWC. Rather, it is an MCO affiliated with a potential customer of the Board member's employer that is doing business with BWC. The Ethics Law would not prohibit the Board member from doing business with a company affiliated with an MCO, provided that neither the Board member nor his employer would have a definite and direct interest in the MCO's contract with BWC.

You have not provided any information that would suggest that either the Board member or his company would have an interest in BWC's contract with CareWorks. If neither the Board member nor his company would have an interest in the contract, the Board member would not be prohibited from doing business with RiskControl 360. However, the Board member would have

a prohibited interest in the MCO's contract with BWC if: (1) the Board member's business with RiskControl 360 is dependent upon or directly affected by CareWorks' contract with BWC; (2) RiskControl would use BWC funds obtained from or shared with CareWorks to pay for the Board member's company's products or services; or (3) the Board member or his company would otherwise profit from or provide any products or services under the MCO contract. If any of these facts are present, the Board member should contact the Ethics Commission for a determination of whether an exception to the public contract law can be met. See R.C. 2921.42(C).

The Commission has held that a public official's outside employer is his or her "business associate." Adv. Op. No. 89-008. R.C. 2921.42(A)(1) prohibits a public official from taking any action, formally or informally, to secure authorization of any public contract in which the official's employer has a definite and direct interest. R.C. 2921.42(A)(1) prohibits the Board member from authorizing, or using his public position to secure authorization of, any public contract in which he or his company has an interest. R.C. 2921.42(A)(1) is not limited to public contracts entered into by the agency with which he serves.

The Board member is prohibited from using his position to secure <u>any</u> public contract in which his business associate has an interest. For example, the Board member is prohibited from using his authority with the BWC Administrator or any other official or employee of the BWC Board or BWC to secure a public contract for the MCO, if it would have a definite and direct financial affect on his company, or its business relationship with RiskControl 360.

**<u>General Restrictions on Outside Employment or Business Activity</u>**

Even if he does not have a prohibited interest in a public contract, the BWC Board member will be governed by other provisions under the Ethics Law in connection with his outside employment. The BWC Board member must adhere to general restrictions that apply to all public officials and employees who engage in outside employment or business activities. As explained more fully in Ohio Ethics Commission Advisory Opinion No. 96-004, the Board member is prohibited from: (1) selling goods or services to a party that is interested in matters before, regulated by, or doing or seeking to do business with the BWC Board unless he is able to fully withdraw from matters before the Board that affect his client or customer[1]; and (2) misusing the authority or influence of his public position to secure contracts or clients for his private business.

[1]A member of a public board can withdraw from matters before the board, because it is the board itself that is empowered to make decisions. Adv. Op. No. 2008-02 and 92-009. By contrast, an individual office holder who does not serve on a governing board, and in whom decision-making power is vested by statute, cannot withdraw from matters before his or her office in order to seek outside employment unless there is a specific statute that enables his or her withdrawal. Adv. Ops. No. 2008-02 and 92-009; R.C. 109.04.

**Participating in Matters Affecting a Business Associate**

A BWC Board member is a "public official" subject to R.C. 102.03(D) and (E), which provide:

> (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.

See R.C. 4121.12; Adv. Op. No. 93-002. The term "anything of value" is defined to include money and every other thing of value. R.C. 1.03; 102.03(G). Payments for services, awards of contracts, and review of vendor work that affects payments are all things of value. In addition, the beneficial or detrimental economic impact of a decision by a public decision-making body is a thing of value. Adv. Ops. No. 85-012, 90-002, and 90-012.

A thing of value manifests a "substantial and improper influence" on a public official if it *could* impair the official's objectivity and independence of judgment with respect to his public duties.[2] Adv. Ops. No. 91-010 and 95-001. The Commission has stated that voting on, recommending, deliberating upon, discussing, lobbying, or taking any other formal or informal action within the scope of a public official's public authority is "use of," or "authorization of the use of" the authority or influence of a public official's office. Adv. Op. No. 88-005.

The Commission has held that a public official's objectivity and independence of judgment will be impaired if he, his business associate, or another party with which the official has a close, familial, financial, or fiduciary relationship receives anything of value as a result of decisions before his public agency. Adv. Ops. No. 88-005; 90-012; 2007-01; and 2008-02. The Commission has also explained that an official would be subject to an inherent conflict of interest that could impair his objectivity and independence of judgment in carrying out his official decisions and responsibilities if he were to consider or act upon a matter in which his business associate has an interest, including matters in which his associate has provided services, such as consultation or advice. Adv. Op. No. 90-008.

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[2] A thing of value is "of such a character as to manifest a substantial and improper influence" on a public official or employee if it *could* impair the official's or employee's objectivity and independence of judgment with respect to his public duties. Adv. Ops. No. 76-005, 91-010 and 95-001. The Commission has explained that it is unnecessary that the thing of value actually has a substantial and improper influence on the official or employee provided that it is of such a character that it could have such influence. *Id.*

R.C. 102.03(D) and (E) prohibit the BWC Board member from soliciting or using his position to secure any benefit for his company or its clients. Adv. Ops. No. 83-007 and 93-014. He is prohibited from participating in any matter which would definitely and directly affect his own or his company's or client's interests. For example, the Board member would be prohibited from participating in the consideration of, voting on, or discussing matters that would affect CareWorks, if those matters would also definitely and directly affect his private employer or RiskControl 360. He would be prohibited from using his unique access to his fellow Board members, the BWC Administrator, or other BWC or BWC Board officials or employees to secure contracts or favorable decisions for his company or his company's clients.

R.C. 102.03(D) would also prohibit the BWC Board member from: (a) using public time, facilities, personnel, or resources in conducting his private business, including using public equipment to conduct demonstrations for clients; (b) using his official title or identification on private business cards or other written materials;[3] (c) using his relationship with other public officials and employees to secure a favorable decision or action by the other officials or employees regarding his private interests or the interests of his business; (d) discussing, deliberating, or voting on any matter involving his or his business's private interests; (e) receiving compensation for providing services rendered on projects that he has recommended in his official capacity; (f) participating in decisions or recommendations regarding his business's competitors; and (g) using his public position or authority in any other way to secure a benefit for himself or his business. Adv. Op. No. 96-004.

**Other Matters**

The BWC Board member should also be aware of the "Revolving Door" statute, R.C. 102.03(A)(1), which prohibits him from representing any person, before any public agency, on matters in which he personally participated during his Board service. The restriction applies to the Board member while he serves on the Board and for one year thereafter. This section prohibits the Board member from representing clients of his company before any public agency on any matter in which he personally participated as a BWC Board member.

Further, R.C. 102.03(B) prohibits a public official from disclosing or using confidential information acquired in the performance of his public duties. The 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.

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[3] However, the Board member would not be prohibited from noting his public title or office on materials intended for general distribution, such as resumes or directories, provided that the materials are not prepared for the sole purpose of advocating or advancing his employer's interests. Adv. Op. No. 2008-02.

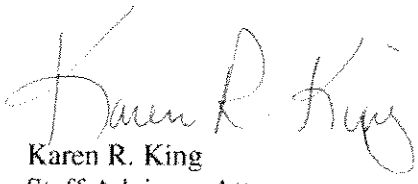
Finally, R.C. 102.03(C) prohibits a public official from participating within the scope of his duties as a public official, except through ministerial functions, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which he or his immediate family owns or controls more than five percent.

**Conclusion**

As explained more fully above, the BWC Board member is not prohibited from doing business with a company affiliated with an MCO that participates in BWC's HPP, provided that neither the Board member nor his company would have an interest in BWC's contract with the MCO. Furthermore, the Board member would not be prohibited from participating in matters that would affect the MCO, unless those matters would also definitely and directly affect his private employer or RiskControl 360.

This staff advisory opinion represents the views of the undersigned, based on the facts presented and the precedent of the Ethics Commission. 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 further questions or desire additional information, please contact this Office again.

Sincerely,



Karen R. King
Staff Advisory Attorney

Enclosure: Advisory Opinion No. 96-004

# Exhibit G

# 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.[i]

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.[ii]

## 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.[iii] 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.[iv] 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.[v]

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,[vi] 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 3.) 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.

---

[i] *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)
[ii] ORC Section 121.45 (A)
[iii] ORC Section 121.42
[iv] ORC Section 121.52
[v] ORC Sections 121.42 (I) and (J)
[vi] ORC Section 121.131

# Exhibit H

# 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 member of the Board who is an actuary. The Board, by majority vote, shall appoint at least four additional members of the Board to serve on the Actuarial Committee and may appoint additional members who are not Board members, as the Board determines necessary. Bureau management personnel cannot serve as a committee member.

The Chair and Vice Chair are designated by the Board, based on the recommendation of the Board Chair. If the Board Chair is not a member of the Committee, he/she shall be an ex-officio member. As an ex-officio member, the Board chair shall not vote if his/her vote will create a tie.

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.

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.

## Meetings

The Committee shall meet at least nine (9) times annually. The Committee Chair will provide a meeting report at the next subsequent Board meeting. Additional meetings may be requested by the Committee Chair, 2 or more members of the Committee, or the Chair of the Board.

A quorum shall consist of a majority of Committee members. Committee meetings will be conducted according to Robert's Rules of Order. All Directors are encouraged to attend the Committee meetings.

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.

Minutes for all meetings of the Committee will be prepared to document the actions of the Committee's in the discharge of its responsibilities.

## Duties and Responsibilities

The Actuarial Committee shall be responsible for the following statutory requirements:

- Recommend actuarial consultants for the Board to use for the funds specified in Chapters 4121, 4123, 4127, and 4131 of the Revised Code (RC 4121.129 (B)(1))
- Review the calculation of rate schedules prepared by the actuarial consultants with whom the Board contracts (RC 4121.129 (B)(2))
- Supervise, 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 the House. (RC 1421.125(C) and 4123.47)
- Arrange for an actuarial analysis of any legislation expected to have measurable financial impact on the system, within 60 days after introduction of the legislation. (RC 4121.125(C)(6) and (7) and 4121.125(G)).
- At least once every five (5) years, contract 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(C)(4) and RC 4121.125(F)
- Review, and make recommendations to the Board, regarding rate-making administrative code rules. (RC 4121.12(F)(13)(a))

1. Coordinate with other Board Committees on issues of common interest.
2. At least annually, review this charter and submit any proposed changes to the Governance Committee and to the Board for approval.
3. Create, by majority vote, a subcommittee consisting of one or more Directors on the Committee. As appropriate, and in consultation with the Chair, appoint other Board members to the subcommittee. The subcommittee shall have a specific purpose. The subcommittee shall keep minutes of its meetings. The subcommittee shall report to the Committee. At any time, the Committee, by majority vote, may dissolve the subcommittee.
4. 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.

Actuarial Committee Charter.doc
Draft 092607
Review & Approved 112107, Chuck Bryan, Chair
Revised 012408
Revised 092408
Annual Review and Revision 112108
Annual Review and Revision 112009

# 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
- 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 member of the Board who is a certified public accountant. The Board, by majority vote, shall appoint at least four additional members of the Board to serve on the Audit Committee and may appoint additional members, who are not Board members, as the Board determines necessary. Bureau management personnel cannot serve as a committee member.

The Chair and Vice Chair are designated by the Board, based on the recommendation of the Board Chair. If the Board Chair is not a member of the Committee, he/she shall be an ex-officio member. As an ex-officio member, he/she shall not vote if his/her vote will create a tie vote.

The Committee Chair will be responsible for scheduling all meetings of the Committee and providing the Committee with a written agenda for each meeting. In the absence of the Committee Chair, the Committee Vice-Chair will assume the Chair's responsibilities. The Committee will have a staff liaison designated to assist it in carrying out its duties.

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.

## Meetings

The Committee shall meet at least nine (9) times annually. The Committee chair will provide a meeting report at the next subsequent Board meeting. The Board grants the Committee authority to have additional meetings. Additional meetings may be requested by the Committee Chair, 2 or more members of the Committee, or the Chair of the Board.

A quorum shall consist of a majority of Committee members. Committee meetings will be conducted according to Robert's Rules of Order. All Directors are encouraged to attend the Committee meetings.

The Committee will invite members of management, external auditors, internal auditors and/or others to attend meetings and provide pertinent information as necessary.

Minutes for all meetings of the Committee will be prepared to document all actions of the Committee in the discharge of its responsibilities.

## Duties and responsibilities

1. The Audit Committee shall be responsible for the following statutory requirements:

- Recommend to the Board an accounting firm to perform the annual audit required under RC 4123.47. (RC 4121.129 (A)(1))
- Recommend an auditing firm for the Board to use when conducting audits under RC 4121.125. (RC 4121.129 (A)(2))
- Review results of each annual audit and management review; if problems exist, assess appropriate course of action to correct, and develop action plan. (RC 4121.129 (A)(3))
- Monitor implementation of any action plans created to correct problems noted in each annual audit. (RC 4121.129 (A)(4))
- Review management's biennial appropriation requests and recommend approval to the Board. (RC 4121.121 (B)(10).
- 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. (RC 4121.121 (B)(10).
- Review all internal audit reports on a regular basis. (RC 4121.129(A)(5))
- 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(I))

- Provide input to the Board when the Administrator seeks the advice and consent of the Board on the appointment and/or removal of the Chief of Internal Audit. (RC 4121.125 (J))

2. 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.
3. 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.
4. 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.
5. Oversee the assessment of internal administrative and accounting controls by both the external independent financial statement auditor and internal auditor.
6. 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.
7. Review the internal financial statements upon the request of a committee member or BWC staff.
8. Receive and review reports from management regarding the status of appropriations bills.
9. 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.
10. Retain and oversee consultants, experts, independent counsel, and accountants to advise the Committee on any of its responsibilities.
11. 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.
12. The Audit Committee is responsible for strategic financial policies for assuring the appropriate legal of net assets for the appropriate BWC funds, including an annual review of the funding ratio and the net leverage ratio pursuant to BWC's Net Asset Policy. The Audit Committee shall also take the lead in the process for establishing the discount rate for reserves.
13. At least annually, review the Audit Committee charter and submit any proposed changes to the Governance Committee and to the Board for approval.
14. 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. The 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.

15. 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.

Audit Committee Charter.doc
Draft 092607
Review & Approved 112107, Ken Haffey, Chair
Revised 012408
Revised 012508
Revised 092408
Annual Review and Revision 112108
Annual Review and Revision 112009

# OBWC Board of Directors
# Governance Committee Charter

## Purpose

The Ohio Bureau of Workers' Compensation Board of Directors has created the Governance Committee under authority granted by RC 4121.12(G)(2). The Governance Committee is a standing committee of the Board of Directors. The Committee shall assist the 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 three (3) members. One member shall be the Chair of the Ohio Bureau of Workers' Compensation Board of Directors. The Board, by majority vote, shall appoint at least two (2) additional members of the Board. Bureau management personnel cannot serve as a Committee member. The Chair and Vice-Chair 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 will have a staff liaison designated to assist it in carrying out its duties.

Members of the Governance Committee serve at the pleasure of the Board, and the Board, by majority vote, may remove any member except the Board chair.

## Meetings

The Governance Committee shall meet at least four (4) times annually. The Committee chair will provide a report of the meeting at the next subsequent Board meeting. Additional meetings may be requested by the Committee chair, 2 or more members of the Committee, or the Board Chair.

A quorum shall consist of a majority of Committee members. Committee meetings will be conducted according to Robert's Rules of Order. All Directors are encouraged to attend the Committee meetings.

The Committee will invite members of management, fiduciary counsel, and/or others to attend meetings and provide pertinent information as needed.

Minutes for all meetings of the Committee will be prepared to document the actions of the Committee in the discharge of its responsibilities.

## Duties and Responsibilities

1. The Governance Committee shall assist the Board in meeting the following statutory requirements:

- 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 (RC 4121.12(F)(15)).

- Oversee the BWC orientation process and its implementation for newly appointed members of the BWC Board. The Committee shall also regularly assess the adequacy of and need for additional continuing Director education programs. 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 (RC 4121.12(F)(16)).
- Make recommendations to the Board for retaining fiduciary counsel. (RC 4121.12 (F)(6)(c)).

- Oversee the process for all statutorily required reports of the Board for submission to the Governor, General Assembly or the Workers' Compensation Council (RC 4121.12(F)(3), 4121.125).

2. 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 Ohio law, including recommendations concerning the structure, composition, membership and function of the Board and its committees, subject to Board approval.
3. 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.
4. Develop and coordinate the annual self-assessment of the Board and its Committees.
5. Oversee compliance with laws, regulations, policies and ethical requirements.
6. Act as the lead committee for rule review and changes with the exception of actuarial rules or other rules assigned to an existing committee. The Committee will follow the process for rule review as outlined in the Governance Guidelines.
7. Coordinate with other Board committees on issues of common interest.
8. 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. The subcommittee shall keep minutes of its meetings. The subcommittee shall report to the Committee. The Committee by majority vote may dissolve the subcommittee at any time.
9. 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.

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
Annual Review and Revision 112009

# 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 Specialty Fund (collectively the Funds) assets;
- 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 members shall be the members of the Board who are the investment and securities experts. The Board, by majority vote, shall appoint at least three additional members of the Board to serve on the Investment Committee and may appoint additional members, who are not Board members, as the Board determines necessary. 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 (RC 4121.129(C)(1)). Bureau management personnel cannot serve as a Committee member.

The Chair and Vice Chair are designated by the Board, based on the recommendation of the Board Chair. If the Board chair is not a member of the Committee, he/she shall be an ex-officio member. As an ex-officio member, the Board chair shall not vote if his/her vote will create a tie.

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.

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. The Committee Chair will provide a report of the meeting at the next subsequent

Board meeting. Additional meetings may be requested by the Committee Chair, 2 or more members of the Committee, or the Chair of the Board.

A quorum shall consist of a majority of Committee members. Committee meetings will be conducted according to Robert's Rules of Order. All Directors are encouraged to attend the Committee meetings.

The Committee will invite members of management, investment advisors, fiduciary counsel and/or others to attend meetings and provide pertinent information as necessary

Minutes for all meetings of the Committee will be prepared to document the actions of the Committee in the discharge of its responsibilities.

**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. Assist the Board in meeting the following statutory requirements:
   - Develop and recommend the strategic asset allocation and investment policy for the Funds in accordance with RC 4123.442 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. (RC 4121.12(F)(7))
   - 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. (RC 4121.12(F)(8))
   - Prohibit, on a prospective basis, any investment the Committee finds to be contrary to the investment objectives of the Funds and submit to the Board for approval (RC 4121.12(F)(9)).
   - Recommend the opening and closing of each investment class and submit to the Board for approval. (RC 4121.12(F)(10))
   - 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. (RC 4121.12(F)(11))
   - 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. (RC 4121.12(F)(12))

- Monitor implementation of the investment policy by the Administrator and the Chief Investment Officer (RC 4121.129(C)(2)(c)).
- Recommend outside investment counsel with whom the Board may contract to assist the Investment Committee in fulfilling its duties (RC 4121.129(C)(2)(d)).
- Review the 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 (RC 4121.129(C)(2)(e)).
- Consult with the Administrator and recommend to the Board the appointment of the Chief Investment Officer. (RC 4123.441)

2. 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.
3. Monitor and review the investment performance of the Funds on a quarterly basis to determine achievement of objectives and compliance with this investment policy.
4. Coordinate with other Board committees on items of common interest.
5. At least annually, review this charter and submit any proposed changes to the Governance Committee and to the Board for approval.
6. 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. The subcommittee shall keep minutes of its meetings. The subcommittee shall report to the Committee. The Committee by majority vote may dissolve the subcommittee at any time.
7. 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.

InvestmentCommitteeCharter.doc
Review & Approved 112107, Bob Smith, Chair
Revised 012408
Revised 092408
Annual Review and Revision 112108
Annual Review and Revision 112009

# OBWC Board of Directors
# Medical Services and Safety Committee Charter

## Purpose

The Ohio Bureau of Workers' Compensation Board of Directors has created the Medical Services and Safety Committee under authority granted by RC 4121.12(G)(2). The Medical Services and Safety Committee is a standing committee of the Board of Directors. The Committee shall assist the Board of Directors in the development of strategic policy for the provision of quality, cost-effective prevention, treatment, and rehabilitation services necessitated as the result of workplace injuries for the mutual benefit of injured workers and employers.

## Membership

The Committee shall be composed of a minimum of three (3) members. The Board, by majority vote, shall appoint at least three members of the Board to serve on the Medical Services and Safety Committee and may appoint additional members, who are not Board members, as the Board determines necessary. Bureau management personnel cannot serve as a Committee member.

The Chair and Vice Chair are designated by the Board, based on the recommendation of the Board Chair. If the Board Chair is not a member of the Committee, he/she shall be an ex-officio member. As an ex-officio member, he/she shall not vote if his/her vote will create a tie vote.

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.

Members of the Medical Services and Safety Committee serve at the pleasure of the Board, and the Board, by majority vote, may remove any member.

## Meetings

The Committee shall meet at least six (6) times annually. The Committee Chair will provide a report of the meeting at the next subsequent Board meeting. Additional meetings may be requested by the Committee Chair, 2 or more members of the Committee, or the Chair of the Board.

A quorum shall consist of a majority of Committee members. Committee meetings will be conducted according to Robert's Rules of Order. All Directors are encouraged to attend the Committee meetings.

The Committee will invite members of management, and/or others to attend meetings and provide pertinent information, as necessary.

Minutes for all meetings of the Committee will be prepared to document the actions of the Committee in the discharge of its responsibilities.

**Duties and responsibilities**

The Committee shall have the responsibility for ensuring the appropriateness and oversight of policy regarding BWC medical and managed care services and safety programs:

1. The Committee shall assist the Board in meeting the following statutory requirements, including but not limited to:
   - Consult with the Administrator and recommend to the Board the appointment of the Superintendent of Safety and Hygiene (RC 4121.37);
   - Review and make recommendations to the Board regarding administrative code rules related to BWC's Division of Safety and Hygiene, including specific safety rules (RC 4121.12 (F)(13)(b), and 4121.12(F)(13)(d)).
   - Review and make recommendations to the Board regarding administrative code rules related to BWC's health partnership program (RC 4121.12 (F)(13)(c)).
   - Review the Division of Safety and Hygiene annual report (RC 4121.37)

2. The Committee shall provide strategic oversight for BWC in the following areas:
   - Composition of, modification of, and/or delivery of occupational safety and health programs;
   - Composition of or modification to medical, occupational safety and health research programs;
   - Initiation and development of collaborative partnerships between BWC and other agencies in and outside Ohio for the purpose of improving medical services, managed care services and workplace safety;
   - Composition of or improvement to BWC's medical provider network and practice guidelines;
   - managed care and claims policies including an appropriate disability prevention delivery model;
   - research for injury prevention, treatment guidelines, the benefit plan, formularies, and corresponding fee schedules;

- Improvements to the provider bill payment services, and
- Development of metrics for all of the above showing comparative effectiveness.
- Coordinate with the other Board Committees on items of common interest.
- At least annually, review the Medical Services and Safety Committee charter and submit any proposed changes to the Governance Committee and to the Board for approval.
- 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. The subcommittee shall keep minutes of its meetings. The subcommittee shall report to the Committee. The Committee by majority vote may dissolve the subcommittee at any time.
- 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.

Reviewed and approved 112009, James Harris, Chairman

# Exhibit I

TO: **Department / Agency Directors and Chief Legal Counsels**
FROM: Kent Markus
Chief Legal Counsel
DATE: September 19, 2007
SUBJECT: Procedures for Notification of Employee Wrongdoing and/or Suspected Illegal Activity

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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 be 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)

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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)

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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: