

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-4

Approved: January 24, 2023

Re: Douglas Duford

QUESTION PRESENTED:

The Petitioner, the Associate Director of the Quality Management Unit for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, a state employee position, requests an advisory opinion regarding the application of the revolving door provisions of the Code of Ethics to his potential new private employment with CODAC Behavioral Healthcare following his severance from state employment.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Associate Director of the Quality Management Unit for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, a state employee position, is prohibited by the Code of Ethics from representing himself or others, including his private employer, and/or from acting as an expert witness, before the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, or any of its departments, offices, sections, programs or divisions, until the expiration of one year following the date of the severance from his state employment there. The Petitioner is further prohibited from using or disclosing any confidential information he obtained while working as Associate Director of the Quality Management Unit to financially benefit himself or his private employer.

The Petitioner states that he has been employed by the State of Rhode Island for the last ten months as Associate Director of the Quality Management Unit for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals (“BHDDH”).¹ He describes the Quality Management Unit as the ultimate authority on licensure for organizations in Rhode Island that provide behavioral healthcare services, services for persons with intellectual/developmental disabilities, and services for persons with cognitive disabilities (“providers”), adding that the Quality Management Unit also receives complaints against providers and manages the investigations resulting from those complaints. He identifies among his duties as Associate Director the management of all Quality Improvement, Quality Assurance, Licensing and Accreditation Departments that are responsible for thousands of patients in public and private care in Rhode Island. The Petitioner represents that he leads a team of 20 clinicians, administrators and support staff that partner with legal teams and the Attorney General’s Office to drive projects. The

¹ The Petitioner further states that, immediately prior to his hiring by the State of Rhode Island, he worked at Pappas Rehabilitation Hospital for Children in Canton, Massachusetts.

Petitioner states that his last day with the BHDDH will be January 27, 2023, and that he is currently pursuing other employment opportunities in anticipation of his departure from state service.

The Petitioner represents that he recently received an offer of employment to become the Director of Quality Improvement for CODAC Behavioral Healthcare (“CODAC”).² He identifies among the major duties and responsibilities of the Director of Quality Improvement the following: to research and develop quality improvement programs to provide services that lead to better outcomes; to communicate the strategic vision, scope and mission of performance improvement management to CODAC employees; to monitor patient satisfaction surveys and develop a process for the incorporation of patient voice in decision-making; to act as Keeper of the Records, Health Insurance Portability and Accountability Act Privacy Officer, and Corporate Compliance Officer; and to review new contracts to ensure support of the agency’s strategic vision and mission. The Petitioner further identifies the following additional major duties and responsibilities of the Director of Quality Improvement: maintaining BHDDH licensing, Commission on Accreditation of Rehabilitation Facilities accreditation, and National Commission on Correctional Health Care accreditation; participating in program development as relates to quality and performance; and developing a legislative agenda to promote CODAC’s mission and advocate with state leadership in all three levels of government (collectively, “duties which could include involvement with the BHDDH”).

The Petitioner represents that he made clear during two interviews with representatives from CODAC that, under the Code of Ethics, he would be prohibited from representing himself or anyone else, including CODAC, before the BHDDH, including all of its departments and divisions, for a period of one year following the severance of his employment with that state agency. He explains that, following his second interview with CODAC, the Petitioner met with CODAC’s Chief Executive Officer (“CEO”) to discuss his obligations under the Code of Ethics, including with respect to those duties which could include involvement with the BHDDH, which culminated in the CEO’s acknowledgment of those obligations, and the offer to formally attest to that acknowledgement.³ The Petitioner states that, if hired by CODAC, he would be able to perform his duties as the Director of Quality Improvement and still honor his obligations under the Code of Ethics for the next year because CODAC would be prepared to accommodate him in that regard and because CODAC’s licensing from the BHDDH will not be due again for another two years. The Petitioner explains that he shared with the representatives from CODAC who interviewed him that he has sought this advisory opinion. It is in the context of these facts that the Petitioner seeks advice from the Ethics Commission regarding the application of the revolving door provisions of the Code of Ethics to his potential employment with CODAC.

The Code of Ethics prohibits a public employee from representing himself or any other person, and from acting as an expert witness, before any state agency by which he is employed. R.I. Gen. Laws § 36-14-5(e) (“section 5(e)”) (1) - (3). This prohibition extends for a period of one year after

² CODAC, a nonprofit organization based in Cranston, RI, has provided treatment, recovery and prevention services to individuals and families within local communities for more than 50 years. <https://codacinc.org/#:~:text=Contact%20us%20now%20for%20access,Book%20Appointment> (Last visited on January 12, 2023).

³ The Petitioner states that, following a telephone conversation with a member of the Ethics Commission staff the day before his second interview at CODAC, he informed the CEO that a formal attestation would not be necessary.

the public employee has officially severed his position with the state agency. Section 5(e)(4). The “revolving door” language of section 5(e) is designed to prevent any undue influence that a current or recently departed public official or employee may have over an agency and its personnel by reason of current or recent employment there. Under the Code of Ethics, a person represents himself or another person before a state agency if he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his own favor or in favor of another person. Section 36-14-2(12) & (13); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). A “person” is defined as an individual or business entity. Section 36-14-2(7). Additionally, section 36-14-5(c) prohibits the use and/or disclosure of confidential information received through one’s public employment for the purpose of pecuniary gain.

The prohibitions within section 5(e) are absolute and apply to the entire agency, including all of its offices, sections, programs or divisions. See, e.g., A.O. 2020-7 (opining that the Chief Civil Engineer of the Transportation Planning Division of the Rhode Island Department of Transportation (“RIDOT”) was prohibited from preparing plans for submission by a private client to RIDOT, including any separate divisions thereof or entities therein, while he was employed by RIDOT and for a period of one year thereafter).

The Ethics Commission has issued numerous advisory opinions interpreting section 5(e)’s requirements with respect to former state employees interacting with their former agencies during the one-year period following the severance of their state employment. For example, the Ethics Commission issued Advisory Opinion 2022-30 to the former Deputy Director of the Medicaid Program within the Executive Office of Health and Human Services opining that she was prohibited from representing herself or others, including her private employer, or from acting as an expert witness, before the Executive Office of Health and Human Services, or any of its departments, offices, sections, programs or divisions, until the expiration of one year following the date of her severance from state employment. That petitioner was further prohibited from using or disclosing any confidential information she obtained while working as the Deputy Director of the Medicaid Program to financially benefit herself or her private employer. See also A.O. 2020-27 (opining that the former Administrator of Project Management for the Rhode Island Department of Transportation (“RIDOT”) was prohibited from representing himself or his private employer, or from acting as an expert witness, before the RIDOT until the expiration of one year after he had officially severed his position with that agency, and that the petitioner was further prohibited from using any confidential information he obtained while working as the Administrator of Project Management to financially benefit himself or his private employer).

Activities that would constitute representation and/or acting as an expert generally include the presentation of information or arguments for the purpose of influencing the judgment of the agency on matters concerning the Petitioner and/or his new employer. Here, such prohibited activities include, but are not limited to, communicating with and/or appearing before the BHDDH or any of its departments, and/or attending and participating at meetings between CODAC and the BHDDH or any of its departments relative to CODAC’s licensing or other matters. The Petitioner is cautioned that prohibited interactions are not limited to business meetings, and could occur at a restaurant, on the phone, in an email or at any social or political gathering. It is the content of a discussion, rather than its venue, that is most relevant in applying the Code of Ethics’ post-

employment revolving door restrictions. On the other hand, contacts involving purely personal or ministerial matters that do not involve discretion or decision-making on the part of the BHDDH or any of its departments are not prohibited.

In the instant matter, the Petitioner's anticipated actions to avoid conflicts of interest during the one-year period after leaving his employment with the BHDDH are not only appropriate, but required under the Code of Ethics. Accordingly, in consideration of the Petitioner's factual representations, the applicable provisions of the Code of Ethics, and consistent with our past advisory opinions addressing this issue, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing himself or others, including his new private employer, or from acting as an expert witness, before the BHDDH, including any of its departments, offices, sections, programs or divisions, for a period of one year following the severance of his employment with that agency. Further, the Petitioner may not use any confidential information he obtained while working for the BHDDH to obtain financial gain for himself or his new employer. Lastly, until the expiration of one year following the date of his departure from state service, the Petitioner is advised to avail himself of further guidance from the Ethics Commission regarding the Code of Ethics' potential application to his interactions with his former state agency.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2 (7)

§ 36-14-2 (12)

§ 36-14-2 (13)

§ 36-14-5(c)

§ 36-14-5(e)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

A.O. 2022-30

A.O. 2020-27

A.O. 2020-7

Keywords:

Post-Employment

Revolving Door