

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 20-0002

IN THE MATTER

OF

JEFFREY FOURNIER

ORDER TO SHOW CAUSE

1. The State Ethics Commission ("Commission") is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, to initiate and conduct adjudicatory proceedings.
2. On November 21, 2019, the Commission (a) found reasonable cause to believe that Jeffrey Fournier ("Fournier") violated G.L. c. 268A, §§ 4 (c) and 23(b)(2)(ii), and (b) authorized the initiation of adjudicatory proceedings.

FACTS

3. From January 4, 2012 to December 21, 2017, Fournier was a consultant project manager at the Massachusetts Office of the State Auditor ("OSA").
4. The OSA contracted with a Massachusetts company that provides information technology professionals, to obtain professional services performed by Fournier. Fournier was specifically named as the person providing IT professional services to the OSA in the contract between the consulting company and OSA that was in effect in December 2017.
5. In or about 2011, the OSA developed a data analytic tool called the Rules Based Risk Engine ("RBRE").

6. In or about 2014, while working at the OSA, Fournier and two coworkers (Employee 2 and Employee 3) formed a private business, named Riscovery. Employee 3 was the lead developer for the RBRE.

7. In or about September 2014, Riscovery was incorporated in Delaware.

8. Riscovery's website claimed that the company had designed solutions that helped to identify, prevent, or recover hundreds of millions of dollars in improper payments by many government programs and systems.

9. In or about November 2015, the OSA opened an audit of the Massachusetts Department of Children and Families ("DCF") to examine DCF's process for reporting critical incidents and fatality investigations.

10. Employee 3 was a member of the DCF audit team.

11. The DCF audit, which used the RBRE, reviewed Medicaid Management Information System ("MMIS") data from January 2014 through December 2015 for incidents such as suicide attempts, injuries from firearms, serious burns, and other types of medical incidents.

12. OSA's team of auditors chose the types of medical incidents and procedure codes that they wanted to be reviewed in the audit and Employee 3 wrote queries using Structured Query Language (SQL), a database management language, to extract these incidents and procedure codes from the MMIS data.

13. On December 7, 2017, the OSA released the results of the DCF audit which found that DCF did not "effectively identify and investigate all occurrences of serious bodily injury to children in its care."

14. In the DCF audit report, the OSA recommended that DCF "establish

policies and procedures that require its staff to routinely monitor MMIS data...”

15. DCF’s response to the OSA’s recommendation, which was part of the audit report, claimed that it would “...determine the feasibility of accessing MassHealth claims data in its MMIS system to identify medical treatment that may indicate a child was abused or neglected and should have been reported to DCF...”

16. In the DCF audit, the OSA found that DCF failed to report all critical incidents affecting children in its care to the Office of the Child Advocate (“OCA”).

17. On or about December 7, 2017, because the OSA’s audit of DCF had been publicly released, Fournier believed that he and/or Riscovery were closer to commercializing software that Fournier claimed he and others had developed.

18. On or about December 7, 2017, Fournier wrote an email to his wife and attached two newspaper articles about OSA’s audit and DCF’s failure to report crimes against children. Fournier’s email stated that they were “in the money.”

19. On or about December 11, 2017, Fournier appeared unannounced at the state office cubicle of a program coordinator at the OCA.

20. Entrance to the OCA is obtained through the Office of Elder Affairs. The public does not have direct access to the OCA offices, but rather, OCA staff always meets visitors in the lobby and escorts them back.

21. On December 11, 2017, Fournier was not met in the Elder Affairs lobby by a member of the OCA staff.

22. While at the program coordinator’s OCA cubicle, Fournier identified himself as a consultant with the OSA and asked if the program coordinator could schedule a meeting for Fournier with the Child Advocate. When the coordinator asked

Fournier for dates, he told her that he would get back to her.

23. On or about December 12, 2017, in follow up to his conversation on December 11, Fournier sent an email from his Riscovery email address to the OCA program coordinator in which he referred to himself as a consultant at the OSA. He stated that he and other OSA employees were involved in the recent OSA audit of the DCF. He stated that he and these other employees had “re-engineered the Audit Software to be more DCF focused, more Case Management and Case Worker friendly...” He informed the program coordinator that he and others had formed Riscovery and wanted to show the OCA how they had “re-constituted the software to work for DCF and fit their needs...”

24. On or about December 12, 2017, Fournier called the Chief of Operations and Organizational Improvement at DCF. Fournier left a voicemail in which he identified himself as a consultant at the OSA and stated that he, along with two other individuals at the OSA, were the primary architects of the “data warehousing and software solution” that were used in the recent DCF audit. Fournier stated that he had teamed with Employee 3 to “re-engineer the audit software to be more DCF focused, more case management and case worker friendly.” Fournier stated that he wanted to show the work he did on the audit to DCF and how he and his co-workers had “translated that or reconstituted that solution to work for DCF.” Fournier concluded his voicemail by asking to “set up a time to demonstrate some of our capabilities.”

25. The COO at DCF returned Fournier’s call and they spoke by phone.

26. Subsequently, Fournier sent an email from his Riscovery email address, copied to his official OSA email address, to the COO in which he wrote, “As I mentioned during our conversation, [Employee 3] and [Employee 2] have been instrumental in the

development of the network infrastructure, architecture and warehousing platforms, database designs, and risk analytic software used by the [OSA]...” Fournier copied the email to Employees 2 and 3 at their Riscovery email addresses.

LAW

§ 4(c)

27. General Laws chapter 268A, § 4(c) prohibits a state employee from, otherwise than in the proper discharge of his official duties, acting as agent or attorney for anyone other than the Commonwealth or a state agency in connection with a particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest.

28. As a professional consultant to the SAO, Fournier was a state employee subject to the conflict of interest law, G.L. c. 268A, §1(n).

29. When Fournier communicated with DCF and OCA on behalf of Riscovery, he acted as the spokesperson and agent of a private corporation.

30. Fournier’s communications on behalf of Riscovery were not made in the proper discharge of his official duties as a state employee because he was not acting in his capacity as a consultant at the OSA.

31. The OSA’s determination, as stated in its audit report, that DCF should monitor the MMIS data was a particular matter.

32. Fournier’s communications with DCF and OCA on behalf of Riscovery were made in connection with this particular matter because Fournier was attempting to sell a product and/or service to be provided by Riscovery that would allow monitoring of DCF’s MMIS data.

33. The Commonwealth had a direct and substantial interest in the monitoring of the DCF's MMIS data.

34. Therefore, Fournier violated § 4(c) by, otherwise than in the proper discharge of his official duties, acting as agent or attorney for Riscovery by communicating with DCF and OCA on behalf of Riscovery and pitching Riscovery's MMIS data monitoring program and/or services to those state agencies.

§ 23(b)(2)(ii)

35. General Laws chapter 268A, § 23(b)(2)(ii) prohibits a state employee from knowingly, or with reason to know, using or attempting to use his official position to secure unwarranted privileges which are of substantial value, and which are not properly available to similarly situated individuals.

36. Fournier used or attempted to use his position when he identified himself by his OSA position and title for the purpose of fostering a sense of credibility and to obtain access to channels to promote his private business. By doing so, Fournier used or attempted to use his official position to promote his personal interest and to gain an advantage in a private business transaction.

37. Given that Fournier's use of his OSA position resulted in receiving a quick response from his target customer and a meeting that allowed him to pitch Riscovery's product, the unwarranted privilege he received by his use of his OSA position and title was of substantial value.

38. The unwarranted privilege was not properly available to similarly situated individuals because other business could not use an official state title and position when attempting to obtain business from DCF or OCA.

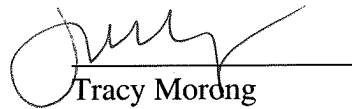
39. Therefore, Fournier violated § 23(b)(2)(ii) by, as an OSA consultant, knowingly, or with reason to know, used or attempting to use his official position to promote his private business.

40. WHEREFORE, Petitioner asks that the Commission:

1. find that Jeffrey Fournier violated G.L. c. 268A, §§ 4(c) and 23(b)(2)(ii); and
2. levy such fines, issue such orders and grant such other relief as may be appropriate.

Date: 6/23/2020

Respectfully submitted,
Petitioner State Ethics Commission
By its attorneys,



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