

The Regents of the University of California

COMMITTEE ON HEALTH SERVICES

March 19, 2009

The Committee on Health Services met on the above date at the Commons, Riverside Campus.

Members present: Regents De La Peña, Island, Johnson, Lansing, Ruiz, and Shewmake; Ex officio members Blum and Yudof; Advisory members Bernal and Powell

In attendance: Regents Cole, Garamendi, Gould, Kozberg, Makarechian, Reiss, Schilling, Scorza, Varner, and Wachter, Regents-designate Nunn Gorman and Stovitz, Faculty Representative Croughan, Secretary and Chief of Staff Griffiths, Associate Secretary Shaw, General Counsel Robinson, Chief Investment Officer Berggren, Chief Compliance and Audit Officer Vacca, Interim Provost Pitts, Executive Vice President Lapp, Senior Vice President Stobo, Vice Presidents Dooley, Lenz, and Sakaki, Chancellors Bishop, Blumenthal, Drake, Fox, Kang, Vanderhoef, White, and Yang, and Recording Secretary Smith

The meeting convened at 10:35 a.m. with Committee Chair Lansing presiding.

UPDATE ON EFFORTS TO RE-OPEN THE MARTIN LUTHER KING FACILITY

[Background material was mailed to Regents in advance of the meeting, and copies are on file in the Office of the Secretary and Chief of Staff.]

[Regents were provided with a packet of correspondence received regarding this item, and copies are on file in the Office of the Secretary and Chief of Staff.]

Committee Chair Lansing introduced Senior Vice President Stobo to provide an update on the efforts to re-open Martin Luther King-Harbor Hospital (MLK), which had closed in August 2007.

Senior Vice President Stobo commented on the ongoing discussions with Los Angeles County officials and the Governor's Office concerning the development of a plan for re-establishing services at the site of the existing hospital. He recalled that the hospital had closed after it was determined to be seismically unsafe. The Governor's Office asked UC to participate in the discussions about the possibility of re-opening a facility there. Those discussions spanned a year and have involved weekly conference calls among UC officials, Los Angeles County officials, and the Governor's Office. There have been meetings at the Office of the President, and several visits have been made to the site.

Dr. Stobo reported that the area in which the hospital is located is called Service Provider Area 6 (SPA 6); it is southeast Los Angeles. There are three hospitals in this area, all private, and only

two have emergency rooms. SPA 6 is unique in terms of its healthcare needs. It has 1.1 million people, the lowest per capita income, and the highest rate of the medically uninsured in the area. It has the highest death rate for heart disease, stroke, and cancer, and the highest number of emergency room visits in the area as well. In short, the health status of individuals in SPA 6 is among the lowest in the state.

Dr. Stobo commented that a hospital alone cannot solve the health problems in the area. It is necessary to have an inpatient facility there, but to be effective, that must be linked to a broad outpatient, health services delivery community. When discussions first began, the parties developed a set of principles to help guide their efforts. These included recognition that the re-opened hospital would serve as a safety net provider, treating a high volume of Medi-Cal and uninsured patients; an agreement that re-established inpatient services would be integrated with the County's existing network of primary care and specialty clinics; and concurrence that the model and structure for the new facility would optimize public and private resources to fund high-quality care.

Dr. Stobo reported that, in keeping with these principles, the parties propose to establish an independent, private, non-profit 501(c)(3) entity to operate the re-opened hospital. The non-profit entity would hold the hospital license, have its own independent governing board, and operate the re-opened facility under a long-term lease agreement with Los Angeles County. At full operation, the re-opened hospital would have approximately 120 licensed beds and an emergency room, but no trauma unit. Other trauma units to which patients could be transported when necessary are within a reasonable distance from the MLK site. The former trauma unit space, which has been designated as seismically compliant to 2030, would house the new facility.

Several organizational structures were considered for governing the facility and for taking responsibility for its day-to-day management. It was decided to recommend a private, not-for-profit structure that would maximize reimbursement for the facility and would not disrupt existing revenue streams that go to other hospitals, including UC hospitals in the area, and that would afford the appropriate legal and financial protections. The Office of General Counsel has determined that the financial liability of UC in this structure is close to zero. There is case law to show that, in similar arrangements, the participants are shielded from financial liability. UC would not own or manage the facility or provide start-up or operational support. Its name would not be on the facility. Los Angeles County would be responsible for providing \$170 million to retrofit the inpatient facility and build two outpatient areas, ancillary space, and an outpatient area, and for providing ongoing operational support. The County is willing to provide ongoing support because the amount required for the facility under the suggested structure would be far less than the cost of supporting the existing MLK facility. The business plan must work with no change in payor mix. It assumes that about half the patients will have Medi-Cal and half will be uninsured.

Finally, a guiding principle is that the facility instruction must be consistent with UC's overall academic and service missions.

The 501(c)(3) structure offers the greatest financial protection to UC. In a structure created with a separate board, the participating institutions cannot be held liable for liability incurred by the new organization. The board will consist of seven individuals. Two will be chosen by UC, two by Los Angeles County, and three jointly by UC and Los Angeles County. In this scenario, the two partners will control appointment of the board.

There are two important characteristics of the new board. First, each of the members appointed must have a minimum of ten years' experience in health, business, law, or another area that is relevant to a board that is overseeing the operations of a hospital. Second, none of the individuals appointed may be present employees or officers of either UC or Los Angeles County, so as to prevent any conflict of interest. The board will hold the license to the facility and a long-term lease to the facility granted to the board by Los Angeles County. The board will be responsible for managing the hospital and hiring all employees except physicians. It has been agreed that UC physicians would provide the care. They will be under contract with the 501(c)(3). Details of the contract are to be determined.

Dr. Stobo reported that several parts of the planning process remain. A draft business plan has been subjected to sensitivity analyses. Although in each scenario there is a small but positive operating margin, the assumptions upon which the analyses are based need to be finalized.

Two additional safeguards have been suggested. The County has agreed to put aside a reserve to cover operations if, for some reason, there is an unanticipated financial obligation to the 501(c)(3). It will be a multiple of the amount the County is willing to contribute to the operational subsidy yearly. Also, an agreement must be developed that would trigger dissolution of the 501(c)(3) automatically if certain financial obligations by the County or the State are not fulfilled. Dissolution of the entity would not require approval by the Regents or the President. Although further consultation with respect to legislative and regulatory approvals must take place, Los Angeles County's Board of Supervisors has indicated its support. Once the business plan, all approvals, details of the dissolution provisions, and the operating reserve are made final, sometime next fall, the President will present the completed plan to the Regents for approval.

Dr. Stobo believed that this undertaking is consistent with the University's responsibility as a public trust to address health needs of the medically underserved and medically vulnerable populations. He noted that the University's Medicaid waiver comes up for renewal in 2010. This waiver affords great financial protection to UC's hospitals. The individuals who are participating in the MLK discussions are the same as those with whom the University will negotiate the waiver. The University's appeal for re-approval of the waiver would be strengthened by its willingness to participate in this project. He emphasized that, as envisioned, UC would enter into a contractual agreement with the new non-profit entity to establish standards pertaining to quality assurance and the provision of physician services. Through these arrangements, UC would have a direct and substantial role in assuring that high-quality standards for patient care are established and maintained. As planned, hospital staff would be hired and employed by the new non-profit entity.

Inpatient services would be located in the seismically-compliant patient tower at the existing MLK site. The County will make the capital investments required to build out the patient tower

and construct an ambulatory care and ancillary services building, which would include an emergency department. All parties agree that UC will not provide start-up or ongoing financial support for the new hospital. The parties also recognize and understand that, prior to entering into any new arrangement, the operational and fiscal plan for re-opening the facility must be reviewed and approved by the Los Angeles County Board of Supervisors and the Board of Regents. It is further understood that Los Angeles County and UC will need to work together with the Governor's Office and administration, the California Legislature, and the U.S. Centers for Medicare and Medicaid Services to secure the legislative, regulatory, and other programmatic support that will be necessary for this effort.

Regent De La Peña put forth three suggestions: that the University seek legislation that would protect it from financial liability if certain conditions were not met and it had to withdraw; that it not be involved in the hiring of nurses; and that at least a six-month operating budget be placed in a trust account in addition to the funding needed to begin operations. Dr. Stobo responded that the dissolution documents will include not only financial triggers but also regulatory triggers.

Regent Johnson commented that Dr. Stobo's update had answered many of her questions. She suggested that he proceed carefully. She advocated taking as much time as is necessary to ensure that the University is not encumbered financially.

Regent Gould agreed with Regent De La Peña about the necessity of a reserve fund provided by the County. A reserve fund would demonstrate both a level of resources and a line of accountability. He supported the idea that, if the financial commitments are not maintained, the organization will dissolve automatically, not as a judgment call but as a business decision. He emphasized that County funding is what makes the operation possible, and that unmet obligations must be met by the County.

Chairman Blum commented that he was familiar with the area and recognized the need for the proposed facility. He recalled, however, that, under previous leadership, the University had signed a Compact with the Governor. The Compact failed to be honored when financial times were tough. If the enterprise did not receive the appropriate funding, in this case it would be irresponsible of the University to walk away. He asked whether there were a way to assure that the University would have access to County monies if the County failed in its funding obligations. Dr. Stobo responded that the reserve funding would be accessed if the agreed-upon schedule were not met and during the time the University was extricating itself from the entity, if that proved necessary. He noted the County's substantial investment in the project. He believed that it is in the County's best interests to make the plan work. Committee Chair Lansing asked that Chairman Blum's idea of securing another source of funding be explored.

Regent Kozberg noted the need for a reserve and expressed her hope that all issues would be resolved in advance. With respect to an alternate source of funding, she recalled that there may be a model for such an agreement. There have been situations in which a local agency formation commission, in granting permission for a portion of a county to pursue city status, has required that a certain amount of funds be reserved. Regent Kozberg also reported hearing that the outpatient clinics would be run by civil service employees, and she asked if this would add a layer of complexity. Dr. Stobo noted that about half the clinics would be run by Los Angeles

County and half as part of the public-private partnership. The University has emphasized to the County the importance of those clinics to the overall operation of this facility.

Faculty Representative Croughan also expressed concern about the structure for providing the care. She was pleased that the physicians would be UC employees, but citing the clinic structure, staff, technicians, and other support services, she hoped that decreasing liability for the University would be a paramount concern. She noted that San Francisco General Hospital offers a model. There, the staff have been predominantly County employees and the physicians UC employees, and the arrangement has worked well. Dr. Stobo responded that the MLK arrangement would be similar.

Regent Ruiz asked what the University's long-term vision for the hospital would be. Dr. Stobo emphasized that the project is envisioned as being a community asset. Although it will be neither owned nor operated by the University, the University can help honor a commitment to address specific needs in that community. He anticipated that the hospital would become part of the University's overall educational, research, and clinical service missions. Dr. Stobo reiterated that the facility would not carry UC's name.

University Counsel Reynolds stated that the University has developed safeguards that will minimize its risk in helping reconstitute MLK Hospital. That risk level would change if some of the safeguards were removed, such as naming it a UC facility and being involved in its management. He noted the existing successful affiliations between UCSD Medical Center and Rady Children's Hospital and between UC Irvine Medical Center and Children's Hospital of Orange County. This plan differs in that the University's appointees to board seats would not be UC employees. The benefit of having the board representation is that UC can ensure, given the scope and breadth of training activities and the amount of charity care, that the facility is operated in a manner consistent with the University's mission.

Regent Reiss expressed her support for establishing a six-month reserve and for considering Chairman Blum's suggestions further. She advocated exploring creative ways in which both the financial and moral issues related to dissolving the agreement could be accommodated, as well as establishing the legal obligations of the parties in advance.

Regent Island noted that most of the concerns stemmed from the fact that the University contemplates forming a partnership with State and County governments and with an institution that is perceived to have failed. He believed that those factors may have caused the University to focus on the inherent risks of the project more than on its merits. An automatic dissolution provision may hold the County and State accountable for their part of the bargain, but once engaged, the University would not be in a position to withdraw support from a community of a million people who need medical services. The University needs the right to terminate, but it should be subject to normal notice and negotiation procedures. The arrangement should be entered into on a basis of mutual respect and mutual responsibilities.

Regent De La Peña requested information on the cost of funding physicians at the facility, and if this was UC's only obligation.

Committee Chair Lansing emphasized that the agreement is a work in progress. She urged any Committee members who wished to discuss the plan further to inform Dr. Stobo directly.

Regent Gould believed that it would be possible to find ways in which to structure the University's commitment so that there are safeguards that memorialize the fact that the State and County intend to make restoring the hospital a top priority.

The meeting adjourned at 11:40 a.m.

Attest:

Secretary and Chief of Staff