

The Regents of the University of California

COMMITTEE ON COMPLIANCE AND AUDIT

September 11, 2012

The Committee on Compliance and Audit met on the above date at UCSF–Mission Bay Community Center, San Francisco.

Members Present: Regents De La Peña, Kieffer, Makarechian, Ruiz, and Stein; Advisory members Feingold and Powell; Staff Advisors Barton and Smith; Expert Compliance Advisor Guyton

In attendance: Regent Rubenstein, Regents-designate Flores and Schultz, Faculty Representative Jacob, Secretary and Chief of Staff Kelman, Associate Secretary Shaw, General Counsel Robinson, Chief Compliance and Audit Officer Vacca, Provost Dorr, Chief Financial Officer Taylor, Vice President Mara, Chancellor White, and Recording Secretary Johns

The meeting convened at 1:25 p.m. with Committee Vice Chair Makarechian presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of July 17, 2012 were approved.

2. **RESPONSE TO RECENT HIGHER EDUCATION EVENTS**

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

Deputy Compliance Officer Lynda Hilliard reported that, in light of child abuse events at Pennsylvania State University and Syracuse University which were widely reported by news media, the University of California has been examining potential gaps in its compliance and reporting system. An investigative report issued by Freeh Sporkin & Sullivan, LLP about the response of Pennsylvania State University to the events on its campus contains a number of observations and recommendations. Ms. Hilliard discussed a chart included with the background material that listed UC current processes or proposed initiatives that respond to the points raised in the Freeh report in seven key areas.

Director of General Liability Cheryl Lloyd, of the Office of Risk Services at the Office of the President, stated that her office must respond in anticipation of possible claims if similar events were to occur at UC. She reported that the University had recently purchased a sexual abuse and molestation insurance policy, but emphasized that the University wishes to see the campuses develop programs to prevent this kind of incident. The Office of Risk Services is providing consultation services for the campuses and

implementing a six-point plan for prevention: campuses are being asked to assign leadership to this area, to establish child safety task forces, to identify and assess current risk exposures, to establish policies for programs involving minors, to provide compulsory training on interaction with minors; finally, the Office of Risk Services would develop a system for reporting and responding immediately in the event of a claim.

Chief Compliance and Audit Officer Vacca observed that activities were already under way on the campuses to ensure that minors are protected. She stressed that the Freeh report identified problems not only in the athletic department at Pennsylvania State University, but in the institution's culture.

Expert Compliance Advisor Guyton stated that the Pennsylvania State University events have focused attention on the culture of compliance at universities and colleges, the ability to prevent, detect, and stop risky behavior, and the implementation of processes and procedures that allow for escalation and tracking of reported incidents. UC has a comprehensive compliance program tied to an internal audit structure. Few other institutions in the U.S. have this comprehensive structure. Mr. Guyton expressed his view that UC's annual compliance plan is effective in its written state, but must be executed with the support of the Regents and their continued involvement.

Committee Vice Chair Makarechian observed that inappropriate activities at Pennsylvania State University had been reported, but that the reporting stopped short; information was not forwarded as it should have been. He requested assurance that UC has a procedure so that reports or information about violations or about individuals who have mental health problems and may be dangerous are forwarded and brought to the attention of the appropriate authority. Ms. Vacca responded that, by law, new employees are identified as mandated reporters and are made to understand this. The University would also make efforts to increase awareness among UC employees about existing internal reporting mechanisms, primarily through training. The unfortunate events at Pennsylvania State University underscore the obligations of anyone who works with youth and the potential weaknesses in any compliance system.

Ms. Lloyd recalled that UC has an anonymous reporting mechanism. Employees can report incidents anonymously either online or by telephone and receive an anonymous response. To address situations that might arise from individuals with mental health problems, the Office of Risk Services, the University's compliance program, and the Office of the General Counsel have developed a comprehensive program. This program provides training for UC professionals on threats and threat assessment in the student environment. Students have many places to bring forward complaints. The University's goal is that all units are communicating on campus and that a dangerous situation will not escalate beyond control.

Regent Ruiz stressed that there must be consequences for inappropriate behavior. He asked if the Office of the President has the appropriate culture and authority to mandate

and to ensure that things get done. He described the University's culture as one of extreme tolerance.

Regent De La Peña noted that background checks are carried out before individuals are hired at UC medical centers, and suggested that repeated checks be carried out on employees every two to three years. He asked about UC policy in this area. Ms. Vacca responded that the subject of background checks would have to be considered separately from the compliance efforts in the current discussion. This was due to contract provisions with unions and to conditions of employment for academic employees. Different conditions apply to different categories of employees; the University cannot apply background checks as a blanket condition. General Counsel Robinson added that there are legal constraints on carrying out background checks. The University is examining a comprehensive policy to address these issues, including mandated reporters, required reporting, and background checks. In response to Regent Ruiz's remarks, Mr. Robinson indicated that the Office of the President has two roles, as a UC location in itself and as the central office for the system. He stated his view that the Office of the President has a culture of accountability in both roles, although he acknowledged that it has perhaps been more successful in creating a compliant environment in its own location than throughout the system. The Office of the President is very much aware of its compliance responsibilities.

Ms. Vacca concluded that the University had addressed each major issue raised by the Freeh report. Ms. Lloyd reported that the University would begin that week to visit the campuses with a consultant who would discuss minor safety and protection. The campus visits would continue throughout October. This was part of the University's effort to provide education and training to prevent incidents like those at Pennsylvania State University from occurring at UC.

3. **UNIVERSITY OF CALIFORNIA STRATEGIC INFORMATION TECHNOLOGY INITIATIVES**

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

Chief Information Officer Ernst recalled that current information technology initiatives were largely inspired by the resolution approved by the Regents in July 2010 on common administrative best practices. The first initiative spawned by the resolution was the UCPath project, which would replace the current payroll and human resources system; it was making good progress. Future initiatives might develop common applications in support of financial transactions, procurement, and perhaps student affairs.

Mr. Ernst observed that campus administrative systems have become highly individualized over the years. The only shared system among the campuses is the high-speed networking technology provided by the Corporation for Education Network Initiatives in California (CENIC). CENIC links UC, the California State University (CSU), the California Community Colleges, County offices, and some private

universities, and its network can be used for research and administrative purposes. The University is currently at work to ensure that other UC networking technology is in place that will be required for future shared UC systems.

Mr. Ernst reported further progress in the development of regional data centers, which would reduce operating costs and capital construction costs. About 200 computer server racks would be in place at the San Diego Supercomputer Center by the end of the year. For the end user, the location of the computer is no longer important in terms of response time. The University is also considering the use of cloud computing for some of its future computing needs.

In the area of privacy and information security, Mr. Ernst recalled that the University had recruited Cheryl Washington as Chief Information Security and Privacy Officer about six months earlier. Ms. Washington held a comparable position for several years at CSU and would make a presentation at a future meeting.

The Privacy and Information Security Initiative, a systemwide initiative sponsored by President Yudof, would soon be issuing its report. The report examines the complementary and competing demands in this area and examines values and principles, governance, accountability, and policy. Mr. Ernst noted that there is a need for a sustainable, regular review process. He distinguished the needs to protect individuals from observation, to protect information about individuals, and to protect all information and infrastructure. The recommendations from the report would be presented at a future meeting. UC is taking a leadership role but also studying solutions developed at other institutions.

Regent Ruiz asked about the risks and consequences if the University's efforts in privacy and information security are not effective. Mr. Ernst responded that one of the most pressing issues is the security of patient and health care information. He observed that problems arise more often from carelessness than from malice. The Privacy and Information Security Initiative report would provide recommendations for education and training programs. This area presents significant risks of litigation and public loss of confidence in the University.

Committee Vice Chair Makarechian noted Mr. Ernst's impending retirement and thanked him for his service to the University.

4. **ANNUAL REPORT ON ETHICS AND COMPLIANCE 2011-12**

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

Deputy Compliance Officer Lynda Hilliard indicated that the Annual Report on Ethics and Compliance focused on six main areas: the culture of ethics and compliance, research compliance, data privacy and security, campus safety and climate, government reporting requirements and accuracy, and health care reform. One important focus of the current

year was the systemwide presidential policy management process project. All presidential policies were examined, reviewed, and would be made consistent and available in a transparent manner to UC affiliates and the public. Ms. Hilliard recalled the successes of the University's royalty audits and reported that royalty audits and a clinical research billing project were currently under way. The University was reviewing health care billing and coding, and had engaged an outside expert in the field. There was an increase in investigations in the current year; campuses are being provided with the resources and training they need to investigate whistleblower complaints.

Committee Vice Chair Makarechian recalled that high risk Management Corrective Actions (MCAs) are expected to be addressed within 90 to 180 days. He asked that the Committee receive a list of MCAs that still remain unresolved after twice this period, or about 365 days. The Committee should be aware of these risk issues, and the reasons for which they have not been addressed, whether funding or another cause. Chief Compliance and Audit Officer Vacca agreed and stated that this information would be provided. Representatives of campus management could report to the Committee as well, in cases where action has taken longer than the normal range of 180 days.

Regent De La Peña referred to the health sciences compliance officers' reports. He asked about the relationship of these audits to the Division of Health Sciences and Services at the Office of the President and the Regents' Committee on Health Services. He suggested that these audits should be reported to the Committee on Health Services. Ms. Vacca responded that it would be appropriate and a positive next step to bring the health sciences compliance officers' annual report for discussion to the Committee on Health Services.

Regent De La Peña added that not only the report, but also the planning for the next year would be of interest to the Committee on Health Services. Ms. Vacca responded that this information would be provided.

5. **INTERNAL AUDIT ACTIVITIES REPORT**

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

Chief Compliance and Audit Officer Vacca briefly summarized the Internal Audit Activities Report, remarking that internal audit activities were currently focused on audit controls. This was due to a situation of budget constraints, which also resulted in fewer advisory services than might otherwise be provided. The internal audit program must focus on day-to-day controls, identify weaknesses, and bring these to the attention of management.

6. **CHIEF FINANCIAL OFFICER DIVISION AIM REPORT: ACTIONABLE INFORMATION FOR MANAGERS**

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

Chief Financial Officer Taylor explained an essential assumption of the AIM (Actionable Information for Managers) report: if a phenomenon cannot be measured, it cannot be improved. About a year-and-a-half earlier, the Office of the President had established a benchmarking process to compare financial and business data campus by campus. This allows campuses to compare their performance to the other campuses and to communicate directly with one another about best practices, such as strategically sourced purchasing. Mr. Taylor noted that he had just received 2012 data for hand postings and was happy to report that the number of hand postings had been reduced by half in one year. This reflected an aggressive effort by Systemwide Controller Peggy Arrivas and the campus controllers to make monthly data more accurate. This effort frees up staff time spent on manual entries and corrections and allows time for more valuable strategic tasks.

Regent Kieffer suggested that the progress shown in this report should be highlighted and presented to the full Board, not only the Committee on Compliance and Audit. This information was a critical measurement not only of risk and risk management, but of management in general. Mr. Taylor responded that this information would be presented to the Board. Committee Vice Chair Makarechian observed that some topics, such as reduction of hand postings, would fall under compliance, but concurred with Regent Kieffer's suggestion.

Committee Vice Chair Makarechian referred to a chart in the report displaying medical center cost of claims per 10,000 adjusted patient days. He suggested that figures for the previous three years should be included in the chart, to show where improvement had occurred. Mr. Taylor responded that these figures were available and would be included in the next report.

Staff Advisor Barton asked about campus and systemwide efforts to move toward direct deposit of wages and use of electronic W-2 forms. Mr. Taylor reported that when Office of the President employees view their pay statement online, they receive a reminder to request an electronic W-2 form. This measure has resulted in a significant increase in the number of employees receiving an electronic W-2 form.

Regent Rubenstein asked if the University had considered offering any incentive to employees for switching to electronic W-2 forms. Ms. Arrivas responded that the University programmed a "pop-up box" in its online system which enrolls employees for electronic W-2 forms by default unless they opt out.

7. UPDATE ON STATUS OF LABORATORY SAFETY PROGRAM

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

Chief Financial Officer Taylor recalled that, following a tragic laboratory fire at UCLA in 2008 that led to the death of an employee, the University and the Los Angeles County District Attorney's office had reached a settlement agreement. This item concerned the implementation of the agreement conditions.

Director of Environment, Health and Safety (EH&S) Erike Young, of the Office of Risk Services at the Office of the President, noted that an EH&S leadership council meets monthly. In the past, this group has focused on responding to problems rather than forecasting. In March 2010 the group carried out a strategic planning session. This has resulted in the establishment of the UC Center for Laboratory Safety at UCLA and greater sharing of resources among campuses. Three years previously, four of the campuses were developing different software systems for laboratory inspections; the University is now developing one model that all campuses will be able to use.

Mr. Young outlined the major provisions of the settlement with the Los Angeles County District Attorney, including identification of laboratory facilities, availability of a laboratory safety manual and chemical hygiene plans, completion of laboratory safety training by researchers and laboratory personnel, personal protective equipment documentation, and laboratory inspections. He noted that the provisions largely reflect existing regulations, but request greater specificity in implementation. The settlement also provides for enhanced inspections by the State Division of Occupational Safety and Health (Cal/OSHA) and imposes conditions for breaches of the agreement. In the case of a breach, a campus has 30 days to initiate corrective action. If there is no corrective action, the University can receive a fine of up to \$500,000.

In order to ensure compliance with the agreement, the University has instituted a Systemwide Laboratory Safety Manager position, a laboratory safety panel at the Office of the President, and a laboratory safety management self-assessment and peer review program. There would continue to be independent oversight by the Office of Ethics, Compliance and Audit Services. Mr. Young indicated that every campus had different policies on personal protective equipment and laboratory safety training. Draft systemwide policies have been written and were currently being reviewed by the Academic Senate. The University is making use of material developed by UCLA for sharing systemwide and is developing a laboratory safety fundamentals course. Mr. Young anticipated that the course would be available online within 60 days. Other resources to be shared systemwide include a standard operating procedures library and a web-based chemical use authorization system.

Mr. Young discussed implementation of an institutional culture of safety which would not only reduce accidents or injuries but prepare graduate students for work in industry. On July 27, there was a systemwide stakeholder meeting to discuss the settlement

agreement. In the weeks following, letters sent from Office of the President senior leadership to the campuses expressed support for changes beyond the laboratories specified in the agreement. Mr. Young stressed that communication must reach the level of department chairs in order for change to take place. He reported that a UC laboratory safety SharePoint site has been created and that a webinar series focused on research safety would soon begin. The University's laboratory safety programs would be peer reviewed by the American Chemical Society, the foremost American professional society for chemists. Campus senior leadership would make safety observations of campus laboratories, and Mr. Young invited Regents to participate in these visits.

Regent De La Peña asked whom the systemwide laboratory safety manager or the laboratory safety panel report to in case of an incident or breach in policy. Mr. Young responded that an incident would be immediately reported to him. He would work with the Office of the President panel, which includes a number of attorneys. The panel reports to President Yudof, and Mr. Young affirmed that an incident reported to the panel must be reported to President Yudof.

Regent De La Peña suggested that laboratory safety incidents be reported not only to the Office of the President but also to the Committee on Compliance and Audit. The Regents must be aware of what is occurring. Mr. Taylor responded that this information would be provided to the Committee in the future.

Regent Ruiz praised the systemwide approach to this matter.

Committee Vice Chair Makarechian asked about violations and incident reporting under the agreement. Mr. Young responded that there could be two different situations. One would be a breach of the agreement. In that case the campus vice chancellor for research would be notified. An example of a breach might be a researcher who has not received required training. The second situation would be a laboratory accident, which would not necessarily represent a breach of the agreement. In such a case Cal/OSHA must be notified immediately, and the University must secure the laboratory as a crime scene for inspection. The subsequent inspection might reveal a breach of the agreement.

Committee Vice Chair Makarechian asked if there is a reporting system in place for a laboratory employee who sees a colleague not wearing appropriate protective equipment. Mr. Young responded that the settlement agreement requires such a reporting mechanism for UCLA. He stated that EH&S would like UCLA's policy on personal protective equipment to be adopted systemwide. Technically, reporting requirements exist already, but the institutional culture in some laboratories may be somewhat lax in this regard. If EH&S identifies such a situation, corrective action will take place. There may be misunderstanding among researchers about when personal protective equipment must be worn. The webinar series and policy discussions would address this.

Committee Vice Chair Makarechian asked if a system is in place that allows a laboratory employee to report problems without negative consequences for that employee.

Mr. Young responded in the affirmative. Typically, campus EH&S websites have a link to report safety concerns.

Faculty Representative Powell expressed agreement with Mr. Young's earlier statement that department chairs must bring about these changes. He reported that the Academic Senate would like continuing engagement of faculty in the governance of these issues on campus, and he communicated some faculty concerns. The first was that campuses are interpreting systemwide communications and directives in different ways. The second was a concern about costs. New requirements might involve adding staff to a department or placing additional stress on staff. Mr. Young responded that discussions were under way about resources that could be provided at the campus level. He concurred that messages communicated to the campuses must be consistent, and observed that the webinar series would help to achieve this.

The meeting adjourned at 2:45 p.m.

Attest:



Secretary and Chief of Staff