

UNIVERSITY OF WASHINGTON

FACULTY COUNCIL ON FACULTY AFFAIRS

The Faculty Council on Faculty Affairs met on April 26, 2004, at 10:15 a.m., in 26 Gerberding Hall. Chair Kate O'Neill called the meeting to order at 10:19 a.m..

Synopsis:

1. Announcements
2. Winn Settlement Report – Discussion
3. Appendix: Report in Response to Class C Resolution Adopted by the Faculty Senate on October 24, 2002.

Approval of agenda and minutes

The agenda was approved. The April 12 minutes were approved as corrected.

Announcements

Lea Vaughn announced that FCFA does not yet have a chair for the 2004-2005 academic year. The SEC nominating meeting is today, and Vaughn would like to be able to present a chair for FCFA. Leah Ceccarelli has considered the post, but will not have the time to do it this time.

In response to Vaughn's announcement, Dan Luchtel volunteered to chair FCFA next year; Katherine Graubard volunteered to serve as vice-chair. On behalf of the Faculty Senate, Vaughn thanked Luchtel and Graubard for their willingness to provide leadership to this Council, which is of utmost importance to the faculty.

Winn Settlement report

O'Neill asked the Council for guidance on the next steps in the Winn Settlement report, which she and the subcommittee revised per the Council's discussions on April 12, 2004.

FCFA's charge in this investigation is to ascertain that the UWP is meeting its fiduciary responsibilities, particularly in the legality of the payment made to Dr. Winn, and that UWP methods and procedures guarantee openness with the faculty. This should include openness about the way the funding process works.

In general discussion, Council members suggested various formatting and editorial changes, including grouping like items together under headings, etc.

In view of the fact that it has been sixteen months since the subcommittee met with representatives of the Medical School, it was decided to submit the report to the Medical School for verification of statements of fact made in items A through E of the report (see appendix). It was also suggested that there be another meeting with the Medical School, but the consensus of the Council was that this would further delay the report, which was mandated in October 2002, without producing any new information or benefit that would justify the delay.

It was decided that the report, which includes both fact-finding and remedies, be broken into two parts. The fact-finding portion of the report, with a cover letter, will be forwarded as a final report to the Medical School for verification of the facts, with a requested response date of May 31.

The recommendations portion of the report will also be forwarded to the Medical School, but as a "draft only" indicator of what FCFA is considering. Simultaneously, both portions of the report will be added to the agenda for the May 3 Senate Executive Committee meeting so that the Faculty Senate leadership (and by his membership in SEC, the President) will be apprised

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of FCFA's findings and proposed remedies. Kate O'Neill and Dan Luchtel will present the report to SEC.

At some point in Fall Quarter, the FCFA report, the final draft of recommended remedies, and the Medical School's reply will be submitted to the SEC and then to the Faculty Senate in response to the October 2002 Class C resolution. At that time, a letter to the new President will ask for a review of the UWP to ensure it is meeting both law and principles of shared governance, and that the UWP and all similar organizations on campus meet the provisions of the Sarbanes-Oxley Act for public companies and accounting reform.

Present:

Regular: Graubard, Hadjimichalakis, Hildebrandt, Kirtley, Luchtel, O'Neill, Wilson

Ex-officio Krieger-Brockett, Cameron, Walker, Vaughn

Absent:

Regular: Ceccarelli, Demorest, Dzwirek, Janes, Kolko, Lydon-Rochelle

Ex-officio: Blumenthal, Johnson, Stygall

APPENDIX

April 27, 2004

Faculty Council on Faculty Affairs

Report in Response to Class C Resolution Adopted by the Faculty Senate on October 24, 2002.

Background

The Faculty Council on Faculty Affairs has prepared this report in response to concerns about the use of funds generated by the members of University of Washington Physicians¹ (UWP). In the fall of 2002, the University of Washington agreed to pay Dr. H. Richard Winn up to \$3.7 million² to resign his position on the Medical School's faculty and to enter a guilty plea on a federal felony charge of obstruction of justice in connection with a federal investigation into illegal billing practices. In addition these funds from UWP were used to pay very substantial legal fees associated with the investigation.³

The Faculty Senate Resolution provided in part that "the appropriate Faculty Council be asked to examine this matter, and to determine if the current regulations for spending funds from non-state origins are adequate for the effectiveness in specifying the fiduciary

¹ Technically, UWP's corporate name is The Association of University Physicians.

² The total amount of payments will depend on Dr. Winn's earnings over the next five years. The agreement provided for \$950,000 for one year beginning Sept. 1, 2002, \$750,000 the next, and \$500,000 for the succeeding four years, minus his earned income during that period.

³ Attorneys fees paid by UW medicine to defend against all the federal charges of medicare overbilling have reportedly reached \$26.5 million. See Seattle Post – Intelligencer, April 17, 2004, pp. A1, A5.

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duties of their administrators, and to provide sufficient openness by the public, the President, and the affected faculty.”

On January 23, 2003, the then Chair and Vice-Chair of the Faculty Senate, Profs. Sandra Silberstein and Doug Wadden, and the Chair of the Faculty Council on Faculty Affairs, Kate O’Neill, met at the Medical School to discuss the Winn settlement.⁴

At the meeting the Medical School representatives explained that the moneys for the settlement and other monies for some of the related legal expenses came from the “Dean’s Fund.” According to John Pettit, the Dean’s Fund is generated by an 11 percent “tax” on the net (after costs of operations) revenues generated by UWP.⁵ At that meeting the Medical School representatives, particularly John Pettit, also outlined the structure and governance of UWP.

After that meeting, the Faculty Senate leadership assigned preparation of a report in response to the Resolution to the FCFA.

⁴ Attendees included John Coulter, Executive Director, Health Sciences Administration and Associate Vice President for Medical Affairs, Dan Dubitzky, private attorney for the University, Jack Johnson, Division Chief and Senior Assistant Attorney General, Ruth Mahan, Dean Medicine, Associate Director of Management and Finance, John Pettit, Dean Medicine and Director of Business and Legal Affairs, and Christina Surawicz, Professor of Medicine.

⁵ The “Dean’s Fund” appears in the various corporate documents under other names, including the Academic Support Fund (Agreement between UW and UWP, Par. 4) and Clinical Medical Fund (Member’s Guide/Income Distribution Plan). The Agreement provides that “All funds in excess of the annual operating expenses of the foundation shall be retained within the Foundation, for the benefit of the School of Medicine, as an Academic Support Fund to be used by the School of Medicine for the educational, research and other institutional needs of the School of Medicine.” Par. 4. The Member’s Guide and Income Distribution Plan provides that “AUP shall hold the Clinical Medicine Fund for use by the Dean for the benefit of the School of Medicine.” It further provides that the “ ‘Clinical Medicine Fund Contribution’ for a particular Department shall mean the greater of (i) eleven percent (11%) of the cash receipts remaining after deduction of all AUP Operating Expenses, or (ii) the amount transferred from the Department to the Clinical Medicine Fund with respect to calendar year 1987.” There are allegations that the Dean’s fund percentage has increased to 18 percent this year.

Summary

A subcommittee of the FCFA⁶ has reviewed the organization's corporate documents, the information provided at the January 23, 2003 meeting with Medical School representatives, interviewed a small number of medical school faculty, reviewed newspaper accounts of the settlement, and read an article by Dr. Winn concerning this matter.⁷ Readers should be warned that the subcommittee did not undertake a comprehensive independent investigation into the facts nor are we competent to opine on the legality of the organization's structure, operations or the particular practices and transactions involving Dr. Winn.

The allegations, rebuttals and anecdotes that we have heard from various people in and out of the Medical School can, we think, be grouped into three major categories:

1. The legality and propriety of the settlement payments to Dr. Winn and, relatedly, the merits of the federal charges.
2. Concern over the "transparency" of UWP's governance and management, particularly its finances. We have heard two related financial concerns: whether the monies devoted to Dr. Winn and related legal expenses have negatively impacted department budgets and salaries at the Medical School, and whether the percentage of UWP revenue controlled by the Dean is known and whether it has been increasing relative to the percentage devoted to faculty salaries.
3. Concern about a hierarchical and intimidating "culture" at the Medical School.

Issues that relate to the rights and obligations of faculty at UW are properly within the Faculty Senate's, and FCFA's, purview. For reasons detailed below, this subcommittee cannot provide a definitive answer to the first legal issue and we think the third cultural issue well beyond our poor powers to address, except to the extent that our recommendations, if put into practice, improve the transparency, accountability and independent oversight of UWP's management.

As to the second group of concerns, we think it a matter of legitimate concern to the Senate and the faculty at large that UW medical clinical faculty are, as detailed below, subject to management by an organization in which they have substantial financial and reputational stakes but very little insight or input, much less any meaningful power. UWP began as a partnership in 1962. Since then, UWP's organization has been modified

⁶ Professors Jack Hildebrandt, Dan Luchtel, Kate O'Neill

⁷ J. Neurosurg. Vol. 100 / January 2004 / 47 – 55. In the article, Dr. Winn alleges among other things that the federal charges of improper billing resulted from UW's failure to train personnel on the complex and changing regulations, rather than on intent to defraud.

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several times to arrive at the present structure. Each step has eroded faculty input and oversight and concentrated administrative power in the Dean's office.

Clinical faculty at UW Medical School and affiliates are required to be members of UWP, and they are required to assign their clinical incomes to UWP. Yet, three-fourths of the members of the Board of Trustees of UWP are appointed by the Dean and those Trustees are Chairs of Departments who serve at the Dean's pleasure. Each Chair receives a substantial part of his or her budget from UWP funds. The six non-Chair Trustees are nominated by the Dean and are faculty members who must teach and practice within one of those Departments. Thus, it seems to us that individuals on the Board of Trustees, no matter how well-intentioned, suffer from inherent conflicts of interest in trying to represent the well-being of the organization while serving under the Dean.

The Board's dependence on the Dean is aggravated by an absence of faculty input into decision-making. We are told that there is only one annual meeting of the medical faculty as a whole. Allegations that the Dean does not regularly consult with an elected faculty Council, and did not apparently consult with such a body regarding the Winn matter, add to our concern that medical school faculty are effectively disenfranchised from expressing their views on matters that affect their incomes, the resources available to their departmental programs, and the reputation of the institution and individuals working for it.⁸

Whether the decision to make a settlement with Dr. Winn was proper or wise depends upon information that this subcommittee lacks and upon legal judgments of which it is incapable. In our meeting with Medical school representatives and attorneys, and in public statements by University representatives,⁹ those persons have been adamant that the settlement was justified for two basic reasons: to avoid even greater legal expenses associated with the federal investigation and its defense and with terminating Dr. Winn's employment, and to avoid further damage to the personnel, patients, and operations of the department of neurosurgery and the Medical School in general. The UWP corporate documents suggest to us that the Dean and others had the authority under a literal reading of those documents to use the "Dean's fund" to pay the settlement and legal costs. Nevertheless, many faculty members in and out of the Medical School question whether using UWP funds to pay the settlement and legal fees is in keeping with the spirit of those documents that dedicate the funds to the educational and scientific mission of the medical school and to supplement physician salaries. Some faculty have raised concerns about the legality of using funds from a public agency for the settlement, and many

⁸ There are, in addition, allegations that corporate procedures are not generally followed. For example, there are allegations that members do not receive financial and other reports to which they are entitled and that members are not given access to the financial records of UWP as a whole, but only to the records for their home department.

⁹ See, e.g. Steve Miletich, "Lower-paying job may leave UW on hook in Winn deal," Seattle Times, October 17, 2003, quoting L.G. Blanchard, spokesman for UW medicine, available at http://seattletimes.nwsourc.com/html/localnews/2001768124_winn17.html; Kate O'Neill notes of January 23, 2003 meeting at Medical School, with John Pettit, Jack Johnson, et al. (personal files.)

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question why such a large settlement was made to secure the resignation of a faculty member whose alleged conduct, if proven, would have justified termination for cause. That apparent paradox has generated suspicions that the settlement payments might have been made to cover up other, more widespread problems beyond the alleged billing errors and related misconduct of one or two individuals.

We believe that these questions are legitimate and the faculty is entitled to a fuller explanation than the brief remarks by Medical school spokespersons that have been quoted in the popular press.¹⁰ The pending proposed settlement of Medicare and Medicaid billing charges against UW Medicine involves many of the same issues.¹¹ While the terms of settlements may be sealed, the rationale for settling and why the amounts paid are reasonable are matters that we believe can be better explained to faculty. Equally important is a prospective improvement in UWP's management to provide independent oversight, transparency of decision-making, and accountability to faculty members.

¹⁰ E.g. "While this is a large sum of money, it pales in comparison to the far deeper, more painful and far-reaching costs, economic and otherwise, that would have resulted if this agreement had not been reached L.G. Blanchard, spokesman for UW Medicine, quoted in Steve Miletich, "Lower paying job may leave UW on hook in Winn deal," Seattle Times, October 17, 2003.

http://seattletimes.nwsourc.com/html/localnews/2001768124_winn17.html.

¹¹ A settlement is reportedly pending between the federal government and UW doctors and the Medical School for charges of overbilling Medicare and Medicaid. The penalty payment, to be made from UWP funds and from other funds at UW Medicine, is reported to be \$35 million. See Steve Miletich, "Penalty in UW billing scandal reportedly \$35 million," Seattle Times, January 14, 2004.

Appendix

Structure and Management of UWP

Associated University Physicians was founded in 1962 as a partnership. Since 1983 it has been organized as a non-profit corporation, Association of University Physicians. It is now generally referred to as University of Washington Physicians (UWP).¹²

In its partnership form, each department was a partner with the Chair as senior partner and there was an overall partnership at the school level. Earnings over ceilings were distributed to faculty in one's own department and when everyone in a department had reached his ceiling, the funds were used to bring faculty in other departments up to ceiling. Surplus funds went to the Dean for the teaching and research programs at the Medical School.

Articles of Incorporation, Art. III. Currently, UWP is a 501(c)(3) non-profit educational, charitable and scientific membership organization. Its Articles of Incorporation provide that it is "organized for the benefit of the University of Washington School of Medicine exclusively for charitable, education and scientific purposes and to aid in performing certain functions of and to carry out certain purposes of " the Medical School. Article IV. The Articles also provide that "[N]o part of the net earnings of the corporation shall inure to the benefit of any trustee, Trustee, or officer of the corporation, or any private individual (except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered to it...including...compensation for medical services rendered by individuals holding appointments as Faculty members" of the Medical School.)

Agreement between the University of Washington and The University Physicians Foundation 1983, Par. 6. All clinically active faculty of the School of Medicine are required to be members of UWP. Par. 2 of The Agreement requires UWP members to assign all income from clinical practice at UW owned or managed institutions to UWP.

By-Laws Article III and IV B & C. The Board of Trustees of UWP is comprised of the Chairs of each department in the Medical school (numbering 18 currently), who are appointed by the Dean of the Medical School, and six other Trustees elected by the membership. The Dean appoints from the Board the members of a Management Committee, which is accountable to the Board and to the Dean, sets policies, oversees the budget, provides fiscal and other reports, and keeps minutes, all of which are required to be reported to the Dean and the full Board, but not to the membership.

¹² The organizational documents may be found at [insert link to **Articles of Incorporation for "Association of University Physicians" (an earlier name for UWP), its By-Laws, Agreement between the University and the University Physicians Foundation¹²; UW Physician's Member's Guide (rev'd May 2001) which includes UWP's Income Distribution Plan.**]

By-Laws Article IX,B. The Management Committee of the Board is required to order an annual audit by independent certified public accountants.¹³ It also must prepare and distribute an annual statement of accounts to members.

By-Laws Article II. Members are entitled to notice of and attendance at an annual meeting. A quorum consists of 40 percent of the membership in present or voting by proxy. Apart from the right to elect six non-departmental Chairs to the Board of Trustees, the By-Laws do not appear to give members any powers to vote on other matters. Departmental Trustees are required to keep copies of the UWP's important organizational documents and records and are required to make report, at least semiannually, to the members in each department concerning the affairs of the department and UWP.

By-Laws, Article VI. Members have the right to inspect the books and records of the Association for any proper purpose at any reasonable time. Indeed, because it is a registered non-profit corporation, the subcommittee believes that the general public also has such a right of inspection.¹⁴

Faculty Code Provisions. As faculty, members of UWP also are governed by the UW Faculty Code. **Faculty Code, Section 23-45.** Every college, school and department shall have a council, comprised of elected faculty members, to advise the Dean on matters of promotion, tenure, academic policy, resource and salary allocation and budgets. It is not clear that the Dean of the Medical School consults with such a faculty council; there is no indication that such a council was consulted with respect to any part of the Winn investigation or settlement.

Section 25-51 also provides in part that “[a] faculty member having tenure under the provisions of this Chapter may be removed for cause from his or her position... for [c]onviction of a felony.¹⁵

¹³ Currently KPMG; formerly Arthur Anderson.

¹⁴ **Insert cite to RCW.**

¹⁵ A guilty plea is generally deemed a confession of guilt whose result is equivalent to conviction. See Washington Practice: Criminal Practice and Procedure, 2d. ed., vol. 13, § 3617, citing *Ricketts v. Adamson*, 483 U.S. 1 (1987).