

## **FACULTY CONSULTATIVE COMMITTEE (FCC)**

October 1, 2015

Minutes of the Meeting

*[These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions, or actions reported in these minutes reflect the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.]*

[In these minutes: Individual Conflicts of Interest Policy, CIC Faculty Governance Leadership Conference Update Postponed, 2015 – 2016 Possible Intellectual Futures Conversation Topics Discussed, Whose Diversity, President Kaler]

**Present:** Colin Campbell (chair), Jigna Desai (vice chair), Catherine French, Rebecca Ropers-Huilman, Linda Bearinger, Dan Feeney, Gary Gardner, Kathleen Krichbaum, Susan Wick, Dale Carpenter, Janet Ericksen, Greta Friedemann-Sanchez, Joseph Konstan, Marlene Zuk

**Regrets:** Scott Lanyon, LaDora Thompson, Karen Mesce, Chris Uggen, Jean Wyman

**Others attending:** Jon Steadland, associate to the deputy chief of staff, Office of the President

**Guests:** President Eric Kaler and Individual Conflicts of Interest policy guests: Professor Will Durfee; Jon Guden, associate program director, Conflict of Interest Program, Office of Institutional Compliance; and Lynn Zentner, director, Office of Institutional Compliance

1. **Call to order** - Professor Campbell convened the meeting and called for a round of introductions.

2. **Individual Conflicts of Interest Policy** - Professor Campbell welcomed Professor Will Durfee; Jon Guden, associate program director, Conflict of Interest Program, Office of Institutional Compliance; and Lynn Zentner, director, Office of Institutional Compliance, who were invited to share information about the proposed changes to the Individual Conflicts of Interest Policy and to receive member feedback/input.

Ms. Zentner began with an overview of the policy review process. She noted that typically this policy is reviewed every four years, but because the final report of the external review team on the University's Human Research Protection Program

(HRPP) was not issued until last spring, the review was delayed slightly. In addition to routine policy changes for clarification purposes, explained Ms. Zentner, other policy changes were made due to regulation changes imposed in the 2012 Public Health Service requirements for individuals involved in research as well as recommendations from the Implementation Team. The proposed changes to the policy are being vetted through the SRC, SCFA, FCC, AHC FCC, University Senate (November 2015 and March 2016), and the President's Policy Committee.

Next, Jon Guden, associate program director, Conflict of Interest Program, Office of Institutional Compliance, said members should have received a draft copy of the policy to review prior to this meeting. He began by noting that for the past four to five years there have been two separate conflicts of interest policies, one that applied to individuals involved in providing clinical health care, and another for the rest of the University. The proposal is to combine these two policies into one because there were not that many unique aspects in the clinical health care policy to make two policies necessary. A number of changes being proposed in the policy are based on the experience of the Office of Institutional Compliance and the types of questions it receives. Before walking members through the proposed policy changes, Mr. Guden noted that for members who are interested in reading the various reports and other documents related to advancing human research protections at the University they could visit the Office of the Vice President for Research website at <http://research.umn.edu/advancehrp/index.html>.

Mr. Guden walked members through the proposed changes to which members had the following questions/comments:

- Regarding the education requirement (completing the University's conflict of interest course) for filing a Report of External Professional Activities (REPA), Professor Campbell asked if the requirement to retake the course every four years has always been in the policy or if this was a change. Mr. Guden explained that the policy at one point said the course needed to be completed when filing a REPA for the first time and then every three years thereafter, but due to changes in the Public Health Service (PHS) regulations, the course must now be completed when filing a REPA for the first time and then every four years thereafter. This policy change was made in 2012 when the PHS regulations took effect.
- On page three under "Disclosing Business and Significant Financial Interests," where the policy talks about employees who have a significant financial or business interest in a business entity that they have to disclose this information to patients, asked Professor Friedemann-Sanchez, what

procedures are in place to ensure the patient understands the disclosure information? Mr. Guden said there can be a degree of difficulty in conveying information to people, for example, who speak other languages or have a lower level of education. Studies have shown that while some patients want to receive disclosure information, others do not. Disclosures will be a continuing dialogue topic. Proposed changes to the policy leave it up to the physician as to how they want to disclose this information to their patients either verbally or in writing.

- Professor Ropers-Huilman asked about the accountability for disclosures. Who has the responsibility to verify the disclosure was made? Ms. Zentner said when this issue was raised a year or so ago, the recommendation was made that there be an entry on the patient's medical record. Some faculty were concerned about this and so the decision was made to have physicians keep a record in a place that made sense to them. There is an expectation of a document or a record of some sort. Professor Bearinger raised a concern that Epic, the electronic health record software, has no place to document a disclosure. Ms. Zentner said this issue was recently brought to her attention. Initially, she had suggested developing another system for tracking this information, but it was brought to her attention that doing so could have HIPAA (Health Insurance Portability and Accountability Act) implications. She reported that she is checking into this question.
- Under Section II – “Standards Governing Relationships With Business Entities” and prohibited activities for employees, Professor Konstan said a lot of the prohibitions have to do with companies putting money directly into a faculty member's pocket, and wondered if the prohibition should be made stronger. Is it true that as long as any money a faculty member receives from a company flows through the University that this is acceptable? If so, the optics and reality of this maneuver is in fact the exact same conflict of interest. He said he would like to see serious consideration given to not thinking that money flowing through the University as being ethically sanitizing. He suggested adding language that talks about receiving compensation broadly and makes it clear that compensation given directly to an employee is not permitted, but also that compensation that is available for use by the employee through a gift to the University, a University contract, or other means over which the employee would have practical control over the funds is also not permitted. Ms. Zentner asked Professor Konstan if he would be comfortable with money going to the institution as a whole rather than an individual. Professor Konstan said he thinks that would be appropriate as long as the funds are not expended at the discretion of or benefit to the individual involved.

- Regarding the proposed changes to the section on gifts (page 7), noted Professor Konstan, the changes do not match what happens in the real world and used the example of receiving a trinket, e.g., memory stick, laser pointer, after giving a presentation at a university or non-profit organization that had a value of over \$25. In his opinion, the University needs to either decide that this is ok or come up with another solution such as accepting the trinket but requiring that it be turned over the employee's unit. Particularly in other cultures, not accepting a gift/trinket can be construed as rude. He added he is also concerned about how non-profit professional and scholarly societies are dealt with in the policy as compared to businesses, e.g., treating private universities differently than public universities. Professor Carpenter said that in his opinion a vast majority of the examples raised could be dealt with if the \$25/\$50 thresholds were raised. Ms. Zentner said perhaps this could be an option because when this was initially discussed it was the device, pharmaceutical and other large companies that were of major concern as opposed to professional societies faculty engage with. It is worth rethinking the language in this section, adding more definition and making certain distinctions, said Ms. Zentner.

Moving on, Mr. Guden took a couple minutes and highlighted the significant Implementation Team's recommendations, which included:

- Individuals engaged in human subjects research must disclose dollar one of any financial interest that they have in the research.
- Individuals engaged in human subjects research that is sponsored by a business entity cannot receive personal income from that business entity while the human subjects research is being conducted. Or, if an individual is involved in human subjects research that is sponsored by someone else, e.g., NIH, and if the research involves a company's product or intellectual property, the individual cannot receive personal income while the research is being conducted.

Member comments/questions included:

- "Research with human participants," said Professor Konstan, is not a commonly used phrase. He said he would be much happier if "human subjects research" were used instead because this is defined. Professor Konstan said it would be easy to say if students were doing research that it could be considered research with human participants when in fact it is not.
- Professor Konstan reiterated his earlier request that the language in Section II – "Standards Governing Relationships With Business Entities" be

strengthened. While a business entity cannot give money directly to an employee, neither should that money be available for use by the employee through a gift to the University from the business entity, a University contract, or other means. If the point is the objectivity of the work/research, and if the money ends up in the employee's pocket, he/she has a reason to favor particular outcomes/results. Professor Durfee said he understands Professor Konstan's point, but noted that there are a number of different opinions about this across the University. Keep in mind, said Professor Durfee, that the policy says "...with the approval of a conflict review panel," which means there is a body that reviews these agreements. He added that the Implementation Team recognizes that there are some exceptions to the business of no consulting because there are lots of different scenarios where it would make sense to consult.

- Professor Bearinger had a formatting comment on page 7 and suggested the definition of "gifts" be moved to the definition section of the policy.
- Professor French asked if there is any language in the policy that addresses situations where employees use University equipment for their consulting research. Mr. Guden replied that this issue is covered in the Outside Consulting and Other Commitments Policy - <http://policy.umn.edu/operations/outsideconsulting>.
- Some of the language in the policy that specifically applies to human subjects could apply to other areas as well, said Professor French. By specifically using human subjects research verbiage implies that if an employee is doing other research that the same requirements do not apply. Professor Durfee said the human subjects verbiage is used because the University wants to have an exceptionally high ethical standard as it relates to its human subjects research. Expanding this language to cover other research is probably a discussion for a later time. Professor French responded that it would seem that the University would want exceptionally high ethical standards for all its research. Just because there was a problem with human subjects research it is being addressed specifically, but the high standards should be applied consistently across all research areas. Ms. Zentner noted that the policy requirements use a risk-based approach; the more risk, the more the restrictions, e.g., human subjects research. Professor French said the definition of risk should be looked at more broadly because depending on a faculty member's research area there could be a consequences, e.g., a faculty member doing public safety research without human subject participants could still have a life or death liability.

Professor Campbell thanked the guests for attending today's meeting.

3. **CIC Faculty Governance Leadership Conference Update** - Professor Campbell announced that in light of time, the CIC Faculty Governance Leadership Conference update he planned to give would be moved to the October 22 FCC agenda.

4. **2015 – 2016 Potential Intellectual Futures Topics** - Professor Campbell introduced the next agenda item, a discussion about possible topics for this year's intellectual futures conversation. Suggestions that were made included:

- A deep discussion about what a University of Minnesota undergraduate degree should be to adequately prepare students going forward, e.g., how should the University intellectually be positioning itself, what are the trends? (Professor Konstan)
- How does University of Minnesota undergraduate education differ from that of MnSCU, for example? While people understand that the University does research, they do not understand how the undergraduate education experience is intertwined with scholarship and the problems that are posed to students. What kind of undergraduate education is the University trying to provide? (Professor Gardner)
- A discussion about what kind of leadership structure should universities of the future have. (Professor Ropers-Huilman)
- A conversation about the University's budget model. (Professor Campbell) Professor Gardner added that the primary reason the University exists as a major R1 university is to foster creativity, and it is this creativity that leads to long-term discoveries that solve problems. The current financial/budget model does not encourage creativity. How can creativity be nurtured to keep the University among the top tier research universities in the country/world?
- Space utilization and student enrollment. (Professor French)
- How does the University measure what it values so the values can be optimized, e.g., creativity, impactful scholarship? (Professor Konstan)
- Economic pressures and the impact on the cultivation of intellect. (Professor Desai) Professor Ericksen agreed with Professor Desai, and noted that faculty are frequently left out of decisions where their input should be solicited. She cited the example of when students enroll in courses they put their courses in a shopping cart in the MyU portal. Faculty could not have been consulted on this decision. Professor Campbell said he would take this up with the appropriate senior leader(s).

**5. Whose Diversity** - Professor Campbell briefly provided members of the committee who were unfamiliar with the group of students named Whose Diversity with some background information. He explained that this group of students occupied President Kaler's office in February 2015, and the police were called in to get them to leave. Most of the students left, but there were about 13 or so who did not. As a result, these students were arrested and faced criminal charges as well as Student Conduct Code violations. The City of Minneapolis agreed not to prosecute the students who were arrested if they stayed out of trouble for a year. The University, however, has refused to drop its disciplinary charges.

Professor Campbell said he and Professor Desai received a letter from Whose Diversity asking this matter be brought to the attention of the FCC, and included a petition signed by a number of people, including faculty, to drop the charges. He noted that he and Professor Desai have been working behind the scenes to try and get the University to drop its charges. In Professor Campbell's opinion, it has been an unconsciously long time to keep students waiting for disciplinary action and used the metaphor of justice delayed is justice denied.

Professor Desai added that there is a long history of students of color advocating for institutional change around diversity. She recalled last year's FCC conversation with Vice Provost Donita Brown Young and some of her staff about what are the acceptable limits of critical public speech on campus. There was supposed to be further faculty consultation around this matter but it appears this has not yet happened nor has Vice Provost Brown Young reported back to the FCC on next steps. Professor Campbell reiterated that he would forward the email he received to the FCC.

## **6. Conversation with President Kaler**

President Kaler began by distributing the University Progress Card, which he explained is a new tool that the administration will use to track progress on high-level institutional goals. He then briefly walked members through it.

After looking at the document, Professor Gardner reiterated his earlier comment about the difference between a University of Minnesota undergraduate degree and a MnSCU degree. Part of the answer has to do with the University's integration of its research and scholarship missions with its teaching mission. There should be some metrics that are unique to the University to make this distinction. Professor Kaler said this is a great observation, and he believes it would help the University in its conversations with Minnesota citizens and legislators.

Regarding the Progress Card, in Professor Konstan's opinion, he does not think that percentage participation in the Employee Engagement Survey is a good measure of institutional goals. The more it is conducted, the more the percentage rate will likely decrease, said Professor Konstan. He thinks there should be metrics around employee retention and development. A measure that he thinks a lot of people would be interested in are the outcomes of the educational experience as a whole and not just graduation rates, but this data could be hard to get at. Another measure that would be interesting, said Professor Konstan, has to do with reputation and brand awareness. Also, with the trajectory the University is on now, it would be interesting to have a measure of its risk calibration. President Kaler said he thinks the University's reputation is something that could be quantifiable and gotten at through surveys, etc.

Based on conversations and discussions that have taken place with legislators during a recent tour of the Medical School, said Professor Bearinger, the graduate/professional education statistics are understated in terms of the University's reputation. More should be done to demonstrate the excellence of the University's graduate and professional programs, e.g., Medical School's residency programs, which are feeder programs for educating providers who will work in outstate Minnesota, for example. President Kaler said reputational metrics are difficult to get at, but nonetheless are important.

Professor Carpenter asked whether instead of a question on percentage of employees who participated in the Employee Engagement Survey on the Progress Card that there should be questions about overall employee satisfaction with the workplace as well as overall student satisfaction with the education they are receiving. He said he would think the Regents would be particularly interested in knowing whether employees and students are happy. President Kaler said he would mention this to them.

Professor Campbell asked President Kaler why graduation rates are improving. President Kaler cited a number of reasons including but not limited to 1) recruitment of better students, 2) improving advising so students are getting good advice and not wasting time here, 3) making class availability a priority, 4) offering more financial aid so students do not have to leave school to work and save money, 5) admitting students who already have earned college credits. In response, Professor Campbell said he raised this question because there is a certain amount of cynicism about why graduation rates are rising, which may not necessarily reflect well on the University. Rather than just reflecting on what the

institution is doing, the more subjective reasons why graduation rates are rising should also be measured. Professor Wick said another thing that is contributing to increasing graduation rates is the emphasis on first-year programs, which help acclimate students sooner to college life.

Another distinctive feature of the University in the State of Minnesota, said Professor Gardner, is its graduate programs. He added that there should be less focus on the number of graduate students who graduate, and more emphasis on how the University is educating a workforce of future leaders. Professor Gardner suggested doing more to promote the impact on Minnesota of the University's graduate students; it is not just about the private good to the student, but the public good to the State of Minnesota. President Kaler said in his opinion he does not necessarily think this would be a good Progress Card metric, but definitely a story that needs to be communicated to legislators and Minnesota citizens. Professor Desai added that this gets back to the question of the impact of undergraduate and graduate students once they graduate because a lot of them stay in Minnesota. The impact of education and research needs to be assessed. President Kaler agreed with these comments. He said until institutions of higher education are permitted to track career progression, however, that they have to rely on anecdotal information.

Moving on, President Kaler reported that Professor Campbell had requested he drop the charges against the Whose Diversity students. President Kaler said he disagrees and believes the proceedings should move forward, which is consistent with the Student Conduct Code. He added that while he is in alignment with a lot of what these students were trying to accomplish, the method they used requires some repercussions. Professor Campbell said he appreciates President Kaler's willingness to express his position on this matter, but said one of the things that bothers him the most is that the discipline process has taken an extremely long time. He added that he believes a certain component of justice delayed is justice denied, and this is the most troubling aspect of this whole matter for him. Professor Campbell informed President Kaler that a petition is being circulated that will likely come to the FCC.

Professor Campbell then shared the concern that was raised earlier by Professor Ericksen concerning the recent system upgrade, which has students putting their courses in a shopping cart when they register for classes. While this is somewhat funny, there is a commercialization aspect to the use of a shopping cart that does not sit well with faculty. Professor Campbell noted that Professor Desai suggested

that a backpack be used instead. President Kaler said his office would look into this.

Professor Feeney suggested the FCC and the administration have a conversation about what this institution will look like 10 – 15 years down the road. Given the unlikely event of new money coming into the University, the institution needs to figure out what to do with the resources it has. The institution needs to decide what it is and is not going to do. President Kaler said this is exactly the conversation the Strategic Plan Grand Challenges framework is meant to get at. At the end of the day, faculty need to identify areas where the institution should drive research and teaching. This means that some academic programming will need to be eliminated. Professor Gardner said rather than approaching this from a retrenchment and reallocation position, which is negative, the administration should ask the faculty to identify new initiatives and this could engender some interesting proposals. Additionally, given the demographics of a number of the faculty, there is going to be turnover, and the institution will be able to accomplish a lot of redirection with this turnover. President Kaler said as the University moves forward in a strategic direction, it will need to target the resources that come open and to align these resources strategically and he used the example of the Race, Indigeneity, Gender & Sexuality Studies (RIGS) initiative.

Professor Desai raised the issue of equity and diversity. The reason a number of students have been agitating in the past few years over this is because changes that impact them are being made without consultation, e.g., Multicultural Center for Academic Excellence (MCAE) changes. Students are at a point where after years of talking about diversity, no significant changes have been made, or, if they have been made, the changes are impacting them negatively. While she agrees that President Kaler has some of the same goals as Whose Diversity, the perception of students is that in order to make positive changes happen that they need to do something drastic. The message these students get in terms of what the University does to support diversity and students of color is not getting down to their level. President Kaler said while he agrees with much of what Professor Desai said, but he believes this is where Whose Diversity could play an important role in constructively and respectfully moving their issues forward with the offices of Equity and Diversity and Student Affairs.

**7. Adjournment:** Before adjourning, Professor Campbell reiterated that he would share the petition and letters that he and Professor Desai received concerning Whose Diversity. He added that while President Kaler has decided not to drop the charges against the Whose Diversity students, he and Professor Desai will take his

advice and continue talking with Vice President Albert from the Office of Equity and Diversity and Vice Provost Brown Young in the Office for Student Affairs about moving the underlying issues forward and hopefully to rethink a policy that keeps bringing students up on charges of free speech and expression.

Hearing no further business, Professor Campbell adjourned the meeting.

Renee Dempsey  
University Senate