

Minutes*

**Senate Consultative Committee
Thursday, September 16, 2010
3:00 – 4:30
Room 238A Morrill Hall**

Present: Kathryn VandenBosch (chair), Thomas Brothen, Colin Campbell, Aaron Carlson, Nancy Carpenter, Christopher Cramer, Carol Chomsky, Bree Dalager, Nancy Ehlke, Michael Hancher, Thomas Haarstick, Russell Luepker, Jonathan Lundberg, Jan McCulloch, Terrance Paape, Steven Pearthree, Francis Strahan, Eddie Symons, Sarah Waldemar

Absent: Peter Bitterman, Don Cavalier, Shawn Curley, Barbara Elliott, Marti Hope Gonzales, Jeffrey Kahn, Michael Oakes, Mark Privratsky

Guests: Lynn Zentner (Compliance Office); Carolyn Chalmers, Mary Tate (Office for Conflict Resolution),

Others: none

[In these minutes: (1) administrative conflict-of-interest policy; (2) conflict-resolution policy; (3) web-streaming senate meetings; (4) approval of University Senate docket]

1. Administrative Conflict-of-Interest Policy

Professor VandenBosch convened the meeting at 3:05 and welcomed Ms. Zentner to lead a review of the current draft of the administration conflict-of-interest (COI) policy.

Ms. Zentner reviewed the history of COI, the recent attention to it, and the development of the current draft policy. The policy connects what people do at the University and interactions with industry. They began reviewing the policy in 2008, looked at policies at other institutions (mostly medical), and established a group to develop the University-wide policy. They consulted widely on it and released a version in November, 2009, that had institution-wide application. They received a lot of comments and considerable pushback, with many arguing that one size does not fit all. They took that advice to heart and brought back a revised policy last spring; the draft was posted for comment until last week.

One difference between the earlier and the more recent policy is that with the earlier version, they received over 100 hits on the website with comments. The more recent version received 17, almost all very thoughtful and focused, and they have incorporated changes in the policy in response to those comments.

They also created Appendix A to deal with clinical care, one of the highest-risk areas. The Appendix is now in effect and they are making adjustments to it as needed.

* 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 represents the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.

Ms. Dalager asked how one finds out about policies that are available for comments. Ms. Zentner said that in the case of the COI policy, there were emails to all faculty, staff, and graduate students in both November, 2009, and July, 2010.

Professor Bitterman said that a number of faculty were confused about adopting an appendix to a parent document that does not exist; is it possible to explain that so he can explain it to colleagues? Ms. Zentner agreed that the process was unusual but said that there was great urgency to adopt the COI policy covering clinical care; they used a broader approach for the University-wide policy. Senior Vice President Cerra met with the deans and asked them to share the Appendix with the faculty; there was consultation for a month on it within the AHC. Professor Bitterman asked when that occurred; it was July, Ms. Zentner said, and the Appendix was not posted for comments. Dr. Cerra shared it with college leadership, and they in turn rolled it out within the colleges. Professor Bitterman suggested that the process was "autocratic and insular." It was not a closed process, Ms. Zentner said.

Ms. Zentner noted that the policy still requires reporting of financial and business interests on a Report of External Professional Activities (REPA), as before, and the same standards apply if one is not engaged in the high-risk activities (the policy identifies five such areas). Those covered by Appendix A have more stringent standards. To provide transparency, the AHC will develop a public website where the financial interests of AHC faculty and staff may be reported. This will be a voluntary process initially because such information may be characterized as private data under the Minnesota Data Practices Act (the Office of the General Counsel interprets this statute), and it will likely remain voluntary until state law is changed or federal regulations require such reporting.

The review of information reported on REPAs will continue to be centralized. The centralization of this review process began last year. Collegiate departments and administrative units will review the REPAs for completeness and her office will review them for potential conflicts of interest. One new element of the policy is that if anyone reports more than \$100,000 (total) external income, the REPA will be referred to the individual's department or unit for a conflict-of-commitment review under the Consulting and Other Outside Commitments policy. The Provost owns this policy. Her office will have no role in determining whether a conflict of commitment exists. The role of Ms. Zentner's office is limited to ensuring that REPA filers understand the requirements of this policy and file a Report of Outside Consulting when the circumstances require that they do so.

Professor Campbell raised a question about the language governing influencing the content of medical-education curriculum. Anyone who carries out instruction does that, he said, and would thus be covered by the policy. The Committee and Ms. Zentner discussed the implications of the current language in the policy; it was agreed that it would be revised to more accurately identify the activities to be governed by the policy. Professor VandenBosch noted that this will be a living document, with FAQs, and updated as needed. Professor Carpenter inquired how one could vote for a "living" document that now has no FAQs. Any changes would go to the Policy Advisory Committee and the President's Policy Committee, Ms. Zentner pointed out; and to the Senate, Professor VandenBosch added. She reported that the Committee had agreed earlier in the summer with Ms. Zentner and Vice President Brown that the policy would remain open for comment all summer and that if there remain issues after the University Senate has debated it, there would be an ad hoc group appointed to take up those issues.

Ms. Zentner noted that the policy does not cover students unless they are responsible for the design, conduct or reporting of research. That leaves out a large group of people who could fall under

the same influences, Professor McCulloch said. Consideration has recently been given to covering residents under the policy but, at this time, the policy does not cover students except as she explained.

Professor VandenBosch thanked Ms. Zentner for joining the meeting.

2. Conflict Resolution Policy

Professor VandenBosch next welcomed Carolyn Chalmers, Director of the Office for Conflict Resolution, to the meeting to discuss proposed changes in the conflict-resolution policy.

Ms. Chalmers introduced Ms. Tate, Deputy Director of the Office for Conflict Resolution, and Director, Diversity and Multicultural Affairs, Medical School. Ms. Chalmers began by noting that her office handles faculty and staff employment-related problems. A formal hearing process is available for claims of a violation of University policy or practice; they work with student employees and collaborate with the Student Conflict Resolution Center.

Every five years the conflict-resolution policy is reviewed, Ms. Chalmers reported, and this year they have recommended certain changes. One is to put the policy into University policy format; the administrative policy is short. The bulk of the process is detailed in the administrative procedures. Another proposed change is to improve the arbitration part of the process; one can go through the internal process, and if dissatisfied with the result, may go to arbitration. Arbitration raises the question of fees.

At present the cost of arbitration is divided equally between the University and the petitioner. Sometimes, however, the petitioner has not paid their portion of the fees because he or she has lost his or her job, and as a result those arbitrators do not like the University's policy because they are not paid half their fees. In addition, some petitioners do not elect arbitration because the amount of fees is unpredictable. The point is to try to make the process more predictable in terms of what the petitioner will have to pay. The proposal in the policy is that the petitioner is encouraged to choose an arbitrator from a roster of local arbitrators maintained by the Minnesota Bureau of Mediation Services. If the petitioner chooses from this roster, the University and the petitioner split the fees up to \$3500; the University would pay any amount over that cap up to \$5000, and the administration would have to decide, on the basis of good cause, if the University would pay any amount in excess of \$5000. The numbers are based on empirical work; they determined that \$3500 is a reasonable fee if one uses an arbitrator from the state's Bureau of Mediation Services (which pays for 3.5 days of arbitration; most arbitrations take one, or at most two, days).

Alternatively, P&A staff and faculty may choose to use an arbitrator from the National Academy of Arbitrators. If they do, the policy provisions remain as at present: The University and the petitioner split the fee 50/50. The exact language of the fee provision is not yet settled, Ms. Chalmers said, because there were good suggestions about it by members of the President's Policy Committee, but the intent is as she has described it. It may be that the decision about paying the increased fee will go to the Senior Vice President for System Academic Administration, because it is the Provost who made the final decision that led to the arbitration in the first place, so asking the Provost to approve payment of additional fees can be seen as a conflict of interest.

Professor Luepker noted that there could be a problem if the fees exceed \$5000. Ms. Chalmers agreed but pointed out that there is about one arbitration per year, so this discussion is about whether the University might spend an additional \$2000 or \$3000 in a year.

Professor Chomsky wondered if the actual numbers belonged in the policy. If they are, then every time the amounts are increased for inflation, the policy has to come back for amendment. Senior Vice President Cerra wanted the amounts in the policy, Ms. Chalmers explained, not just in the procedures. But this is a very good point that they will consider.

3. Web-Streaming Senate Meetings

Professor VandenBosch asked if the Committee would approve web-streaming Senate meetings in the interest of open communication. Those who observed the meeting would not be able to participate. Ms. Dalager noted that if the meetings are streamed on the web, someone could put them on YouTube.

The Committee voted unanimously to approve web-streaming the Senate meetings.

4. University Senate Docket

Professor VandenBosch reviewed the contents of the September 30 University Senate docket. The Committee approved the docket unanimously.

Professor VandenBosch adjourned the meeting at 4:30.

-- Gary Engstrand