

Board Meeting
May 14, 2014

ROLL CALL

DISCLOSE CERTAIN MINUTES OF EXECUTIVE SESSIONS PURSUANT
TO OPEN MEETINGS ACT

Under the Open Meetings Act passed by the General Assembly, public bodies subject to the Act that conduct business under exceptions specified in the Act must, at least every six months, determine whether the need for confidentiality still exists with respect to each item considered under such exception.

Items from October 1999 through January 2014 that have been heretofore unreleased are recommended for release at this time.

The University Counsel and the Secretary of the Board, having consulted with appropriate University officers, recommends that the following matter considered in executive session for the time period indicated above be made available to the public at this time.

The Board action recommended in this item complies in all material respects with applicable State and federal laws, University of Illinois *Statutes*, *The General Rules Concerning University Organization and Procedure*, and Board of Trustees policies and directives.

The President of the University concurs.

Executive Session Minutes Released to Public

Portions of the following items remain sequestered and are redacted.

January 15, 2004, Board of Trustees meeting

Pending, Probable, or Imminent Litigation Against, Affecting, or on
Behalf of the University

Mr. Bearrows stated that he had reports on two cases, one for which he would recommend proceeding to trial, the [REDACTED], and another for which he would recommend settlement, the [REDACTED].

Mr. Bearrows then described the [REDACTED] case that involved a 61-year-old male who came to the University Hospital for cancer surgery. He said that the patient was in stage II cancer, with a history of diabetes and coronary artery disease when first seen at the hospital. Mr. Bearrows said that the surgery, performed in December 1998, to remove part of the patient's stomach went well. He described two things that were done to assist the patient's healing; one was a procedure to allow feeding through a tube through the jujunem, to allow his stomach to heal and the other was the insertion of a nasogastric tube to reduce pressure and remove secretions. Mr. Bearrows stated that about six days after surgery the patient was improving and the surgery oncology resident considered whether to remove the nasogastric tube and decided to leave it in. The next day the patient pulled the tube out and the nurses could not reinsert it necessitating help from two residents, one of whom was the physician who examined the patient the day before. Mr. Bearrows said the residents decided to leave the nasogastric tube out unless

the patient began to vomit, and then reinsert it in radiology under a fluoroscopy to assist in locating it properly and avoiding damage to the surgical site. The patient then did begin to vomit and the physicians reinserted the nasogastric tube as planned. At that time they also took a chest x-ray, since the patient had exhibited some post-surgery problems with pneumonia. The patient vomited at the time of the chest x-ray and his heart rate dropped; a suction was sought to clear his airways; there was some delay in obtaining this; CPR was started; and oxygen was administered to stabilize the patient, but he was unresponsive. Mr. Bearrows said that the patient was transferred to the surgery intensive care unit (SICU) in a vegetative state, and later transferred to a nursing facility where he died of pneumonia in March 1999.

Mr. Bearrows indicated that suit is being brought alleging that the nasogastric tube should have been reinserted immediately and not in radiology under fluoroscopy, but in the SICU. He said that the plaintiff also states that the patient vomited then aspirated and choked, which led to the cardiac event. Mr. Bearrows commented on the expert witness that has been hired by the plaintiff, and stated that this physician had not practiced in 12 years, and that he had never inserted a nasogastric tube. Also, he said that this expert had stated that the patient might have had a life expectancy of 20 more years. Mr. Bearrows said that defense counsel would try to have the witness barred from testifying. He then indicated that the University's outside attorney had retained three experts who all said that the standard of care was appropriate, and two of these witnesses had stated that the patient might have had a 5 to 10 percent of surviving three years.

Discussion followed and Mr. Bearrows reported the plaintiff demanded \$1.5 million, but the University's outside counsel has advised that settlement value for the case might be in the range of \$150,000 to \$200,000. He stated that a trial date of March 15, 2004, had been set and he indicated that plans were to proceed unless a modest settlement were reached.

March 10, 2005, Board of Trustees meeting

Litigation

At this time, Mr. Bruce was excused due to the nature of the material to be discussed in order to eliminate the potential for any conflict of interest.

Mr. Bearrows described the case of [REDACTED], *et al.* This case involved the death of 18-year-old [REDACTED] following elective surgery, due to failure to recognize significant respiratory compromise following administration of anesthesia. Mr. Bearrows urged settlement of the case. He explained that the patient suffered from kyphoscoliosis and had entered the hospital for breast and chest reconstructive surgery. He then described serious problems encountered in administering anesthesia to the patient before surgery that involved various approaches to intubation of the patient. He also told the board of the patient's respiratory problems in the hospital following surgery due to the special problems she presented.

Mr. Bearrows stated that this would be a difficult case to try, and said none of the consultants he had asked to review the case approved of the procedures followed. He added that the University Hospital has made changes in its procedures after the

experience of the case, and that there had been no similar occurrences since the new procedures had been instituted.

Mr. Bearrows then discussed possible settlement amounts, stating that comparable cases had been settled for \$500,000 to \$2.0 million and that the highest amount was \$6.5 million. He said that the facts are bad and that the age of the patient presents a further problem. He indicated he had been advised that settlement might require \$2.5 to \$3.0 million.

The board discussed this case in terms of criticism of the procedures followed, commented on risk management at the University, and also asked if quality control was lacking, particularly at the hospital. President White remarked that the work of the board involves risk management, and that the Medical Center is the largest risk in the University. He said he would make a recommendation to improve oversight. Some board members noted that the claims experience at the Medical Center is better than the experience of some peer institutions, and observed that the University Hospital serves some patients other hospitals will not serve.

At the end of the discussion, Mr. Vickrey stated that he found this executive session perhaps the best in his experience. Others joined in the assessment.

May 19, 2005, Board of Trustees meeting

Litigation



Mr. Bearrows reviewed the highlights of this case that involved a patient who had received a kidney transplant at the University of Illinois Hospital and developed a serious infection that was not diagnosed or treated timely. As a result, necrosis of the tissue in the patient's leg occurred, necessitating amputation of the leg. Mr. Bearrows said that experts had been consulted regarding this case and they had been critical of the care the patient had received. Based on the facts, Mr. Bearrows recommended settlement in the range of \$0.5 to \$1.5 million, in view of the complicated medical history of the patient. He said that other cases with some of the same characteristics had settlements in the range of \$0.5 to \$10.0 million. He observed that if the experts were deposed their testimony would weaken the case. No board member disagreed with the recommendation to move to settle this case.

July 14, 2005, Board of Trustees meeting

Mr. Bearrows stated that this case involving a 67-year-old woman, who sustained a right ankle fracture due to alleged improper physical therapy, seems defensible and the settlement demand of \$1.25 million from the plaintiff is extravagant. He said the suit is against a physical therapist, Ms. Cynthia Sternisha, and alleges negligence based on

failure to have another person assist in helping the plaintiff walk a short distance.

Mr. Bearrows reported that expert witnesses retained by defense counsel testified that procedures followed by Ms. Sternisha were appropriate. Thus, he indicated that unless the plaintiff decides to settle for \$250,000 or less, he advises proceeding to trial.

April 11, 2006, Board of Trustees meeting

The next case Mr. Bearrows reviewed was [REDACTED] [REDACTED] that involves impairment to a newborn, [REDACTED], due to an alleged failure to timely diagnose fetal distress and perform a cesarean section in 1989. Mr. Bearrows stated that record-keeping and other conditions in the hospital are much different now and that he doubted such a case as this would occur today. He reviewed the case and reported that opinions from experts suggested that settlement of this case ought to be pursued. Mr. Sperling then suggested proceeding to settlement. No one disagreed.

May 11, 2006, Board of Trustees meeting

Pending, Probable, or Imminent Litigation Against, Affecting, or on
Behalf of the University

Mr. Bearrows presented a summary of the case of [REDACTED], about which he had written the board earlier that involves alleged failure to properly diagnose and treat breast cancer. He suggested proceeding to trial and the board members did not disagree.

In the case of [REDACTED] who claimed failure to timely diagnose rectal cancer, Mr. Bearrows recommended settlement in the range of \$750,000 to \$1,250,000. No one disagreed with this recommendation.

November 9, 2006, Board of Trustees meeting

Litigation

(Medical Malpractice Cases)

At this time, Mr. Bruce and Mr. Dorris were excused due to the nature of the material to be discussed in order to eliminate the potential for any conflict of interest.

Mr. Bearrows stated that the case of [REDACTED] involved the death of a patient from a bowel obstruction following gastric bypass surgery. He said that evidence suggests that sufficiently aggressive timely action was not taken and that the patient developed gangrene that was noted when a second surgery was performed. Mr. Bearrows recommended settlement of this case and stated that the University's self-insurance is \$3.0 million and the excess coverage with St. Paul Insurance is \$60.0 million. Thus, if the settlement exceeds \$3.0 million, St. Paul Insurance will cover the additional amount.

The next case reported was [REDACTED]. This case involved the death of a patient following a fall which produced a laceration on her face and injury to her chest and broken ribs. After being treated in the emergency room she returned home. The next day she returned to the emergency room reporting confusion. He said she was placed on a cardiac monitor and x-rays were taken for her chest and ribs

that showed a hemothorax, and that attending physicians determined that the patient might need to have blood or fluid in her chest drained. He said that prior to this, it was decided that a CT scan of the patient's chest should be performed, and in order to do this the patient was removed from the cardiac monitor. He said that the patient expired shortly after the CT scan. Mr. Bearrows told the Board that an autopsy concluded that the patient died from a hemothorax due to rib fractures after a fall. Discussion of the treatment followed and Mr. Bearrows recommended settlement and suggested that the University's self-insurance should pay for the settlement.

March 13, 2007, Board of Trustees meeting

Litigation, Medical Malpractice Cases

For this discussion, Trustees Bruce, Dorris, and Montgomery departed the executive session. Mr. Bearrows reported on two medical malpractice cases. The first, [REDACTED], was described as a case involving an 18-year-old woman student at Urbana who was treated at the McKinley Health Center on campus for an abrasion to the left eye that was later diagnosed as a pseudomonal corneal ulcer. He indicated that the condition worsened necessitating cornea transplant surgery. The case alleges Dr. Gona, the physician at McKinley, failed to adhere to the standard of care in treating the corneal abrasion. Mr. Bearrows recommended settlement in the range of \$150,000 to \$250,000. There was no disagreement with this.

The second case, [REDACTED], *CNM*, involves injury to the left shoulder of an infant, [REDACTED], during delivery. Mr. Bearrows explained that

defense of the case is hampered by the medical record. Page two of the record contains details of a discussion with the mother about the risks of delivery and injury to the infant. Plaintiff's counsel states that this second page was blank when he first received records in response to a subpoena. Now page two of the clinical notes states that the patient said she would never have a Caesarean section for this delivery. Mr. Bearrows recommended settlement in the range of \$3.0 to \$5.0 million. There was no disagreement with this.

Mr. Bearrows reported that as a result of this case and the injury to the infant, the University of Illinois Hospital now requires that an attending physician be present at each delivery by a nurse midwife. Trustee Schmidt suggested the training program for nurse midwives be reviewed since obstetrics and gynecology as a specialty is associated with high risks and high costs for practice.

November 14, 2013, Board of Trustees Meeting

Discussion of Minutes Lawfully Closed Under the Open Meetings Act

Mr. Kennedy explained that University Counsel Bearrows and Secretary Kies had reviewed all the minutes sequestered under the Open Meetings Act and that there were no minutes recommended for release at this time.