

Board Meeting
November 14, 2019

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. Pursuant to the Act, “[m]inutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential...” [5 ILCS 120/2.06(f)].

Items from November 1999 through July 2019 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 matters 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

June 17, 2004, Board of Trustees Meeting

Discussion of Medical Malpractice Cases

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

Mr. Bearrows summarized two medical malpractice cases for the board. The first case was *Volel v. Seo, et al.*, involving neurological damage to a newborn, Howard Volel. Mr. Bearrows described the labor and delivery of 23-year-old Tracey Volel in December 2000 as including extensive labor during which Pitocin was prescribed and an epidural and that during labor the infant's heartbeat decelerated, whereupon Dr. Seo, the physician in the family practice service where the patient was admitted, stopped the Pitocin. And, at that time, an obstetrician, Dr. Kilpatrick, was consulted who opined that the decelerations were in the normal variability of late developing decelerations and she resumed Pitocin. Mr. Bearrows reported that the infant's heartbeats decelerated over several hours, but not as low as earlier, and that during this time the patient was given more Pitocin and the obstetrical resident was consulted two more times. Mr. Bearrows stated that after the third consultation, the obstetrics resident discovered that the infant was positioned in the occiput posterior position (head facing up) which makes delivery more difficult. Mr. Bearrows said that upon that discovery, the resident and the first physician that saw Tracey Volel, Dr. Seo, decided to deliver the infant with forceps and did so, and that the infant had problems immediately. Mr. Bearrows described several problems, including some neurological

problems, that were revealed by an MRI taken shortly after delivery. He also said that now, several years later, the child is unable to walk or talk, and has significant communication and behavioral problems, including violent tendencies. He stated that the plaintiff's counsel's criticism is that the delay in delivery allowed the situation that presented danger to the fetus to continue, specifically a slower amount of oxygen to the fetus. Mr. Bearrows told the board that the obstetrician suggested that the infant's position before delivery and the pushing involved in the delivery caused the injuries and not the forceps. He then summarized the opinions of experts regarding causation of the child's injuries and stated that the two experts said they did not think the infant's position and the mother's pushing caused the injuries, but a more likely explanation was coactive blunt force. He added that a total of five other experts had been consulted as well, and that none could be found that was completely supportive of the treatment. Mr. Bearrows told the board that the case would be difficult to defend. He also advised that no settlement demand had been received and that the University's self-insurance retention is \$3.0 million, and that the insurance company, St. Paul, would cover up to \$60.0 million in addition. He briefly discussed recent settlements for infants injured in delivery, stating that some settlements had been in the \$12.0 to \$15.0 million range. There was additional discussion about how the University of Illinois Hospital compared to other teaching hospitals for such cases and Mr. Bearrows stated that the University of Illinois Hospital was comparable to other similar institutions. Dr. Gindorf reminded the board that the University of Illinois Hospital had more obstetrics cases than other similar institutions. In addition, there was further discussion of the availability of family practice services and

the requirement that these programs must include obstetrics and the attendant risks. Both Drs. Gindorf and Schmidt agreed that perinatology specialists ought to be involved in problem pregnancies early on.

Next Mr. Bearrows presented another medical malpractice case. This was *Reyes v. Paton, et al.*, that involved the death of newborn twins, a boy, Brandon, and a girl, Patricia, delivered in December 1997 at the age of 27 weeks, each weighing less than two pounds, four ounces. He said that the infants were treated by Dr. Paton, a neonatologist, and Dr. Kapogiannis, a first-year pediatric resident, and that the infants received nutritional support, respiratory support, help eating (primarily through nasogastric tubes) and breathing as well as various drug treatments while in the hospital. Mr. Bearrows related that during the infants' stay in the hospital they had episodes of ABDs (apnea, bradycardia, and desaturation) that involve brief cessation of breathing, reduced heart rate, and a reduced oxygen level in the blood. He said that these episodes were mild and gentle stimulation resolved them, and that the infants gained weight so that at about eight weeks, they each weighed approximately three pounds nine ounces, and that the ABDs continued up until two and three days prior to the day they were discharged, January 30, 1997. Mr. Bearrows stated that the parents were trained in how to care for the infants before they took them home and that a home health care nurse made regular home visits to check on the infants. He also stated that the parents were not given apnea or bradycardia monitors for the infants that would sound an alarm if either condition occurred, as they were considered unnecessary. He reported that within a few days of arriving home, the infant girl had problems during feeding and vomited, aspirated,

and was not getting air, but that she was resuscitated by paramedics and taken to Children's Memorial Hospital. He also said that the home health care nurse asked the resident, Dr. Kapogiannis, if the protocol should be changed for the infants' care and was told that this was not necessary. Mr. Bearrows commented that the record did not show that Dr. Paton was consulted at this time. Mr. Bearrows next reported that the infant boy suffered cardio-respiratory arrest and died at Resurrection Hospital in the emergency room—the day after the infant girl was admitted to Children's Memorial Hospital. He added that the Illinois Department of Children and Family Services was contacted to check to see if anything out of normal had occurred in the home and that this was investigated later as well, with no evidence found to support that. Also, Mr. Bearrows told the board that the infant girl died several weeks later from hospital-acquired pneumonia.

Mr. Bearrows reported that the plaintiffs have an expert who is a neonatologist at Cincinnati Children's Hospital who concluded that the infants ought not to have been dismissed from the University of Illinois Hospital when they were, given their size and the ABDs they were experiencing, and he also criticized the failure to use a monitor, the amount of nourishment given the infant girl, the possibility that the parents were not adequately trained, the decision not to review the treatment protocol, and the fact that the infant boy was not readmitted when the infant girl was admitted to Children's Memorial. Mr. Bearrows summarized the views of three experts consulted by the University of Illinois and reported that none were supportive of all aspects of the treatment. In addition, he said that two nurses at the University of Illinois Hospital

presented problematic observations about the decision to discharge the infants, with one stating that the ABDs had occurred a few days prior to the discharge date and she thought the infants should have stayed in the hospital and the other stating that the physicians were not receptive to her suggestion that the discharge was premature.

Mr. Bearrows recounted discussions about settlement and told the board that the plaintiffs' attorney is now discussing a settlement of about \$10.0 million. He then described how the case might develop, given that these twins were the plaintiffs' only children and that warning signs were present including the parents' difficulty in caring for the infants, the two nurses' urgings that the infants not be discharged that were ignored, monitors were not ordered, and the home health care nurse's inquiry about whether the treatment protocol ought to be changed. Dr. Rice commented at this point and stated that indeed in 1997 the standard of care was to encourage the use of infant monitors and that the statements of the two University of Illinois nurses were problematic. Mr. Bearrows told the board that a trial is set for September and that the verdicts in similar cases range from \$500,000 to \$20.0 million, though in death cases the settlements are usually smaller and in the range of \$500,000 to about \$3.0 or \$4.0 million. He suggested that if the settlement is over \$3.0 million, the amount of the University's self insurance, that this amount be transferred to the insurance company, St. Paul, to be settled. Discussion then followed about the events occurring in the care of the infants.

Mr. Sperling suggested that in future Mr. Bearrows' summaries of cases in the executive sessions contain fewer details, with these provided in supplemental written reports. Mr. Bearrows said he was happy to do this.

July 15, 2004, Board of Trustees Meeting

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.

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

Mr. Bearrows stated that he had two cases to discuss with the board. Dr. Charles L. Rice, vice chancellor for health affairs, joined Mr. Bearrows for discussion of these cases.

The first concerned *Coughlin v. Cohen, et al.* This involved the death of 52-year-old Karen Coughlin, due to failure to diagnosis acute myelogenous leukemia type M3. Mr. Bearrows reported that the pre-operative physical examination included blood tests that revealed a severely decreased white blood cell count suggestive of leukemia, and several counts indicating anemia. He stated that nothing was said to the patient about this at the time, and that two and one-half months later the patient suffered a stroke related to acute myelogenous leukemia and expired soon thereafter. Mr. Bearrows indicated that outside counsel opined that the case is indefensible from a standard of care view point, and that medical experts have indicated that the probability of survival would have been very high had diagnosis been made and treatment initiated at the time of the elective surgery. He recommended settlement in the range of \$3.0 million, which is the University's self-insured retention limit, and stated that in the event this is insufficient he recommended the case be tendered to St. Paul Insurance, the University's insurer, for payment.

[previously released information]

The board did not disagree with either of these recommendations.

November 11, 2004, Board of Trustees Meeting

Torres v. Radhkrishnan, et al.

Mr. Bearrows described this case that involved the death of 13-month-old infant (a twin) due to improper insertion of a catheter that punctured the heart and led to death. He recommended settlement in the range of \$2.0 to \$2.5 million. There was no disagreement expressed.

September 8, 2005, Board of Trustees Meeting

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

Mr. Bearrows presented facts related to a medical malpractice suit, *Young v. Portugal, et al.*, involving a 44-year-old patient, Robert Young, and alleged failure to properly treat cancer in his right nasal cavity. Mr. Bearrows reported that the patient had surgery, performed by Dr. Louis G. Portugal, which went well and that no chemotherapy or radiation was discussed as additional therapy. Then several months later the patient returned complaining of nosebleeds. Mr. Bearrows reported that over the following few months two CT scans were ordered and the second one showed recurrence of a tumor. In October 2000, an MRI was done, but not interpreted until June 2001. Mr. Bearrows described lack of follow-up from the medical staff at the hospital including the failure to

discuss possible radiation therapy after surgery, and the failure to discuss results of the CT scans and the MRI with the patient. Mr. Bearrows indicated that two expert witnesses had been consulted and both stated that radiation therapy should have been a part of the treatment of this patient and one said the probability of recurrence of the tumor would have been reduce if radiation therapy had been provided. Given these facts, Mr. Bearrows recommended settlement in the range of \$250,000 to \$500,000 if possible. No board member disagreed with this recommendation.

November 9, 2006, Board of Trustees Meeting

Other Discussion of Litigation

Dr. Schmidt asked what the outcome of a case involving an 18-year-old man, Julius Izquierdo, who donated a kidney to his brother in late June 2006, and subsequently expired due to infection.

Mr. Bearrows responded that settlement was in negotiation. Dr. Carroll asked for explanation of the Behzad case. Mr. Bearrows explained that the treating physician wanted the settlement of this case “undone” by the court.

May 17, 2007, Board of Trustees Meeting

Litigation

At this time, Messrs. Bruce, Dorris, and Montgomery left the meeting.

Mr. Bearrows stated that he had two cases to discuss and that he had summarized these in correspondence with the Board earlier. He recommended settlement of both. The first he identified as *Padilla v. Khan, MD, et al.* and stated that it involved the 2003 death of Anabel Padilla due to an aneurysm. Mr. Bearrows said that the facts of this case led the hospital to revise its triage system and that processes for treating such patients as Ms. Padilla with multiple medical problems have been changed in an effort to prevent the kinds of problems that occurred for her after admission. Mr. Bearrows told the Board that settlements in similar cases have ranged from \$3.0 to \$15.0 million and recommended pursuing settlement in the range of \$2.0 to \$3.0 million. No trustee disagreed with this.

July 30, 2007, Board of Trustees Meeting

Next Mr. Bearrows discussed the case of *Olguin v. Chibas, et al.*, which involves a child who is six and one-half years old and suffers from cerebral palsy. The child was delivered at the University Hospital and will likely have life-long problems as a result of problems not detected in delivery. Mr. Bearrows stated that outside experts rated the treatment as poor. He recommended settlement of this case and stated that if the settlement exceeds \$3.0 million, the University's insurance will cover the amount over \$3.0 million. No trustee disagreed with the recommended approach.

November 14, 2007, Board of Trustees Meeting

Attendees at this portion of the executive session included the trustees recorded as present earlier in this meeting, President White, Chancellors Herman, Manning, and Ringeisen, Vice President Knorr, Vice President Rao, University Counsel Bearrows, and Secretary Thompson.

Litigation

University Counsel Bearrows stated that he had circulated information on the medical malpractice cases, *Roman v. Torres, et al.*, and *McGee v. Neylan, et al.*, with detailed facts and indicated that he would appreciate receiving comments or questions within the next week. He said that if he hears nothing he will proceed with the recommendations contained in his memorandum to the Board.

Vice President Knorr left the executive session at this time.

March 11, 2009, Board of Trustees Meeting

Mr. Bearrows said that the second case is *McGuigan v. Barua*, which is in Chicago, and involves a male patient who experienced two improperly performed surgeries. He said the first surgery was supposed to be performed at a certain thoracic level, and in counting the vertebrae the surgeon did not take into account that the patient had one extra lumbar vertebra, and mistakenly did not actually remove the cyst that was the purpose of the surgery. He said that this was discovered after the patient complained of persistent and continual pain and the surgeon discovered that she had erred. He said that the surgeon admitted this, and said it was necessary to perform the surgery again. Mr. Bearrows

stated that, sadly, it is fairly clear, but not certain, that in the second surgery an injury occurred that was caused by pressure that was brought on by use of a surgical instrument by the surgeon, and caused some paralysis. He said, in other words, the surgeon caused the second injury. He told the Board that the University had two very good neurosurgeons review this case and that they advised settling it. Mr. Bearrows said that the patient now has difficulty walking, and though he is able to work, he can handle only very light duty, and the situation is not going to improve for this patient. Mr. Bearrows reiterated that the case is in Chicago, and he recommended trying to settle it. Further, he recommended settlement in the range of \$2.5 to \$3.0 million, because it is pretty egregious. He said that he thought that if this case had involved one surgery, and the procedure had been performed at the correct location, and then something bad had happened, the settlement recommendation might have been half the amount stated, but given the facts in the case the settlement recommendation is at this level.

Dr. Schmidt said he could not agree more with the recommendation.

Mr. Shah inquired if there would be a review or analysis of the surgeon's work. Mr. Bearrows responded that all medical malpractice cases are discussed with the medical malpractice action group that includes Dr. Chamberlin, who is the chief medical officer; those concerned with patient safety; and others. Discussion continued on the source of funds for settlement and Mr. Bearrows explained that the total amount of the settlement would come from the University's self-insurance retention fund. He added that payment from the insurance company does not begin until a claim exceeds approximately \$10.0 million. He noted that in recent years the coverage has decreased

and the premium has increased. Mr. Shah asked who purchased the insurance and Mr. Bearrows told him that the University's Risk Management Office handles this, under the direction of Mr. Knorr. Mr. Shah offered a few suggestions about procuring insurance.

January 19, 2012, Board of Trustees Meeting

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

Watson v. Mess, MD

When the business to be discussed under the aegis of this exemption was introduced, Trustee Montgomery left the room. Dr. William H. Chamberlin, chief medical officer, University of Illinois Hospital, joined the meeting to discuss the case noted above. Mr. Bearrows reported the facts of the suit by the plaintiff who had been a patient at the University of Illinois Hospital and underwent surgery for a knee replacement, ceased the recommended physical therapy due to some problems that had developed, sought treatment at another hospital for these problems, and then brought suit against the University of Illinois Hospital due to difficulties associated with recovery. Mr. Bearrows told the Board of reports from expert reviewers which supported the appropriateness of treatment by the physician at the University of Illinois Hospital, and Dr. Chamberlin concurred with the facts presented by Mr. Bearrows. Based on the reviews by experts, Mr. Bearrows recommended proceeding to trial. There was no disagreement with this. Dr. Chamberlin then departed this session.

November 8, 2012, Board of Trustees Meeting

Mr. Kennedy convened this executive session at 8:10 a.m. All of the trustees except Governor Quinn and Mr. Oliver were present. Mr. Montgomery excused himself for this portion of the meeting. The following were also in attendance: President Robert A. Easter; University Counsel Thomas R. Bearrows; Treasurer Lester H. McKeever Jr.; Dr. William H. Chamberlin; and Secretary Susan M. Kies.

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

Ramirez v. Vaitkus, MD, et.al

At 8:12 a.m. Dr. William Chamberlin summarized the medical issues related to this Cook County case that involved a cardiac catheterization on a 72-year-old female who presented with multiple medical problems. The timing of the procedure was the issue of this case that had been filed more than 10 years ago. Mr. Bearrows discussed the internal and external processes involved in evaluating the merits of the case. Mr. Bearrows explained that each case, including this one, is reviewed multiple times by the Medical Malpractice Action Group, which meets several times per year. This internal group is composed of representatives from University Risk Management; Hospital Risk Management; Patient Safety; physicians from key departments; the Claims Department; the Office of University Counsel; and outside counsel. External reviews by outside counsel include medical experts who review the case. The medical reviews consider the standard of care given the plaintiff, and the group makes a recommendation on how to proceed. In this case, a vascular surgeon and an interventional cardiologist were

consulted. It was determined that the standard of care was followed, and the case is medically defensible. It is the recommendation of the team to proceed to trial. Verdicts in comparable cases in Illinois have ranged from \$1.0 million to \$7.5 million.

The process of defending these cases was discussed, and trustees commented that they were satisfied with the focus of the discussions on the process of arriving at the recommendation. Mr. McMillan encouraged Dr. Koritz to review medical aspects of future malpractice cases.

November 13, 2014, Board of Trustees Meeting

Hughes v. Kaufmann, MD, et al.

Mr. Kennedy asked for a discussion regarding the medical malpractice cases. Dr. David E. Schwartz, associate dean for clinical affairs, College of Medicine, entered the room. Mr. Bearrows provided a brief introduction to the Cook County case that involved the death of a 39-year-old patient due to an alleged failure to evaluate and properly treat bleeding from an inactive site that had been used for kidney dialysis. Dr. Schwartz provided medical details on the matter and answered questions. Mr. Bearrows explained that medical expert opinion was that care and treatment were appropriate and recommended proceeding to trial. The trustees were in agreement.

July 23, 2015, Board of Trustees Meeting

Mr. McMillan called for a summary of the medical malpractice case *Avila v. Balla, MD, et al.* Mr. Montgomery left the room at this time, and Dr. David E.

Schwartz, associate dean for clinical affairs and department head, anesthesiology, College of Medicine, Chicago, entered. Mr. Bearrows introduced this Cook County case involving the 68-year-old Juan Avila and the alleged failure to timely diagnose and treat malignant liposarcoma, resulting in decreased life expectancy. Dr. Schwartz provided the medical facts of the case. Dr. Schwartz explained that the patient had presented with complaints of pain behind the right knee. A lump was examined by the physician, an MRI performed, and a needle aspiration performed to rule out a malignant neoplastic lesion. The University became involved when reading pathology reports. Dr. Schwartz explained the reviews by expert witnesses that agreed that the standard of care was given to the patient. Mr. Bearrows and Dr. Schwartz relayed the recommendation to proceed to trial. The trustees concurred.

January 21, 2016, Board of Trustees Meeting

Monroe v. U.S., et al.

Mr. McMillan called for a summary of the medical malpractice case *Monroe v. U.S., et al.*

Mr. Bearrows introduced this case brought to federal court under the Federal Tort Claims Act by the parents of a patient who was treated at West Side VA Hospital (WSVH), which is operated by the U.S. Department of Veterans Affairs (VA). A University of Illinois physician provided the care at issue, creating a dispute with the federal government over which institution is responsible for the cost of the adverse judgment that resulted or any settlement that may be reached.

Dr. Schwartz presented the medical facts, which include a patient diagnosed with cervical cancer who underwent a biopsy of the cervix that was treated with Monsel's solution to control post-procedural bleeding. It was found that the procedure had nicked the uterus and allowed the Monsel's solution to escape into the abdominal cavity, which resulted in myriad issues, causing the patient to undergo 10 additional abdominal surgeries, develop sepsis with multiple organ dysfunctions, and other issues. The patient incurred more than \$2.0 million in medical costs, and she died, leaving two children.

Mr. Bearrows explained the complexities related to the case. A suit was brought and assigned to U.S. district court, where various actions took place. Eventually the case proceeded to a bench trial at the conclusion of which the plaintiffs were awarded a total of \$4.3 million. The federal government then appealed the judgment and other rulings to the Seventh Circuit Court of Appeals. A contractual dispute then ensued where the VA demand on the University for indemnification of the \$4.3 million verdict. The University's response, in part, is that the defense of the underlying medical malpractice case was deficient; that Judge James Zagel's ruling dismissing the University of Illinois physician from the case and applying the statute of limitations to all but one count should stand; and the findings of negligence and proximate causation against the VA should bind the VA. Mr. Bearrows recommended that given the unusual procedural posture of the case, the cost of participating in the appeal process, and the likelihood of a protracted litigation, the outside counsel be authorized to participate in voluntary mediation with the VA to resolve the matter in the range of \$500,000 to \$1.0 million. The trustees were in agreement.

May 16, 2019, Board of Trustees Meeting**Discussion of Minutes of Meetings Lawfully Closed Under the Open Meetings Act**

At 8:35 a.m., Mr. Edwards asked Ms. Williams and Mr. Bearrows to discuss the potential release of minutes that have been previously sequestered under the Open Meetings Act.

Ms. Williams discussed five items that were recommended for release. Mr. Bearrows relayed the relevant provisions of the Open Meetings Act related to this issue. The trustees agreed with the recommendation proposed. The Board vote to approve the release of certain minutes was scheduled to occur later in the meeting during open session.