

MINUTES
COMMITTEE ON GOVERNANCE
March 21, 2013

The Committee on Governance met on March 21, 2013, at approximately 12:30 pm with Trustees Brown, Cameron (Chair), Heekin, and Roberts present. Trustees Scott and Criser were unable to attend the meeting.

Also present were President Bernie Machen, Senior Vice Presidents Joe Glover and Win Phillips, Vice President and General Counsel Jamie Lewis Keith, Kim Czaplewski of Human Resource Services, Senior Counsel Mike Ford and members of the administration and public.

The first order of business was to approve the Minutes from the Committee's December 1, 2012 meeting. On motion of Board Chair David Brown and a second by Trustee Michael Heekin the minutes were approved unanimously.

There were two action items on the agenda which had been discussed by the Committee during its telephone conference call on March 18th. The first item, GV1, was to recommend the approval of amendments to the Charter of the Committee on Audit and Operations Review mainly to reflect title changes and that the Audit and Operations Review Committee has a review, not operational, function. On motion by Board Chair David Brown and a second by Trustee Michael Heekin the Committee voted unanimously to recommend that the Board approve the Charter amendments.

The second action item, GV2, was to recommend the ratification of the reopeners in the Graduate Student Union Collective Bargaining Agreement, including an unpaid medical leave provision, a study on childcare options, and due dates for member fees. On a motion by Board Chair Brown and a second by Trustee Carolyn Roberts the Committee voted unanimously to recommend the ratification.

There were several discussion items. The first was an update from Vice President and General Counsel Jamie Keith on Directors and Officers liability insurance. Ms. Keith noted that the President already has authority from the Board to purchase insurance. However, the Administration committed to return to the Committee for discussion if the premium for Directors and Officers insurance exceeds \$55,000. The premium quotes that were received were slightly higher than that threshold, with the best quote being about \$62,000 for \$5M of coverage with a \$100,000 deductible. Ms. Keith pointed out that this insurance would back the Board's mandatory indemnification of Trustees and would supplement the protections of sovereign immunity for limited gaps such as breach of fiduciary duty. Ms. Keith also pointed out that some employers will want their executives who serve on our Board to be covered by insurance. We are usually able to satisfy employers with a description of existing protections and the University's financials. Members of the Committee discussed the matter and the general consensus was that, given the financial wherewithal of the University and the protections already afforded through sovereign immunity and indemnification, the insurance was probably not necessary unless its availability is important to retaining Trustees. We do not want any Trustee to be unable to serve because his or her employer requires the insurance and the Committee was

comfortable with obtaining insurance if needed. President Machen offered to explore with Ms. Keith the availability of individual insurance, which could be purchased by the University for a Trustee if needed, and we will purchase a policy for all Trustees if there aren't other commercially reasonable options.

The next item was an update from Ms. Keith on the creation of GatorCare Health Management Corporation. Ms. Keith advised the Committee that Articles of Incorporation and Bylaws of the corporation have been prepared and they contain all of the requisite provisions regarding the oversight and governance of University DSOs, with the added requirement that any change in the corporation's purposes has to be approved by the Board of Trustees to ensure that the corporation remains focused on administration and management and is not an insurance company without further University of Florida Board review.

There was no discussion of the new Annual Trustee Disclosure Form as it was addressed at the pre-meeting call.

Ms. Keith then made a slide presentation on the oversight and governance of DSOs and other affiliated corporations. She advised the Committee that in 2007 former Board Chair Mac McGriff undertook a project with the assistance of the General Counsel's Office to enhance the governance and financial oversight of the affiliated corporations consistently for all affiliates. The Committee members noted that members and representatives of the University's Board or President are on affiliate boards for oversight purposes and other good controls are in place. These include review of affiliate audit reports at UF's Audit Committee, review and approval of affiliate annual budgets by the President or his designee, and review of summaries of affiliate financial reports at the UF Finance and Facilities Committee. Copies of the slides will be provided to the Trustees (and were immediately provided following the meeting). The Committee expressed satisfaction but asked President Machen and Ms. Keith to report back on whether there may be any one or two updated controls that would be helpful from a risk management perspective. It was noted that UF Board members are informed of any special risks that may occasionally arise. Trustee Roberts suggested that the UF representative on the Category 1 affiliate boards—those that are the most complex and are engaged in activities with significant risks—make a report to the Governance Committee annually. The Committee may consider that option or inviting one or two of the Category 1 affiliates to meet periodically with the Committee. Ms. Keith noted the possibility of an insurance review.

The Committee next met in closed session for a report on collective bargaining matters, after which the meeting was reconvened in open session and adjourned at approximately 1:43 pm.

EXISTING CONTROLS FOR UF DIRECT SUPPORT ORGANIZATIONS (DSOs)

UF BOARD OF TRUSTEES GOVERNANCE COMMITTEE
MARCH 21, 2013

OVERVIEW OF CONTENTS

- Creation/Purpose
- Board and CEO Controls
- Financial Oversight
- Shands Oversight
- DSO Appearances

CREATION/PURPOSE

- **By Statute, UF and/or BOG Policies:**
 - UF Board Action Is Required To Create DSOs
 - Exclusive Purpose Is to Support UF's Mission
 - The UF Board (or President as Authorized Designee) Approves DSO Articles, Bylaws, Policies, Plans, Tax Exemption Application

BOARD AND CEO OVERSIGHT

- 2007, Governance Chair/then Board Chair Mac McGriff Led Initiative to Establish Consistent Principles and Bylaws Across DSOs
- Office of the UF VP/General Counsel Reviewed and Revised All Bylaws – DSO Boards Adopted

BOARD AND CEO OVERSIGHT

- **UF Policy – By UF Board Action:**
 - Each DSO Is Categorized 1, 2, or 3 for UF Oversight, Depending on Its Scope, Complexity, Activity/Exposure
 - 1: Requires UF Trustee On DSO Board*
E.g., Foundation, Research Foundation, Athletics Assoc., Investment Corp.
 - 2: Requires Non-Trustee Board Rep. on DSO Board (may be, but not necessarily, a Trustee)*
E.g., St. Augustine DSO, Health HSSOs, IFAS Research/Education Foundations
 - 3: UF President Rep.*
E.g., Practice Plans (not DSOs)

*Appointed by UF President, Unless BOT Acts In Particular Cases

BOARD AND CEO OVERSIGHT

- **Statutory/Regulatory/Policy Controls**
 - UF BOT Chair (or President as Delegate) May Appoint a Representative to DSO Board
 - UF President or Designee Serves on Board and Executive Committee and Approves Audit Charter
 - UF President Approves DSO-CEO's Hiring
 - CEO Reports to UF President and DSO Board
 - CEO May Be Removed For Cause or Unacceptable Performance by UF President After Consulting with DSO Board
 - DSO Board Members May Be Removed For Cause by UF President After Consulting with DSO Board

FINANCIAL CONTROLS

- **Each DSO Is Required to Have An Audit Committee and Annual Audit by An Independent CPA**
 - Audit Report and Management Letter Must Be Submitted to UF President or Designee
 - Audit Report and Management Letter Must Be Reviewed by UF Board Audit Committee

FINANCIAL CONTROLS

- **Each DSO Is Required to Adopt Annual Budget**
 - Proposed Budget Must Be Submitted to UF President or Designee for Approval
 - Annual Report on Budget and Financial Performance of Each DSO Must Be Made to UF Board Finance and Facilities Committee

SHANDS OVERSIGHT

- Shands Entities Are Not DSOs
- Have Separate Statutory and UF Board-Imposed Controls
 - Primary Purpose Is Support of UF's Health Affairs Mission
 - UF Board Approves Shands' Articles
 - Articles Control Shands' Bylaws and Amendments
 - UF President or Designee (Sr. VP Health Affairs) Chairs and Appoints Shands' Board
 - UF Trustee or Designee is on Boards
 - UF President or Designee (Sr. VP Health Affairs) is President of Shands UF

SHANDS OVERSIGHT

- Shands CEO Reports to Shands Board and President (UF President or Designee)
- Shands General Counsel Reports to CEO and UF General Counsel (as “parent company” GC)
- Shands Financial Statement Summaries Are Attachments to UF’s Financials, Reviewed by UF Finance and Facilities Committee
- UF Trustee and/or President or Designees Are On Shands Boards Which Fully Review Financials
- Creation of Shands Subsidiaries Requires UF Board Approval

DSO APPEARANCES

- Beginning June 2004, Several DSOs Presented at UF Board Governance Committee Annually (Rotating)
- Governance Chair/Then Board Chair McGriff's 2007 Initiative on Uniform Principles and Bylaws For Consistent, Good Oversight Practices Were Determined More Effective
 - UF President Has Good Oversight of DSO Management and Is Accountable to UF Board
 - UF Board Has Governance Oversight Through Board Seats and UF Board Committee Review of Audit Report and Financials
- Discussion?