



Governance & Policy Committee

October 2020

October 9, 2020

8:00 a.m.

Videoconference & Boardroom, McNamara Alumni Center

GOV - OCT 2020

1. Board of Regents Policy: Protection of Individual Health Information - Action

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2. Governance Best Practices: Balancing Governance and Management in the Pandemic

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3. Resolution Related to Amendments to Urgent Approval Authority – Review

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BOARD OF REGENTS DOCKET ITEM SUMMARY

Governance & Policy

October 9, 2020

AGENDA ITEM: Board of Regents Policy: *Protection of Individual Health Information*

Review

Review + Action

Action

Discussion

This is a report required by Board policy.

PRESENTERS: Kaley Klanica, Senior Associate General Counsel
Lori Ketola, Chief Health Information Compliance Officer and Director,
Health Information Privacy & Compliance

PURPOSE & KEY POINTS

The purpose of this item is action on proposed amendments to Board of Regents Policy: *Protection of Individual Health Information*. The amendments are the result of a comprehensive review of the policy. They align the policy with current Board policy conventions; simplify the language for readability and clarity; and make no substantive changes to the University's operations in this area. No changes have been made since the committee reviewed the policy in September.

BACKGROUND INFORMATION

Board of Regents Policy: *Protection of Individual Health Information* was adopted in 2003 and last amended on March 13, 2009.

PRESIDENT'S RECOMMENDATION

The President recommends approval of the proposed amendments to Board of Regents Policy: *Protection of Individual Health Information*.



BOARD OF REGENTS POLICY:

Protection of ~~Individual~~Individually Identifiable Health Information

Subd. 1. Policy Statement.

SECTION I. SCOPE.

~~This policy governs the protection of individually identifiable health information. This policy and the administrative policies and procedures implementing this policy shall apply to all University of Minnesota (University) faculty members, employees, trainees, students, and volunteers who handle, transmit, receive, or have access to individually identifiable health information.~~

SECTION II. PROTECTION OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.

~~It is the policy and practice of the University of Minnesota (University) that individually identifiable health information gathered:~~

- ~~(a) in the course of research conducted at the University; or~~
- ~~(b) through the provision of health care by the University; or~~
- ~~(c) in the course of health plan administration at the University~~

~~shall be protected in accordance with applicable state and federal law, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations.~~

Subd. 2. Delegation of Authority.

SECTION III. IMPLEMENTATION.

~~The president or delegate shall administer and implement this policy, including the adoption and amendment of appropriate administrative policies and procedures.~~

Subd. 3. Application.

~~The administrative policies and procedures implementing this policy shall apply to all University faculty members, employees, trainees, students, and volunteers who handle, transmit, receive, or have access to~~

DRAFT for Action

protected health information in the course of research conducted at the University, through provision of health care at the University, and in the course of health plan administration at the University.

REVISION HISTORY

Adopted: February 14, 2003

Amended: March 13, 2009



BOARD OF REGENTS DOCKET ITEM SUMMARY

Governance & Policy

October 9, 2020

AGENDA ITEM: Governance Best Practices: Balancing Governance and Management in the Pandemic

Review Review + Action Action Discussion

This is a report required by Board policy.

PRESENTERS: Theodore E. Long, Senior Fellow, AGB Consulting

PURPOSE & KEY POINTS

The purpose of this item is discussion of the balance between governance and management, especially during this pandemic. The committee will engage around how boards can ensure they maintain a balance, supporting presidential leadership and governing strategically in this time of considerable and constant change.

The discussion will center around five principles for good fiduciary governance and board leadership in the pandemic. While not unique to a crisis, these principles are even more critical during a crisis. They suggest that governing boards must:

1. Be actively engaged in addressing their institutions' urgent needs and consequential decisions.
2. Work as thought partners with their presidents, reserving board decisions for the most important fiduciary decisions.
3. Ask long-term strategic questions and assess how the institution can thrive after the crisis passes.
4. Ensure that current actions are aligned with future needs and do not compromise the institution's future.
5. Take the lead in focusing institutional attention on its long-term future and develop special mechanisms to ensure attention to those important fiduciary issues.

BACKGROUND INFORMATION

Theodore E. Long is a Senior Fellow and Senior Consultant with AGB Consulting, and has extensive experience working with both public and private higher education boards. He previously served as president of Elizabethtown College from 1996-2011, and as provost and vice president for academic affairs at Merrimack College. Long holds a B.A. from Capital University, an M.A. from Duke University, and a Ph.D. from the University of Virginia. He has served on numerous boards of higher education, arts, economic development, and community service organizations. Since 2004, he has been a trustee of Capital University, the largest Lutheran university in the country.



BOARD OF REGENTS DOCKET ITEM SUMMARY

Governance & Policy

October 9, 2020

AGENDA ITEM: Resolution Related to Amendments to Urgent Approval Authority

Review **Review + Action** **Action** **Discussion**

This is a report required by Board policy.

PRESENTERS: Regent Darrin Rosha

PURPOSE & KEY POINTS

The purpose of this item is review of a resolution related to amendments to the Board’s urgent approval authority. The resolution seeks to amend the urgent approval authority defined by Section V, Subd. 7 of [Board of Regents Policy: Board Operations and Agenda Guidelines](#). If adopted, the amended urgent approval process will:

- Require the President to submit an expanded request that describes the imminent and significant harm to the University if the approval is not immediately granted.
- Direct that if a quorum of the Board is available to meet, the Board chair must call a special or emergency meeting of the Board to consider the item. If a quorum is not available or the situation prevents the Board chair from attempting to convene the Board, the urgent approval authority may be used.
- Adjust the immediate notification process that occurs when an urgent approval is granted to the rest of the Board to include a provision that all materials provided to support the request be included in that notification, which aligns policy with current practice.
- Require that any action granted using urgent approval be presented to the Board for ratification at its next regular or special meeting.

Additional background information, including a list of urgent approvals granted since FY 2016 and data on practices across the Big Ten, are included in the docket.

BACKGROUND INFORMATION

The resolution was introduced during New Business at the September Board of Regents meeting and referred to the Governance & Policy Committee by Chair Powell.

Board of Regents Policy: *Board Operations and Agenda Guidelines* was adopted in 2002 and last amended on June 8, 2018. The June 2018 amendments included retitling emergency approvals to urgent approvals, added the stipulation that they be used judiciously, and implemented a notification requirement that any actions taken be reported to the Board or respective committee upon approval and included as an information item at the next scheduled meeting.



REGENTS OF THE UNIVERSITY OF MINNESOTA

RESOLUTION RELATED TO

Amendments to Urgent Approval Authority

BE IT RESOLVED that the Board of Regents adopts the following amendments to Board of Regents Policy: *Board Operations and Agenda Guidelines*, Section V, Subd. 7, Urgent Approvals:

Subd. 7. Urgent Approvals.

~~Upon recommendation of the president, the Board chair, Board vice chair, and the respective committee chair may act on behalf of the Board when delay for Board approval could have a significant impact on the University's mission or poses a considerable health, safety, or financial risk. Urgent approvals shall be used judiciously and any such approvals will be reported to the Board or respective committee upon approval and included as an information item at the next scheduled meeting, consistent with Subd. 3 of this section.~~

When circumstances arise that require Board approval to prevent imminent and significant harm to health or safety or to the University's financial ability to maintain its operations, and when convening a regular, special, or emergency meeting of the Board prior to the imminent and significant harm is not possible, the president may request an urgent approval by the Board chair, Board vice chair, and the respective committee chair who may act on behalf of the Board.

To request an urgent approval, the president shall submit to the Board chair a statement describing the imminent and significant harm to health or safety or to the University's financial ability to maintain its operations if approval is not granted. If the Board chair determines that immediate Board action is necessary, then OBR shall attempt to contact all Regents to assemble a quorum of the Board for a meeting as soon as possible.

- (a) If a quorum of the Board is available, the Board chair shall call a special or emergency meeting to act on the president's request.
- (b) If the Board chair determines that the circumstances giving rise to the president's request for urgent approval do not permit any attempt to contact all Regents, or if a quorum is not attainable prior to the imminent and significant harm described by the president, the Board chair, Board vice chair, and the respective committee chair may act on behalf of the Board.

- i. Immediately following the granting of an urgent approval on behalf of the Board, the OBR shall distribute to all Regents notice of the approval and all materials provided to support the request.
- ii. At the next regular or special meeting of the Board following the approval, the urgent approval granted on behalf of the Board shall be presented to the Board for ratification.

Emergency & Urgent Approvals: FY 2016 to Present

Date	Approval Granted	Description
1. August 13, 2015	Retention of External Legal Counsel	Retained Karen G. Shanfield and Joseph T. Dixon from the law firm of Fredrikson & Byron P.A. to investigate sexual harassment in Gopher Athletics. The Board ratified this item in September 2015.
2. August 20, 2015	Establishment of Oversight Committee	Established an oversight committee for the investigation of sexual harassment in Gopher Athletics. The Board ratified this item in September 2015.
3. November 12, 2015	Purchase of Goods and Services \$1,000,000 and over & Non- Audit Engagement with External Auditors	Engagement of Deloitte & Touche, LLP for an estimated \$1,500,000 to provide consulting services and due diligence for the proposed integration of Fairview Health Services and University of Minnesota Physicians.
4. November 12, 2015	Engagement of Audit Firm Other Than the University's Principal External Auditors	Engagement of CliftonLarsonAllen LLP to assist with facilitation of the internal processes necessary to reach the Definitive Agreements for the restructuring of the relationship between the University of Minnesota, University of Minnesota Physicians and Fairview Health Services.
5. December 1, 2015	Schematic Design	Minnesota Poultry Testing Lab Expansion, Willmar
6. February 19, 2016	Real Estate Transaction	NHL stadium lease of TCF Bank Stadium
7. April 27, 2017	Final Project Review	VFW and Masonic Memorial Relocation Projects
8. January 25, 2018	Purchase of Goods and Services \$1,000,000 and over	To KaufmanHall for an estimated \$1,350,000 to provide financial analysis and evaluation services regarding strategic options for the University Health System for the Office of the General Counsel for the period of January 16, 2018 through December 31, 2018.
9. March 25, 2020	Declaration of a Public Health Emergency	Approval of a declaration of a public health emergency caused by the COVID-19 pandemic
10. August 7, 2020	Purchase of Goods and Services \$1,000,000 and over	To Chromacode, Inc. and other related suppliers for up to an estimated \$10,560,000 for the purchase of HDPCR SARS-CoV-2 assay test kits for the Medical School for the period of August 1, 2020 through April 21, 2021.

Big Ten Universities – Ability for Action by a Subset of the Board

Institution	Ability for a Subset of the Board to Act
Illinois	<p>A 3-person Executive Committee meets whenever the chair or two of its members find it necessary for the transaction of any business that cannot be postponed to a regular meeting of the Board. The committee may act on behalf of the Board as long as it does not overrule any previous acts of the Board. Actions are reported to the full Board.</p> <p>Members of the Executive Committee are: Board chair and two additional members as elected by the Board at the annual meeting in January of each year. Any Board member may participate in the meeting as a nonvoting participant.</p>
Indiana	None. A special meeting of the Board would be called (requires a 48-hour notice).
Iowa	None. An electronic special meeting of the Board would be called (requires 24-hour notice).
Maryland	None. A special meeting of the Board would be called (requires a five-day notice if able).
Michigan	None. A special meeting of the Board would be called if the president or any three Board members believe official Board action is required prior to the next meeting (requires two days' notice).
Michigan State	None.
Nebraska	The Board chair may grant emergency approval for contracts and real estate transactions after consulting with at least a majority of the Executive Committee. A report describing the nature of the emergency and the contract approved must be reported to the full Board at the next meeting.
Ohio State	None. A special or emergency meeting of the Board would be called.
Penn State	<p>A 13-person Executive Committee may take action only in extraordinary circumstances. Any action taken is reported to the full Board at the next meeting. Penn State reports that this authority is not the preferred option to be used for emergency actions.</p> <p>Members of the Executive Committee are: Board chair and vice chair; chairs of the standing committees; chair of the board of Penn State Health; the immediate past Board chair; and at-large members nominated by the Committee on Governance and Long-Range Planning and elected by the Board as necessary to reach 13 members. The President of the University is an ex officio non-voting member.</p>

Purdue	<p>A 5-person Executive Committee may act on behalf of the full Board between meetings for any reason. Any actions taken are reported to the Board for ratification; per the Bylaws, failure to ratify the action does not invalidate the action.</p> <p>Members of the Executive Committee are: Board chair and vice chair, and at least one other Board member appointed by the Board chair after consultation with the Board.</p>
Rutgers	<p>The Board chair, the chair of the Committee on Finance and Facilities, and any other relevant committee chair may approve sole source or single contracts under extraordinary or emergency circumstances. At the next regular meeting of the Board, the full Board is asked to ratify the approval.</p>
Wisconsin	<p>A 9-person Executive Committee has the powers of the Board when the Board is not in session and may “provide for the execution of orders and resolutions not otherwise specially committed or provided for.” A record of this committee’s proceedings is submitted at the next regular or special meeting.</p> <p>Members of the Executive Committee are: Board chair and vice chair; chairs of five standing committees; the immediate past chair; and one other member of the Board appointed by the Board chair.</p>



BOARD OF REGENTS DOCKET ITEM SUMMARY

Governance & Policy

October 9, 2020

AGENDA ITEM: Information Items

Review
 Review + Action
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 Discussion

This is a report required by Board policy.

PRESENTERS: Brian Steeves, Executive Director & Corporate Secretary

PURPOSE & KEY POINTS

Update on Administrative Policy Alignment Review

The purpose of this item is to update the committee on the ongoing alignment review of Administrative and other University policies to Board policy. Since the last update in June 2019, the following progress has been made:

Board Policy	Alignment Challenge	Action Identified	Status as of September 2020
<i>Awards, Honors and Recognition</i>	<ul style="list-style-type: none"> May 2016 – only awards, honors, and recognitions approved directly by the Board remain in the revised policy. Status quo order not lifted until October 2017. 	The Office of the Provost will revise Administrative Policy: <i>Outstanding Contributions to Education</i> policy in FY 2020 to address the gap.	Estimated completion is now December 2020.
<i>Employee Development, Education, and Training</i>	<ul style="list-style-type: none"> Board policy provides for a sabbatical leave of up to one year at one-half salary and full benefits, while Administrative policy provides for a sabbatical leave of up to eleven months at one-half salary and full benefits. 	The Office of the Provost will revise the administrative policy in FY 2020 to ensure that the timeframe aligns.	Completed in March 2020.

Board Policy	Alignment Challenge	Action Identified	Status as of September 2020
<i>Academic Misconduct</i>	<ul style="list-style-type: none"> Administrative Policy: <i>Research Misconduct</i> changed in 2012 from Academic Misconduct Aligns with the Federal Research Misconduct policy, but Board policy references the broader scope. 	The Office of the Provost will launch a work group in FY 2020 to review this subject area/identify gaps.	A modification to Board of Regents Policy: <i>Academic Misconduct</i> will be considered during the policy's comprehensive review cycle next year.
<i>Campus Public Art</i>	<ul style="list-style-type: none"> Board policy requires an administrative policy and procedures on this topic. No administrative policy currently exists. There is a protocol followed by the Weisman Art Museum, but it is flexible and not documented. 	The Office of the Provost and University Services will create and publish a policy in FY 2020 to satisfy this requirement.	Estimated completion is now March 2021.

Campus Policy Alignment

Review of campus-level policies to Board and Administrative policies was completed in February 2020. All campus-level policies were in alignment at the time of the review.

College Policy Alignment

A review of college-level policies to Board and Administrative policies is currently in progress. Results to date are as follows:

Colleges reviewed thus far	Number in Alignment
Law School (TC) College of Education and Human Development (TC) College of Biological Sciences (TC) College of Continuing and Professional Studies (TC) School of Dentistry (TC) College of Veterinary Medicine (TC) College of Extension Services (TC)	100%