

UNIVERSITY OF VIRGINIA
BOARD OF VISITORS AGENDA ITEM SUMMARY

BOARD MEETING: July 10, 2009

COMMITTEE: Full Board

AGENDA ITEM: Legislative Proposal

Amending the State and Local Government Conflicts of
Interest Act

The University seeks to clarify subsection A 5 of § 2.2-3110 of the Code of Virginia, the State and Local Government Conflict of Interests Act, which provides an exception for an officer or employee of a public institution of higher education who has a personal interest in a contracting firm in excess of 3% of the firm's equity. The Office of the Attorney General has informally questioned whether the exception would also apply if the officer or employee has an income interest in the firm in addition to equity. To remove any doubt and protect University personnel from unwitting violations based on such technical line-drawing, the University, therefore, seeks to amend and clarify subsection A 5 to extend the exception to include personal interests that arise by reason of annual income (salary or dividends) in excess of \$10,000.

Proposed legislation for the 2010 Session must be submitted to the Governor's Office before the next regular Board of Visitors meeting in September, and is therefore being brought before the Board for consideration at this time.

ACTION REQUIRED: Approval by the Board of Visitors

APPROVAL OF LEGISLATIVE PROPOSAL

RESOLVED, the Board of Visitors approves and endorses the proposed legislation to amend and clarify subsection A. 5 of § 2.2-3110 of the Code of Virginia, in the State and Local Government Conflict of Interests Act, to cover an officer or employee of a public institution whose interest may include ownership of a contracting firm exceeding 3% of total equity and/or annual income from the contracting firm exceeding \$10,000.

The proposed legislation is in italics and underlined below:

§ 2.2-3110. Further exceptions.

A. The provisions of Article 3 (§ 2.2-3106 et seq.) of this chapter shall not apply to:

5. When the governmental agency is a public institution of higher education, an officer or employee whose personal interest in a contract with the institution is by reason of an ownership in the contracting firm in excess of 3% of the contracting firm's equity and/or income from the contracting firm in excess of \$10,000 per year, provided that (i) the officer or employee's ownership or other equity or income interest and that of any immediate family member in the contracting firm is disclosed in writing to the president of the institution, which writing certifies that the officer or employee has not and will not participate in the contract negotiations on behalf of the contracting firm or the institution, (ii) the president of the institution makes a written finding as a matter of public record that the contract is in the best interests of the institution, (iii) the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of the institution or disqualifies himself as a matter of public record, and (iv) does not participate on behalf of the institution in negotiating the contract or approving the contract;

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Amending the Code of Virginia as it Pertains to
Threat Assessment Teams

Section 23-9.2:10 of the Code of Virginia provides that all public institutions of higher education create threat assessment teams (TAT) to implement the institutions' assessment, intervention, and action policies. Because of the sensitivity of a TAT's work and the private, intimate nature of the issues considered by it, several concerns have been raised about publicly disclosing a TAT's working papers and about the information that may be shared by law enforcement officers and mental health professionals in a TAT meeting. In order for a TAT to be effective and to be able to protect the contributions of each member, the University seeks to introduce a package of three bills providing exemptions from § 2.2-3705.4, § 19.2-389, and § 32.1-127.1:03 of the Code of Virginia.

Proposal 1: Exemption of threat assessment teams' working papers from public disclosure. The nature of a TAT's working papers is consistent with other documents exempt from disclosure under the provisions of the Freedom of Information Act (e.g., scholastic, personnel, and criminal investigations records). Since FOIA is often interpreted in favor of disclosure rather than exemption, the University seeks to codify that these records are not subject to public disclosure under FOIA by creating a further exception to § 2.2-3705.4.

Proposal 2: Enable law enforcement to share certain criminal history information. Section 23-9.2:10 (D) expressly requires that members of law enforcement be included in the TATs, and § 23-9.2:10 (E) expressly requires that "each [TAT] shall establish relationships or utilize existing relationships with local and state law enforcement agencies... to expedite assessment and

intervention with individuals whose behavior may present a threat to safety." The full participation of law enforcement agencies in TATs is hampered, however, because of restrictions on the ability of these agencies to disclose criminal history record information to non-law enforcement personnel. "Criminal History Record Information" is defined broadly in § 19.2-101 and includes sweeping categories of information known to law enforcement agencies. Dissemination of such information is limited to specifically defined circumstances stated in § 19.2-389. Penalties for violating the prohibition on dissemination are severe, and law enforcement agencies therefore limit dissemination of information to the specific exemptions. The University seeks to create an exemption allowing disclosure of criminal history record information to members of TATs. The proposed exemption is consistent with other exceptions aimed at protecting the public, including an exception that permits disclosure of such information to higher education institutions for purposes of screening candidates for employment.

Proposal 3: Enable full participation of mental health professionals. Section 23-9.2:10 (D) also expressly requires that mental health professional be included in the TATs. Mental health professionals face a similar issue as law enforcement officers with regard to their ability to actively and effectively participate in a TAT meeting, but currently there is no waiver in the Virginia Health Records Privacy Act (VHRPA), Va. Code 32.1-127.1:03, for these instances. Without a signed release from a patient, mental health professionals are prohibited from sharing patient information. The University recommends that an exception be included in the VHRPA, in the instances when a patient becomes the subject of a threat assessment team under this statutory section.

Proposed legislation for the 2010 Session must be submitted to the Governor's Office before the next regular Board of Visitors meeting in September, and is therefore being brought before the Board for consideration at this time.

ACTION REQUIRED: Approval by the Board of Visitors

APPROVAL OF LEGISLATIVE PROPOSAL

RESOLVED, the Board of Visitors approves and endorses the proposed legislation to amend the Code of Virginia as it pertains to threat assessment teams.

The proposed legislation, which follows in italics and underlined, would amend §§ 2.2-3705.4, 19.2-389, and 32.1-127.1:03 of the Code of Virginia:

PROPOSAL 1

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

8. All records and electronic communications of a threat assessment team established by a public institution of higher education pursuant to section 23-9.2:10 relating to the assessment or intervention of specific individuals.

PROPOSAL 2

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

25. Members of threat assessment teams established by a public institution of higher education pursuant to § 23-9.2:10 relating to the assessment or intervention of individuals whose behavior may present a threat to safety;

PROPOSAL 3

§ 32.1-127.1:03. Health records privacy.

D. Health care entities may, and, when required by other provisions of state law, shall, disclose health records:

34. To a threat assessment team established by a public institution of higher education pursuant to section 23-9.2:10 when such records concern a student at the public institution of higher education (including students who are minors).

Notwithstanding the provisions of subdivisions 1 through ~~33~~ 34 of this subsection, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

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Amending the Code of Virginia as it pertains to the
Debt Collection Authority of the Medical Center

Section 2.2-4806 of the Code of Virginia provides that agencies forward certain past due accounts receivable to the Office of Attorney General, Division of Debt Collection. The provisions of this section apply to all agencies of the Commonwealth, including the University of Virginia Medical Center which until 2004 was required to use the Division for delinquent debt collection activities: accounts with amounts owed in excess of \$15,000 requiring a Circuit Court lawsuit; accounts where a compromise settlement is requested by a patient or a patient's representative; and collections involving litigation or any disputed claim originating on smaller balance accounts.

In 2004, at the request of the University, the General Assembly through the budget bill granted the Medical Center authority to collect accounts receivable and settle certain claims. This exemption is subject to periodic review and approval by the Secretary of Finance based on performance data demonstrating the successful implementation of the exemption and the financial benefits achieved by virtue of this authority. The Medical Center's most recent approval to collect its own accounts receivable expired on July 1, 2009. On April 28, 2009, the Executive Vice President and Chief Operating Officer requested an extension of the Medical Center's exemption through June 30, 2015. To date, the Secretary of Finance has not taken action on this request. If the extension is not approved, the Medical Center would like to permanently codify its exemption, which is consistent with other authorities granted in the Code of Virginia that allow it to effectively compete in the increasingly challenging healthcare environment. Further, codification of this exception will allay concerns that the authority will be removed from future acts of appropriations.

Between 2004 when the original exception was granted and 2008, the Medical Center has generated \$3.4 million in recoveries for compromise settlements and \$1.4 million in gross recoveries for accounts placed with outside counsel. Given that litigation matters and settlement actions were not handled on a timely basis by the Division, a large percentage of these recoveries likely would not have been recovered, resulting in a cash reduction of up to \$1.2 million per year. The Medical Center has staff devoted to the management of receivables, both insurance and patient-related, and consistently performs in the top quartile.

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ACTION REQUIRED: Approval by the Board of Visitors

APPROVAL OF LEGISLATIVE PROPOSAL
RESOLVED, the Board of Visitors approves and endorses the proposed legislation to amend the <u>Code of Virginia</u> as it pertains to the debt collection authority of the University of Virginia Medical Center.
The proposed legislation, which follows, would amend § 23-77.4 of the <u>Code of Virginia</u> :
§ 23-77.4. Medical center management.
B. Capital projects; leases of property; procurement of goods, services and construction; <u>debt collection</u> .
<u>4. Debt collection. Notwithstanding any provision of the Code of Virginia to the contrary, but subject to policies and procedures adopted by the Board of Visitors, the University of Virginia shall have the authority on behalf of its Medical Center to collect its accounts receivable by engaging private collection agents and attorneys to pursue collection actions, and to independently compromise, settle, and discharge Medical Center accounts receivable claims. Nothing in this section is intended to limit the ability of the University of Virginia Medical Center from</u>

voluntarily contracting with the Office of the Attorney General's Division of Debt Collection in cases where the Medical Center would benefit from the expertise of legal counsel and collection services offered by the Office of the Attorney General.