

MEMORANDUM

TO: The University of Michigan Community

FROM: The University of Michigan Board of Regents

DATE: October 19, 2012

RE: Findings and Resolutions Stemming from the Medical Resident Matter

I. Introduction

In February 2012, in response to a University Audits' Report finding a six-month delay in reporting to law enforcement a University medical resident's possible possession of child pornography, we issued a unanimous resolution for action. Specifically, the Regents unanimously determined to conduct our own independent and *de novo* investigation of the circumstances surrounding both the reporting and investigation of the incident by University personnel. We made our intention clear: to insure that the unacceptable situation presented by this case is never repeated at the University of Michigan.

To accomplish this, we resolved to do two things immediately. First, we hired an external law firm to conduct a vigorous and fully independent investigation of the facts. Second, we determined to consult with outside experts regarding the University's culture and organizational structures impacting safety and security procedures.

In the months since, we have executed on our plan. First, after a thorough search process, we retained the international law firm of Latham & Watkins LLP to conduct an independent external investigation. We selected Latham & Watkins partner Zachary Fardon, a respected former federal prosecutor and chair of Latham & Watkins's litigation department in Chicago, to lead the investigation with his firm. Second, the University retained the firm of Margolis Healy & Associates to examine the cultural and organizational issues that may have contributed to the delay. The Margolis Healy firm consists of former law enforcement officials who have provided expert advice to universities nationwide regarding campus safety and security matters. We also solicited and considered the perspectives of our current University leadership, which has worked tirelessly in support of our efforts to review and address these issues. We are grateful for both their candor and thoughtfulness in aiding our independent efforts to maintain our commitment to excellence in all aspects of our University environment.

Latham & Watkins and Margolis Healy have completed their work and reported back to us. This Report summarizes our findings regarding the matter and sets forth remedial measures we have determined to implement.

II. Process

A. Latham & Watkins Investigation

Latham & Watkins conducted a thorough and intensive investigation regarding the circumstances of this case. Latham & Watkins obtained over 15,000 University emails and electronic documents created during relevant periods from the email files of twelve different email custodians who had knowledge or involvement in this matter. In addition, Latham & Watkins received access to and reviewed copious other materials from the University's systems and from various sectors across the University. Latham & Watkins requested and reviewed the University Police investigative materials regarding this matter, as well as University Audits' files and materials.

Latham & Watkins interviewed 37 witnesses, some multiple times, as part of their review. Those witnesses included:

- Pediatrics Resident who first reported the concerns
- Third-Year Pediatrics Resident
- Clinical Professor, Pediatrics
- Assistant Professor, Pediatrics
- Faculty Director, Pediatric Education
- Chair, Pediatrics Department
- Director, Combined Internal Medicine-Pediatrics Program
- Chief Medical Officer, UMHHC
- Chief Compliance Officer, UMHHC
- Chief Risk Officer, UMHHC
- HHC-Security Public Safety Officer
- HHC-Security Public Safety Officer
- HHC-Security Supervisor
- HHC-Security Manager of Operations, Security and Entrance Services
- HHC-Director, Security & Entrance Services
- MCIT Data Security Analyst
- Director, Housing Security
- DPS Police Detective
- DPS Police Sergeant
- DPS Interim Executive Director
- Executive Director of University Audits
- Healthcare Audit Manager, University Audits
- University Steering Committee Task Force Project Manager
- University Vice President and General Counsel
- Associate Vice President and Deputy General Counsel
- Associate Vice President and Deputy General Counsel, Health Systems Legal Office ("HSLO")
- Former Associate General Counsel, HSLO
- Associate General Counsel, HSLO

- Executive Assistant, HSLO
- Paralegal, HSLO
- Associate General Counsel, HSLO
- Associate General Counsel, HSLO
- Assistant General Counsel, HSLO
- Vice President for Student Affairs
- Associate Vice President for Student Affairs
- Executive Vice President and Chief Financial Officer
- Executive Vice President for Medical Affairs

Based on its extensive review, Latham & Watkins advised us regarding the facts and circumstances they uncovered, as well as their point of view on the manner in which the investigation of the incident had originally been conducted. The Regents have met several times with Mr. Fardon to hear and discuss his firm's findings, opinions and legal analysis based upon that review, including in executive session without University officers or personnel present. The Regents have received the benefit of Latham & Watkins's experience and candid perspective and has taken into account its recommendations regarding remedial changes moving forward.

B. Margolis Healy Review

Separate from the Latham & Watkins investigation, the Margolis Healy firm conducted a vigorous cultural and organizational review of campus safety and security in general. Margolis Healy's work included extensive surveying across three University sectors – Health Systems, the Department of Public Safety, and University Housing. Margolis Healy reviewed relevant safety and security policies and procedures, and they conducted dozens of interviews with personnel across the University to assess culture and functionality with regard to safety and security.

The Margolis Healy firm further conducted a benchmarking study that included obtaining and analyzing security-related data from eight institutions of higher learning:

- University of Chicago
- Duke University
- University of Florida
- The Ohio State University
- University of Pennsylvania
- University of Southern California
- University of Washington
- University of Wisconsin

Based on its extensive review, the Margolis Healy firm advised us regarding the cultural and organizational strengths and weaknesses impacting our University's safety and security operations. The Regents have received the full benefit of the Margolis Healy firm's law enforcement and cultural expertise.

III. Findings

Based upon this extensive investigation and consultation with these advisors, the Regents have reached the following conclusions in connection with this matter:

- First, there was a clear failure of University personnel among and within various departments to timely and effectively communicate regarding the reported possession of child pornography by a medical resident. The reasons given for this failure differed among the different individuals who learned of the concerns in May 2011. **Regardless of the individual reasons, this failure of timely communication is categorically unacceptable.** Where there is a concern of possible possession of child pornography or an incident of similar gravity, it is incumbent upon *all* personnel who become aware of that concern to promptly notify law enforcement. **There can be no exceptions to that rule.**
- Second, certain University personnel (especially in the Health System and in the Office of General Counsel) inappropriately investigated the reported child pornography information independently, without involving or referring the incident to an appropriate law enforcement agency. Those individuals made an assessment that there was not sufficient evidence to further pursue the concerns, purportedly because the flash drive containing the offending image could not be readily located. **That assessment was wrong and unacceptable.** The individuals who made that determination are no longer employees of the University.
- Third, the relationships and communication between the University's Health Systems Security and the Department of Public Safety are broken and demand repair. There must be a University-wide and closely coordinated system that guarantees timely and effective communication of potential serious misconduct, as well as the safety and security of all of our University constituencies, while still respecting the ethos and privacy and other legal concerns unique to university and healthcare environments.

IV. Remedial Actions

To remedy the problems uncovered through our review, we have both addressed what we perceived as weakness in the responses of certain individuals to the incident and more broadly determined to implement prospectively meaningful and lasting organizational change. We have thus resolved that the following be done:

1. Creation of the "Division of Public Safety and Security" to Bring Together All Safety and Security Components Under a Unified Division

We are creating a new University division that will unify the security components that are now divided among the different University units. The new Division of Public Safety and

Security (“DPSS”) will encompass all security functions across the University, including those currently managed by the Department of Public Safety, HHC-Security, Housing Security, Emergency Preparedness, and other campus-wide security functions. The new division will be led by a newly appointed executive director of public safety and security, to whom the University chief of police and other security leadership will report directly. The executive director of DPSS will report directly to the president of the University.

We expect this consolidation will improve efficacy and consistency in incident response protocols and procedures.

Until a permanent director is hired, working with President Coleman we will appoint University Police Chief Joe Piersante to serve as the interim executive director of DPSS. Chief Piersante is an experienced, respected and dedicated law enforcement official and understands the concerns raised by our investigation. We appreciate his willingness to serve in this important interim role.

2. Formation of a Search Committee to Find an Executive Director for Public Safety and Security

Effective today, a search committee has been appointed to conduct a nationwide search for the most qualified leader to serve as the first executive director of DPSS. The committee will be comprised of:

Mark Banaszak Holl, Professor of Chemistry, Professor of Macromolecular Science and Engineering, Professor of Biomedical Engineering, and former Associate Vice President for Research;

Elizabeth M. Barry, Managing Director, Life Sciences Institute;

Darrell A. (Skip) Campbell Jr., Henry King Ransom Professor of Surgery, Professor of Surgery, and Chief Medical Officer, UMHHC;

Nancy J. Diehl, (retired) Chief, Trial Division Wayne County Prosecutor's Office, Former President of the Michigan State Bar;

E. Royster Harper, Vice President of Student Affairs;

Debra A. Kowich, Interim Vice President and General Counsel;

Gary D. Krenz, Special Assistant to the President, Chair of Committee;

John Seto, Chief of Police, City of Ann Arbor; and

Kathleen M. Sutcliffe, Gilbert & Ruth Whitaker Professor of Business Administration, Stephen M. Ross School of Business.

The search committee will be responsible for conducting the search with the goal of hiring the best overall candidate with proven organizational leadership *and* law enforcement experience; the Regents consider it crucial that the new executive director have law enforcement experience in addition to management expertise. The search committee will be advised by Mr. Fardon as external counsel.

We believe that bringing on a leader with such experience will ensure that the University's safety and security measures are organized and managed in a manner that is truly in the best interest of the entire University community.

3. Development of a Unified Standard Practice Guide

We have asked President Coleman to oversee the development and implementation of a University Uniform Standard Practice Guide related to safety and security. Consistent with the recommendations of Margolis Healy and others, this Uniform Guide will:

- Clearly delineate crime incident reporting mandates, responsibility and accountability;
- Clarify inter-organizational roles and responsibilities;
- Develop a shared mission, vision and set of common values;
- Improve communication and coordinate resources;
- Build and enhance trust and respect;
- Create an environment of problem solving and conflict resolution; and
- Provide a clear set of goals and metrics to include in employee performance expectations, evaluations and incentives.

By establishing these procedures, we will insure that the ambiguity and errors surrounding both proper responsibility for, and procedures for handling matters such as the incident investigated will be avoided in the future, and assure direct and accountable responsibility for such matters by designate University personnel.

4. Continued Implementation of Improvements through the Safety & Security Steering Committee

Lastly, we note the efforts and commendable progress made in recent months by the University's Safety & Security Steering Committee. That committee, led by the University's executive vice president and CFO, executive vice president for Medical Affairs, vice president for Student Affairs, and vice president and general counsel, was constituted to address the concerns and recommendations raised in the University Audit's Report related to this matter. As detailed in the attached "Interim Update on Status," the committee has instituted changes and improvements in connection with, among other things: 911 procedures, protocols for hospital incidents, shared communications across University divisions, debriefing on major security incidents, and training regarding duty to report requirements. We ask that the committee continue its efforts and report back to us no later than January 2013 regarding further progress.

By establishing clear direction and protocol for the on-going involvement of the Regents in this matter, we will assure that our recommendations are implemented, the results monitored

by us, and that we have the opportunity to address any further changes that may become necessary.

IV. Conclusion

As we noted in March, the situation that gave rise to these changes is terrible and unacceptable. We can never again have a delay in timely reporting to law enforcement of this kind of serious misconduct.

We want to express our gratitude to the University physician who brought forward these concerns last November. We commend that physician for following through and making sure this information came to light in a manner that ultimately resulted in the arrest and successful prosecution of the former medical resident. The University community needs and relies upon people who are willing to step up and do the right thing by timely notifying their supervisors and law enforcement when misconduct occurs. It is the University's policy and our firm expectation that all personnel will do just that. In addition to campus-wide 911 services for reporting crimes, the University maintains a Compliance Hotline through which anyone can raise concerns or allegations about any type of potential misconduct or safety issue. The Compliance Hotline allows for callers to remain anonymous, and is accessible through the University's website or by dialing 1-866-990-0111. There will be no retaliation against anyone in the University community for timely notification of misconduct or similar concerns.

We thank the investigative and prosecuting authorities at the University, in Ann Arbor, and the U.S. Attorney's Office in Detroit. These law enforcement authorities have been diligent and thorough in their response and prosecution of the former medical resident. We are grateful for their service.

The remedial changes we are ordering today are significant and will require considerable further resources and diligence. That is by design. The safety and security of our University family is sacrosanct. We must be and will always be fiercely vigilant when it comes to campus safety and security. We commit to the full and speedy implementation of these remedial mandates and will actively assess progress moving forward.