

THE UNIVERSITY OF NEW MEXICO
Board of Regents Audit Committee Meeting
September 19, 2013 – Meeting Minutes

- Members Present: Chairman J.E. “Gene” Gallegos, Vice Chair Lt. Gen. Bradley Hosmer (Quorum).
- Members Absent: Regent James Koch
- Other Attendees: David Harris, Jewel Washington, Chaouki Abdallah, Liz Metzger, Helen Gonzales, Eileen Sanchez, Mike Duran, Ella Watt, Elsa Cole, Mallory Reviere, Kathy Guimond, Leslie Jones Easom, Gloria Carol, Karen Mann, Hans Barsun, Leslie Boni, Richard Holder, Bernadette Jaramillo-Peck, John Hatz and John Albrecht (Gallagher Services), Purvi Mody, Cynthia Reinhart (KPMG), Elaine Phelps, Sandy DuBrock, Alicia Gallegos, Pamina Deutsch, Bonnie Leigh Reifstek, Kimberly Bell, Manu Patel, Chien-chih Yeh, Lisa Wauneka, Brandon Trujillo, Victor Griego, Amy O’Donnell.

Chairman Gallegos called the meeting to order at 8:35 AM in ROBERTS ROOM, Scholes Hall, UNM.

- The Committee discussed revisions to Board of Regents’ Policies 1.2, 7.2, and 7.3. Policy 1.2 relates to changing of language to recognize the Compliance Office. Policies 7.2 and 7.3 are more substantive, particularly 7.2 that defines the new role of the Audit Committee and the Compliance Officer in the Compliance Office. Chairman Gallegos pointed to the first paragraph where it only refers to the audit office reporting functionally to the Board of Regents. The Chairman believes that both audit and compliance should report functionally to the Board of Regents. Regent Hosmer agreed, stating the Freeh report and independence should be the same as the Internal Audit office. The Chairman stated the basic construct of the policies should reflect that so they have direct access to information. He feels that the Committee should postpone approval until they have a revised version. Regent Hosmer concurred.

INFORMATION ITEMS:

- The first information item is Advisor’s Comments. Hans Barsun, co-chair of the Faculty/Staff Benefits Committee asked to comment on the retiree health care item. Chairman Gallegos asked if Mr. Barsun could hold off until the agenda item related to retiree health care in this meeting.
- Chairman Gallegos referred back to the minutes of the previous meeting for follow-up items. The Committee previously asked about conflict of interest forms and where the University houses the forms. Should the Compliance Office take possession of the forms and review them? Helen Gonzales, Chief Compliance Officer, stated that function is in the Office of University Counsel and it is her understanding that it will remain that way. Elsa Cole, University Counsel, does the appropriate reporting for that function. Ms. Gonzales stated she believes it is the Administration’s desire that the forms stay with the Office of University Counsel.

Chairman Gallegos said he is not sure that is the Regents’ desire. They see the forms get filled out and then they have no idea what happens to them or if they reveal significant information. What is the use of having the forms? There is state law with certain conflict of interest provisions. He would think the role of compliance covers that – are we complying with various regulations and laws? Regent Hosmer asked if there is a compliance person in the University Counsel office. Ms. Gonzales does not think there is one specific person but that as University Counsel they have a role in compliance.

Chairman Gallegos addressed Elsa Cole regarding the forms and asked why the Compliance Office is not involved. Ms. Cole confirmed her office has sent out the forms in years past and they retain them in that office. She does perform a legal review of the forms. Ms. Cole further stated this is her first year in this position but she can say that this year there was no issue with the forms. The Chairman asked Ms. Cole how the Compliance Office and the Compliance Officer are going to work together with University Counsel on these items. Ms. Cole responded that there is a compliance committee and persons already involved with compliance at the University serve on that committee. It is an opportunity for Ms. Gonzales to learn of issues. Right now, they are compiling a list of compliance functions at the University. Until that is complete, it will be difficult to know where the Compliance Office should focus its efforts and which units are most vulnerable. Ms. Cole has no objections to reviewing the forms and sharing the information with the Compliance Office. This is an isolated example of a large number of things going on and a large number of reports around campus. Regent Hosmer asked if a report or simple letter could be filed with the Compliance Office for Regent review that states what was found and if action is required. It could serve as a template for other areas around the University. Chairman Gallegos noted it does not even have to be in paper form; it could be electronic. The Regents are interested in the results. Ms. Cole agreed. If she discovered a conflict of interest that is also something she would want to share with the Board.

The next follow up item concerns a need for the Regents to have a complete picture of litigation and threatened litigation. Ms. Cole reported she did prepare that information and she will discuss it with the Committee during Executive Session.

Chairman Gallegos stated that at the prior meeting Amy Neel, Faculty Senate, was concerned that there was no faculty representation from Academic Affairs, Vice President of Research, Faculty Senate, etc. on the compliance committee. Ms. Gonzales reported there is actually representation on the committee from all these areas; Ms. Neel must not have been aware of their inclusion. The HSC Chief Compliance Officer is also a member. Chairman Gallegos asked how we reach out to the program managers that deal with children. Ms. Gonzales stated there is not a single individual who handles that, but many people on the committee have programs that deal with children. The particular issue is being handled by special project/report. Manu Patel, Director, Internal Audit, noted we had a draft report at the June meeting. The Committee asked for input from management on the draft report. The final report will be presented at the October meeting. Chairman Gallegos asked how this is coordinated with the Compliance function. Mr. Patel stated that decision will be based on the outcome of the final report. Professor Yemane Asmerom started the children's report prior to the existence of the Compliance Office. The final report presentation will have recommendations based on management input on the report.

Another follow-up item is in regards to a framework developed for best practices related to sentencing guidelines for violations of compliance. The Regents would like information about the enforcement structure. There is a concern about absence of enforcement when there is a violation. Ms. Gonzales stated the enforcement process is part of management responsibility. She sees her job, as she uncovers areas with gaps or potential problems, is to bring that information forward to management, the President, the Executive Compliance Committee, and the Board. The enforcement capacity happens within the chain of command. Chairman Gallegos stated that relies on somebody's discretion. If the violator happens to be in good graces with whom they report to, there could be a different result. He does not think that works. The Chairman stated Regent Hosmer had a lot of experience as Inspector General in this very type of role. You do not just leave everything to discretion. Ms. Gonzales replied that the guidelines include consistent enforcement. It is part of her office's role to make sure there is consistent enforcement based on the guidelines. The Chairman

said this is like drafting a criminal code that says that burglary is illegal but does not say what the penalty is. Ms. Gonzales stated there are already policies in place that discuss what happens when there are violations of policy.

The Chairman noted they need to look at what already exists. This Committee feels that there were egregious violations in the past that finally came to the attention of the Regents, but the violators did not receive what the Committee felt were appropriate disciplinary actions. Jewel Washington, Interim Vice President, Human Resources, informed the Committee that she will be providing a presentation with specific examples in Executive Session regarding Human Resources-related issues and how the progressive disciplinary action works. Human Resources works directly with management in the enforcement of violations of policies. The Chairman stated we are plowing new ground with this office – something maybe we should have done years ago. It's as important to say what happens if you do something as to say not to do it. Regent Hosmer added it is the Regents' responsibility to make sure there is a system that works. There are two different parts. One, when a compliance irregularity occurs, we need to make sure it is fixed and something is put in motion to repair the defect. The audit committee should be informed when that occurs, but the action is a management action. Two, the University needs to find responsibility for that irregularity and make a competent management judgment whether some disciplinary action is appropriate. The Regents should expect to hear a report from management on what happened. Duffy Rodriguez, Executive Assistant to the President, stated Ms. Gonzales is working on the compliance directory. There are consequences for policy violations in all of those compliance areas. Even for inactions, not just non-compliance. The process would be that those areas would report to Ms. Gonzales and the Executive Compliance Committee. If there is anything wrong, it goes to the Committee and this Audit Committee. Chairman Gallegos stated it sounds like the system is being designed. Regent Hosmer asked if the Audit Committee could get a report on how the system is built and functioning. The Chairman replied that the Compliance Officer would be reporting at every meeting.

At the last meeting, Regent Hosmer asked if the Audit Committee would receive information about outside reports (third party audits), like Legislative Finance Committee (LFC) recommendations and accreditation reports. Mr. Patel responded that this subject is part of the policy revisions and was also part of the Quality Assessment Review of the internal audit function, so this is now in progress. Internal Audit will gather the information if there is a federal or state audit, contract and grant audits, etc., to present to the Committee.

Chairman Gallegos asked if Amy O'Donnell, Administrative Assistant 3, could go through the minutes and compile a list for each meeting of follow up items. Mr. Patel stated he will compile the list for each meeting.

The next agenda item is the retiree health benefits actuarial report. According to Chairman Gallegos, there was good discussion on this topic in a special meeting yesterday. They came away with some work to do rather than conclusions. Chairman Gallegos asked Ms. Washington to give an overview of the additional tasks the Committee asked Gallagher Services to perform. Ms. Washington put together a document to review with the Committee to make sure they are clear on the follow-up items. John Hatz of Gallagher Services reviewed the items. They broke it out into two sections. The first section included the updates to the Governmental Accounting Standards Board (GASB) 45 actuarial valuation. They are charged with calculating the VEBA accumulation and unfunded actuarial accrued liability based on updates to the discount rate and when those would start. Chairman Gallegos asked about the three or four different actuarial methodologies that Gallagher could have been employed when completing the report. John Albrecht of Gallagher Services stated it was an amortization process. GASB 45 allows use of different methods. They

used the standard approach. The second GASB 45 item for update is a grid illustrating the change in liability based on the contribution schedule starting in July 2012 through July 2017. The Committee also asked Gallagher Services to provide some updates for early retiree benefit plan options. One option will have a high deductible of \$1500, and another will have \$2500. In addition, they are going to value the impact to the plan based on the network utilization. They will explore if a single source is financially beneficial and come up with plan designs that target an overall 25% savings. They will provide an analysis to the best of their ability - given the information available - comparing current plan design to a stipend allowing early retirees to purchase health care on the state exchange. Lastly, they will provide estimated savings if UNM discontinues offering basic life insurance for early retirees. Gallagher Services is expected to deliver these items 72 hours prior to the October 25, 2013 Audit Committee meeting. Ms. Washington added she is investigating gap coverage and will have the final results by January.

Chairman Gallegos asked Cynthia Reinhart of KPMG if she had any comment. Ms. Reinhart commented that as part of the standard audit process, KPMG has an actuary that checks the assumptions as well as amounts recorded in the financial statements. They have looked at the key assumptions on the September report (which they realize have now changed) and their actuary is comfortable with the assumptions used to develop the actuarial accrued liability, the amortization methodology, and the time period the cost is being amortized. Now they are in the process of testing the underlying data to make sure the information is correct and comparing the amounts to what the University is reporting.

Chairman Gallegos called on Hans Barsun to comment (see first paragraph of Information Items herein). Mr. Barsun stated that UNM has made a commitment in writing, listed in the benefits package, to provide health insurance for retirees that is comparable to active employees. It is part of why people work here. They paid extra premiums for this for many years. That is why the insurance costs a lot extra. Due to financial challenges, they came up with the VEBA and some other changes to protect the benefits and retirees' access to health care. As such, it is only right that UNM continue to support the same so-called "rich plan." People have taken a large financial hit to have that remain. The efforts over the last year have made a large impact on the liability - huge reductions. Why is there such a continued push to reduce benefits? His own personal experience with this "rich plan" is that in a good year his out-of-pocket medical expenses run about \$2000. In a bad year, it can be \$6000 - \$7000. The reason he got involved with the benefits committee is he had the choice of paying for his daughter's care or paying his health insurance premiums. For two years, he went without health insurance because he could not afford both. If this is a rich plan, what does the poor plan look like and what is the point of having one? Chairman Gallegos stated he expects there will be some unhappiness but the final structure has not arrived. We need to get to the point where we really know what the outcome is going to be. We should wait and see how bad it is. We are just not there yet. The exchange may not be functioning October 1, 2013. It is a work in progress. Regent Hosmer stated it might be useful for the University to review why we are looking at this is the first place. It is because of an accounting rule change that will have an impact on what shows up on our books. There is going to be an impact no matter what. Perhaps EVP Harris is the appropriate person to pull together the question of impact that has put us in the position of going down this road to begin with, and we should reacquaint ourselves. Chairman Gallegos stated why this is being done needs to be made clear. It is simply unsustainable to say that you have a large liability commitment and it is going to be funded from operating costs year after year. That is not prudent in any management approach. Maybe there should have been a reserve being built 10 years ago. The Regents are not doing this because it gives them any pleasure. It is a tough situation. They are trying to deal with it and still understand the human cost.

Leslie Jones Easom, UNM Retiree, addressed the Committee. She informed the members that she agrees with everything they are saying and appreciates the fact that they are looking at it from the viewpoint they are. Her biggest point is that as active employees, they participated in a VEBA-like process and they were told they were paying increased premiums because they would carry that through their retirement. They have already done that part. They were told these benefits would be provided. It was not formal or called VEBA at that time, but it was a promise the University made. Everyone in the room has a physician-patient relationship. When you talk about going to one type of plan and provider, you start breaking up those relationships. That directly will affect lives. She does not know if people truly appreciate that. We need to be careful when you go down a path that funnels everyone in to one type of insurance plan. We do not have access to physicians in this state. She relayed a story from a physician at her daughter's parents' night. That physician stated the only reason many people work at UNM is for the benefits. They take a huge pay cut to work here. What Regent Koch was saying yesterday was very scary. There is so much pressure put on the health care providers, once you make some of these monetary business decisions, care is going to go out the window. Please do not throw the retirees under the bus. Hold this University to a higher standard. The University needs to have integrity in order to hire good people to come here.

Provost Abdallah informed the Committee that he attended the retirees' retreat last weekend. This was high on their list of concerns. However, he also heard from them how proud they are of their service here. They actually want to do more. They are talking about a retirees' college to help UNM in some of the challenging parts of the University. He would like to join his voice to those who spoke before to look at the complete package. We are on a path to reduce the liability, but we need to look at what the retirees are doing to help us in other areas, including student success. The graduation rate went up this year, in part due to coaching, some of which was performed by retirees. He would hate for them to become soured and for it to affect the relationship. He strongly requests that the Board members attend one of their meetings and hear from them directly. The Provost told the Committee he agreed to pass that message on.

The Chairman called for a brief recess at 9:36.

The meeting resumed at 9:47.

- Cynthia Reinhart of KPMG updated the Committee regarding the status of their audit. Her audit team and a consulting actuary, Al Ross, from their Chicago office performed a review of last year's report as well as this year's report. He also evaluated the qualifications of the actuaries that work for Healthcare Analytics. There are data files transmitted from the University to the actuaries that contain demographic information as well as claim data. This information is used to develop the actuarial estimates. The principal responsibility of the external auditors is to test the two assertions – the completeness and the accuracy of the information provided. They are doing that now and have not found any exceptions. They look at the reports and verify the amounts used for calculating pension liability and the annual required contribution match what the University provided. They then evaluate the disclosures in the financial statements to make sure they comply with GASB 45. Chairman Gallegos asked Ms. Reinhart to remind the audience members about the outcome of the new GASB rule and when it takes effect. Ms. Reinhart responded that planning for this began in 1994. It indicated that entities need to accrue an obligation for the present value of benefits that have been communicated to participants. It is a significant obligation for the University and has to be reflected on the balance sheet over time. Because of the concern that it was a huge obligation for many entities across the country, GASB allowed amortization over 30 years. Last year, it was about \$25 million dollars. Because there was no funding mechanism, it would increase. Pension retirement benefits do not impact the balance sheet yet. GASB 68, when it goes into effect, will

require educational entities to pick up their share of the amounts that are recorded at the ERB. It will be hundreds of millions of dollars – potentially \$500-\$600 million.

Ms. Reinhart prepared a high-level overview of the changes. The actuarial evaluation includes changes, even though the report is completed after the end of the year. The recent prospective changes could be in an additional footnote disclosure but they would not be measured because they would be a subsequent event. The current financial statement report reflects the changes that have been made to create a VEBA trust, even though there is not any amounts. Contributions are being collected and held and will be deposited in the future. There are comparisons of the two valuations. Each valuation is done at the beginning of the year on July 1. There was a pay as you go 4.5% discount last year, and 7% discount this year. This was due to the creation of the VEBA trust, which is permitted under GASB 45 if you have effectively created a trust that is bankruptcy remote, and you cannot use the funds for any purpose other than to pay the benefits and insurance policies pursuant to that trust.

The Chairman noted that Gallagher is rerunning the numbers with different assumptions. KPMG is assuming for the purpose of the financial statements that it is the 7% rate that will be used for purposes of the audit. Chairman Gallegos stated we are mislabeling it as it is really an investment return rate and the Committee feels, unless it is a time problem, the assumption should be 5% and that is what they should use. This makes it a larger liability. It is roughly \$10 million per one percent. Ms. Reinhart stated she would work with the University Controller and the actuaries on that. The healthcare trend rate is roughly the same. The impact between the \$153 million last year and the \$94 million now is mostly driven by the subsidy and the discount rate. The Chairman asked Ms. Reinhart to assume that the actual accrued liability is \$115 million. What will that reflect on the financial statement? You have the 30-year amortization. Ms. Reinhart stated that there will be a different liability calculation. Right now, it stayed about the same. The liability and expense will increase. Ms. Reinhart confirmed that the Committee will see the audit results next month. The audit is progressing on time. All the component units are complete.

Chairman Gallegos asked when the audit report is due to the State Auditor. Mr. Patel responded that KPMG will submit the draft report to the State Auditor to get it into the queue for the review on October 15, 2013, prior to the next Audit Committee Meeting. At the exit conference with the Committee next month, if there are any changes, they can still send revisions. Ms. Reinhart noted that the actual due date is November 15, 2013, but if you beat the rush, you do not have to wait as many months for them to review it.

- Provost Abdallah provided the Committee with a follow up discussion on Special Administrative Compensation (SAC) and the Special Teaching Compensation (STC). There were recommendations regarding the SACs and STCs in an audit of the Provost's Administration prior to Provost Abdallah becoming provost. The audit was published just as he came in. There was no policy or guidelines on dispensation of SACs. The Provost looked at other universities to see what their policies were. Many did not have policies, and those that did were often not willing to share them. However, they did gather some information. They formed a policy and the Faculty Senate has recently approved it for the Faculty Handbook. The policy formed guidelines and set up an approval process. Awarding SACs will be dependent on the number of people managed, the budget, other commensurate duties, etc. It will come to the Academic Affairs office for approval.

For the STCs, there was a policy, but the process lacked guidelines. The guidelines are now in place and are extremely similar.

The Internal Audit Department has not received the final policy and guidelines yet. For follow-up, the Provost could bring that information to the October meeting. They stayed away from specifying numbers, but the guidelines are rational. There are things that make sense in there, but were not written down. For instance, once you step away from the position, you do not keep the SAC unless something is in the hiring contract (offer). The Provost noted that they will be on line and his office will be happy to share them with other universities. Chairman Gallegos stated this is progress. The Provost informed the Committee they are actually already applying the guidelines. They are in use. The Chairman said that they appreciate the work that went in to it.

- Stuart Freedman, HSC Compliance Officer, gave a presentation regarding clinical compliance and oversight. Mr. Freedman asked the committee to think of it as how healthcare providers have to document in a medical record what they do every day and how they are paid for the services. He will be speaking about the best practices they employ here. Mr. Freedman feels the practices stand up to John Hopkins and Mayo Clinic, etc. The concept of clinical compliance is an important thing to understand. It does not matter where the service is provided; it is one record. We have to make sure that the physicians who work so hard every day understand the importance of accurate documentation, they are paid appropriately for what they do, and that UNMH is reimbursed from the government. Health care is a significant part of our Gross National Product. The Affordable Care Act is being debated hotly now in congress. Per Mr. Freedman, the government is getting more involved in healthcare, tightening the rules, and therefore strengthening the enforcement. There have been many changes in enforcement powers over the last few years through multiple enforcement agencies.

Last year, the Office of the Inspector General (OIG), which is the enforcement agency for Medicare and Medicaid, recovered approximately \$7 billion resulting in 3100 exclusions, meaning that if you are caught, you can be excluded from billing for services. UNMH has not been in the news and we want it to stay that way. They must constantly check the black (exclusion) list – for every employee who comes on and every vendor. There were approximately 800 convictions. They have a Health Care Fraud Prevention and Enforcement Action Team (HEAT) that is like SWAT. The government can padlock and close healthcare facilities for outright fraud. Mr. Freedman's office watches that to see what they are doing and what they are looking for. These people need to be convicted for stealing from the government. They need to be sentenced, and physicians are going to jail.

Emerging risks include a new 60-day repayment deadline for overbilling that is discovered. It used to be they had time to determine when they would repay if there was a billing instance. If you fail to do that, they can come after you with penalties. In addition, it used to be 3 years, but now they can look back 5 years. Money that is recovered goes back into hiring more federal agents to do more oversight and get smarter about detecting fraud and abuse. They are pushing the dollars down to state Medicaid agencies to collaborate. Medicaid is a "sleeping giant" that has not been looked at as closely as Medicare. Those days are coming and we need to be very concerned as a hospital that really services the poor and disadvantaged.

There have been some cases, primarily with pharmaceutical companies, where the Boards and CEOs have been threatened with exclusions. It is about false or off-label marketing. This is where a drug is approved by the FDA to be used in the marketplace but it is used for other purposes. Many drug companies have received billion dollar settlements. It is included in the corporate exclusion clause.

The government is also rewarding people for whistleblowing. There is an incentive of up to 30% of recovery. Where we start with that is developing a culture of compliance, from the Board down to housekeeping staff. They need to know they can come forward. Disgruntled employees, if they are turned away and retaliated against, the first thing they do is go downtown and talk to federal authorities. If the authorities think they have a case, they are going to take it because the whistleblower is from the inside. This is what we live with every day.

Mr. Freedman presented this same information to department clinical chairs because this is about physicians and their behavior. When he started here two years ago, he went to the chairpersons and asked them what worries them, and what he can do to help. These chair people responded with three main things. First, the rules change all the time. They bill based on codes. There are thousands of codes and the government changes them every year. It is the providers' responsibility to know what the codes say and what needs to be written to support the code. You cannot plead ignorance. That is the job of the compliance officer – to bring that information forward and communicate that to the physicians and people performing the coding. We all know government rules are not as clear as they should be and there are gray areas in interpretation. The Compliance Office came up with guidance documents for physicians, explaining what they need to write and why. Secondly, one of the most important jobs for a compliance officer is education. There are approximately 900 faculty and 400 residents on staff at a time. We need to educate everyone. Lastly, what do we do to audit? How do we review to make sure the records support the bills that go out?

If an inquiry comes to the Compliance Office, no matter how the information comes in, as Compliance Officer, he encourages them and actually thanks the person. Then their office performs an assessment. They pull records. First is intake. Second is assessment, including financial risk. Third, and most important, is communication. They need to make sure the people that are the impact of this know what they found. The last thing is corrective action; that is not just setting a reserve aside on the books. Corrective action is finding the root cause, identifying what it is, teaching the person, and then monitoring to make sure it does not happen again. Another thing they have done is purchase an audit tracking tool called MD Audit. The who's who of medical centers across the country use this program. Because they do hundreds of audits each year on physicians, they need to track them. An audit is usually followed up with education unless you get 100%. It is a constant process. Another use for the audit tool is customized audits. The Office of the Inspector General releases hot topics. The tool allows for that customization. They engaged physicians as a user group so the report they get is one they like and adds value.

We are a very unique institution. Presbyterian and Lovelace are not teaching hospitals. They do not have as part of their mission to teach residents and medical students. With that, there are billing and oversight requirements. We need to make sure physicians know when they are teaching a resident to use very specific, prescribed language. A physician does not go to medical school to learn these types of rules. The guidelines are posted in the electronic health record. There is a link on the front page. Typically, one-on-one education is done as a consequence of a review of records. UNMH has engaged physicians as "physician champions" who can relate to other physicians to provide education. Since January, they have taught over 800 physicians, including 150 residents that came on board in June. This is a great track record. The better we teach, the lower the risk. Physicians do not want to hear from administrators how to do something. They want to hear from their colleagues. It engages the physician to be part of the clinical compliance program.

Chairman Gallegos inquired about the millions of dollars of purchases made by hospital personnel. What does his office do in regard to compliance in that area? Mr. Freedman explained that the exclusion list includes contactors/vendors. They look at the list for that as well upon any contractual

arrangement before they are engaged. They are then reviewed every month after. It is a pre-condition of doing business or for any employment, including volunteers. They also have conflict of interest policies and work with UNM Purchasing Office. The Purchasing Office handles procurement.

Mr. Freedman concluded that he would like to come back and talk to the Committee in the future. He would like to provide other best practices such as the Code of Ethics. That is what really establishes the behavior. There are things that may be able to help Ms. Gonzales as she builds the compliance program on this side of campus. Health care compliance is not new. He has been doing it for 20 years. Regent Hosmer added the soul of Mr. Freedman's program is proactivity. The Main Campus side is young and is not there yet. The number of functions is far more diverse and complex.

- Ms. Gonzales introduced her first quarterly Compliance Office report. As such, she included background information on the Compliance Office, the development of the office, and accomplishments to date. She gave a presentation previously at the June meeting about compliance itself. This report pulls it all together and provides more history. She will point out some highlights and answer questions.

We have not had a Main Campus Compliance Office that pulls together all the multiple existing compliance functions. In August 2012, President Frank commissioned a study team to look at the compliance functions at UNM, determine what to do, and to report on any policy and organizational changes necessary to create a compliance office. In January 2013, Ms. Gonzales was appointed as the first Main Campus Chief Compliance Officer. In developing the office, she immersed herself in compliance; she read everything there is on compliance. She found the best way to start the function is to use the federal sentencing guidelines. The guidelines are very clear, helpful, and specific about seven elements that go into having a good compliance office. Chairman Gallegos asked about recommendations from the Freeh Report. Ms. Gonzales stated the report had many sections, with an entire one on compliance. Louis Freeh did use the federal sentencing guidelines as a foundation. Recommendations for Penn State came from the guidelines. There is a very large section on the compliance office in the Penn State report. Chairman Gallegos stated the Committee should revisit that at the October meeting. Ms. Gonzales will bring back a chart and add more information about what the Freeh Report recommended, what Penn State did in response to the Freeh Report, and what UNM has done as well. Using the seven elements of the sentencing guidelines not only provides for a good foundation, but potentially protection if there are violations found and UNM receives fines. The Ethics and Compliance Officer Association made a formal request two years ago to the Department of Justice to give some specific information on what mitigation has occurred as a result of following the seven elements, but to her knowledge, the Department of Justice did not respond.

Ms. Gonzales documented in her report to the Committee where UNM is with the seven elements and some initial actions that have occurred. We have many policies and statements regarding ethical conduct, code of conduct, and conflicts of interest. It would be worthwhile to bring those together and have a broader institutional policy around ethical behavior, as they have done recently at the Health Sciences Center.

The compliance program structure includes two committees. One is an Executive Compliance Committee. That committee includes the President, Provost, Chancellor of Health Sciences, Executive Vice President of Administration, Vice President of Athletics, University Counsel and Executive Assistant to the President and Chief Administrative Officer. This executive group's role is to set policy, direction, and tone at the top on compliance. They will also hear compliance

reviews, concerns, areas that are lacking in best practices, and areas that need to be improved. Ms. Gonzales, Mr. Patel, and the Director of Safety and Risk Services advise that unit. This has just started. They have met and will continue to meet at least quarterly.

Ms. Gonzales also chairs an Institutional Compliance Committee. That committee has 18 members who are each responsible for significant compliance areas. Members include Director Patel, Stuart Freedman representing the Health Sciences Center, a member of University Counsel is their advisor, and the presidents of Faculty Senate and Staff Council. We have significant compliance responsibilities in Athletics. At a future meeting, Ms. Gonzales will ask the Athletics Compliance Officer to come and give a report on their activities. We have Research, Safety, Financial Aid, Security, IT, Human Resources – it is a long list. There are hundreds of compliance obligations. These compliance partners are each responsible for ensuring that they meet compliance in those areas. Part of Ms. Gonzales' oversight includes working with these individuals, identifying their compliance obligations, and ensuring they are meeting those compliance obligations through risk assessment. Her office is only Ms. Gonzales and her executive assistant, Eileen Sanchez. The departmental operating budget is \$34,755. This is primarily spent on education, training, and informational materials.

Some of the Compliance Office goals in its initial state include working collaboratively with the compliance partners to coordinate compliance efforts. To get to that, one of the first projects is to try to assess what the current controls and monitoring is. That project has four parts. The first part is to identify what are all of those compliance obligations. There is a first draft of a compliance directory. Then, try to identify all the relevant policies, regulations and laws. The next step is working on documenting the internal controls and monitoring mechanisms that ensure compliance. Finally, identify the metrics that are or should be used to ensure program effectiveness. A primary goal is to provide the Regents and Administration assurance that those processes are in place, the areas are following their internal controls, and that they are monitored effectively. The goals of a strong and comprehensive ethics and compliance program continue to focus on ensuring a presence of appropriate internal policies and internal controls, timely and relevant education, monitoring is taking place, and investigation of potential instances of non-compliance.

Challenges are large and include prioritizing the ever-growing body of compliance-related requirements. She has to rely on the compliance partners and she will focus her attention on the areas of greatest risk. Ms. Gonzales is currently collaborating with the risk-assessment process Mr. Patel has already put in to place. As they go forward, she will make the process a little more robust and get more collaboration to enhance identification of risk. Mr. Patel's focus is internal audit and she will broaden that risk for the compliance function. She has also interviewed compliance partners to ask what they believe are the greatest risks. The information she found most useful is what they thought other areas' risks were, as opposed to what they thought their own risks were. From that information, she put together areas to focus on. She will be prepared to present that at the next meeting. She will work with the two committees to make sure they are aware of that. A second challenge area is acquiring the information necessary. There is no one tool at UNM. Determining what is the appropriate authority and role of the Compliance Office to access those tools and gather the information is a challenge. The third challenge is the unsettled question of what the role is of the Compliance Office. That is not unusual in developing an office such as this. Ensuring the auditing and monitoring component of the sentencing guidelines is still an educational component. As the role becomes clearer, that challenge will start to diminish.

Chairman Gallegos wanted to convey something about the Compliance Office's role. Internal Audit has a direct, confidential, unfiltered, reporting relationship with the Regents through the Audit

Committee. The compliance office is going to be in the same category. The Committee will expect confidential sessions with Ms. Gonzales. That credibility and independence of her role is absolutely important. That is best practice. Regent Hosmer asked about the information in Ms. Gonzales' report about a lack of access to Banner. He asked her to advise the Committee on why she thinks there is resistance. Ms. Gonzales replied that she thinks it is a lack of awareness. Appropriately, the individuals responsible for certain areas are concerned about granting access to individuals who do not need to know. In the development of this role, the acknowledgement that it is necessary has not been articulated or conveyed. She does not feel it is deliberate. Regent Hosmer asked if she needs help with that. She feels the administration can help her with that. As there is more clarity, and as it is a role the President is very interested in, that will resolve.

Regent Hosmer also noted that all the Compliance Goals outlined are process goals, not output goals. Should the Compliance Officer be asked to be responsible for results? Obviously, responsibility rests ultimately with the President, but the question is the extent to which the Compliance Officer becomes a carrier of the results as opposed to simply implementing process. Ms. Gonzales responded that as she understands it today, development of the process is the goal. Therefore, if the goals are enhanced beyond that, they would need to talk about what it takes to be responsible for the results. Ms. Rodriguez noted that first they have to figure out what they are responsible for, and that is the directory that Ms. Gonzales is working on. Until that is finished, she does not know how to get to additional processes or what the results are supposed to be. Chairman Gallegos stated that is how diffused it is now, without a Compliance Office or Compliance Officer. Are we not doing something more than that? Regent Hosmer reiterated the University and the President is responsible for compliance now. To what extent is the Compliance Officer responsible for results as opposed to implementing processes? The Chairman asked Mr. Freedman for his input. If things go bad over there, is that not a reflection on him? Mr. Freedman answered absolutely. The buck stops with him. Results are difficult for compliance officers to measure. A compliance program is the insurance policy you cannot buy. What do you want to measure? What are the key barometers to see success? Are we teaching our employees appropriate behavior? How many incidents have been reported? How are we managing that? On his end, have they made any refunds to the government for a billing risk? What is the annual work plan and how do we make sure it is being completed in a timely way?

Chairman Gallegos asked if the Compliance Officer finds out for example, that something is not inspected, doesn't her office have to do something about that? Ms. Rodriguez stated that is why Ms. Gonzales has the Compliance Committee and the Executive Committee, and Mr. Freedman has the same exact thing on the Health Sciences side. Mr. Freedman added that they have been doing this for decades. They have structure in place; Ms. Gonzales is starting from scratch. She is beginning to identify and assemble the resources and has put committees in place. According to Mr. Freedman, results will follow from that, and even just to get these things in place, he feels those are results. It is going to take some more time. Ms. Gonzales stated she feels the Committee's concerns are legitimate. Part of this is creating a structure to ensure not only that the compliance partners are doing this but that they report in to her so that she has a mechanism to then report to Administration and the Regents. She cannot go and inspect buildings herself. She would expect that her compliance partner in that area would do that. She might have to do so if it is identified as a key risk area. Initially, that enforcement has to happen locally through the compliance partner and then it moves up the chain so that it can happen globally as well. Those processes are part of the role of the Chief Compliance Officer.

Regent Hosmer asked Mr. Freedman if he has formal goals for his function, and if they include results. Mr. Freedman said he does and that results for him include not ending up in the paper and

not being singled out for doing something illegal. Regent Hosmer asked if Mr. Freedman has responsibility for that. Mr. Freedman answered that he does. Ms. Gonzales stated compliance is everyone's issue. Ensuring you have an effective compliance program includes having proper mechanisms and processes in place, ability to follow up, as well as making sure consequences are appropriate. Ms. Rodriguez added that is why Mr. Freedman emphasized the culture of compliance. Regent Hosmer said we have a fundamental question. We have decided, and the Freeh Report has given us a strong push to decide, to have a specialist in this area. Ms. Gonzales is the specialist. To what extent does the President's responsibility shift over and become shared by the Compliance Officer? What is the ultimate goal? It will drive things like access. Regent Hosmer suggested the Committee look forward to a recommendation from the leadership of the University stating how the responsibility is parsed out and the extent to which it drives some of the Chief Compliance Officer's work. Ms. Rodriguez replied they just initiated that discussion with the Executive Compliance Committee. Regent Hosmer said he does not think that the Regents can make that decision but would need to understand how the University comes out on the shared responsibility.

- The next item is Clery Act reporting. This is partially the responsibility of the Campus Police Office. Melanie Baise, Associate University Counsel, and Kathy Guimond, UNM Chief of Police presented the Clery Act information to the Committee. Ms. Guimond provided some background on Clery, the way it has changed, and where it is going. She would also like to propose some things with which they could use some assistance.

Ms. Baise was quoted in the U.S. Department of Education (DOE) handbook for Clery, and as an institution, UNM has some examples appear in that handbook. This goes back many years. The Clery Act passed in 1990 and effective in 1991. Ms. Guimond provided the crime statistics for that for the institution where she worked at that time. Initially, Clery focused on crime statistics and what police did. That remains the basic model. The problem is, as things have happened at various Universities, Clery has grown. Ms. Baise added the law has been amended five times by Congress, and each time it has expanded. The change in 2000 was due to a terrible fire at a Seton Hall residence hall where a couple of students were killed. In response to that, congress amended Clery to require that University report on fires that occur in residential facilities as well as fire safety measures and policies in place. Down to the level of stating in the report what the facilities do about allowing candles to be burned in dorms. In 2007, the terrible shootings at Virginia Tech precipitated a response from Congress, so the act was amended in 2008 to include a completely new area of emergency notification and response. Since that time, UNM added timely warnings around campus if there is a Clery crime that occurs and the police think it poses continued potential danger. UNM has to have a policy on missing students. If a student who lives in a residential facility is reported missing, how does the University respond? When does it notify a parent?

Most recently, the law was amended again in May of this year. Congress re-authorized the Violence against Women Act. As a part of that act, it created a Campus Sexual Violence Elimination Act. It adds new crimes (dating violence, domestic violence, and stalking) that they will have to report on starting in the 2014 report. This represents a real focus by government agencies on the problem of sexual violence on University Campuses. The agencies are performing reviews and compliance checks on the Clery Act and Title IX. It will require campuses to adopt programs – a shift from only reporting on processes to prevention and awareness programs for incoming students and new employees. In January, the DOE will start writing rules to implement and look at the best practices around the country. This expansion is way beyond the scope of the Campus Police. There are 12 different groups around campus that contribute to the report. The role of Campus Police may be less clear than the role of Compliance Officer. Ms. Guimond stated her background is not in training. Clery has become a multidimensional kind of reporting. We are in the early stages of Main

Campus compliance. However, to Ms. Guimond, Clery epitomizes compliance from a variety of places. Crime statistics are just a part of that. The reports are due October 1 of each year for the information from the previous year. Ms. Guimond gave an example of a few sheets of paper – that was what the first report looked like. It has gone very far, and we can continue to expect that. The challenge is to look at some kind of mechanism or proposal explaining how it can be more helpful and why.

Ms. Guimond can attest that the police piece is there, but cannot verify the other contributing pieces. All of the pieces that are required by the Clery law are there. They get the statistics on fires and the fire safety information from Safety and Risk Services. The information on people who are referred for disciplinary action for alcohol and drug violations, etc., comes from the Dean of Students. Ms. Guimond said they have been talking and they feel there is a better way to do it. She does not know if she has the authority to contact a department head or director and say that they have not received the information and they need it right away, although she has done so. Additionally, she feels each area who submits to the Clery Act document should sign that they attest the information is accurate to the best of their ability. There should be a policy in the Red Book that says they need to sign the form. Chairman Gallegos stated that that is good, but should someone be responsible for reviewing all pieces of the report with signed declarations for completeness and compliance with the requirement? Ms. Guimond replied that part of it has to do with the directors, and another part lies with the people gathering the information. She does believe the Compliance Office should have a piece of that. It is like a bicycle wheel with spokes, but what it is missing is the hub. We need accountability as well as education. Persons compiling the information need to know what they are doing and why they are doing it. Chairman Gallegos informed Ms. Guimond that the Audit Committee does not make that decision. The ball is in her court. What does she think is the hub? Ms. Guimond replied it is in the best interest of the University for the hub to be at a higher level than a director. Ultimately, it needs to be the Compliance Office, but she recognizes that Ms. Gonzales is a one-person office. However, that is the model they need to work towards because of the reporting lines. When, not if, the DOE comes in to audit the University on Clery, it demonstrates an institutional commitment to Clery if the hub is at a high level. The police are going to continue to have the same part they have always had. They compile all the information, but it is getting increasingly difficult and time-consuming. They are faced with if they want that lieutenant, commander, or chief to do compliance or police work. Chairman Gallegos said Congress is great about giving work to do without appropriation. Ms. Baise stated that most Universities probably still have police departments responsible, but the best practice shows it moving to more of a Clery Compliance Committee structure. The full Board needs a presentation explaining Clery and what the University is doing in that regard. Regent Hosmer stated that perhaps for the October meeting, the Committee could look forward to a recommendation for the University (the President) about how this should happen.

Ms. Gonzales stated this is a valuable dialog. Is the Compliance Officer responsible for compliance and its existence? The model so far, and at most institutions she has surveyed, is that the Compliance Officer is ensuring that compliance is happening in other places, but is not the one doing it. If this model changes, does it have the authority and are there resources? Today, this is not the case. However, maybe that is part of the recommendation. Moving the Clery function to another area does not necessarily solve the problem, unless that area is structured to be able to handle it. Regent Hosmer added that he thinks there are different premises. He does not believe, no matter what is said, that the President or the Vice President of Athletics are relieved of their responsibility for compliance. He sees the Compliance Officer's task is to facilitate the achievement of those responsibilities. The question is whether the performance of the Compliance Office is judged only by the processes, or by the effectiveness of the compliance partners. He would argue it should be.

He also feels the Chief pointed out a potentially important function that is missing in all of this. Some single entity is probably best positioned to determine what we can learn from this flow of information and how we can make it better. That is the real payoff. If the Chairman agrees, can we ask for a recommendation from the University to integrate Clery more effectively with other compliance activities? Chairman Gallegos stated we need a solution as to where the hub should be. A possibility is University Counsel, and then it will go to the Compliance Office. Someone has to take responsibility. Ms. Guimond added she can guarantee that her entire command staff, whether they are involved in Clery or not, understands the ramifications of not doing it right. The educational component is critical. That is what we need to spread to the other partners. She would like to see a certification. Chairman Gallegos said she needs authority to make that happen. Regent Hosmer stated this will be an interesting presentation in October. The Chairman asked why they were provided with 2011 statistics. Ms. Guimond responded that 2012 will be out October 1. Ms. Baise asked if they received the article on Clery best practices. The Chairman confirmed they received that information. The article included information that institutions that have the most problems tend to be ones that do not have a Clery committee.

- Director Patel presented the Internal Audit Director's Report. He noted that the October meeting has changed from October 17, 2013 to October 25, 2013 at 9:00 a.m. Mr. Patel reviewed the status of audits. Three are complete for presentation now. Three are in fieldwork, and two are in planning. One is unassigned that will carry forward to FY14. Once Internal Audit discusses the risk assessment with the committee, they can add any of their input to the audit plan. Chairman Gallegos asked about the status of the College of Education audit. Mr. Patel informed the Chairman that it is in the fieldwork stage and the auditor in charge is meeting with the college right now. Mr. Patel received input from Regent Hosmer. Internal Audit also met with the Legislative Finance Committee. They will provide three or four years of data they gathered statewide. Mr. Patel will be meeting with the Public Education Department for the most recent data. The project is a cooperative project between Internal Audit and the Provost's Office.

Internal Audit has a complaint from FY10 that is pending in court. In FY13, the department received 60 complaints. So far, for the first two and a half months of this fiscal year, the department received 27. Ms. Washington is going to provide a report about Human Resources-related complaints, how many they have, what kind of action they have taken, and what kind of training is taking place.

Based on the current budget, the Department expects to close out the fiscal year with about \$34,000 in reserve carry forward. There are no auditor vacancies. The Department is in the process of recruiting student interns. There are three applications and interviews are taking place tomorrow. The Department hopes to hire two interns, and depending on what level they are, keep them for about a year and a half. It will be good training for them and a help to the Department.

- Audit Manager Yeh reviewed the status of audit recommendations for the Committee. Mr. Yeh noted the first four pages of the report show recommendations that departments implemented. The remainder of the pages include recommendations that are outstanding. Mr. Yeh stated he would focus on the past due items, unless there are any questions. Chairman Gallegos inquired about three Gallup items. Mr. Yeh stated the branch implemented those recommendations. Mr. Patel added that the Department sent an auditor out to the Gallup Campus to verify they did implement the recommendations. The Campus has a new Executive Director, Director of Finance, and Bookstore Manager. It took a long time to implement the recommendations due to the change in management. Ms. Rodriguez reported the new Executive Director is fairly aggressive. His name is Christopher Dyer. The first past due item is regarding the Provost area's STC compensation. Internal Audit has

not cleared the item because the Department has not received the information. The Chairman noted it sounds like it is done now. Mr. Yeh confirmed it can be closed. The next item is the Foundation's investment fund 5% maximum allocation. This item is back for review at the Foundation Board of Trustees. The Department can clear this one as well because the assumption is that their Board will approve it. As for the quality assessment recommendation for Internal Audit, the Department is going to present a risk assessment and five-year plan in executive session. Therefore, once the audit committee approves the information, the Department can close the recommendation. Finally, the past due College of Arts and Sciences recommendation is about implementing a process to make sure reserve dedications are fully supported and justified. The college developed an on-line system. They were just waiting for IT to post the system and to receive training. Yesterday, the college informed Internal Audit that they did complete the training. Mr. Yeh stated they developed a computer form for the personnel to fill out justifying the use of reserves, categorizing them either as committed, designated, or unrestricted. IT needed to post it on line so the college has access to fill out that form on line. Mr. Patel noted that there was not previously a centralized process. In addition, now if Internal Audit or the Budget Office needs to look at any of it, they can just go into the system to determine if it is a valid use of those funds. If it works over there, it could be implemented campus-wide.

- Regent Hosmer moved for a recess at 12:00 p.m. Chairman Gallegos seconded. The meeting will go into Executive Session following the recess.
- The meeting reconvened at 12:30 p.m.

The meeting went into Executive Session for the reasons stated in the agenda. (Motion: Regent Hosmer, Second: Chairman Gallegos).

- a. Discussion of Final Internal Audit Reports, pursuant to limited personnel matters exception at Section 10-15-1.H(2) NMSA (1978) and exception for matters subject to attorney-client privilege pertaining to threatened or pending litigation at Section 10-15-1.H(7), NMSA (1978).
- b. Schedule of Audits in Process, pursuant to exceptions at Sections 10-15-1H(2 and 7), NMSA (1978).
- c. Vote to re-open the meeting.

The meeting returned to open session at 3:15 p.m., with certification that only those matters described above were discussed in Executive Session. There were no audits approved or acted on.

ACTION ITEMS:

- The Committee approved the minutes from June 20, 2013 (Motion: Regent Hosmer, Second: Chairman Gallegos).

Summary of the Regents' Audit Committee
September 19, 2013

Motion to adjourn (Motion: Regent Hosmer, Second: Chairman Gallegos). There being no further business, the Chairman declared the meeting adjourned at 3:15 p.m.

Approved:


Audit Committee Chairman