

**FINDINGS AND RECOMMENDATIONS OF THE**  
**UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON**  
**BLUE RIBBON PANEL REVIEW – April 28, 2014**

The Committee was appointed by Dr. David Callender with the purpose of reviewing the institution's recent handling of executive reassignments, more specifically, that of Dr. Garland Anderson and Mr. William Elger. We were asked to review management's actions for their appropriateness relative to current law, standards and management practices for organizations such as UTMB. The Committee perceived its charge to be:

- Review management actions including release of public information in the reassignments of Dr. Anderson and Mr. Elger;
- make recommendations of how to handle these types of issues going forward; and
- make recommendations that will assist in managing difficult personnel decisions with transparency.

Our findings and recommendations follow:

**FINDINGS**

**A. Garland Anderson, MD**

1. Investigation

The complainant lodged a complaint in February of 2011 about remarks made to her beginning in May of 2010 that made her feel uncomfortable. The complaint alleged no actions of inappropriate touching or sexual advances, but inappropriate comments and remarks.

An investigation was launched immediately. Dr. Anderson, the complainant and numerous other employees were interviewed. The thorough investigation was concluded and a report submitted on May 5, 2011.

The investigation determined that no sexual harassment had occurred. Dr. Anderson was counseled not to ask personal questions or to make personal remarks that the complainant had found offensive. Dr. Anderson complied and no further such remarks or questions were reported.

2. Business decisions made after the investigation

a. Decision to settle

The complainant retained legal counsel and filed a complaint with Equal Employment Opportunity Commission that generally paralleled her original sexual harassment claim. A business decision was made to enter into a settlement with the complainant; an agreement was negotiated with her and a payment was made.

Several members of the committee felt that the payment made to effect the settlement was excessive relative to the magnitude of the initial

complaint; however, the committee agreed that the decision to settle was a reasonable exercise of business judgment to avoid the disruption, expense and risk of protracted litigation.

b. Decision regarding Dr. Anderson's removal from leadership

Although sexual harassment was not found, Dr. Callender felt Dr. Anderson's leadership ability had been compromised and that he could no longer be effective in his roles as Executive Vice President, Dean of the School of Medicine and Provost. Senior administrative appointments can be terminated by the UTMB President independent of any faculty appointment held by that individual.

Dr. Anderson was a tenured faculty member. Based on the results of the investigation, there appeared to be no legal grounds to terminate him from his faculty position.

c. Decision regarding Dr. Anderson's continuation of employment

Because there were no grounds to remove Dr. Anderson from his tenured faculty position, Dr. Callender's decision to retain Dr. Anderson was reasonable.

However, Dr. Anderson should not have been given the title "Special Advisor to the President." The title of "Special Advisor" denotes favoritism as it was not descriptive of Dr. Anderson's new role.

Dr. Anderson's new position/title and salary should have included a specific job description that reflected the nature of his responsibilities and expected contributions.

**B. William Elger**

1. Investigation

- a. Because the Human Resources Department (HR) reported to Mr. Elger it was inappropriate to have HR conduct the investigation. Therefore, the Office of Institutional Compliance (OIC), rather than HR, conducted this investigation. Unlike investigations conducted by HR, proceedings and results of investigations conducted by the OIC may not be disclosed pursuant to Texas Health and Safety Code Ann. § 161.032 (c).
- b. The extent of information available to the committee was therefore more limited. Available evidence indicates complaints of sexual harassment arose during a review of employee dynamics within Mr. Elger's administrative office. The complainant alleged two unwanted kisses and several suggestive comments which crossed professional boundaries. These allegations were investigated in a timely manner, and a status update was provided to UT System Office of General Counsel. According to law, no conclusions or findings of the (OIC) investigation can be made public.

2. Business decisions made after the investigation

a. Decision to terminate complainant

During the time the investigation was ongoing, certain facts became known that led to the complainant being terminated for reasons unrelated to the sexual harassment investigation. After a review of the facts, it appeared to the committee that the complainant was terminated for legitimate reasons and was not subjected to retaliation.

b. Decision to settle

The complainant retained legal counsel and threatened to institute legal action against UTMB. Following that, a settlement was negotiated with the complainant and a payment made. In light of the circumstances and information discovered, the decision to enter into a settlement agreement with the complainant appeared to be a reasonable exercise of business judgment to avoid the disruption, expense and risk of protracted litigation and was based on an appropriate cost/benefit analysis.

c. Decision regarding Mr. Elger's continuation of employment

Initially, Dr. Callender believed continuing Mr. Elger's employment on an interim basis to assist with the transition was in the best financial interest of UTMB. However, after further consideration and consultation with others, it was decided to shorten the interim period of Mr. Elger's service.

## **CONCLUSIONS AND RECOMMENDATIONS**

1. UTMB should release this Committee's written findings and recommendations.
2. UTMB should make a concerted effort to improve its internal and external communications. There appears to be a perception that complaints are received, ignored and not investigated, which the Committee did not find to be true in these two cases. The results of investigations should be communicated to employees and the public to the extent allowed by law and privacy considerations. The employees should be made aware that as a check and balance, UT System requires that all allegations of sexual misconduct should be reported by UTMB Office of Institutional Compliance to the UT System Office of General Counsel and updates are provided until the investigation is concluded.
3. The Committee concluded that these two instances were examples of a lack of professionalism on the part of the individuals involved rather than indicative of a culture of sexual harassment throughout the Institution. Consequently, UTMB should offer additional training to employees and executives on dealing with situations of sexual harassment and lack of professionalism and how to report same. This training should be targeted and mandatory. Executives and upper management should receive additional training beyond that provided to non executive employees.
4. Sexual Harassment and Misconduct Policy should be revised to consider the following:
  - a. The policy should be revised to reflect the situations where HR is unable to conduct the investigation (e.g., when HR or its reporting structure has been implicated). Included in the policy should be information regarding the various checks and balances, including the fact that complaints of sexual misconduct must be reported to the UT System Office of General Counsel and updates are provided until the investigation is concluded.
  - b. Employees should be encouraged to file complaints of sexual harassment or discrimination within 30 days as a means of preventing ongoing misconduct and facilitating a full and fair investigation.
5. The Committee recommends that in response to a public request for information regarding sexual misconduct claims, the following response should be considered:

It is UTMB's policy to investigate all complaints of discrimination or harassment promptly. UTMB will attempt to protect the confidentiality and privacy of all employees and to preserve the integrity of the investigation. UTMB will comply with all requests for information in accord with applicable regulations from the UT System and state law. In addition, pursuant to the policy of the UT System, all sexual misconduct complaints must be reported by UTMB's Office of Institutional Compliance to the Office of General Counsel of the UT System.
6. Positions should be descriptive of the responsibilities and expectations of the role. Terms such as "Special Advisor to the President" and similar generic terms should not be used.