



**VIRGINIA COMMONWEALTH
BOARD OF VISITORS
ORIENTATION
SCOTT HOUSE
909 WEST FRANKLIN STREET
1:00 P.M.
SEPTEMBER 8, 2022**

MINUTES

BOARD MEMBERS PRESENT

Mr. H. Benson Dendy III, *Rector*
Mr. Todd Haymore, *Secretary*
Dr. Vernon Dale Jones
Dr. Clifton Peay

OTHERS PRESENT

Dr. Michael Rao, *President*
Mr. Matthew Conrad, *Vice President for Government and External Relations for VCU and VCU Health System*
Ms. Chelsea Gray, *Executive Director for Board and Executive Operations*
Ms. Karol Kain Gray, *Senior Vice President and Chief Financial Officer*
Ms. Stephanie Hamlett, Esq., *University Counsel*
Ms. Karen Helderman, *Executive Director for Audit and Compliance Services*
Mr. Grant Heston, *Vice President for University Relations*
Ms. Pamela Lepley, *Senior Advisor to the President*
VCU students, faculty and staff and members of the public via livestream

CALL TO ORDER AND INTRODUCTIONS

Mr. H. Benson Dendy III, Rector, called the meeting to order at 1:15 p.m. The public was able to view the open session of the meeting via livestream at <https://mssvideo.vcu.edu/BOV>.

H. Benson Dendy III welcomed two of the new Board members, Dr. Vernon Dale Jones and Dr. Clifton Peay, and thanked them for his willingness to serve on the Board of Visitors of Virginia Commonwealth University. He acknowledged Mr. Anthony Bedell and Ms. Ellen Fitzsimmons who also were appointed to the board, but were unable to attend the orientation. He highlighted that VCU's unique mission as a public good is motivating and inspiring. VCU is a large, complex institution that benefits greatly from the expertise, experience and active engagement of board members. The board values different perspectives and proactive involvement in advancing the university's mission and setting high standards for the university as well as values transparency in the work as a governing board.

Mr. Dendy recognized those in attendance in the room including the reporter from The Commonwealth Times.

President Rao welcomed the new board members. He began his remarks by stating that students and patients are the center of VCU's mission, and everyone at VCU is committed to their success. VCU is modeling what a truly public research university and health system should be. VCU is focused on being nimble and adaptable to support the changing needs of its students and patients. This is a foundation that has consistently been built and fostered by a culture of unmatched commitment to students and patients. VCU enrolls about 28,000 students in more than 200 degree and certificate programs, including 29 that are unique in Virginia. Eighty-two percent of students are enrolled full-time. VCU conferred more than 7,800 degrees and certificates in the 2021-22 academic year. The university and health system employ more than 23,000 people (full and part time), and have an annual operating budget of \$4.4 billion.

VCU is one of the nation's premier urban public research universities. VCU graduate programs and first professional programs are consistently ranked among the top 50 nationally by U.S. News & World Report. VCU is one of the three top research universities in the Commonwealth. VCU's annual economic and social impact report shows that VCU generates enormous economic impact, for the Commonwealth, the region, and the city of Richmond.

The people at VCU work hard every day to put the needs of students and patients first. VCU is dedicated to the true mission of public higher education: to create opportunities for every student who wants to earn a degree. A third of students are first generation, a third are also underrepresented minorities, and about a third also qualify for Pell grants.

BOARD MEMBER DUTIES & RESPONSIBILITIES

Ms. Stephanie Hamlett, Esq., University Counsel, introduced the role of university counsel. She highlighted legal duties that the board has including educational requirements. She explained what every board member must know about FOIA (Freedom of Information Act) including meetings being open to the public and records being accessible to the public. There are certain specific statutory exemptions that allow for a portion of a meeting to be closed. She emphasized that if three members are together it is considered a meeting and must be noticed at least three working days in advance of the meeting. Agenda materials must be available to public prior to meeting and minutes must be recorded and posted on VCU website. A copy of her presentation is attached hereto as *Attachment A* and is made a part hereof.

Ms. Karen Helderman, Executive Director of Audit and Compliance Services, gave a presentation with an overview of the Division of Audit and Compliance Services, including a review of the oversight role of the Board of Visitors. A copy of the presentation is attached hereto as *Attachment B* and is made a part hereof.

RELATIONSHIP BETWEEN VCU & VCUHS

Ms. Hamlett continued by providing an overview of the relationship between the VCUHS Board of Directors and VCU Board of Visitors. She emphasized OneVCU and the complexities of the organizations. The board members in attendance said that they would like to learn more about the relationship and what is appropriate going forward.

ONE VCU

Mr. Heston, Vice President for University Relations, talked about the emerging OneVCU brand. He reminded members that the Rector speaks on behalf of the Board of Visitors. The University keeps the board informed by providing updates and notices of information that will be released by the media. A copy of Mr. Heston's presentation is attached hereto as ***Attachment C*** and is made a part hereof.

ADJOURNMENT

There being no further business, Mr. Dendy, Rector, adjourned the meeting at 2:32 p.m.

ATTACHMENT A

Legal Duties & Responsibilities

September 8, 2022



Office of University Counsel

Office of University Counsel

Stephanie Hamlett

Jake Belue

Jim Fiorelli

Elizabeth Griffin

Sarah Johns

Bill Norris

Ruth Ann Smith (Paralegal)

Anne Walther (Law Fellow)



University Counsel Services

- ▶ Represent Virginia Commonwealth University on:
 - Contracts and Business Transactions
 - Development/Foundations
 - Labor and Employment
 - FOIA
 - Research Compliance
 - Intellectual Property Issues
 - Student and Faculty Issues
 - Civil Rights (all the “Titles”)
 - Litigation
 - *Lay Psychotherapy*
- ▶ We can only handle legal matters related to University business

Legal and Compliance Challenges for Higher Education

- [Accounting](#)
- [Accreditation](#)
- [Affirmative Action](#)
- [Athletics](#)
- [Campus Safety](#)
- [Conflicts of Interest](#)
- [Copyright and Fair Use](#)
- [Disabilities and Accommodations](#)
- [Donors and Gifts](#)
- [Environmental Health and Safety](#)
- [Export Controls](#)
- [Financial Aid](#)
- [Foundations and Affiliated Enterprises](#)
- [Governance](#)
- [Grants Management](#)
- [Health Care and Insurance](#)
- [HEOA Compliance Obligations](#)
- [Human Resources](#)
- [Immigration / International Students and Employees](#)
- [Information Technology](#)
- [Intellectual Property and Technology Transfer](#)
- [International Activities and Programs](#)
- [Lobbying and Political Activities](#)
- [Privacy / Student Records](#)
- [Program Integrity Rules](#)
- [Research](#)
- [Sexual Misconduct](#)
- [Tax Compliance](#)
- [Telecommunications](#)

What Does The Law Say?

Board Powers and Duties

§ 23.1-2305

- Appoint all teachers, staff members, and agents, fix their salaries, and prescribe their duties
- Generally direct the affairs and business of the University
- Confer degrees, including honorary degrees
- Receive gifts

What Does The Law Say?

Executive Committee Responsibilities

§ 23.1-1306

- Organize working processes and recommend best practices for governance
- Review the board's bylaws and recommend amendments
- Advise board on committee structure, appointments, and meetings
- Develop orientation and continuing education process
- Develop and monitor compliance with a code of ethics for board members
- Develop a set of qualifications and competencies for membership

Code of Virginia – Educational Requirements

§ 23.1-1304

- SCHEV delivers annual educational programs for governing boards
- New members must attend at least once within first two years
- Nineteen elements of educational program
- Continuing training on board governance after first two years

Code of Virginia – This Might Get Your Attention

Term and Conduct

- Two full terms, then waiting period of four years
- Board Policy on Ethical Leadership
- Process for removal without sufficient cause for absence

Removal for:

- Failure to attend meetings for one full year
- Failure to attend SCHEV orientation in first two years
- Malfeasance, misfeasance, incompetence, or gross neglect of duty

VA Freedom of Information Act (FOIA)

What Every BOV Member Absolutely *Must* Know About

FOIA:

- All **meetings** must be open
- All **records** must be available to the public – the format or medium does not matter

Importance of Compliance

- BOV records have become a target of interest to:
 - Faculty & Students
 - Press
 - Alumni
 - General Assembly and Other Elected Officials
- Meetings not handled appropriately = Board actions could be challenged
- Negative publicity for the university
- Perceived violation of public trust
- Possible fines for deliberate actions

Meetings

- All meetings of public bodies must be open with public access
- *There are certain specific statutory exemptions that allow for a portion of a meeting to be closed*
- What is a meeting?
 - When three or more members are gathered, and
 - Public business is discussed
- It doesn't have to be a "Meeting" to be a meeting (social events, unplanned conversation at coffee shop)

Requirement For A Legal Meeting

Meetings Must Be “Noticed”

- Three *working days*’ notice
- Posted in 4 specific public places
- Public has the right to attend

Agenda materials must be available to public prior to meeting

Minutes must be recorded and posted on VCU website

Meetings: *What does this mean to me?*

- Cocktail parties and golf games?
- Avoid discussion of Board or Board Committee business between *three or more* members
 - in person
 - telephone
 - internet chat **or email**

Electronic and Telephone Meetings

- Generally, meetings must be in person
- BOV members may call in but a quorum of the BOV must be physically present
- The notice required for telephone meetings is 3 working days –same as for other meetings.
- Very specific requirements exist for the notice that require details about the meeting to be known in advance. For example, the notice must include the remote locations that are open to the public and the electronic communication means by which members of the public may listen to or observe the meeting. Public access to remote locations is encouraged but not required.
- Consult with counsel prior to issuing the notice for electronic meeting

Electronic and Telephone Meetings

State of Emergency Exception

If the Governor has declared a State of Emergency in accordance with Va. Code § 44-146.17, a board may meet without a quorum in one location if:

1. The catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location; and
2. The purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities

Additional notice, comment, and access requirements apply to these meetings

Closed Session

Common exemptions for closed sessions:

- Legal advice
- Discussion of contract negotiations
- Discussion of ***identifiable*** employees or applicants
- Discussion of ***identifiable*** students or student discipline matters
- Exemption specific to VCU/VCUH- §2.2-3711(A)(23)

Requirements for Closed Meeting

- **Motion for closed session must include three elements:**
(i) citation to the statutory exception; (ii) general topic (e.g. personnel); (iii) specific matter to be discussed (e.g. evaluation of the President)
- Committee may discuss **only matters identified in the motion** to go into closed meeting – even if the subject would otherwise qualify for a closed meeting discussion
- **Certification** required after closed meeting
- Any action the BOV wishes to take as a result of discussion in closed session must be **voted on in open session**

Closed Meetings: *What Does This Mean For Me?*

- Remember the stated purpose of closed meetings, and do not stray from that discussion
- Gently remind others if discussion strays
- Cast a truthful certification vote
- Legal counsel cannot play “FOIA cop” but should be relied upon for guidance

Public Records

- All public records not subject to a specific exclusion/exception must be made available to the public upon request
- Public records - *anything* that records *any* public business
 - letters or other documents
 - handwritten notes
 - video/audio recordings
 - emails
 - text messages
- Location doesn't matter (at the university, home, office, personal devices, etc.)

What is a “FOIA Request”?

- Any request from any eligible person (Virginia citizen or certain media)
- Does not have to be a written request – oral is fine
- Need not reference “FOIA”
- Five workdays to initially respond
- Can charge reasonable fees, but this rarely covers actual costs
- Report any records request *immediately* to the Rector and Board staff, even if you are not certain if it is a FOIA request

Records: What Does This Mean For Me?

- Be thoughtful about what you write in email, notes, memos
- Favor telephone over email if you have confidentiality concerns
- Use your official VCU email for VCU business; or keep all VCU business communications in a separate folder if you use a personal or business account
- Do not trash or delete official messages/documents - state law requires preservation of records for certain time periods

Records: What Does This Mean For Me?

- Expect that some communications will come to you from legal counsel to maintain confidentiality/privilege
- If you share a privileged communication with someone else, privilege may be lost – ask counsel before sharing
- If you need to communicate regarding a difficult issue via email, work with the Rector and copy legal counsel for review/advice

Email And Social Media Can Be A Record And A Meeting!

- Simultaneous e-mail or texting can easily result in discussion between “more than two members” = *Illegal* meeting
- Social media interactions may result in a meeting (e.g. “liking” posts)
- Recommendation
 - Use the telephone when possible
 - Avoid e-mail to more than one member when possible
 - ***Never*** use REPLY ALL

ATTACHMENT B

Audit and Compliance Services

September 8, 2022



Audit and Compliance Services

- University and Health System Responsibilities
- Reports to both Boards (BOV and BOD)
 - Provides audit, integrity and compliance operations on behalf of the Boards
 - Executive Director is accountable to the Boards through their respective audit and compliance committees
- University Functions
 - University Audit and Management Services (Internal Audit)
 - Integrity and Compliance Office

University Audit and Management Services (Internal Audit)

- Institute of Internal Auditor's *International Standards for the Professional Practice of Internal Auditing*
- Risk-based audits of information systems, financial and compliance controls
- Investigative reviews
- Special requests
- Advisory services
- Audit reports provided in Audit, Integrity and Compliance Committee materials

Integrity and Compliance Office

- Oversees VCU's Compliance and Ethics Program
- Utilizes/coordinates compliance partners throughout the University
- Case management system tracks and provides visibility into reports of concern
- Provides leadership guidance on creating an ethical, “speak up” culture
- Compliance Program based on Chapter 8 of the US Department of Justice *Federal Sentencing Guidelines* – Seven Elements of an Effective Compliance Program

Integrity and Compliance Office

- Standards & Procedures – Code of Conduct, written policies and procedures
- Oversight – designated compliance officer and Board compliance committee
- Education & Training – education program on policies and expectations
- Reporting – methods to communicate concerns without fear of retaliation
- Monitoring & Auditing – track policy updates, analyze trends, staff surveys
- Enforcement and Discipline – enforce our compliance program by taking action
- Response and Prevention – analyze violations, refine or adopt policies, provide additional training

Michigan State's Untouchable Board of Trustees

Members of the board have been accused of covering up Larry Nassar's abuse, and yet they've somehow emerged from the scandal unscathed.

CAROLINE KITCHENER SEP 26, 2018



Penn State Board Of Trustees Respond To Coverup Allegations In Freeh Report: 'Speculation'

By Andrew Berry
@AndrewBerry1

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The Washington Post

Enron Board Aided Collapse, Senate Panel Says

By Carrie Johnson
July 7, 2002

The members of Enron Corp.'s board of directors contributed to the firm's collapse by failing to curb the Houston energy trader's risky accounting tactics, approving conflicts of interest, and rubber-stamping enormous cash payouts to executives, according to a harshly worded Senate report to be released today.

"The board witnessed numerous indications of questionable practices by Enron management over several years, but chose to ignore them to the detriment of Enron shareholders, employees, and business associates," the report said.

March 21, 2019 04:03 PM

U-Maryland Medical System CEO put on leave after board conflict scandal

HARRIS MEYER

TWEET SHARE SHARE EMAIL



Robert Chrencik

The University of Maryland Medical System has put CEO Robert Chrencik on temporary leave of absence following reports that nine of the system's 30 board members, including elected public officials, have substantial business deals with the system.

Board Chairman Stephen Burch announced that the board, at an emergency meeting Thursday, also voted to hire an independent firm to review board members' contractual relationships with the system.

Typical Oversight Questions

- How does VCU's compliance program compare to its peers?
- Are we satisfying the seven requirements of an effective compliance program?
- What are our most significant risks and how are we mitigating them?
- How are we monitoring and responding to misconduct?
- Are we effectively communicating our ethics and compliance commitment?
- How do senior leaders determine which risks to report to the Board?
- How is the Board assured that controls for key risks are working?
- How does VCU measure or assess organizational culture?

Conflicts of Interest

VCU Board of Visitors Bylaws

ARTICLE IV CONFLICT OF INTEREST COMPLIANCE

Each member of the Board shall comply with state statutes regulating conflict of interest which may include filing an annual financial disclosure statement and completion of required conflict of interest training.

Conflicts of Interest

A Conflict of Interest (COI) occurs when outside interests or relationships (financial, personal, or other) create a risk that professional judgment or actions regarding university interests will be, or may appear to be, unduly influenced by a secondary or personal interest. Conflicts can occur in fact or appearance.

Some relevant state statutes:

- You shall not have a personal interest in a contract with VCU (2.2-3106 A.)
- You shall not have a personal interest in any contract with any other state agency unless the contract is competitively awarded (2.2-3106 B.)

Prohibited Conduct (Code of Va § 2.2-3103)

- Solicit or accept money or other thing of value for your Board services, except the expenses paid by VCU
- Offer or accept any money or other thing of value for or in consideration of:
 1. obtaining employment, appointment, or promotion of any person
 2. using your Board position to obtain a contract for any person or business
- Use for your own economic benefit or that of another party confidential information that you have acquired from your Board position and which is not available to the public
- Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence you in the performance of your Board duties;
- Accept any business or professional opportunity when you know there is a reasonable likelihood that the opportunity is being afforded you to influence you in the performance of your official duties;
- Accept any honoraria for any appearance, speech, or article in which you provide expertise or opinions related to the performance of your Board duties
- Accept a gift from a person who has interests that may be substantially affected by your Board duties under circumstances where the timing and nature of the gift would cause a reasonable person to question your impartiality in the matter affecting the donor.
- Accept gifts on a basis so frequent as to raise an appearance of using your Board position for private gain.
- Use your Board position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law

Conflicts of Interest

- You are expected to disclose conflicts to protect you, to be compliant with Board bylaws and state statutes, and to protect VCU
- Conflicts are not inherently bad
- Disclosing potential conflicts, both in fact or appearance) early allows you to work with Chelsea, legal and others to assess and manage it and reduce risk
- VCU will be proactive with reminders when a Board topic may present conflicts
- You should complete the annual Ethics Council disclosure and report additional potential conflicts to Chelsea as they occur throughout the year.

Virginia Conflict of Interest and Ethics Advisory Council

- Annually file a financial disclosure between 1/1 and 2/1
- All disclosures are maintained on a public facing website
- Disclosure includes:
 - Businesses that compensate you (employment, officer payments)
 - Business interests with value in excess of \$5,000
 - Real estate except your principal residence (\$5,000)
 - Businesses you represent before any state agency where you were compensated (\$5,000)
 - Businesses where someone with whom you have a close financial association represented before any state agency where they were compensated (\$5,000)
 - Virginia businesses in which you provided services and received compensation (\$5,000)
 - Sources from which you received lodging, transportation, money or anything of value in excess of \$100 in connection to a meeting or event in your official capacity with VCU

Integrity and Compliance Office



www.codeofconduct.vcu.edu

ATTACHMENT C

Enterprise Communications and Marketing

January 2021

VCU

- Public and media relations
- Crisis and issues management
- Branding and marketing
- Social media
- Digital and print advertising
- Budgetary authority

VCU Health

- Public and media relations
- Crisis and issues management
- Branding and marketing
- Social media
- Digital and print advertising
- Budgetary authority

May 2022

VCU

- Public and media relations
- Crisis and issues management
- Branding and marketing
- Social media
- Digital and print advertising
- Budgetary authority

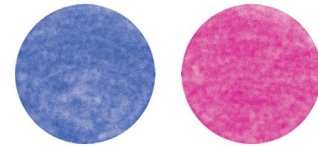
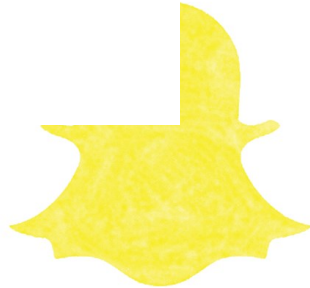
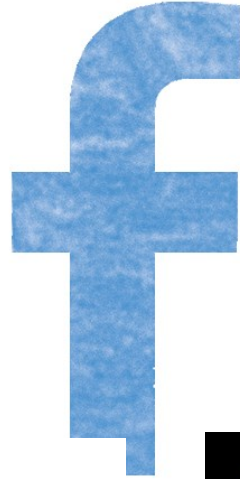
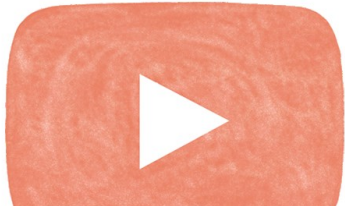
VCU Health

- Public and media relations
- Crisis and issues management
- Branding and marketing
- Social media
- Digital and print advertising
- Budgetary authority

Partnerships and Support

- **Undergraduate admissions – SEMSS**
- Students – *Student Affairs, colleges and schools*
- Faculty, staff – *HR, Administration and Academic Affairs*
- BOV, BOD and other boards – *President's Office*
- Donor and alumni – *DAR*
- Local, state, federal officials and agencies – *Government Relations*





VCU