

**Executive Committee Minutes**  
**Monday, November 11, 2002**  
**4:00 P.M.**  
**(Approved)**

Chairperson Lane Crothers called the meeting to order at 4:00 p.m.

**Present:** Ryan Allen, Carolyn Bathauer, Paul Borg, Vic Boschini, Nicole Clemmons, Lane Crothers, Eileen Fowles, Jack Howard, Mark Ligunas, Khalid Razaki, Sharon Stanford, Laura Knoblauch

**Excused Absences:** Jim Reid, Al Bowman

**Approval of Executive Committee Minutes of 10/28/02**

**Motion XXXIV-45:** By Senator Fowles, seconded by Senator Ligunas, to approve the October 28, 2002 Executive Committee minutes. The minutes were unanimously approved.

**Oral Communications:**

10.28.02.01 From Sandra Little: Deletion of Public Relations Sequence in Communications Proposal and Deletion of Sequences in Special Education Proposal (To Consent Agenda)

**Distributed Communications:**

10.31.02.01 From Al Bowman: School Designation Request – Applied Computer Science (Administrative Affairs and Budget Committee)

11.08.02.01 From Laura Knoblauch, University Privacy Officer: Health Insurance Portability and Accountability Act (HIPAA) Sanctions Policy. See Discussion Section

11.08.02.02 From Ken Lindblom: Memo Endorsing Student Involvement Transcripts

**Proposed Agenda for Academic Senate Meeting of November 20, 2002 at 7:00 p.m.**

**Call to Order**

**Roll Call**

**Approval of Minutes of November 6, 2002**

**Chairperson's Remarks**

**Student Government Association President's Remarks**

**Administrators' Remarks**

**Committee Reports**

**Action Item:**

**Election of Honorary Degree Representatives - 1 Faculty Senator, 2 Student Senators (Rules Committee)**

**Information Item:**

**11.08.02.02 Student Involvement Transcripts (Academic Affairs Committee)**

**Communications:**

**10.28.02.01 Deletion of Public Relations Sequence in Communications Proposal and Deletion of Sequences in Special Education Proposal – Approved on Senate Consent Agenda 11/11/02**

**Adjournment**

**Motion XXXIV-46:** By Senator Razaki, second by Senator Clemmons, to approve the agenda.

**Motion XXXIV-47:** By Senator Bathauer, second by Senator Fowles, to add the student involvement transcript as an

information item. The motion was unanimously approved. The agenda, as amended, was unanimously approved.

**Discussion:**

**Provost Search**

**Senator Crothers:** Two Provost candidates' interviews have been scheduled so far and the Senate will have an opportunity to meet with the candidates on November 20 and November 22 at 1:00 p.m. in the Faculty Staff Commons. There will be two additional candidates scheduled for interviews.

**11.08.02.01 Health Insurance Portability and Accountability Act (HIPAA) Sanctions Policy**

**Senator Crothers:** Laura Knoblauch, University Privacy Officer, and Sharon Stanford join us today to discuss the Health Insurance Portability and Accountability Act (HIPAA) Sanctions Policy. As you see in the cover memo, they have given a timeline for approval of the policy of no later than December 31; however, the Senate cannot possibly respond to the policy by that time.

**Ms. Knoblauch:** HIPAA affects health care providers or members of the work force who have access to protected health information and are defined as part of the health care component. We have not identified all units within the health care component, but we are confident that the Student Health Services and the pharmacy are included. Those units that are included could share protected health information for the purposes of treatment, payment and health care operations without additional authorizations. The units that are not covered would need to get authorizations each time they wanted to share information. We have recently joined in a consortium with Western Illinois University to contract with a health law firm to find answers to some of our questions.

**Senator Borg:** You talk about the "health care provider or member of the ISU workforce" in the policy. What is the difference? Are they essentially the same thing?

**Ms. Knoblauch:** They could be. For instance, the ISU Disability Concerns Office is not considered a provider of health care, but the employees there do have a great deal of protected health information.

**Senator Borg:** If my health care provider does not comply, does my being a member of this University invoke sanctions on them?

**Ms. Knoblauch:** No, because your health care provider, which I assume is CMS, administers your health care plan, not the University.

**Senator Borg:** Then I suggest that you clarify such distinctions within the policy. How long have you had a Privacy Sanction Committee?

**Ms. Knoblauch:** I believe that its first meeting was at the end of September.

**Senator Borg:** That committee needs to be defined somewhere before we start referring to it.

**Senator Bathauer:** I am looking at a policy that is talking about health records, the majority of which are student records. How could students be overlooked as being a part of the ad hoc group that developed the policy?

**Dr. Stanford:** In retrospect, we should have included a student employee from the Student Health Center. If you look on the page regarding the grievance process, you can see that you would be on the second committee that would be formed.

**Ms. Knoblauch:** We are dealing with the fact that we have civil service, AP and faculty employees with different grievance procedures. The law requires that if two employees commit the same inappropriate act concerning health information, then both parties must receive the same sanction. This committee could issue that same sanction, but through the grievance processes, the sanction may change. We hoped that by having it written that way, we would comply with the law. Do students have a grievance process?

**Senator Bathauer:** I am expressing concern about not being a part of the ad hoc group and also that if a student were the individual that discovered that his/her records had been handled inappropriately, that student would not know that there was a process through which he/she could go.

**Dr. Stanford:** I think one of the things that you are asking for is training should this all come to pass and for students who are affected by this to know what their rights are.

**Senator Bathauer:** I am asking for that and for student representation on any group that is formed.

**Senator Crothers:** I was stunned that Eric Thomas was appointed as the faculty representative on the ad hoc committee. If he has not had extensive experience working with health records, then that is a good reason to look for a faculty representative who has. Also, there is really no sense about what the sanctions committee is going to do or under what circumstances sanctions might be invoked. That you have a policy that is thin that refers to a committee that has no structure, experience or rules is very troubling.

**Sharon Stanford:** This was an attempt to avoid penalty by at least minimally having a sanctions policy in place were it necessary to have one.

**Senator Howard:** For us to say that we did not know what the law meant will not carry much weight in district or federal court, but I don't think we can bring this to the Senate until we have more information.

**Senator Borg:** If this is not going to be effective until April, why are you concerned about having it in place by December 31?

**Ms. Knoblauch:** I am concerned because of the civil and criminal penalties that go with this law. They gave us two years to get into compliance and April 13, 2003 is the deadline. There are a lot of things that we have to do between now and then to make sure that the University is in compliance.

**Senator Allen:** We had two years to be in compliance. Why were not the health care attorneys involved sooner?

**Ms. Knoblauch:** The University did not name a privacy officer until July of this year. We sent out a survey to try to determine what departments were going to be covered. We were looking at it from the health service standpoint, but then we realized other units on campus would need to comply.

**Dr. Barone:** I have been a skeptic of this whole process. This was a law passed to stop health care providers from inadvertently revealing health care information, particularly electronically. It has nothing to do with universities. I contend that the act clearly exempts us. There is a section of the act that refers to FERPA (Family Educational Rights and Privacy Act), which covers student records. It explicitly states that the HIPA Act *does not* supercede FERPA. A law firm has been hired and it seems premature to develop sanctions before we have a legal opinion.

**Senator Crothers:** The FERPA section reads, "We have also excluded certain records, those described at 20 U.S.C. 1232g(a)(4)(B)(iv), from the definition of protected health information because FERPA also provided a specific structure for the maintenance of these records. These are records (1) of students who are 18 years or older or are attending post-secondary educational institutions, (2) maintained by a physician, psychiatrist, psychologist, or recognized professional or paraprofessional acting or assisting in that capacity, (3) that are made, maintained, or used only in connection with the provision of treatment to the student, and (4) that are not available to anyone, except a physician or appropriate professional reviewing the record as designated by the student." Why is it your understanding that HIPAA supercedes that language?

**Ms. Knoblauch:** If you read FERPA in its entirety, it specifically excludes those records that are maintained by a physician or psychiatrist or psychologist. We have never considered our Student Health Services records as FERPA records, meaning that we would share them across the institution if another unit wanted those records, because of the confidentiality involved.

**Dr. Barone:** I am certainly in support of the spirit of what this is attempting to do, but the issue is that the Psychological Services Center now has a potential conflict between two worthy objectives: the protection of private health information and a certain method of providing a service that is, in our opinion, not a part of the health service component.

**Senator Crothers:** This policy will never pass in the Senate because we are going to raise all of these questions and have extensive debate. Alternatively, we can transmit this information to the Senate as an advisory item. I am reluctant to suggest this because it provides a mechanism by which potentially controversial policies can go through the system without any meaningful input from shared governance.

**President Boschini:** Every policy that we have is liquid. We can change it at anytime.

**Senator Crothers:** Even a good temporary policy that has not gone through the decision-making structures can easily be abused, so that is my area of reluctance.

**Senator Razaki:** I don't think that we are in a position to finish this today or by this deadline. It does seem reasonable to me that if a law firm has been asked to render an opinion, we should wait for that.

**Senator Crothers:** Do you have any sense of when that might occur?

**Ms. Knoblauch:** I should know within the week.

**Senator Crothers:** If indeed it turns out that the lawyer is not going to get to this soon, then we can refer it to Rules in the interim. At the very least, we can develop a memorandum of understanding as an interpretative frame.

### *Adjournment*

**Motion XXXIV-48:** To adjourn. The motion was approved by standing vote.