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**Meetings of the Board of Trustees**

**August 13, 2014**

# **Minutes**

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MINUTES OF MEETING  
**BOARD OF TRUSTEES**  
VOLUME 280  
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A special meeting of the Board of Trustees was held telephonically on Wednesday, August 13, 2014, beginning at 8:48 a.m.

The following Trustees were present: Masser (chairman), Casey (vice chairman), Barron, Benson, Brown, Cotner, Dambly, Dandrea, Doran, Eckel, Ferretti, Frazier, Goldstein, Greig, Harpster, Hintz, Huber, Jubelirer, Lord, Lubrano, McCombie, Mead, Oldsey, Peetz, Pope, Rakowich, Rucci, Shaffer, and Taliaferro.

Also present by invitation were staff members Dunham, Guadagnino, and Poole.

Chairman Keith Masser's opening remarks are included as follows:

"The Board met this morning in executive session to discuss this matter in a privileged session with our general counsel and outside counsel. The sole subject of the meeting today is to discuss a possible settlement of the litigation between the NCAA and certain Commonwealth parties related to the \$60-million fine in the NCAA Consent Decree.

"The University is a party in one of the two cases between the NCAA and the Commonwealth parties. We have convened a special meeting because the parties have asked for the Board's position in the settlement discussions. We distributed a draft resolution late yesterday that provides further background.

"Let me say at the outset that there is no agreement on the terms of a possible settlement. I invite the Trustees to provide any advice and counsel on what those terms should be. Let me note that we all, including the Trustee plaintiffs in the Paterno case, have in the meetings been appropriately sensitive to conflict issues that are presented by participation of those plaintiff Trustees in any Board action that relates to the University's position or in defense of the Paterno litigation. The resolution we have in front of us as to the Corman lawsuit has no connection to the Paterno litigation, which continues unaffected by this resolution. If we were to go into any Board action that relates to the issues in the Paterno litigation, then a vote on any such action by the plaintiff Trustees would raise issues of a conflict of interest.

"We are now ready to proceed with the public deliberations of a proposed resolution. A draft of the resolution was sent to all members of the Board yesterday afternoon. For the convenience of the public and the media, the text of the draft resolution is available on the University's website at <http://www.psu.edu/trustees/agenda/scheduleaugust132014.html>

"A possible settlement in the Endowment Act litigation has been discussed in the Legal Subcommittee, so I call on Rick Dandrea, as Chair of the Subcommittee, to make a brief introduction and move the resolution. After we have a second, we will open it up for discussion by any Trustee.

Trustee Anthony Lubrano called for a point of order, asking if Trustees would have an opportunity to present a resolution. Chairman Masser confirmed that a motion would be put on the floor, and that the discussion, at this public meeting, would be limited to the aforementioned motion and that amendments or substitutes could be introduced provided they were germane to the subject. Chairman Masser gave the floor to Trustee Rick Dandrea, Chair of the Legal Subcommittee.

Trustee Dandrea's remarks are included as follows:

"Pennsylvania Senator Jake Corman and Treasurer Rod McCord have filed a lawsuit against the NCAA that relates to the \$60-million fine that is part of the NCAA Consent Decree. The parties to the lawsuit have had preliminary settlement discussions, and the Commonwealth parties have asked for an expression of the Board's position on a possible settlement. That's the reason that we convened this special meeting on short notice today.

"The resolution distributed to the Board yesterday basically expresses two positions: first, the resolution endorses settling on terms that would result in payment of the \$60-million fine to the Commonwealth for distribution in Pennsylvania for the benefit of Pennsylvania children. Secondly, the resolution provides that any settlement should be consistent with the University's continuing commitment to full compliance with the Consent Decree.

"And with that introduction, I move that the Board adopt the resolution before us:"

1. Litigation was initiated in 2013 in the Commonwealth Court of Pennsylvania, *Corman v. National Collegiate Athletic Association* (the "Litigation"), regarding the enforcement and validity of the Pennsylvania Institution of Higher Education Monetary Penalty Endowment Act (the "Act"). The Litigation seeks as a remedy that, under the terms of the Act, the University should pay to the Commonwealth a \$60 million fine imposed on the University by the NCAA in the Consent Decree entered into between the NCAA and the University in July, 2012. Since early in the Litigation, the University has urged the parties to try to reach an amicable settlement. The University has recently been added as a party to this Litigation.
2. A federal court action between the NCAA and certain Commonwealth parties also related to the Act and the \$60 million fine is pending in the United States District Court for the Middle District of Pennsylvania. The University is not a party to this litigation.
3. The NCAA and the Commonwealth parties have expressed to the University their interest in settling both the Commonwealth Court Litigation and the federal action. Although the University is not a party in the federal action, the NCAA and the Commonwealth parties have requested the University to participate in the settlement discussions.
4. The parties in the Litigation have had preliminary discussions through counsel but have not reached agreement on any terms. The University understands that in all of the possible settlement scenarios that have been discussed by counsel for the Commonwealth parties, the NCAA and the University, the University would pay the \$60 million fine to the Commonwealth under the terms of the Act as requested in the Litigation by the Commonwealth parties. As part of such a settlement, both lawsuits would be dismissed. Pursuant to the terms of the Act and any such settlement, a central term is that the monies would be spent in Pennsylvania to assist victims of child sexual abuse and prevent future child sexual abuse.

5. The University believes such a settlement would advance and support the University's mission and be in the best interest of the University. It would also provide the Commonwealth parties the relief they are requesting in the Litigation. No amendment to the Consent Decree is necessary to achieve such a settlement. Perhaps most importantly, such a settlement would allow the fine money to be put to the purpose for which it was intended, protection of children in Pennsylvania. Such a settlement would be a win for the Commonwealth, a win for the University and a win for the children of Pennsylvania. The University urges the NCAA and the Commonwealth parties to join with it to pursue a settlement on such terms.
6. The full Board of Trustees repeatedly has been briefed on and has discussed legal issues related to the Consent Decree, the Act and the Litigation, including at the Board meetings on May 8-9, 2014. These briefings were updated in a privileged executive session with the full Board earlier this morning. The University administration welcomes further advice and counsel from the Trustees as to the terms of a possible settlement.
7. The Commonwealth parties have requested that the Board of Trustees consider and express its position on a possible settlement. The Commonwealth parties and the NCAA have also informed the University, through their counsel, of their desire to reach a settlement, if one is possible, by the end of August, 2014. Although action by the Board is not necessary for the University to agree to a settlement of the litigation, nevertheless, to accommodate these requests, the Board has convened this special meeting and adopts this Resolution as a statement of the Board's position.
8. Specifically, the Board would support a settlement in which the University, acting through its President, pursuant to his duly authorized and delegated authority under the University's governing documents, agrees that the \$60 million fine would be paid to the Commonwealth in compliance with the Act and with the Consent Decree for distribution in Pennsylvania for the benefit of Pennsylvania children. For the past two years, the University, with appropriate vigor, has complied with the terms of the Consent Decree, and the University remains committed to full compliance with the Consent Decree as amended from time to time. Any settlement should be consistent with this commitment.

A motion to approve the foregoing resolution was seconded by Trustee Karen Peetz.

Trustee Lubrano cited concerns about paragraph 8 of the resolution, which he read aloud, and requested that the motion be tabled in order to provide the Trustees an opportunity to have sufficient time to review and deliberate the terms of the resolution with regard to the Board's acceptance of the Consent Decree. Trustee Lord requested that Trustee Ryan McCombie be permitted to read into the record comments related to issues that should be recognized by the Board with respect to the acceptance of the resolution.

Trustee McCombie read aloud the following comments:

"Whereas, litigation initiated in 2013 in the Commonwealth Court Of Pennsylvania, Corman et al. vs. the National Collegiate Athletic Association, the litigation, to determine that under the terms of the Higher Education Monetary Penalty Endowment Act, the Act, the \$60-million fine imposed on the University by the NCAA pursuant by the July 2012 Consent Decree must be paid to the Commonwealth.

"Whereas, after disputed issues of fact arose regarding the validity of the Consent Decree that underlines all the other issues in the litigation, the Court ordered that the University be added as party to protect the University's interest in that regard;

"Whereas, the parties in the litigation have had preliminary discussion, through counsel, but have not reached agreement on any terms;

"Whereas, a Federal Court action between the NCAA and certain Commonwealth parties also related to the Act is pending in the United States District Court for the Middle District of Pennsylvania, although the University is not a party in the federal action, the NCAA and the Commonwealth parties have requested the University to participate in the settlement discussions intended to achieve a global resolution in the litigation and the federal action;

"Whereas, the Commonwealth parties have requested that the Board of Trustees consider and express its position on a possible settlement;

"Whereas, no meaningful discovery has yet occurred in the litigation, the University has not yet fulfilled its obligation, and the mandate for the Pennsylvania Commonwealth Court of Appeals to resolve disputed factual issues regarding the validity of the Consent Decree, including, for example: Was the Freeh Report accepted or discussed by the Board? If yes, was it done in a public meeting or in executive discussion? Was it discussed or accepted by the full Board or by the Executive Committee? Who specifically crafted the Consent Decree? Was a Consent Decree discussed or accepted by the Board? If yes, was it done in a public meeting or an executive session? Was it discussed or accepted by the full Board or by the Executive Committee? Did the general counsel advise the Board to accept the Consent Decree? Did the general counsel advise the Board to accept the Freeh Report? What were the substance of the communications between and among Louis Freeh, Freeh Sporkin & Sullivan, and the NCAA? Has the Board seen all such communication? Did the Board see those communications prior to agreeing to a Consent Decree?;

"Whereas, the Board would support a settlement in which the University agrees that provided the Consent Decree is voided in its entirety, and agreement is put in place that recognizes the legal and factual defects as a Consent Decree as set forth below, a \$60-million fine would be paid to the Commonwealth in compliance with the Act?;

"It is, therefore, resolved that the University should pursue a settlement of the litigation that, A., acknowledges the insufficiency of the Freeh Report for purposes of the Consent Decree. All remaining sanctions imposed on the University by the NCAA, returns penalty funds paid into escrow by the University and rescinds further obligation under that penalty; authorizes and requests that, consistent with the University's commitment to transparency, NCAA to release all of its communications between and among the University, Freeh Sporkin & Sullivan, the Freeh Group, and/or Louis Freeh; acknowledges Jerry Sandusky's sole responsibility for the crimes he committed; acknowledges the NCAA accepted and publicize the University's acceptance of the Consent Decree, notwithstanding the fact that the NCAA knew that the University Board of Trustees had not yet conducted a vote regarding its validity; acknowledges and regrets

crimes committed on this University property; acknowledges settlements made with victims and University's compassion by those harmed by its former employee, Jerry Sandusky; agrees the University will not pursue the NCAA for tens of millions of dollars of forgone revenue caused by the sanctions imposed on the University more than two years ago; recommends that the Commonwealth acknowledges this and further agree to forego any further litigation against the NCAA with respect to the Consent Decree's validity; and recognizes that parties forego further action against signers of the Consent Decree except as set forth in this agreement."

Chair Masser stated that the motion, in its current form, is the resolution intact.

Trustee Robert Jubelirer stated that this is the first time that the Board of Trustees has had to review the consent agreement, and that he believes that much more time is required to do so. He moved that paragraph 8 of the resolution be deleted and asked for a roll call vote. A second was provided by Trustee Oldsey.

Trustee Allison Goldstein asked if the Chairman would honor the opportunity for some discussion to occur prior to taking the vote. She further stated that the removal of the final two sentences would satisfy the suggested objective. Trustee Jubelirer concurred, and agreed to amend his motion to delete only the last two sentences of paragraph 8. Trustee Oldsey seconded the amended motion. Trustee Kathleen Casey stated that the removal of language in paragraph 8 would suggest that we are backing away from the continued commitment to full compliance with the consent agreement.

Chairman Masser called for a roll call vote on the removal of the last two sentences of resolution paragraph 8 as proposed by Trustee Jubelirer. The vote to amend the original resolution was defeated, 8-18. Two Trustees abstained.

Chairman Masser called for a roll call vote on the resolution as it was originally presented. The vote to accept the original resolution passed, 19-8. Two Trustees abstained.

The meeting adjourned at 9:53 a.m.

Respectfully submitted,

Janine S. Andrews  
Associate Secretary,  
Board of Trustees