



TABLE OF CONTENTS FOR HEALTH AFFAIRS COMMITTEE

Committee Meeting: 8/11/2004

Board Meeting: 8/12/2004
U. T. M. D. Anderson Cancer Center

Rita C. Clements, *Chairman*
H. Scott Caven, Jr.
Judith L. Craven, *M.D.*
Cyndi Taylor Krier
Robert B. Rowling

	Committee Meeting	Board Meeting	Page
Convene	<i>12:30 p.m.</i> <i>Chairman Clements</i>		
1. U. T. System: Adjust the Plan Participant Premium Rate for the U. T. System Professional Medical Liability Benefit Plan effective September 1, 2004, and return a portion of Plan Reserves to participating U. T. System health components	<i>12:30 p.m.</i> Action <i>Mr. Godfrey</i>	Action	49
2. U. T. System: Amendments to The University of Texas System Professional Medical Liability Benefit Plan	<i>12:40 p.m.</i> Action <i>Mr. Godfrey</i>	Action	54
3. U. T. Health Science Center - Houston: Honoric naming of the Department of Ophthalmology and Visual Science as the Richard S. Ruiz, M.D. Department of Ophthalmology and Visual Science	<i>12:45 p.m.</i> Action <i>Dr. Willerson</i>	Action	71
4. U. T. Medical Branch - Galveston: Correctional Managed Health Care	<i>12:50 p.m.</i> Report <i>Dr. Stobo</i>	Not on Agenda	72
5. U. T. Southwestern Medical Center - Dallas: Authorization to enter into a letter of intent regarding the proposed acquisition of Zale Lipshy University Hospital and St. Paul University Hospital	<i>1:10 p.m.</i> Action <i>Dr. Wildenthal</i>	Action	73
6. U. T. System: Proposed Austin Academic Health Center	Not on Committee Agenda <i>1:45 p.m.</i>	Report <i>Dr. Shine</i>	80
Adjourn			

1. **U. T. System: Adjust the Plan Participant Premium Rate for the U. T. System Professional Medical Liability Benefit Plan Effective September 1, 2004, and Return a Portion of Plan Reserves to Participating U. T. System Health Components**

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs and the Vice Chancellor and General Counsel that the faculty and resident participant premium rates for Fiscal Year 2005 for The University of Texas System Professional Medical Liability Benefit Plan (Plan) be increased by an average of 4% effective September 1, 2004. The proposed premiums reflect a trend in increased claims payment amounts. It is further recommended that \$35 million be returned to the participating U. T. System component institutions. The current and proposed premium rates are set forth in Exhibits 1 and 2 (Pages 51 - 53).

BACKGROUND INFORMATION

Pursuant to the authority of Texas Education Code Section 59.01 et seq., the U. T. Board of Regents adopted The University of Texas System Professional Medical Liability Benefit Plan to provide coverage for certain physicians and medical students of the U. T. System. The Plan went into effect on April 1, 1977, and is funded primarily by the payment of premiums from the Faculty Physician Practice Plans of the component health institutions of the U. T. System. It is recommended that the U. T. Board of Regents approve an increase in participant premium rates projected for Fiscal Year 2005 for the Plan year effective September 1, 2004.

Actuaries from Tillinghast-Towers Perrin (Tillinghast), the nation's largest medical liability insurance plan actuarial firm, have reviewed the Plan's 27-year experience and recommend experience-based premiums related to the claims loss of each U. T. System health component. The 78th Legislature passed tort reform measures that will limit the liability for state employed physicians and dentists to \$100,000, and Tillinghast incorporated that statutory change into its premium calculation last fiscal year.

The Plan has reserves above the actuarially projected risks associated with the Plan, and it is recommended that a return of \$35 million, representing a portion of such reserves, be returned to participating U. T. System component institutions, via a formula to be determined by the Chancellor. This will be the eighth consecutive year for a partial return of Plan reserves.

As of August 31, 2003, there were 5,550 staff and resident physicians of the U. T. System covered by the Plan, with basic liability limits of \$500,000 per claim for staff physicians and \$100,000 for residents. In addition, approximately 3,332 medical students are enrolled in the Plan by paying \$25 a year for \$25,000 in coverage.

The University of Texas System Professional Medical Liability Benefit Plan
Summary of Rates by Risk Class by Health Component

Risk Class 1

Health Component	Current Rates As of 9/1/2003		Selected Rates As of 9/1/2004		Rate Change	
	Staff	Resident	Staff	Resident	Staff	Resident
(1)	(2)	(3)	(4)	(5)	(6)	(7)
UT Cancer Center	\$1,064	\$996	\$1,025	\$959	-3.7%	-3.7%
UT SMC Dallas	988	924	1,019	953	3.1%	3.1%
UTMB Galveston	1,571	1,469	1,675	1,567	6.6%	6.7%
UT HSC Houston	1,480	1,385	1,624	1,519	9.7%	9.7%
UT HSC San Antonio	1,183	1,107	1,214	1,137	2.6%	2.7%
UT HC Tyler	1,384	1,295	1,452	1,358	4.9%	4.9%
UT Austin	1,183	1,107	1,214	1,137	2.6%	2.7%
UT Arlington	1,183	1,107	1,214	1,137	2.6%	2.7%

Risk Class 2

Health Component	Current Rates As of 9/1/2003		Selected Rates As of 9/1/2004		Rate Change	
	Staff	Resident	Staff	Resident	Staff	Resident
(1)	(2)	(3)	(4)	(5)	(6)	(7)
UT Cancer Center	\$1,665	\$1,558	\$1,603	\$1,500	-3.7%	-3.7%
UT SMC Dallas	1,546	1,446	1,594	1,491	3.1%	3.1%
UTMB Galveston	2,458	2,299	2,620	2,453	6.6%	6.7%
UT HSC Houston	2,316	2,168	2,541	2,378	9.7%	9.7%
UT HSC San Antonio	1,851	1,733	1,899	1,780	2.6%	2.7%
UT HC Tyler	2,166	2,027	2,272	2,126	4.9%	4.9%
UT Austin	1,851	1,733	1,899	1,780	2.6%	2.7%
UT Arlington	1,851	1,733	1,899	1,780	2.6%	2.7%

Risk Class 3

Health Component	Current Rates As of 9/1/2003		Selected Rates As of 9/1/2004		Rate Change	
	Staff	Resident	Staff	Resident	Staff	Resident
(1)	(2)	(3)	(4)	(5)	(6)	(7)
UT Cancer Center	\$2,660	\$2,489	\$2,562	\$2,397	-3.7%	-3.7%
UT SMC Dallas	2,469	2,310	2,546	2,382	3.1%	3.1%
UTMB Galveston	3,926	3,672	4,185	3,918	6.6%	6.7%
UT HSC Houston	3,700	3,463	4,059	3,799	9.7%	9.7%
UT HSC San Antonio	2,957	2,768	3,034	2,843	2.6%	2.7%
UT HC Tyler	3,460	3,237	3,630	3,396	4.9%	4.9%
UT Austin	2,957	2,768	3,034	2,843	2.6%	2.7%
UT Arlington	2,957	2,768	3,034	2,843	2.6%	2.7%

Risk Class 4

Health Component	Current Rates As of 9/1/2003		Selected Rates As of 9/1/2004		Rate Change	
	Staff	Resident	Staff	Resident	Staff	Resident
(1)	(2)	(3)	(4)	(5)	(6)	(7)
UT Cancer Center	\$4,948	\$4,629	\$4,765	\$4,458	-3.7%	-3.7%
UT SMC Dallas	4,593	4,297	4,735	4,430	3.1%	3.1%
UTMB Galveston	7,303	6,829	7,785	7,287	6.6%	6.7%
UT HSC Houston	6,882	6,441	7,550	7,066	9.7%	9.7%
UT HSC San Antonio	5,499	5,149	5,642	5,288	2.6%	2.7%
UT HC Tyler	6,435	6,022	6,750	6,317	4.9%	4.9%
UT Austin	5,499	5,149	5,642	5,288	2.6%	2.7%
UT Arlington	5,499	5,149	5,642	5,288	2.6%	2.7%

For easier presentation the premium rates and rate changes shown here have been rounded by Tillinghast-Towers Perrin, the Plan actuary.
 July 2004

The University of Texas System Professional Medical Liability Benefit Plan
Summary of Rates by Risk Class by Health Component

Risk Class 5

Health Component (1)	Current Rates As of 9/1/2003		Selected Rates As of 9/1/2004		Rate Change	
	Staff (2)	Resident (3)	Staff (4)	Resident (5)	Staff (6)	Resident (7)
UT Cancer Center	\$7,289	\$6,820	\$7,019	\$6,568	-3.7%	-3.7%
UT SMC Dallas	6,766	6,330	6,976	6,526	3.1%	3.1%
UTMB Galveston	10,758	10,061	11,468	10,735	6.6%	6.7%
UT HSC Houston	10,137	9,488	11,120	10,408	9.7%	9.7%
UT HSC San Antonio	8,101	7,586	8,312	7,791	2.6%	2.7%
UT HC Tyler	9,479	8,871	9,943	9,306	4.9%	4.9%
UT Austin	8,101	7,586	8,312	7,791	2.6%	2.7%
UT Arlington	8,101	7,586	8,312	7,791	2.6%	2.7%

All Risk Classes Combined

Health Component (1)	Current Rates As of 9/1/2003		Selected Rates As of 9/1/2004		Rate Change	
	Staff (2)	Resident (3)	Staff (4)	Resident (5)	Staff (6)	Resident (7)
UT Cancer Center	\$2,559	\$3,088	\$2,464	\$2,974	-3.7%	-3.7%
UT SMC Dallas	2,708	2,461	2,792	2,538	3.1%	3.1%
UTMB Galveston	4,265	4,006	4,546	4,274	6.6%	6.7%
UT HSC Houston	3,911	8,392	4,290	9,206	9.7%	9.7%
UT HSC San Antonio	2,794	3,044	2,867	3,127	2.6%	2.7%
UT HC Tyler	2,678	4,061	2,809	4,260	4.9%	4.9%
UT Austin	NA	NA	NA	NA	NA	NA
UT Arlington	NA	NA	NA	NA	NA	NA
Total/Weighted Average	3,127	3,241	3,252	3,370	4.0%	4.0%

Notes:

(2), (3) Current rates as of 9/1/2003.

(4), (5) Based on UT rate review.

(6) = (4) / (2) - 1.000

(7) = (5) / (3) - 1.000

The University of Texas System Professional Medical Liability Benefit Plan
Dental Rates by Health Component

Health Component (1)	Rates as of 9/1/2003		Rates as of 9/1/2004		Rate Change	
	Staff (2)	Residents (3)	Staff (4)	Residents (5)	Staff (6)	Resident (7)
<u>Dentist - NOC (Risk Class A)</u>						
UT Cancer Center	\$372	\$348	\$358	\$335	-3.8%	-3.7%
UT SMC Dallas	346	323	357	333	3.2%	3.1%
UTMB Galveston	550	514	586	548	6.5%	6.6%
UT HSC Houston	518	485	568	532	9.7%	9.7%
UT HSC San Antonio	414	388	425	398	2.7%	2.6%
UT HC Tyler	484	453	508	475	5.0%	4.9%
UT Austin	414	388	425	398	2.7%	2.6%
UT Arlington	414	388	425	398	2.7%	2.6%
<u>Dentist - Oral Surgery (Risk Class B)</u>						
UT Cancer Center	\$1,665	\$1,558	\$1,603	\$1,500	-3.7%	-3.7%
UT SMC Dallas	1,546	1,446	1,594	1,491	3.1%	3.1%
UTMB Galveston	2,458	2,299	2,620	2,453	6.6%	6.7%
UT HSC Houston	2,316	2,168	2,541	2,378	9.7%	9.7%
UT HSC San Antonio	1,851	1,733	1,899	1,780	2.6%	2.7%
UT HC Tyler	2,166	2,027	2,272	2,126	4.9%	4.9%
UT Austin	1,851	1,733	1,899	1,780	2.6%	2.7%
UT Arlington	1,851	1,733	1,899	1,780	2.6%	2.7%

Notes:

(2),(3) Current rates as of 9/1/2003.

(4),(5) Dentist Rates = Physician Class 1 Rates Effective 9/1/2004 x 0.35.

Dentist-Oral Surgery Rates = Physician Class 2 Rates Effective 9/1/2004.

(6) = (4) / (2) - 1.00.

(7) = (5) / (3) - 1.00.

2. **U. T. System: Amendments to The University of Texas System Professional Medical Liability Benefit Plan**

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs and the Vice Chancellor and General Counsel that The University of Texas System Professional Medical Liability Benefit Plan be amended in congressional style on Pages 55 - 70 to be effective September 1, 2004.

BACKGROUND INFORMATION

Authority for the establishment of a self-insurance program to indemnify U. T. physicians was granted to the Board of Regents by Senate Bill 391, Acts of the 65th Legislature, effective March 10, 1977 (later codified as Texas Education Code Section 59.01 et seq.). The Plan for Professional Medical Malpractice Self-Insurance was originally approved by the Board of Regents on April 15, 1977. Since the Plan was first approved, it has been amended several times with the most recent amendment on February 13, 2003, when coverage for dentists was added.

In addition to numerous proposed amendments aimed at consistency and clarity in interpreting the terms of the Plan, one substantive change is proposed. In Fall 2003, a Task Force of U. T. physicians and attorneys was appointed to discuss recent tort reform measures and the impact on U. T. physicians and component institutions. The Task Force overwhelmingly recommended expanding coverage to provide legal representation before the Texas State Board of Medical Examiners and the Texas State Board of Dental Examiners. The proposed amendments to Articles II, III, and V provide coverage for legal representation in disciplinary, licensing or similar administrative proceedings up to \$25,000 per proceeding and \$100,000 per enrollment year, unless other Plan exclusions apply. No fines, penalties, or costs assessed as a result of the proceedings will be covered.

**THE UNIVERSITY OF TEXAS SYSTEM
PROFESSIONAL MEDICAL LIABILITY BENEFIT PLAN**

(Effective September 1, 2004)

**ARTICLE I
PURPOSE**

The purpose of The University of Texas System Professional Medical Liability Plan (“Plan”) ~~this Plan~~ is to provide certain health care providers ~~Medical Members~~ and ~~medical~~ students of The University of Texas System (“System”) with ~~medical~~ professional liability indemnity from and against medical and dental liability claims pursuant to the authority granted to the Board of Regents of The University of Texas System by Texas Education Code, Section 59.01 et seq. Senate Bill 391, Acts of the 65th Legislature, which Act became effective March 10, 1977, ~~as amended~~.

**ARTICLE II
DEFINITIONS**

~~This Plan shall be known as the Professional Medical Liability Benefit Plan (“Plan”).~~ Unless otherwise required by the context, the following definitions ~~terms~~ shall control:

A. **Plan Participant** ~~Medical Members~~ shall mean:

1. Staff physicians and dentists who are medical ~~Medical~~ doctors, oral surgeons, oral pathologists, dentists, doctors of osteopathy, ~~or and~~ podiatrists appointed to the full-time faculty of a medical or dental school or hospital of the System, medical doctors employed ~~full-time~~ in health services at and by a general academic institution of the System, ~~residents of such disciplines participating in a patient-care program in the System, and fellows whose salaries are paid by a System health component, who are duly licensed, credentialed, and registered to practice their profession;~~
2. Residents and fellows enrolled in a residency program or fellowship at a System medical or dental school who are duly licensed, credentialed, and registered to practice their profession;
3. Medical ~~medical~~ doctors, oral surgeons, oral pathologists, dentists, doctors of osteopathy, and podiatrists appointed to the faculty of a medical school or hospital of the System on a part-time or volunteer basis, and who either devote their total professional service to such appointments or provide

services to patients by assignment from the department chairman. For purposes of the Plan, such persons are "Plan Participants Medical Members" only when providing services to patients in conjunction with supervision of medical or dental students or residents physicians by assignment from the department chairman and shall become Participants in the Plan only as provided in Article IV, Section 2; and

3. ~~Residents who work additional hours for additional compensation at a U. T. System health facility or facility affiliation with the U. T. System, will be provided coverage as long as the situation meets the requirements of the Accreditation Council for Graduate Medical Education (including requirements of supervision and restrictions on allowable number of work hours), and the work has previously been identified as part of the resident's general training program.~~
 4. Medical or dental students of a medical or dental school of the System and only when participating (with prior approval of such medical or dental school) in a patient-care program of a duly accredited medical or dental school under the direct supervision of a faculty member of the school conducting such program.
- B. ~~**Participant** means any Medical Member qualifying under Article IV for participation in this Plan. The coverage afforded applies separately to each Participant against whom claim is made or suit is brought, except with respect to the limits of the System's liability.~~
- C. ~~**Medical Liability Claim** means a claim, lawsuit or cause of action (arising within the Plan territory) based upon treatment, or lack of treatment within the United States of America, its territories or possessions, or Canada, or other claimed departure that departs from accepted standards of medical or dental care which proximately results in injury to or death of a the Participant's patient, whether the claim or cause of action sounds in tort or contract, subject to the exclusions described in Article V, Section 4, below.~~
- C. **Disciplinary and Licensing Actions** means any disciplinary, licensing, or similar administrative proceeding brought against a Participant by the Texas State Board of Medical Examiners or Texas State Board of Dental Examiners that arises from professional services, except those excluded pursuant to Article V, Section 4.
- D. **System** means The University of Texas System.
- E. **Board** means the Board of Regents of The University of Texas System.

- F. **Fund** means the Professional Medical Liability Fund established by the Board.
- G. **Administrator** means the Vice Chancellor and General Counsel of The University of Texas System.
- H. **Damages** means all damages, including damages for death, which are payable because of injury to which the Plan applies, but does not include exemplary or punitive damages.
- I. **Coverage** means the medical liability indemnity and legal representation afforded Participants by this Plan.
- J. **Plan territory** means
1. The United States of America, its territories or possessions, or Canada; or
 2. Anywhere in the world for medical doctors, oral surgeons, oral pathologists, doctors of osteopathy, or podiatrists, provided the original suit for damages is brought within the United States of America, its territories or possessions, or Canada.
- K. **Annual Enrollment period** means from April 1, 1977 through March 31, 1978, and each succeeding twelve-month period (from April 1, through March 31) or part thereof terminating with the termination of this Plan begins on the date the Participant has a System appointment and meets the conditions for participation under Article IV below and ends on August 31st after enrollment begins.
- ~~KL.~~ **Certificate of Coverage** means that document issued to the Plan Participant Medical Member by The University of Texas the System specifying the terms and conditions of the Plan benefits enrollment period and limits of coverage.
- ~~LM.~~ **Professional services** means medical, dental or health care and treatment.
- ~~N.~~ **Utilization review** means ~~the review of the medical care of a patient by a physician for the purpose of determining quality of care, determining medical necessity of care or treatment or whether a specific medical treatment or consultation will be authorized, or determining in what setting or what type of health care provider will provide the treatment or consultation, in which the physician has had no contemporaneous personal involvement in the care being evaluated. This review may include a review of medical records, medical history or patient examinations in whatever form transmitted (oral, written or electronic).~~
- M. **Plan year** means the twelve-month period beginning on September 1 and ending on August 31 of each year.

ARTICLE III APPLICABILITY OF PLAN PROVISION

The coverage afforded by this Plan is subject to the particular terms, conditions, and limitations (including, but not limited to limits of liability) of this Plan and the interpretation thereof by the Board or the Plan Administrator. Notwithstanding any other language of the Plan, the coverage afforded by the Plan applies only to ~~Medical Liability Claims and Disciplinary and Licensing Actions~~ arising out of incidents, transactions or events occurring on or after April 1, 1977.

ARTICLE IV CONDITIONS FOR PARTICIPATION

Section 1

Each ~~person who is a~~ Participant on the effective date of the Plan, and each person who becomes a Participant thereafter, as long as this Plan remains in effect, shall participate in the Plan provided, that

- A. Each medical or dental student, as an additional condition of participation, must pay into the Fund a fee in such amount or amounts, and at such time or times, as may be required by the Board; and
- B. A medical doctor employed ~~full-time~~ in health services at and by a general academic institution of the System shall not become a participant unless and until:
 - 1. ~~All medical doctors so employed by such institution elect to participate in the Plan,~~
 - 2. Such institution files with the Administrator a written application, on behalf of such medical doctors, for participation in the Plan, and
 - 23. Such application is approved and accepted by the Administrator.

Section 2

Plan Participants ~~Medical Members~~ as defined in Article IIA.3 ~~2~~ above shall become participants in the Plan upon written designation by the president ~~chief administrative officer~~ of the health care institution with the approval of the Administrator and the Executive Vice Chancellor for Health Affairs.

Section 3

Residents and fellows who work additional hours for additional compensation at a System health facility or facility affiliated with the System, will be provided coverage as long as it meets the requirements of the Accreditation Council for Graduate Medical Education (including requirements of supervision and restrictions on allowable number of work hours), and the work has previously been identified as part of the resident's or fellow's general training program and fees generated for professional services are deposited in a System health component practice plan, trust or affiliated foundation or certified not-for-profit corporation as approved by the Board.

ARTICLE V COVERAGE OF PARTICIPANTS

Section 1 -- Payments on Behalf of Participants

- A. Except as otherwise provided herein, the System will pay on behalf of each Participant, from monies in the Fund, all sums which the Participant shall become legally obligated to pay as damages because of a ~~Medical Liability Claim~~ arising from the exercise of the Participant's employment, duties or training with the System as a Plan Participant Medical Member performed in the practice of the Participant's ~~his or her~~ profession, including service by the Participant as a member of a formal accreditation or similar professional board or committee of a hospital or professional society with respect to medical staff privileges, accreditation or disciplinary matters related to competency.
- B. Coverage for Plan Participants Medical Members as defined in Article IIA. 3 2 above shall be limited to claims arising from assigned teaching activities and supervision of medical or dental students, and residents and fellows physicians performed within the course and scope of the Participants' assignments as ~~evidenced in writing.~~
- C. ~~Coverage for Participants shall be subject to the conditions applicable to the Medical Member through his or her Certificate of Coverage.~~
- D. Peer review performed at the request of a credentialing body or a professional society for the purpose of determining quality of care is covered provided that any funds generated from the review are deposited into the practice plan as required by the practice plan bylaws. ~~Utilization review decisions made by a participant that are pursuant to a contract with an insurance company or managed care organization as a provider of health services in which the physician has a contemporaneous personal involvement in the care of the patient care is covered.~~

- D. Coverage for Plan Participants for Disciplinary and Licensing Actions shall be limited to legal representation of the Plan Participant by an attorney in a proceeding brought against the Plan Participant by the Texas State Board of Medical Examiners or Texas State Board of Dental Examiners that arises from a covered activity, subject to the limitation in Section 3 D below and exclusions set forth in Section 4 below.

Section 2 -- Defense of Lawsuits

The System shall have the right and duty to defend any claim or lawsuit against a Participant seeking damages because of such injury even if any of the allegations of the claim or lawsuit are groundless, false or fraudulent. The System may make such investigation and settlement of any claim or lawsuit, as it deems appropriate ~~expedient~~. The System shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the System's liability has been exhausted by payment of judgments or settlements, or monies in the Fund have been exhausted. The System has no duty to defend any claims not covered by the ~~this~~ Benefit Plan.

Section 3 -- Supplementary Payments

The System will pay from the Fund, in addition to the applicable limit of liability:

- A. All expenses incurred by the System in investigating and defending any lawsuit, all costs taxed against the Participant in any suit defended by the System, and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the System has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the System's liability thereon;
- B. Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such lawsuit for an amount not in excess of the applicable limit of liability of this Plan, but the System shall have no obligation to apply for or furnish any such bonds.
- C. Reasonable, personal expenses incurred by a Participant ~~or former Participant~~ at the System's request in assisting the System in the investigation or defense of any claim or lawsuit.
- D. Costs and expenses incurred in connection with the investigation and defense of a disciplinary and licensing action brought against the Participant; however the Plan will not pay more than \$25,000 in costs and expenses on behalf of a Participant for any single proceeding. Furthermore, the Plan will not pay more than \$100,000 for costs and expenses on behalf of a Participant for all such proceedings during an annual enrollment period.

Section 4 -- Exclusions

The System will not defend or indemnify a Participant ~~pay under this coverage~~ for:

- A. Injury arising out of the performance by the Participant of any illegal, dishonest, fraudulent, criminal, or malicious act or omission by the Participant unless Participant had no reasonable cause to believe his conduct was unlawful or illegal;
- B. Any claims or lawsuits alleging ~~based upon the violation of state or federal laws relating to,~~ including antitrust statutes, fraud and abuse, anti-kickback, and illegal remuneration laws;
- C. Injury arising out of any sexual conduct of the Participant, including but not limited to sexual harassment and sexual relations, and including, without limitation, when intentionally or negligently done in connection with any professional service, act or omission, and regardless of whether such conduct is alleged to constitute negligence;
- D. Any injury caused while Participant is acting under the influence of alcohol or controlled substances or as a result of excessive use of therapeutic drugs;
- E. Any use, administration or prescription of any drug or pharmaceutical disapproved or not yet approved by the United States Food and Drug Administration for treatment for human beings; unless such use, administration or prescription has been approved by the Institutional Review Board of the health care institution where such drug or pharmaceutical was used, administered or prescribed;
- F. Any liability arising out of any professional or licensed service, act or omission outside the scope of Participant's employment with System;
- G. Injury for which the Participant may be held liable as a proprietor, stockholder, owner, member of the board of directors, governors or trustees, superintendent, executive officer, department head or medical director of any non-System owned or managed hospital, sanitarium, laboratory, clinic with bed and board facilities, infirmary, nursing home, foundation, surgical center, blood bank, commercial or any other business enterprise whether or not related to patient care and/or treatment; but, this exclusion shall not be applied to responsibilities which require the special expertise or training of a physician or surgeon and which are not principally executive or administrative in nature;

- H. ~~Injury, of an individual practitioner,~~ arising out of the rendering of or failure to render professional services by any other person for whose acts or omissions the Participant may be held liable as a member, partner, officer, director or stockholder of any professional partnership, association or corporation;
- I. Injury to any employee of the Participant arising out of and in the course of that person's employment by the Participant;
- J. Any obligation for which the Participant or any carrier acting as insurer may be liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- K. Any liability or indemnity obligation assumed by the Participant under contract or agreement, except to the extent endorsed hereto;
- L. Injury to any employee (past or present) or applicant for employment or patient of the Participant based upon actual ~~Actual~~ or alleged discrimination based on ~~because of~~ race, religion, color, sex, national origin, age, veteran status, or disability or handicap ~~against a past or present employee or any applicant for employment with any insured, any participant, or any patient;~~
- M. Damage to property:
 - 1. owned, occupied or rented by a Participant;
 - 2. used by a Participant;
 - 3. in any Participant's care, custody or control; or
 - 4. over which a Participant is exercising physical control for any reason;
- N. Any fines, penalties, the return or withdrawal of fees or government payments, including any fines, penalties or costs assessed against a Participant by the Texas State Board of Medical Examiners or Texas State Board of Dental Examiners as a result of a Disciplinary and Licensing Action;
- O. Any award of punitive or exemplary damages, treble or multiple damages;
- P. Any claim arising out of professional services which occurred prior to the ~~prior acts~~ date of this Plan;
- Q. Any claim arising out of professional services which occurred ~~happened~~ after the termination of faculty appointment, residency or ~~medical~~ student status with the System;

- R. Any claim arising out of professional services where the professional services were billed for by the Participant and were not deposited in a System health component practice plan trust or affiliated foundation or certified not-for-profit corporation as approved by the U. T. Board of Regents;
- S. Any claim arising out of professional services performed for professional fees, salaries or other compensation by a Plan Participant that is not part of the Plan Participant's employment with the System or training program Residents or Fellows at a non-System-owned health care facility (moonlighting); and
- T. Legal representation of a Plan Participant before the Texas State Board of Medical Examiners or Texas State Board of Dental Examiners in a Disciplinary and Licensing Action arising out of any activity that is excluded under this Plan
~~Any claim arising out of a request by a managed care company or an insurance company for a Participant to provide utilization review services in which the Participant has no contemporary personal involvement in the care being evaluated.~~

ARTICLE VI PARTICIPANTS' OBLIGATIONS

Section 1 -- ~~Assistance and Cooperation of Participant~~

~~Upon the Participant's becoming aware of an occurrence or incident involving an injury or death, or an alleged injury or death, to which this Plan applies, or may apply, written notice containing particulars sufficient to identify the Participant and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the patient and of available witnesses, shall be given by or for the Participant to the Administrator as soon as practicable.~~

Section 2-- ~~Notice of Claim, or Suit~~ Disciplinary and Licensing Action

The Participant shall give written notice to the System as soon as practicable of any claim made against the Participant. The notice shall identify the Participant and contain reasonably obtainable information with respect to the time, place and circumstances of the injury, including the names and addresses of the patient injured and of available witnesses. If a claim is made or a lawsuit is brought against the Participant, the Participant shall immediately forward to the Administrator every demand, notice, summons, or other process received by the Participant in accordance with administrative procedures ~~regulations for the Plan~~ prescribed or approved by the Administrator.

The Participant shall give written notice to the System as soon as practicable of any disciplinary and licensing action taken against the Participant for which the Participant seeks coverage.

Section 2 3 -- Cooperation by Participant

The Participant shall cooperate with the System and, upon the System's request, respond to discovery requests, attend meetings with Plan representatives or defense counsel, and attend mediations and trials. Further, the Participant shall cooperate with the System assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Participant because of injury or damage with respect to which coverage is afforded under this Plan. The Participant shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Participant shall not, except at Participant's own cost, and after informing the Administrator in writing, voluntarily make any payment, assume any obligation or incur any expense. The Participant shall not take any affirmative act or omission which may reasonably prejudice the defense of the claim or lawsuit. The taking of any affirmative act or omission which prejudices the defense of the claim or lawsuit shall entitle the System, but not obligate the System, to deny indemnity for any or all claims or lawsuit so prejudiced.

Section 3 4 -- Nonassignability of Interest in Plan

The Participant's interest under this Plan is nonassignable. If any Participant shall die or be adjudged incompetent, this Plan shall thereupon terminate automatically as to such Participant, but shall indemnify and defend ~~cover~~ the legal representative of such Participant's estate as a Participant with respect to liability previously incurred and covered by this Plan.

ARTICLE VII LIMITS OF LIABILITY

- A. The Plan's liability shall not exceed the limits of liability stated below, and such stated limits shall be applied as follows:
1. ~~The "per claim" limit of liability is the maximum liability the Plan can owe for a claim first made during an annual period of this Plan and covered by this Plan as a Plan Incident. A single "per claim" limit of liability shall be applicable to a Liability Claim Plan Incident regardless of the number of claimants or Plan Participants involved claims made, lawsuits filed, or physicians involved in a Plan Incident, and regardless of the number of annual periods involved with any Plan Incident.~~
 - a. A single "per claim" limit of liability shall apply to claims involving ~~If a Plan Incident involves~~ injuries to more than one patient such as in obstetrical services to the mother and fetus/child or children, a single "per claim" limit of liability shall be applicable for all such claims and resulting lawsuits.

- ~~b.~~ A Likewise, a single “per claim” limit of liability shall apply be applicable to all claims by both the patient and by the family members or the heirs or estate of such patient, including derivative claims, claims for loss of consortium, claims of beneficiaries under the Texas Wrongful Death Statute and claims for mental anguish and related injuries associated with bystander perception or reaction to the injuries sustained by the patient.
- ~~c.~~ Plan coverage limits of liability, ~~therefore,~~ will not be stacked, added or combined in any manner to increase liability under this Plan even though multiple claimants, multiple claims or injuries, multiple lawsuits, or annual periods may be involved within a Liability Claim Plan Incident.

2. The “annual aggregate for all claims for all Participants” is the maximum amount of money the Plan will pay to indemnify all Participants for all Liability Claims arising during any one Plan year ~~limit of liability is the maximum liability the Plan can owe for the aggregate of all Plan Incidents for which claims are first made during an annual period of the Plan for all participants in the Plan.~~

~~B. When a claim is first made during an annual period as to the Participant, and thereafter, during the same or a subsequent annual period, one or more additional claims or lawsuits are reported arising out of, directly or indirectly, the same Plan Incident, all such subsequent claims or lawsuits shall be considered to have been first made against such Participant at the same time and during the same annual period as such claim was initially reported, and a single “per claim” limit of liability shall be applicable.~~

~~“First made” means a claim first reported in writing to the Plan during the annual period of the Plan.~~

~~“Plan Incident” means any and all injuries and compensatory damages arising out of: the same, connected or related patient services rendered by the Participant or by anyone for whom such Participant has coverage under the Plan for vicarious liability.~~

Limits of Liability Schedule

The following limits shall apply unless lower liability limits are set by law, in which case the lower limits shall apply:

Staff Physician - \$500,000.00 per Liability Claim (up to \$1,500,000.00 per for all Liability Claims during any one enrollment period)

Resident and Fellows - \$100,000.00 per Liability Claim (up to \$300,000.00 per for all Liability Claims during any one enrollment period)

Medical or Dental Student - \$25,000.00 per Liability Claim (up to \$75,000.00 for all Liability Claims during any one enrollment period)

Annual Aggregate for all claims for all participants - \$30,000,000.00 for all Liability Claims for all Participants during any one Plan year

Per Claim Limitation – Plan liability shall be limited to \$2,000,000.00 per claim regardless of the number of the claimants or Plan Participants involved in an incident.

Per Incident Limitation

~~Liability shall be limited to \$2,000,000.00 per incident regardless of the number of the claimants or physicians involved in an incident.~~

**ARTICLE VIII
OTHER COVERAGE INSURANCE**

Section 1 -- Coverage

When the Participant has other professional liability coverage insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the System's liability under this Plan shall not be reduced by the existence of such insurance.

Section 2 -- Insurance

When both this Plan and insurance apply to the loss on the same basis, whether primary, excess or contingent, the System shall not be liable under this Plan for a greater proportion of the loss than that stated in the applicable contribution provision below:

- A. ***Contribution by Equal Shares.*** If all such valid and collectible insurance provides for contribution by equal shares, the System shall not be liable for a greater proportion of such loss than would be payable if each such insurer contributes an equal share until the share of each insurer or the Plan equals the lowest applicable limit of liability under any one policy or the Plan or the full amount of loss is paid, and with respect to any amount of loss not so paid, the remaining insurers or the Plan then continue to contribute equal shares of the remaining amount of the loss until each such insurer or the Plan has paid its limit in full or the full amount of the loss is paid.

- B. **Contribution by Limits.** If any of such insurance does not provide for contribution by equal shares, the System shall not be liable for a greater proportion of such loss than the applicable limit of liability under this Plan for such loss bears to the total applicable limit of liability of all valid and collectible insurance and the Plan against such loss.

ARTICLE IX MODIFICATION AND TERMINATION

Section 1 -- Rights of Participants

The Board may terminate the Plan at any time, ~~or at any time~~ or from time to time, may amend, alter or suspend the Plan in whole or in part, as to all persons eligible to participate hereunder, or any class or groups of such persons, provided such action shall not impair any rights accrued prior to the effective date of such termination, amendments, alterations or suspension. Any such termination, amendments, alterations or suspension shall be effective on the date of the Board action unless a later date is specified by the Board. The Administrator shall promptly give notice of any such termination, amendment, alteration or suspension to all Participants affected thereby.

Section 2 -- Termination in Event of Mandatory Participation in Other Indemnity or Insurance Programs

It is an express condition of the Plan that if the System is required by law, or by a collective bargaining or other agreement, to contribute toward another plan, program or scheme providing professional liability insurance or indemnity benefits for a class or group of Plan Participants ~~Medical Staff Members~~, this Plan will terminate forthwith as to such class or group of Plan Participants ~~Medical Staff Members~~.

Section 3 -- Termination of Plan Participation ~~Upon Cessation of System Employment~~

This Plan shall apply to a Participant only so long as such Participant remains qualified to participate in this Plan, provided that cessation of such participation shall not impair any rights accrued under this Plan prior to the effective date of such cessation of qualification.

Section 4 -- Benefits Terminable

All coverage of a Participant under this Plan shall cease at once if the Participant engages in any business or performs any act which in the sole judgment of the Board is prejudicial to the interest of the System.

**ARTICLE X
ACTION AGAINST SYSTEM**

Section 1 -- Conditions Precedent

No action shall lie against the System unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Plan, nor until the amount of the Participant's obligation to pay shall have been finally determined either by judgment against the Participant after actual trial, or by written agreement of the claimant and the Administrator.

Section 2 -- Third-party Actions

Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement, shall thereafter be entitled to recover under this Plan to the extent of the coverage afforded by this Plan. No person or organization shall have any right under this Plan to join the System as a party to any action against the Participant to determine the Participant's liability, nor shall the System be impleaded by the Participant or the Participant's his legal representative. Bankruptcy or insolvency of the Participant or the Participant's estate shall not relieve the System of any of its obligation hereunder.

**ARTICLE XI
ADMINISTRATION OF PLAN**

Section 1 -- Administration

The Plan shall be administered by the Administrator under direction of the Board.

Section 2 -- Administrative Regulations

The Administrator may from time to time prescribe regulations for the administration of this Plan provided that such regulations shall, in the opinion of the Administrator, be consistent with the provisions of this Plan as it may be amended from time to time pursuant to Article IX of this Plan. Pursuant to ~~Section 7.2(13), Chapter II, Part One,~~ The University of Texas System Regents' Rules and Regulations, the Administrator may delegate in writing certain administrative, accounting, and investment functions of the Plan.

Section 3 -- Legal Interpretation

The text of this Plan shall control and the headings to the Articles, Sections and Paragraphs are for reference purposes only, and do not limit or extend the meaning of any of the Plan's provisions. The Plan shall be governed by and construed in accordance with the laws of the State of Texas. Any interpretation of the Plan by the Administrator shall be

conclusive as between the System and its employees and students, participating Plan Participant ~~Medical Members~~, and retired or otherwise terminated Participants, employees and students, and may be relied upon by the System and all parties in interest.

Section 4 -- Counsel and Settlement Authority

Authority to employ counsel, approve attorney fees and expenses, and approve settlement of all claims, including litigation, shall rest with the Administrator, or the Administrator's ~~his~~ delegate, subject to any additional approval required by the Board of Regents of the System pursuant to any applicable policies of the System.

ARTICLE XII GENERAL PROVISIONS

Section 1 -- Subrogation

In the event of any payment under this Plan, the System shall be subrogated to all of the Participant's rights of recovery thereof against any person or organization and the participant shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Participant shall do nothing after loss to prejudice such rights.

Section 2 -- Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Plan, or estop the System from asserting any right under the terms of this Plan; nor shall the terms of this Plan be waived or changed, except by written waiver or amendment duly approved by the Board.

Section 3 -- Entirety of Agreement

This Plan embodies all agreements existing between any and all persons and the System or any of its agents relating to this Plan and the coverage afforded hereunder.

Section 4 -- Employment Non-Contractual

The System may terminate the appointment, internship, residency, fellowship, or student-school relationship of any Participant as freely and with the same effect as if this Plan were not in operation.

Section 5 -- Actions Against Participant

This Plan or its operations shall not in any way affect any claim or cause of action by the System against a Participant for indemnity or contribution arising out of or incident to any Liability Claim ~~medical liability claim~~.

Section 6 -- Communications

All notices, reports and statements given, made, delivered or transmitted to a Participant shall be deemed duly given, made, delivered or transmitted when delivered to the Participant him, or when mailed by first-class mail, postage prepaid, and addressed to the Participant him at the address last appearing on the books of the System. A Participant who changes his address shall forthwith give written notice to the System of such change. Written directions, notices and other communications from participants to the System shall be mailed by first-class mail, postage prepaid, or delivered as follows:

The University of Texas System
Office of General Counsel
Ashbel Smith Hall
201 West 7th Street
Austin, Texas 78701

Attention: Vice Chancellor and General Counsel

Section 7 -- Use of Pronouns

Whenever used in this Plan, masculine pronouns shall include both men and women unless the context indicates otherwise.

Section 8 -- ~~Coverage Under Prior Plan~~

~~A medical liability claim that occurred prior to the effective date of the revised Plan filed against a medical member after the effective date of the revised Plan is covered under the terms of the prior Plan.~~

Section ~~9~~ -- Effective Date

The revised Plan shall be effective September 1, 2004 ~~February 12, 1998~~.

3. **U. T. Health Science Center - Houston: Honoric naming of the Department of Ophthalmology and Visual Science as the Richard S. Ruiz, M.D. Department of Ophthalmology and Visual Science**

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs, the Executive Vice Chancellor for Business Affairs, the Vice Chancellor for External Relations, and President Willerson that the Department of Ophthalmology and Visual Science at U. T. Health Science Center - Houston be named the Richard S. Ruiz, M.D. Department of Ophthalmology and Visual Science effective upon the retirement of Dr. Ruiz from U. T. Health Science Center - Houston.

BACKGROUND INFORMATION

Dr. Ruiz has served as Chairman of the Department of Ophthalmology and Visual Science for the past 33 years. He holds the John S. Dunn Distinguished University Chair in Ophthalmology and serves as Chief of Ophthalmology at Memorial Hermann Hospital.

In 1968, Dr. Ruiz established the Hermann Eye Fund, a nonprofit, tax-exempt foundation, to help underwrite indigent patient care, teaching, research, and public service. Under Dr. Ruiz's leadership as President of the Hermann Eye Fund, contributions have grown to more than \$15 million. Hermann Eye Center physicians provide free ophthalmic care for indigent patients, while the Eye Fund underwrites their hospital costs. Through the efforts of the Eye Fund Board of Directors, Dr. Ruiz has created more than 20 endowed positions totaling approximately \$10 million within his department, including two distinguished university chairs, five chairs, two distinguished professorships, eight professorships, two special endowed funds, and one fellowship.

As the first holder of the John S. Dunn Distinguished University Chair, Dr. Ruiz was the first faculty member in the U. T. System to hold a distinguished university chair. Upon transference of these funds to U. T. Health Science Center - Houston, the Hermann Eye Fund will become one of the institution's top five donors. The Fund recently made a \$500,000 pledge to the New Frontiers Campaign in support of the Brown Foundation Institute of Molecular Medicine for the Prevention of Human Diseases (IMM).

In addition Dr. Ruiz has generously purchased and placed many commissioned works of art in the Hermann Eye Center and the grounds of the Texas Medical Center. A fountain dedicated to his mother and a metal sculpture called "The Burden", dedicated to his father stand as reminders to all who view them that there is a place for art and the humanities in this city of healing.

Dr. Ruiz's department has excelled in clinical care, research, and education, and continues to gain international attention. Few individuals measure up to the accomplishments of Dr. Richard Ruiz over the past four decades. His significant contributions to Memorial Hermann Hospital, the U. T. Medical School - Houston, U. T. Health Science Center - Houston, U. T. System, and the community continue to be measured.

The naming will not be effective until Dr. Ruiz retires from U. T. Health Science Center – Houston, however the proposed naming is consistent with the Regents' Rules and Regulations, Part Two, Chapter VIII, Section 1, Subsection 1.3, Subdivision 1.32 and institutional guidelines regarding naming of facilities and significant entities, which allow honorific namings for an employee in unusual circumstances.

4. U. T. Medical Branch - Galveston: Correctional Managed Health Care

President Stobo will present a PowerPoint on Correctional Managed Health Care as attached on Pages 72.1 – 72.10.

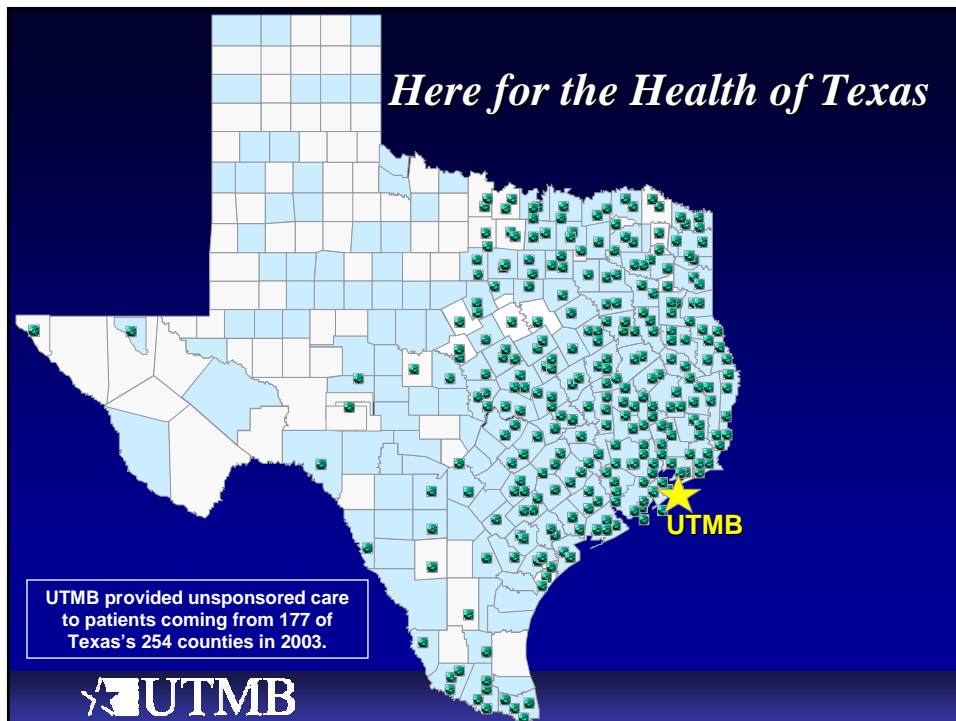


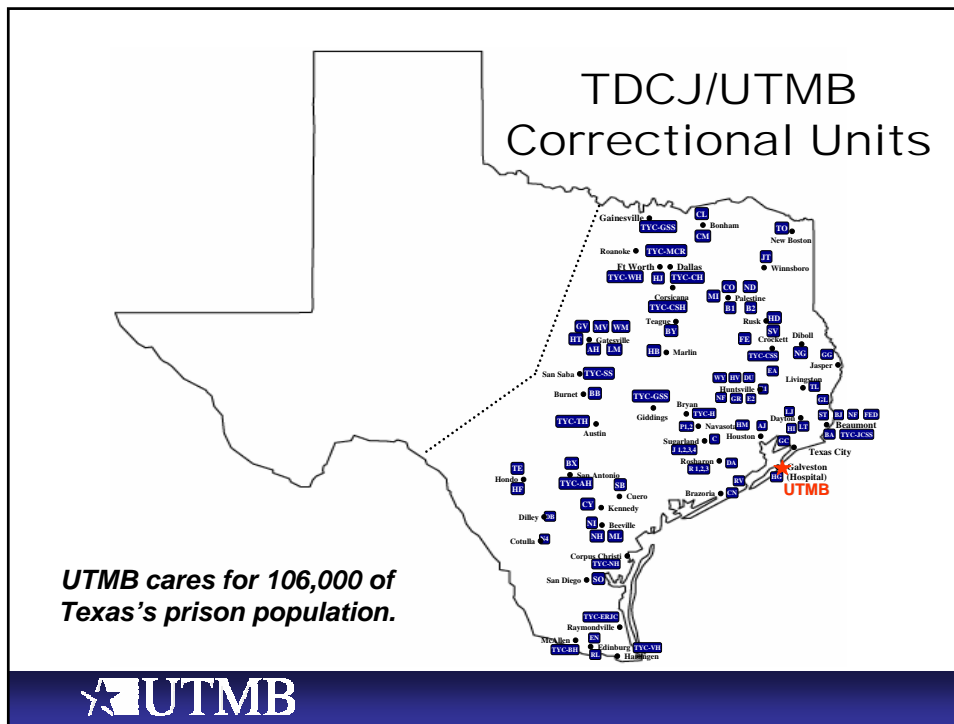
TDCJ Presentation to the UT System Board of Regents

**Dr. John D. Stobo
President, UTMB**

UT System Board of Regents Quarterly Meeting

August 11, 2004





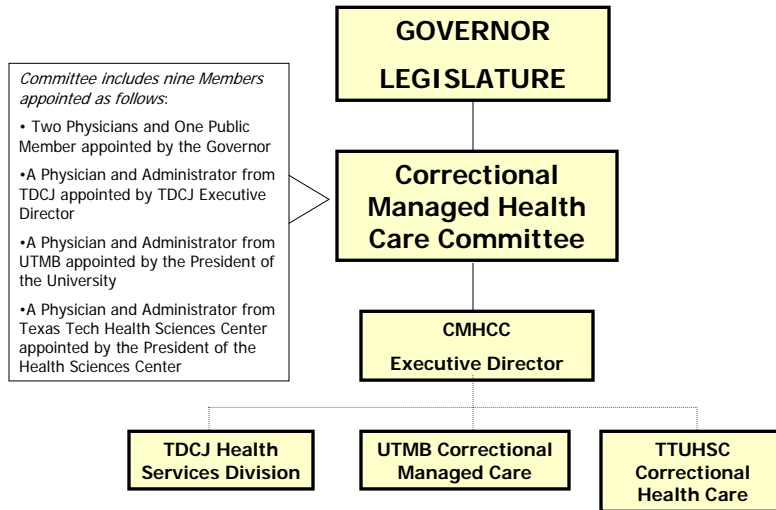
Opened July 1983

General Acute Care Inpatient Hospital

**Accredited by Joint Commission
(December 2003)**

**First multi-categorical prison hospital
on the campus of a U.S. academic
health science center**

CMHCC Organizational Relationships



Telehealth Delivery System



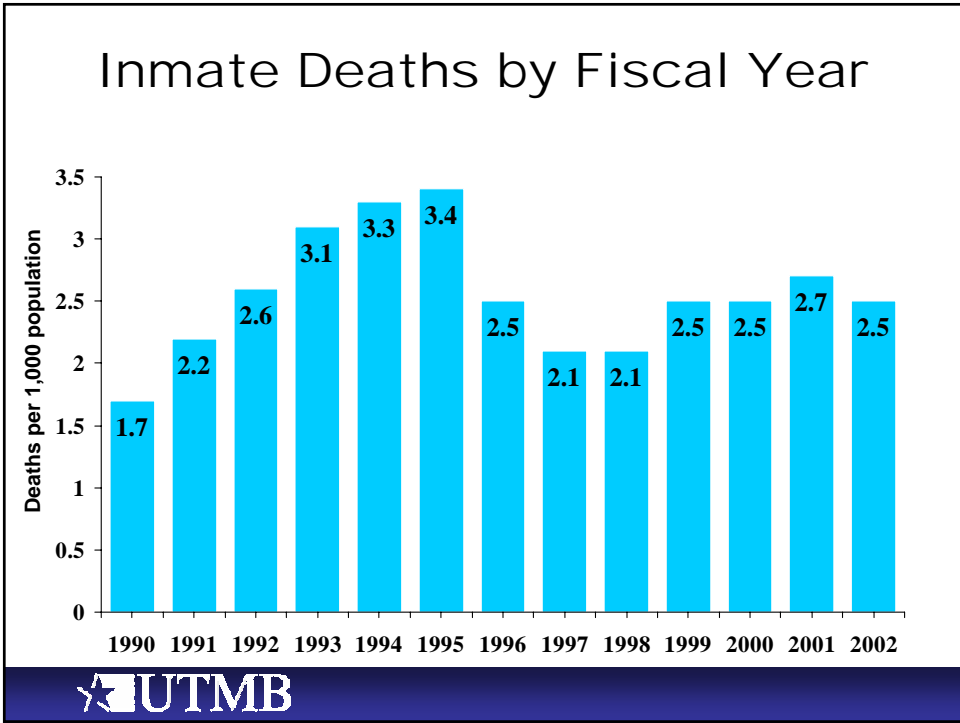
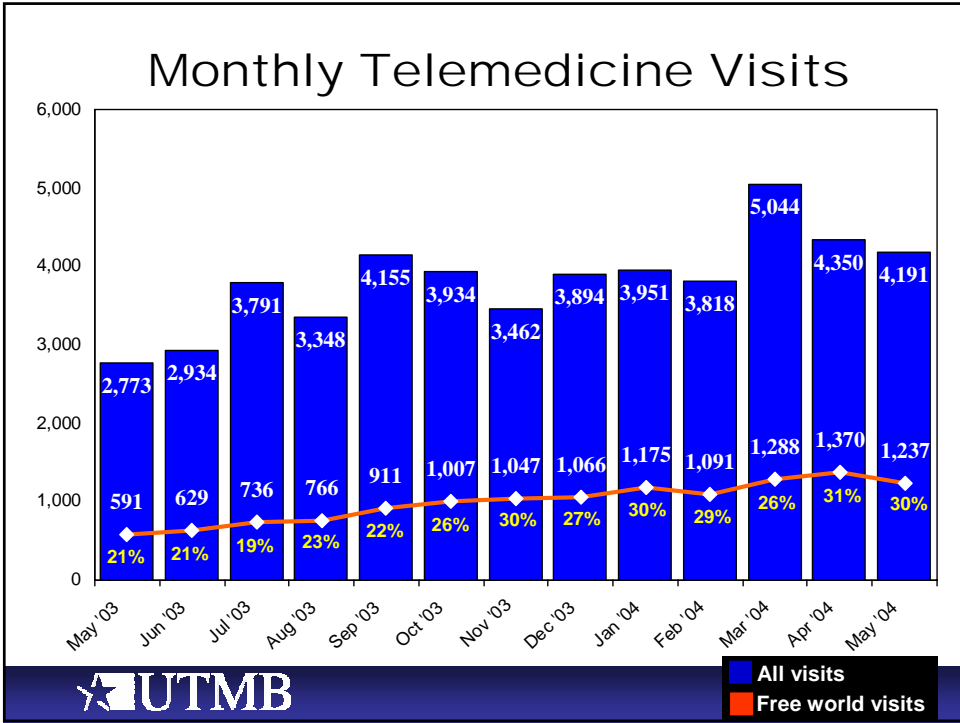
Telehealth Module



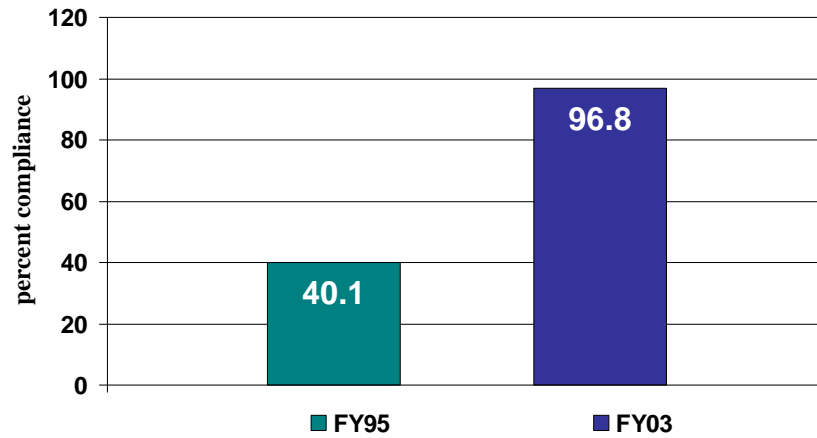
Components of Telehealth Delivery System

- Telecommunication with multiple attachments
- Pharmacy management
- Electronic medical record—HIPAA compliant
- Voice activated dictation
- Disease management/practice guidelines





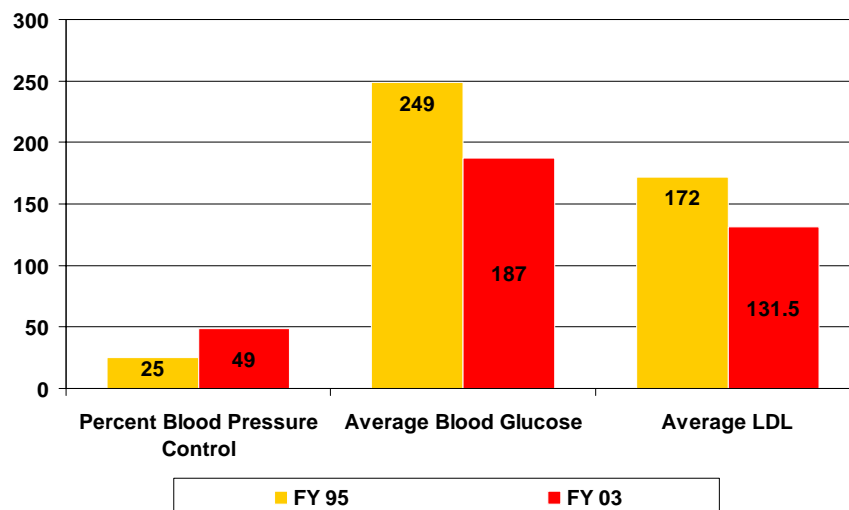
Average Compliance of All Diseases All Indicators*



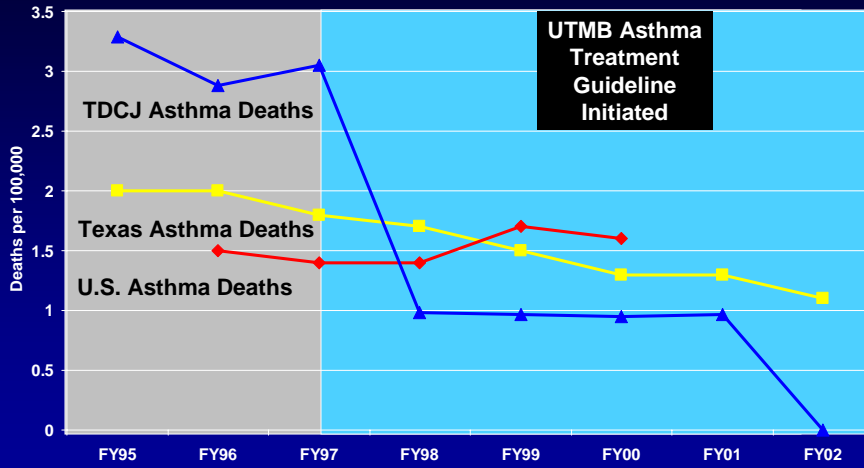
* Operational Performance Evaluation System Data, 2001.



Clinical Endpoint Comparison

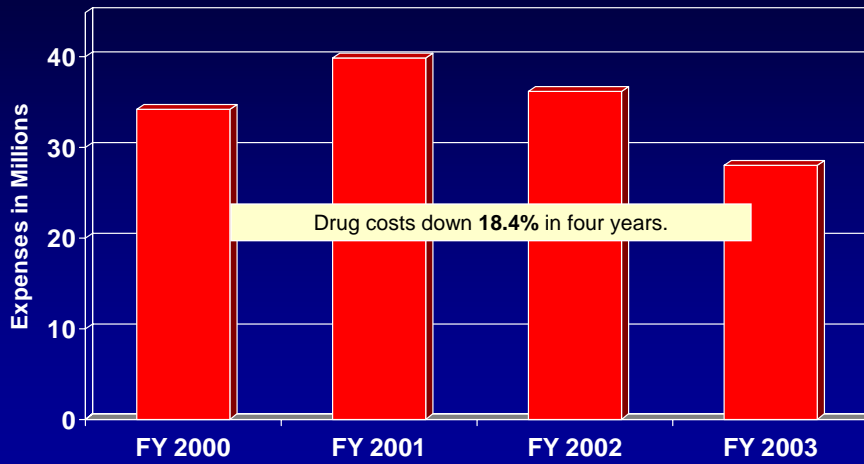


TDCJ Treatment Guidelines and Asthma Deaths



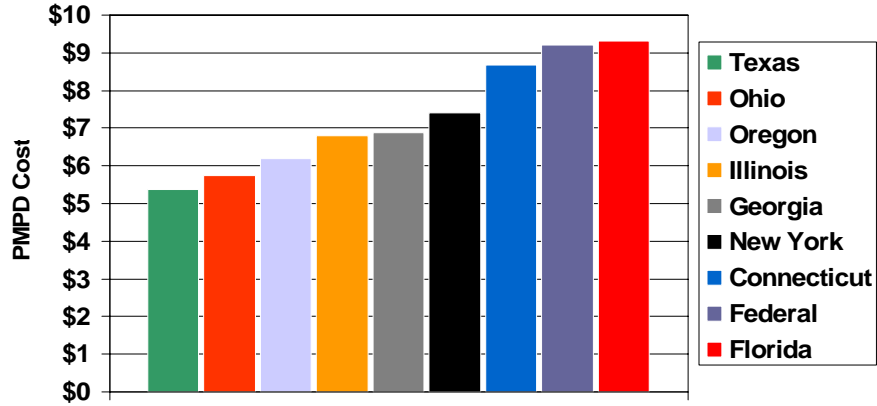
UTMB

Pharmaceutical Costs



UTMB

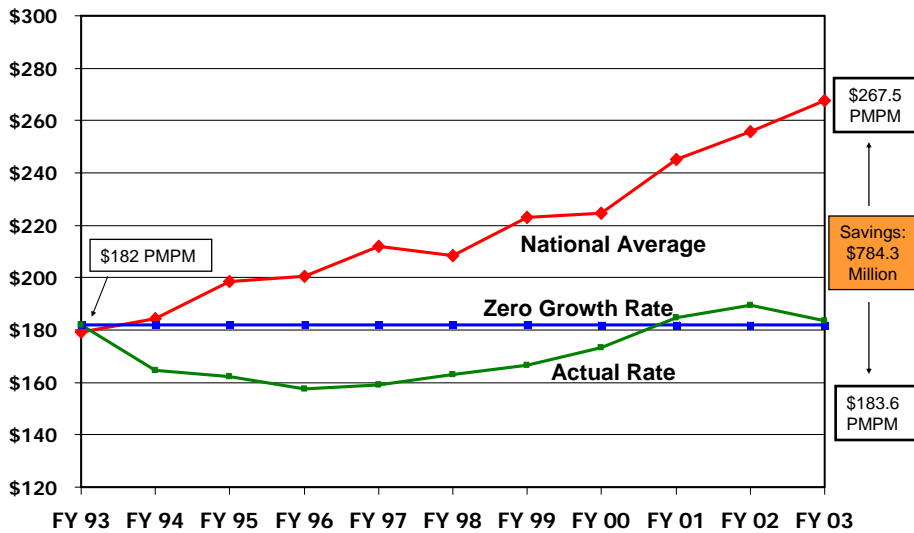
Comparison of Prison Health Care Costs (Per Member Per Day)



Based on data from The Corrections Yearbook 1999 Published by Criminal Justice Institute, Inc.

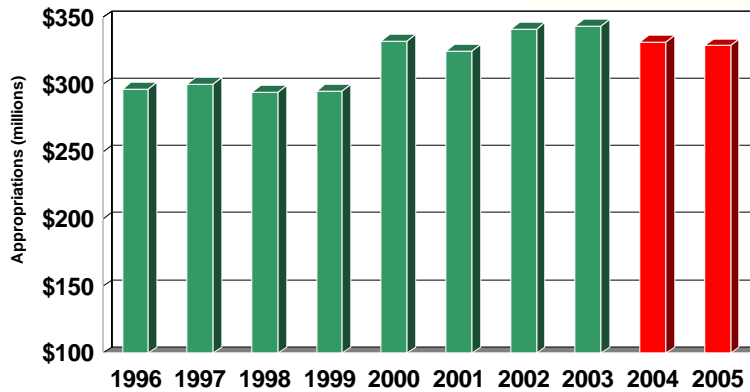


Correctional Managed Health Care Savings Comparison to National Average Medical Costs



CMHC Appropriations* 1996-2005

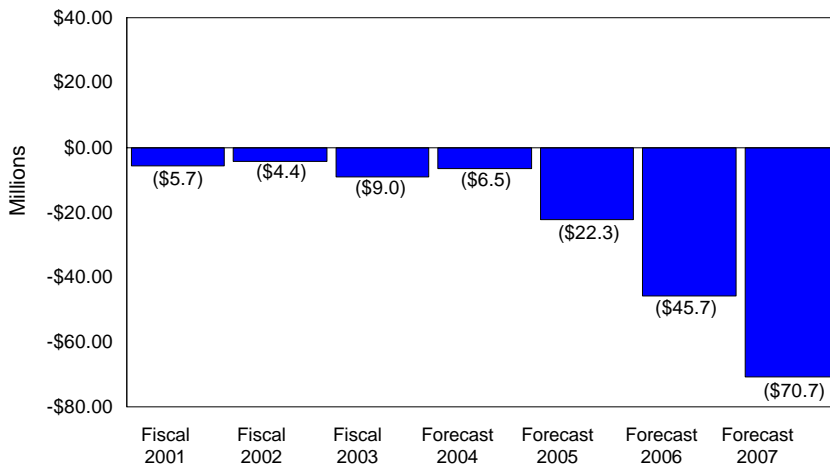
FY 04-05 Appropriations represent a reduction of \$26.6M from FY 02-03 base



*Includes designated self-funding and supplemental appropriations (legislative salary increases)



CMHC Financial Review Adjusted Operating Margin per Year



Note:
(1) Includes TDCJ Hospital, UTMB Faculty Group Practice and CMCH

Texas Medical Foundation Audit

- **Administrative Audit (July 2004)**
 - Policy and Procedures
 - Utilization Review Process
 - Quality Services
 - Credentialing Process
 - Peer Review
- **Medical Record Audit (August 2004)**
 - Quality of care / Outcomes
 - Documentation of care
- **Audit Report (December 2004)**



5. **U. T. Southwestern Medical Center - Dallas: Authorization to enter into a letter of intent regarding the proposed acquisition of Zale Lipshy University Hospital and St. Paul University Hospital**

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs, the Executive Vice Chancellor for Business Affairs, and President Wildenthal that the U. T. Board of Regents authorize the Chairman, on behalf of U. T. Southwestern Medical Center – Dallas, to enter into a letter of intent with Zale Lipshy University Medical Center, Inc., Zale Lipshy University Hospital, Inc., and St. Paul University Hospital, Inc. (in substantially the form attached on Pages 77 - 79) for the purchase of the assets of Zale Lipshy University Hospital and St. Paul University Hospital in Dallas, Texas, for the benefit and use of U. T. Southwestern Medical Center - Dallas.

It is further recommended that the Board recognize that the acquisition of such hospitals is essential to conducting U. T. Southwestern Medical Center – Dallas as a medical school of the first class, and will serve the public benefit through the ownership and operation of such hospitals in accordance with the rules and regulations of U. T. Southwestern Medical Center - Dallas.

It is further recommended that the Board delegate to the Chancellor the authority to (i) direct that final agreements covering all essential issues be negotiated and submitted for Board approval at a future meeting and (ii) direct the preparation and filing of any required submittals to other governmental agencies in connection with the proposed transaction.

BACKGROUND INFORMATION

This following information was provided by President Wildenthal as a supplement to the presentation he will make to the Health Affairs Committee.

For a medical school to excel in medical education, research, and clinical care requires superior programs not only in emergencies, trauma, and acute diseases that are common in public hospitals, but also private specialty care that draws referral patients from a large, diverse population.

Over the last two decades, U. T. Southwestern Medical Center - Dallas has come to be recognized as one of America's greatest medical schools in education and research. Its clinical programs for indigent patients and emergencies at Parkland Memorial Hospital are also regarded as second-to-none, and many of its clinical faculty specialists are regularly included on peer-reviewed lists of "Best Doctors in America." However, having lacked facilities in which to care for referral patients until very recently, and even now

having to utilize multiple small, uncoordinated, and separately-identified sites for such care, U. T. Southwestern has not been able to provide the highest level of clinical care for patients who require referral to specialists and sub specialists. This need has contributed to the inability of U. T. Southwestern to achieve national prominence for broad excellence in clinical care. National recognition for excellence in clinical care, as discussed below, plays a major role in achieving substantial program improvements.

1. U. T. Southwestern has carefully analyzed its strengths and needs, and is clear that to achieve comprehensive clinical excellence and national recognition will require the full integration of its referral hospitals with its outpatient facilities and with the faculty group practice. Both for financial and management reasons, by far the best way to achieve the needed integration is through the acquisition by U. T. Southwestern of Zale Lipshy University Hospital and St. Paul University Hospital; indeed, it is fair to say that this is the only viable option that can yield lasting success.
2. For the first four decades of its existence, U. T. Southwestern's clinical programs were confined to Dallas County's public hospital (Parkland) and the Dallas VA Hospital (plus for pediatrics, Children's Medical Center of Dallas). These hospitals provided excellent sites for programs in emergency care and acute care for indigent patients, but they were not able to accommodate sufficient numbers of private and referred patients for building excellence in many specialties. Consequently, excellence in such fields as cardiac and vascular surgery, degenerative neurological diseases, neurosurgery, transplantation, liver and gastrointestinal disease, orthopedics, ophthalmology, cancer, etc., was slow to develop. (Indeed, much the same can be said for the other University of Texas campuses, excluding M. D. Anderson, in contrast to other leading state schools recognized by *US News and World Report* as among the nation's top 25, including The University of California at San Francisco, UCLA, UC San Diego, and the Universities of Michigan, Washington, North Carolina, Alabama, Virginia, and Wisconsin -- in all of which the university has for many years owned and operated a referral hospital and outpatient clinics for non-indigent patients in coordination with the medical school's referral clinical practice.)
3. To help meet U. T. Southwestern's need for facilities to accommodate private and referral patients, the medical school built and began operating the Aston Ambulatory Care Center in 1985. In 1989, the school also enlisted the help of community leaders to raise philanthropic funds to construct and operate Zale Lipshy University Hospital as a separately governed 501(c)(3) corporation. The property for the building was leased for 50 years with a 50 year renewal option from the Dallas County Hospital District. By 2000, Zale Lipshy's 145 beds were insufficient to serve U. T. Southwestern's patients. After considering the expansion of Zale Lipshy by 80 beds (the maximum its site could accommodate), it was decided instead that U. T. Southwestern would accept the proposal of Texas Health Resources to sell the real estate assets of the adjacent St. Paul Hospital (26 acres including a 300-bed hospital building) to U. T. Southwestern.

The purchased assets of St. Paul Hospital were then leased to Zale Lipshy for operational purposes. The Board of Regents approved this transaction in 2000, and the addition of St. Paul has provided a much-needed, centrally-located outlet for U. T. Southwestern's rapidly growing private practice. Currently, private and referral university programs for cardiology, cardiac surgery, heart transplant, lung transplant, emergency services, and obstetrics and gynecology are housed solely on the St. Paul campus.

4. In 2002, U. T. Southwestern embarked on a major initiative to transform the quality of the clinical service provided to patients, and to develop the highest quality education and care for private and referral patient clinical programs. As part of that process, the university performed detailed best-practice studies of leading academic medical centers (e.g., Duke, Northwestern, Massachusetts General, Vanderbilt, Johns Hopkins, Stanford, University of California at San Francisco, University of California at Los Angeles, and the Mayo Clinic) and created an outside advisory board of national health care executives, led by Dr. Eugene Braunwald from the Harvard Partner's Health System. A major conclusion of this review was that U. T. Southwestern must have operational and financial control of both the inpatient and outpatients environment in order for its clinical programs to produce the excellent level of care and training offered by these programs and to itself become nationally prominent. The Braunwald committee emphasized that comprehensive clinical excellence and national eminence would be impossible without this integration.
5. Heavily influenced by the Braunwald Committee recommendations, but also because the boards of directors St. Paul and Zale Lipshy University Hospitals, along with their parent board, reached the conclusion that U. T. Southwestern had more effective clinical and financial management than did the hospitals, U. T. Southwestern entered into a management agreement with the hospital boards in March 2003, whereby the medical school would provide the senior management for the hospitals. In the intervening 16 months, U. T. Southwestern has recruited new hospital administrators, consolidated operating and information systems, and significantly improved financial performance.
6. Although the hospitals are nearing profitability, in their current configuration they cannot achieve the levels of operating margins required to sustain and grow the excellence of U. T. Southwestern's clinical programs. The current financial structure, whereby all outpatient revenue accrues to U. T. Southwestern, will increasingly challenge the profitability of the hospitals as technology pushes more and more procedures to the outpatient environment. Rather than transferring profitable U. T. Southwestern outpatient programs to a hospital corporation outside U. T. Southwestern control, financial integration of the entire outpatient-inpatient systems under U. T. Southwestern creates a model similar to other top-ranked medical centers. Access to capital is another barrier in the current model. The Hunter Group, national experts in university hospital "turn-

arounds,” after reviewing the current hospital environment in the Dallas market emphasized that U. T. Southwestern’s affiliated university hospitals could never achieve long-term success unless they had a capital partner.

7. U. T. Southwestern is a leading academic institution; however, to achieve the goals and program improvements in clinical care requires operationally and financially integrated inpatient-outpatient systems and a consolidated brand identity, in addition to faculty excellence in research and teaching. Acquisition of the operations of St. Paul and Zale Lipshy University Hospitals will allow U. T. Southwestern to create the structure required to achieve clinical excellence in a number of crucial medical specialties. Enhanced national recognition of clinical programs will, in turn, also benefit the university’s research and education missions by increasing the visibility of the institution, promoting faculty and student recruitment, augmenting clinical research programs and opportunities to engage in clinical trials, and facilitating philanthropy. Moreover, enhancement of U. T. Southwestern’s clinical strength in referral medicine will improve the quality of care at Parkland and the VA Hospital, through the availability of highly qualified specialists who will also care for indigent patients in their area of special expertise.

8. The form of the transactions under which U. T. Southwestern will acquire the hospitals is described in the letter of intent. The transactions, which we anticipate to take place by December 31, 2004, will involve a purchase of assets, at not greater than fair market value, as supported by an independent business appraisal. The assets of St. Paul are the remaining term of the property lease from U. T. Southwestern, other fixed assets not already owned by U. T. Southwestern and financial assets. At Zale Lipshy, the assets are a ground lease for its building and all fixed and financial assets. As a part of the acquisition of the financial and fixed assets of the hospitals, the Board will acquire from Zale Lipshy University Hospital, Inc., its hospital building and equipment, and a lease for the land on which the building sits (for which the Dallas County Hospital District is the lessor). The value of the ground lease will be supported by appraisals. Along with final approval of the Zale Lipshy acquisition, U. T. Southwestern will request financing through the Revenue Financing System, for the purchase of this ground lease, equipment and building, in an amount, supported by the appraisal, at least sufficient to retire outstanding bonds issued on behalf of Zale Lipshy University Hospital. Acquisition of the ground lease and facility will require approval of the Texas Higher Education Coordinating Board and consent by Dallas County Hospital District. Although not anticipated at this time, if a delay should occur in acquiring the ground lease at the closing date, the use of a lease purchase agreement could serve as an interim step leading to an outright purchase. Of the purchase price for each hospital, all amounts in excess of hospital liabilities will ultimately be gifted back to U. T. Southwestern. The Board will not assume any liabilities, known or unknown, of the hospitals.

[To Be Placed on the Letterhead of Zale Lipshy University Medical Center. Inc.]

James R. Huffines, Chairman
The Board of Regents of The University of Texas System
201 W. 7th Street, Suite 820
Austin, TX 78701-2981

Dear Chairman Huffines:

The purpose of this Letter of Intent is to confirm current discussions and understandings between The University of Texas Southwestern Medical Center at Dallas, a component institution of The University of Texas System, ("UTSW"), and Zale Lipshy University Medical Center, Inc. ("ZLUMC"), Zale Lipshy University Hospital, Inc. ("ZLUH") and St. Paul University Hospital, Inc. ("SPUH") (ZLUMC, ZLUH and SPUH being collectively referred to in this letter as "Zale Lipshy-St. Paul"). UTSW and Zale Lipshy-St. Paul are individually referred to herein as a "Party" and collectively referred to as the "Parties". The Parties agree as follows:

1. Proposed Transactions. UTSW and Zale Lipshy-St. Paul have reached agreements in principle for the acquisition by the Board of Regents of The University of Texas System for the use and benefit of UTSW from Zale Lipshy-St. Paul of the assets of ZLUH and SPUH, as going concern general acute care hospitals, at not greater than fair market value, as supported by independent business appraisals. As a part of the acquisition of the financial and fixed assets of these hospitals, the Board of Regents will acquire a long-term ground lease and building from ZLUH, as lessee, with the Dallas County Hospital District. The value of the ground lease will be supported by a separate appraisal. The Parties understand and acknowledge that the acquisition of the ground lease and ZLUH hospital facility will require approval by the Texas Higher Education Coordinating Board and a consent or waiver by the Dallas County Hospital District. Further, the Parties understand and acknowledge that UTSW will request the issuance of bonds through The University of Texas System Revenue Financing System for the acquisition financing in an amount, as supported by the appraisals, at least sufficient to defease the outstanding bonds issued on behalf of ZLUH. The acquisition transactions may close contemporaneously; however, although not anticipated at this time, if a delay needs to occur in acquiring the assets of ZLUH, a later closing date may be specified for ZLUH or the use of a lease-purchase arrangement for ZLUH may serve as an interim process leading to the later acquisition. All amounts from the purchase price of ZLUH and SPUH in excess of the liabilities of ZLUH and SPUH ultimately will be gifted to UTSW. The Board of Regents will not assume any liabilities of Zale Lipshy-St. Paul, whether known or unknown.

2. Negotiation Time Period. The Parties each agree to use their reasonable best efforts to negotiate, complete and execute definitive documents relating to the Proposed Transactions for a closing date(s) of no later than December 31, 2004, unless this date is extended by mutual agreement of the Parties.

3. Confidentiality. To the extent permitted by applicable law, each Party will keep strictly confidential as to third parties (a) the discussions relating to and status of the Proposed Transactions, (b) the nature and substance of this Letter of Intent, and (c) all Evaluation Material (as defined below) provided to it by the other Party in connection with the discussions relating to and negotiations of the Proposed Transactions.

In connection with the Proposed Transactions, the Parties may from time to time request of and disclose to each other certain information and documentation (“Evaluation Material”) to be used to evaluate the Proposed Transactions. Each Party agrees that any Evaluation Material disclosed to it will be kept confidential to the extent permitted by applicable law (acknowledging the fact that Texas open records laws will impact upon this agreement).

Evaluation Material shall not include, and the prohibitions hereof shall not apply to, information which (i) is or becomes generally available to the public other than as a result of an unauthorized disclosure, (ii) is made available to the public or a requesting third party through compliance with the Texas open records laws, (iii) was available to a Party on a non-confidential basis prior to its disclosure, or (iv) was or becomes available to a Party on a non-confidential basis from an independent source other than the disclosing Party, provided that such source is not bound by a confidentiality obligation with the disclosing Party or otherwise prohibited from transmitting such information.

In the event that any Party or any of its Representatives are required, in the opinion of a Party’s counsel, by applicable law or legal process, to disclose any Evaluation Material supplied to it in accordance with the provisions hereof, it is agreed that such Party will give the Party from whom it received the Evaluation Material prompt written notice of the proposed disclosure.

Notwithstanding the foregoing, (1) the Parties acknowledge and agree that part or all of the Evaluation Material may be disclosed to a Party’s Representatives (defined below) who need to know such information for the purpose of evaluating the Proposed Transactions, it being understood that such Representatives shall be informed of the confidential nature of such Evaluation Material and shall be directed to treat such Evaluation Material confidentially, and (2) either Party may make such disclosures as may be appropriate or necessary, including in open meetings, in order to obtain the necessary authority and/or approval to negotiate, enter into and complete the Proposed Transactions, including, without limitation, disclosures to the Board of Regents of The University of Texas System, the Texas Higher Education Coordinating Board, the Texas Bond Review Board, the Office of the Texas Attorney General, the boards of ZLUMC, ZLUH and SPUH, and the Dallas County Hospital District. For purposes of this Agreement, the term “Representatives” shall mean a Party’s directors/trustees, officers, members, employees, attorneys, accountants, and other persons engaged to advise such Party regarding the Evaluation Material or the Proposed Transactions, as well as any of the foregoing who receive the Evaluation Material.

4. External Communication. The Parties will endeavor to ensure that any external or public communication regarding this Letter of Intent or the Proposed Transactions is approved by or consented to by the other Party beforehand.

5. Not Legally Binding. This Letter of Intent is not legally enforceable and does not constitute or create any legally enforceable or binding right or obligation on the Parties except that the provisions of Paragraph 3 relating to confidentiality are intended by the Parties to be legally binding and enforceable. The Parties intend that this Letter of Intent express their commitment to progress through a process of further negotiation and discussion toward definitive terms and documents for the Proposed Transactions. The Parties cannot execute and deliver final and legally binding definitive agreements until the respective governing boards for Zale Lipshy-St. Paul and the Board of Regents have approved those definitive terms and documents and all other legally required approvals or consents for the closing of the Proposed Transactions have been received.

6. Expenses. Each Party will pay its own expenses and costs incidental to this Letter of Intent and the negotiation and completion of the Proposed Transactions.

7. Effective Date. The date of the latter of the dates of execution of this Letter of Intent by the Parties shall be its Effective Date.

8. Counterparts. This Letter of Intent may be executed in one or more counterparts which, when taken together, shall constitute one complete document.

If you are in agreement with the provisions of this Letter of Intent, please execute this Letter of Intent in the space provided below and return the executed Letter of Intent to me at the above address on or before August 15, 2004.

Sincerely,

David Quinn, Chair of the Boards of Directors
Zale Lipshy University Medical Center, Inc.
Zale Lipshy University Hospital, Inc.
St. Paul University Hospital, Inc.
Date: _____

ACCEPTED AND AGREED TO:

The Board of Regents of The University of Texas System
for the benefit of The University of Texas Southwestern Medical
Center at Dallas

By: _____
Name: James R. Huffines
Title: Chairman
Date: _____

6. U. T. System: Proposed Austin Academic Health Center

REPORT

Dr. Kenneth Shine, Executive Vice Chancellor for Health Affairs will present an overview of interest and opportunities for the development of an academic health Center in Austin.

Considerable opportunities exist for the expansion of biomedical research, education, and training programs in Austin. The University of Texas at Austin, a major research institution, would benefit significantly from interactions with biomedical scientists and health researchers. Such research activities could translate into further economic development.

Expansion of educational opportunities for medical students and training for resident physicians would enhance health and healthcare in general, and particularly provide care for the medically indigent in the community. Research and training programs would also attract outstanding faculty physicians who would contribute to healthcare and would add to the attractiveness of the city to employers, employees, and their families.

The U. T. Medical Branch - Galveston has a long history of academic affiliations in Austin. Twenty-three medical students spend their third year training in Austin hospitals. Many other students take electives in Austin so that at any given time as many as 100 medical students are present. A new women's health hospital was opened under the direction of U. T. Medical Branch - Galveston at the Seton/Brackenridge Hospital. This program has received approval for a resident physician training program in obstetrics and gynecology. A state-of-the-art, fast MRI, imaging program is now under joint development by the U. T. Medical Branch - Galveston, U. T. Austin and the Central Texas Veterans Administration. U. T. Medical Branch - Galveston and U. T. Austin are now organizing a joint M.D./Ph.D. program.

Opportunities for an academic health center in Austin include the development of a regional school of public health, created by U. T. Health Science Center - Houston in collaboration with U. T. Austin, as well as collaborations with U. T. Health Science Center - San Antonio and other health institutions.

An academic health center could be developed in Austin through a series of incremental steps which would build research, education, patient care capacity over time. Such an academic health center could be developed in accordance with the following principles:

- a. Each component of the enterprise must be of the highest quality so as to recruit a world-class faculty and develop outstanding educational and clinical programs.

- b. Each step would be taken only if adequate funding were available for that portion of the program. Considerable private support would be required for this purpose.
- c. An incremental approach would be taken to increase the number of programs for undergraduate students seeking M.D. or M.D./Ph.D. degrees, and the addition of postgraduate residency training programs in the various medical specialties.
- d. The academic health center should be physically located proximate to the U. T. Austin campus, in order to synergize the capacities of each enterprise.
- e. An academic medical center would require the establishment of one or more medical research institutes which capitalize on synergies with U. T. Austin. An institute might focus on developmental biology, neurosciences, systems biology, cancer genetics or other aspects of molecular medicine. Substantial support from private donors would be required to create such an institution.
- f. U. T. Medical Branch - Galveston would continue to develop educational and research programs in collaboration with the new Austin Children's Hospital, the Central Texas Veterans Administration, Seton/Brackenridge Hospital, St. David's Hospital and other clinical sites for student and residency training.
- g. The School of Public Health at U. T. Health Science Center - Houston would continue to develop collaborations with U. T. Austin for research and education.
- h. Other institutions including U. T. San Antonio, U. T. Health Science Center - Houston, and Texas A&M University would be encouraged to enter into collaborations in medicine, nursing, pharmacy, allied health and other areas.

The development of expanded educational programs, including residencies, would contribute substantially to the provision of care for the medically indigent individuals. It would also contribute to an increased number of physicians practicing in Texas.

In a time of profound fiscal constraints in the State, development of these academic health programs would require substantial public and private partnerships in which the local community and local donors would have to provide substantial resources for the development of an academic health center.

While there have been no negotiations with the City of Austin, it has been reported that the City of Austin proposes to set aside 15 acres on the former Mueller Airport site for medical purposes. This site is proximate to the new Children's Hospital. A more fully developed academic health center would require substantially more space. However this property might form the initial location of the educational, research, or clinical facilities essential to developing an Academic Health Center.

Considerable public interest has been expressed in Austin to create a medical school in the community. It is possible that the incremental developments described above might lead, at some future time, to formal establishment of such a school. However incremental and gradual expansion of programs by U. T. Medical Branch - Galveston an already fully accredited institution, could continue, without the immediate major financial resources required for a new medical school. Incremental development of research program offers opportunities to recruit a small core of world class scientists upon which a great faculty could be built. This development will require effective public-private synergies and resources for its accomplishment. There does seem to be a convergence of interest and opportunity upon which to build.