

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

EXECUTIVE COMMITTEE

Minutes of the Meeting

June 9, 1994

10:00 a.m.

Held by telephone conference originating from
Bolton Hall, Room 289
UW-Milwaukee
Milwaukee, Wisconsin

Present: Regent Dreyfus, Regent Gelatt, Regent Lubar, Regent Schilling,
Regent Steil

Absent: Regent Davis and Regent Grebe

The meeting was called to order at 10:00 a.m., at which time it was moved by Regent Lubar and seconded by Regent Dreyfus that the Committee recess into closed session to consider negotiation of a contract, as permitted by s.19.85(1)(e), Wis. Stats.

The motion was adopted on a unanimous roll-call vote, with Regent Dreyfus, Regent Gelatt, Regent Lubar, and Regent Steil voting in the affirmative. Regent Schilling joined the meeting at 10:15 a.m., after the vote was taken.

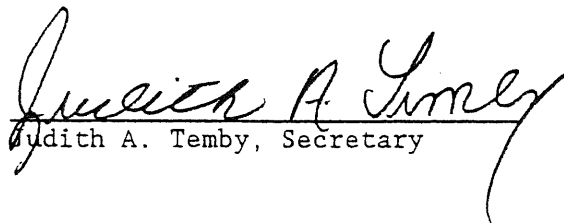
In addition to members of the Executive Committee, those present for the meeting were: Regent Barry, Senior Vice President Bornstein, General Counsel Stathas, Secretary Temby, and Jonathan Henkes and Ken Muth, of the Office of University Relations.

During the closed session, the following resolution was adopted, with Regent Schilling abstaining from the vote:

Resolution 6685: That the President of the Board of Regents be authorized to sign the attached Wisconsin Heart Allocation Agreement with Aurora Health Care, Inc., and Froedtert Memorial Lutheran Hospital.

(A copy of the agreement is attached as Exhibit A.)

The meeting was adjourned at 10:45 a.m.


Judith A. Temby, Secretary

June 20, 1994

WISCONSIN HEART ALLOCATION AGREEMENT

This AGREEMENT is made and effective this 9th day of June 1994, by and between the BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM (hereinafter "UW"), a state agency of the State of Wisconsin on behalf of the University of Wisconsin Hospitals and Clinics, and the University of Wisconsin Organ Procurement Organization; AURORA HEALTH CARE, INC. (hereinafter "Aurora"), a Wisconsin nonprofit corporation, on behalf of St. Luke's Medical Center; and FROEDTERT MEMORIAL LUTHERAN HOSPITAL (hereinafter "Froedtert"), a Wisconsin nonprofit corporation, as the Wisconsin Southeastern Organ Procurement Organization.

WITNESSETH:

WHEREAS, UW operates a tertiary care, teaching and research hospital, University Hospital and Clinics in Madison, Wisconsin, which has a heart transplant program and operates the University of Wisconsin Hospital and Clinics Organ Procurement Organization, which provides hearts for thoracic transplant to that hospital, Middleton Veterans Administration Hospital, and other transplant hospitals; and

WHEREAS, Aurora operates a tertiary care medical center, St. Luke's Medical Center in Milwaukee, Wisconsin, which has established and maintained a heart transplant program; and

WHEREAS, Froedtert is a tertiary-level teaching and research hospital which operates the Wisconsin Southeastern Organ Procurement Organization, which provides hearts for thoracic transplant to St. Luke's Medical Center, to the heart transplant programs of the Medical College of Wisconsin at the John L. Doyne Hospital and Children's Hospital of Wisconsin, all located in Milwaukee, Wisconsin, or its surrounding area and to other transplant hospitals; and

WHEREAS, pursuant to discussions between UW, Aurora, and Froedtert, it has been determined that the manner in which donor hearts are allocated to heart transplant candidates awaiting transplant in the State of Wisconsin will be, with UNITED NETWORK FOR ORGAN SHARING approval, temporarily modified as of June 1, 1994, or as soon thereafter as UNOS' approval is obtained, until no later than January 1, 1995, subjected to expert panel review, beginning June 1994, and conducted in accordance with the specific recommendations developed and submitted by the panel;

NOW, THEREFORE, in consideration of the terms and conditions and mutual promises set forth herein, UW, Aurora, and Froedtert agree as follows:

1. Definitions.

For purposes of this agreement, the following definitions will obtain:

a. "Organ procurement organization" means a nonprofit entity that is designated as such by the federal Health Care Financing Administration and that, under the designation, performs or coordinates the performance of retrieving, preserving, and transporting organs for transplantation and maintains a system of locating prospective recipients for available organs. These organizations will be abbreviated as "OPO" through this agreement.

b. "UNOS" means the United Network for Organ Sharing, a private nonprofit organization created by contract with the federal Department of Health and Human Services to facilitate the orderly, effective and equitable procurement and sharing of transplantable organs, including hearts. All three parties to this agreement, as well as the Wisconsin hospitals with heart transplant programs listed above, belong to UNOS.

c. "Hearts" means human hearts, procured and intended for transplantation into human beings.

2. Temporary Establishment and Use of a Single Waiting List for Heart Transplant Recipients.

UW, Aurora, and Froedtert have jointly requested UNOS in writing to allow the temporary establishment and use of a single, state-wide, eligibility list for all heart transplant candidates awaiting heart transplantation from Wisconsin hospitals from June 1, 1994, (or as soon thereafter as UNOS approval is obtained) until no later than January 1, 1995, unless otherwise provided by the panel of national experts under paragraph 5, fifth subparagraph. The parties all hereby agree to utilize such list during and throughout the period of its existence.

3. Establishment of the Panel of National Experts.

UW, Aurora, and Froedtert agree that a panel of national experts in medicine and ethics (hereinafter called the "Expert Panel") will be established by June 15, 1994, or as soon thereafter as reasonably possible. The Expert Panel shall be comprised of three persons, chosen as follows:

a. Three national experts shall be nominated by the Executive Director, after consultation with the President of the American Society of Law, Medicine and Ethics, following a joint request therefor in writing from the UW, Aurora, and Froedtert; and

b. Three national experts shall be nominated by the Executive Director, after consultation with the President of The Hastings Center, following a joint request therefor in writing from the UW, Aurora, and Froedtert.

c. The experts nominated should have knowledge and expertise appropriate to execute the charge to the panel, as set forth in Paragraph 4 below.

d. The American Society of Law, Medicine and Ethics and The Hastings Center will be requested to determine that each panel nominee has neither a close social nor a professional relationship with any of the three parties which would affect the nominee's ability to be impartial.

e. From among the six nominees, Aurora (in consultation with Froedtert's OPO) shall designate one person to serve on the Expert Panel.

f. Immediately thereafter, the UW shall choose one person from among the remaining five nominees to serve on the Expert Panel.

g. The two selected individuals shall promptly select a third person from among the four remaining nominees to serve with them.

h. These three individuals so selected shall constitute the Expert Panel.

i. All expenses incurred in connection with the selection and operation of the Expert Panel shall be shared equally by the UW and Aurora.

4. Charge of the Expert Panel.

UW, Aurora, and Froedtert agree that the Expert Panel shall study the existing situation and make recommendations for a permanent solution for the allocation of hearts. The charge of the Panel is:

a. To study the procurement, allocation and utilization of hearts to heart transplant candidates awaiting transplantation in Wisconsin hospitals, including the criteria for how prospective recipients are placed on the waiting list, and

b. To assess the performance of the state's two OPOs.

c. To conduct its analysis and issue its report to the parties as expeditiously as possible, but, in any event, no later than November 1, 1994.

5. Report and Operation of the Expert Panel.

The Expert Panel shall convene promptly after selection, and promptly complete its charge and deliver its recommendations, simultaneously, to UW, Aurora, and Froedtert. Such report and recommendations shall be provided as soon as possible, but in no event later than November 1, 1994. Such recommendations shall be based upon the majority vote of the members of the Expert Panel.

The Expert Panel shall follow an informal fact-finding investigative process, in reaching its recommendations. Subject to the requirements of Paragraph 7, the Panel shall have free and

prompt access to whatever information, data and witnesses it shall request from the parties. The Panel shall interview at least the heart transplant surgeons involved and the Wisconsin OPO directors. Each party shall have an opportunity to submit written materials to the Expert Panel. These submissions shall be in accordance with the Expert Panel's directions, and the Panel shall provide all signatories to this Agreement with copies of all correspondence or other request for information submitted to any party hereto. A copy of any written materials provided to the Expert Panel by any one party to this Agreement will be simultaneously provided to the other parties.

Following receipt of the recommendations, UW, Aurora, and Froedtert shall have thirty (30) days simultaneously to comment in writing directed to the Expert Panel; except if the Panel does not report until November 1, 1994, then the parties will have twenty (20) days simultaneously to comment in writing to the Panel.

Following receipt, consideration and, as deemed appropriate by the Panel, incorporation of the comments of UW, Aurora, and Froedtert (but in any event, no later than December 1, 1994), the Expert Panel shall forward its recommendations and final report regarding heart allocation to the three parties. To the extent UNOS' approval may be specifically required with respect to any specific recommendation for a method to allocate hearts, the parties will promptly request that UNOS approve implementation of such specific recommendation.

If a variance under UNOS policies is required and no variance is approved by UNOS by January 1, 1995, the Expert Panel shall immediately refer one of the following two recommendations to UNOS for immediate implementation:

- a. A single, state-wide eligibility list for all heart transplant candidates awaiting transplantation from Wisconsin heart transplant hospitals; or
- b. Two eligibility lists of heart transplant candidates awaiting heart transplantation from a hospital within Wisconsin; one list maintained, respectively by each of the two OPOs in Wisconsin, of the transplant candidates awaiting heart transplantation from hospitals within the region served by each respective OPO.

Once a determination has been made by the Expert Panel concerning either a single eligibility list or two such lists, such decision shall remain continually in place unless and until modified by mutual agreement in writing executed by all signatories to this Agreement.

6. Expert Panel Recommendations are Binding.

UW, Aurora, and Froedtert expressly covenant and agree that the recommendations of the Expert Panel shall (following UNOS approval to the extent necessary) be final and binding for a method to allocate hearts. Once the determination thereof is made by the Expert Panel, UW, Aurora, and Froedtert agree continually and consistently to operate within the terms of

such recommendations. If, following implementation of the Expert Panel determinations, UNOS policies or federal law should change in such a way as to negate any or all of the recommendations, the parties agree to abide by the still valid provisions of this Agreement, while the parties work cooperatively to reach an appropriately modified Agreement. Such cooperation will include the joint hiring of an independent mediator who shall do fact finding and the submission of all issues with respect to heart allocation on which the parties have not been able to agree. If the issues cannot be resolved by mediation, then the parties hereto will go to the original Expert Panel or a new Expert Panel chosen in the manner set forth in paragraph 3, above, and will follow the procedures outlined above in paragraph 5 to resolve the issues. The determination of the Expert Panel would be binding.

The parties are aware of the recent State v. Miron case decided by the Wisconsin Supreme Court and agree it has no application to this matter.

7. No-Contact Agreement.

In order to assure objectivity and fairness with respect to the determinations to be made by outside experts pursuant to the terms of this Agreement, and any decisions to be made by UNOS arising out of this Agreement, UW, Aurora, and Froedtert expressly agree that at no time prior to July 1, 1995:


- a. shall any oral or written contact be initiated or permitted with respect to the issues addressed in this Agreement by UW, Aurora, or Froedtert, or any of their respective employees or agents (or others affiliated in any way with such organizations) with any person employed by or associated with the American Society of Law, Medicine and Ethics and/or The Hastings Center (including any member of the Expert Panel associated with either the American Society or The Hastings Center), without written notice to, and full joint participation by, all signatories to this Agreement (or their designees in writing); nor
- b. shall any oral or written contact be initiated or permitted with respect to the issues addressed in this Agreement by UW, Aurora, or Froedtert, or any of their respective employees or agents (or others affiliated in any way with such organizations), with anyone associated with UNOS or on any committee of UNOS which shall need to make a decision with regard to the joint requests of the parties, without prior written notice to, and full joint participation by, all Wisconsin signatories to this Agreement (or their designees in writing).
- c. It is understood that 7.a. above is made subject to the second subparagraph of paragraph 5 above, which allows the Expert Panel to contact the parties or any of their employees, officers or agents to obtain information (provided all parties to this Agreement are provided with copies of all such requests for information).

8. Covenant to Support This Agreement and Modifications.


UW, Aurora, and Froedtert each hereby covenant and expressly agree that they have an affirmative obligation to support the terms and conditions of this Agreement, including, but not limited to, the time limits agreed to in this Agreement, and all temporary and final agreements that arise from this Agreement. These parties also agree that this Agreement shall not be modified or terminated in any way by any party, except by written agreement signed by all signatories to this Agreement.

IN WITNESS WHEREOF, this Agreement has been signed as of the date first above written by duly authorized representatives of UW, Aurora, and Froedtert.

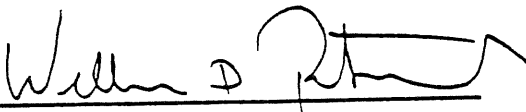
BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

By: 
George K. Steil, Sr.
5/16/88 PRES Chairman of the Board of Regents

AURORA HEALTH CARE, INC.

By: 
G. Edwin Howe
President

FROEDTERT MEMORIAL LUTHERAN HOSPITAL
WISCONSIN SOUTHEASTERN ORGAN PROCUREMENT ORGANIZATION

By: 
William D. Petasnick
President