

PR 6

Office of the President
September 14, 2010

Members, Board of Trustees:

APPROVAL OF AN EXCEPTION TO KENTUCKY STATUTE

Recommendation: that the Board of Trustees approve an exception to Kentucky Revised Statutes 164.131(7), under Governing Regulation I.E.1. and Kentucky Revised Statutes 164.367, upon recommendation of President Lee Todd and as outlined in the attached opinion and recommendation of the University Ethics Committee.

Background: Dr. John C. Gurley, M.D., a faculty employee in the College of Medicine is a co-founder with Kentucky Technologies Inc. (KTI) of Therix Medical Development, Ltd Co. (Therix). Therix was founded to commercialize certain of the University's intellectual property, specifically medical devices and diagnostics developed by UK's clinicians, and possibly other regional medical centers. Therix has a contractual relationship with UKRF (UK's designated agent for commercialization of technology). Dr. Gurley has also disclosed a number of inventions to Therix, and Therix anticipates that it may negotiate one or more license agreements with UKRF for inventions made by Dr. Gurley. Therix also anticipates that Dr. Gurley may discuss with other UK inventors the possible commercialization of their inventions by Therix. Dr. Gurley currently owns 13.56% of Therix. With completion of the current solicitation of capital, it is anticipated that Dr. Gurley's investment will be diluted to 6.7% of the company.

KRS 164.131(7) prohibits an employee from having an interest in a contract with the University, unless approved by the Board. KRS 164.367 allows the University to establish a procedure whereby the Board may approve an employee having an interest in a contract with the University. Governing Regulation I.D.2.1. provides that procedure. Pursuant to the procedure, the Ethics Committee evaluates five criteria and makes a recommendation to the President. After evaluating the Ethics Committee's recommendation, the President may make a recommendation that the Board approve the relationship.

In reviewing the facts in accordance with the five criteria from GR I.D.2.1., the Ethics Committee has determined that:

- Dr. Gurley's ownership interest in a company that has a contract with the University is, in fact, in the best interest of the University;
- Dr. Gurley's ownership interest in a company that has a contract with the University is a conflict of interest but that the conflict of interest may be managed sufficiently by Dr. Gurley's agreement to abide by all actions that the University Ethics Committee found are necessary to manage the conflict;
- the Therix-KTI contract is not subject to Kentucky Revised Statutes Chapter 45A;
- with Dr. Gurley's acceptance of the actions to manage the conflict of interest, Dr. Gurley's ownership does not present a conflict with his duties as a faculty employee; and
- the nature of the contract and the nature of Dr. Gurley's interest in the contract has been, and is being, fully disclosed to the University community and to the University officials making the decisions related to the contract.

President Todd accepted the Committee's recommendations and recommends that the Board approve Dr. Gurley's interest in the contract between Therix and UKRF.

The attached opinion of the Ethics Committee fully discloses the nature of the conflict of interest and the reasons the Board should take this action.

Action taken: Approved Disapproved Other _____