

Findings and Recommendations of Hearing Panel

Parties: Rainer Gruessner, M.D.
University Physician Healthcare (UPC)

Panel Members:

John Fung, M.D. (Cleveland Clinic)
Stuart Knechtle, M.D. (Emory University)
Sander Florman, M.D. (Mount Sinai Medical Center)

Issue: Was Dr. Gruessner's termination by University Physician Healthcare justified, meaning was it reasonable and for good cause?

Proceeding: A hearing was held on August 5, 2014 in the Patagonia Room of the UPH offices at 575 E. River Road in Tucson, Arizona. The hearing began at 9:00 am and was completed at 6:30 pm. Randy Yavitz served as the Hearing Officer.

Background Facts:

1. Commencing July 1, 2007, Dr. Gruessner entered into a Member Practice Agreement with UPH.
2. At the same time, Dr. Gruessner also assumed a number of positions at the University of Arizona, ("UA") College of Medicine and the University of Arizona Medical Center ("UAMC"), including:
 - Chair of the Department of Surgery;
 - Chief of Transplantation; and,
 - Professor.
3. UA College of Medicine, UAMC, and UAHN are not parties to this hearing.
4. UMAC is a member of the United Network for Organ Sharing ("UNOS"). Dr. Gruessner was UAMC's designated UNOS Surgical Director for the kidney, liver, pancreas, living donor and intestinal transplant programs.
5. Effective September 1, 2013, Dr. Gruessner agreed to an Amendment to Member Practice Agreement with UPH and an Agreement and Release with the UA College of Medicine. Dr. Gruessner agreed to relinquish certain positions and titles.

6. Dr. Gruessner was suspended by University Physicians Healthcare on September 19, 2013 because it was said that he “either altered or directed others to alter records related to transplant procedures.”
7. UPH then terminated Dr. Gruessner on December 16, 2013 without providing any reason.
8. On March 7, 2014, a Court found that Dr. Gruessner had not been given due process in the suspension or termination and ordered that a hearing be held.
9. On March 20, 2014, UPH gave a notice that said that the termination was because of concerns over “Dr. Gruessner’s involvement in causing changes to UAMC’s OTTR database.”
10. UPH and Dr. Gruessner then agreed on a hearing with these panel members.

Exhibits and Witnesses:

1. The Panel was presented with two binders of exhibits, and a third binder with transcripts of Court hearings. The exhibits, together with opening statements by each party were provided in advance of the hearing to each panel member by use of a computer “Dropbox.”
2. UPH, because it bore the burden of proving that the termination of Dr. Gruessner was justified by a preponderance of the evidence, presented first. UPH called the following witnesses:

Scott Sahlman (telephonic)

- Former Vice President & General Counsel of The University of Arizona Health Network

Michael McCarthy (by transcript)

- Manager Business Systems for the Transplant Department

Karen Mlawsky (by transcript)

- CEO of the Hospital Division for University of Arizona Health Network (CEO of The University of Arizona Medical Center)

Tun Jie, M.D. (by transcript)

- Interim Chief of Abdominal Transplant

Michael R. Waldrum, M.D.

- President and CEO of University Physicians Healthcare and
President and CEO of The University of Arizona Health Network

3. Dr. Gruessner presented the following witnesses:

Rainer Gruessner, MD

- * Professor of Surgery and Immunology

Abbas Rana, MD (telephonic)

- * Assistant Professor of Surgery at Baylor University

Steven J. Barker, PhD, MD (telephonic)

- * Professor of Anesthesiology, former Chair, Department of
Anesthesiology

Farid Gharagozloo, MD

- * Professor of Surgery, Chief of Thoracic Surgery, Chief of
Robotic Cardiothoracic Surgery, Chief of Esophageal Surgery, Chief of
Southwestern Lung Cancer Program

Panel Findings:

1. Dr. Gruessner is a liver transplant surgeon with a nationally recognized high reputation. At the hearing, UPH acknowledged that the quality of his care and his skill as a surgeon were certainly not at issue.
2. UPH acknowledged Dr. Gruessner's contribution in building the transplant program at UPH and UMC, which, under his direction, grew explosively during his 6 years' tenure as head of the program.
3. Dr. Gruessner explained that he and the dean of the program, Dr. Goldschmidt, did not get along personally, and did not agree professionally. This culminated in August, 2013, when Dr. Goldschmidt asked Dr. Gruessner to step down as Chair of the Surgery Department. Dr. Gruessner explained that he signed the Amendment in anticipation of achieving a dignified exit from the program.

4. Unfortunately, Dr. Gruessner's exit was anything but dignified. The panel believes that the charged political rivalry between Dr. Goldschmidt and Dr. Gruessner led to misunderstandings which, had good will and trust prevailed, could have been readily avoided.
5. The signature problem that developed after the Amendment was signed was poor communication, exacerbated by the quick resort to attorneys, a poor choice by anyone seeking to avoid conflict.
6. The panel was told that Dr. Goldschmidt was no longer Dean at the Medical School of U of A. Several doctors characterized his leadership style negatively; Dr. Barker called him a "tyrant"; Dr. Gharagozloo related how he refused to sign his contract for 4 months after moving to Arizona with his surgical team; and Dr. Gruessner testified that he recommended to the "committee of 11" that Dr. Goldschmidt should be relieved of his responsibilities. Dr. Goldschmidt did not testify; a decision not explained by UPH.
7. UPH relied on two alternative grounds as its "good cause" to terminate Dr. Gruessner:
 - a. Alteration of the OTTR database by directing Mike McCarthy, the database manager, to revise the data, most importantly to identify the primary surgeon and secondary surgeon.
 - b. Writing to UNOS notifying it of the transition in leadership.
8. The panel, knowledgeable in UNOS and database reporting, concluded that Dr. Gruessner did not "alter records." He acted reasonably to correct errors he found in the OTTR database. Bringing these errors to the attention of the OTTR data base manager was a reasonable approach. His conduct was appropriate.
9. UPH did not even attempt to prove that the changes to the OTTR data base (which remain today) were incorrect, with one exception: a procedure where Dr. Jie and Dr. Rana extracted a liver and placed a new liver in the patient before Dr. Gruessner even arrived at the operating room. Both Dr. Gruessner and Dr. Rana testified that Dr. Gruessner was not the primary surgeon, while Dr. Jie disagreed. The panel believes that Dr. Gruessner would not aptly be designated the primary surgeon on this particular procedure based on the testimony and operative notes
10. With respect to the UNOS communication, the panel remains unclear on Dr. Gruessner's motivation with respect to his communication with UNOS dated September 10, 2013. The panel believes that some notice of his resignation was required in any event, and while UNOS' reaction undoubtedly caused

consternation, there was no showing of harm to UPH, so the episode did not rise to the level of a firing offense, nor was it cited initially as grounds for Dr. Gruessner's suspension or termination.

11. While more recent communications with UNOS do no credit to Dr. Gruessner and his counsel, crossing the boundaries of constructive criticism and entering the realm of malice, they are unrelated to the issues in this case. The panel found the behavior of both sides to be unprofessional.
12. In sum, the panel felt that UMC did not meet its burden of proving that the termination was justified.
13. The panel considered its recommendations.
14. The panel concluded that the initial charge by the University of Arizona Physicians that the modifications of the OTTR database were illegal, was erroneous. However these actions led to the subsequent ripostes by Dr. Gruessner, which the panel concluded, created an environment in which a functional relationship based on trust and communication cannot be restored. Therefore it would be in neither party's interest to force reconciliation by pretending that restoration of relationship to pre-April 2013 is doable. Given the prior agreement that Dr. Gruessner would voluntarily resign from his position at the University of Arizona and seek employment elsewhere, the panel feels that the University of Arizona should do everything within reason to facilitate this.
15. The panel recommends reinstatement of employment, but not privileges or titles, essentially a faculty member without titles or clinical duties.
16. Dr. Gruessner should not be reinstated to all his former positions, including Chairman of the Department of Surgery, Chief of Abdominal Transplantation, and Director of the HepatoPancreaticoBiliary Program because he voluntarily resigned these posts and his appointment would be disruptive of the current efforts to resuscitate the UMC transplantation program. However, in order to facilitate his re-entry into practice, Dr. Gruessner should be named a Professor of Surgery.
17. Under the circumstances, a reinstatement of Dr. Gruessner's staff privileges does not make sense unless it is done as a formality based on an agreement by Dr. Gruessner not to exercise his clinical or administrative privileges.
18. The panel debated whether to recommend that UPH pay Dr. Gruessner's attorneys fees. Given that both sides bear significant responsibility for the

mutual animosity and falling out, each side should bear their own legal fees subject to the following recommendation.

The Panel notes that Dr. Gruessner has been paid since he was suspended in September, 2013. UPH should pay Dr. Gruessner for up to one additional year, or until he finds a new position

19. UPH should issue Dr. Gruessner a public apology of its design that wishes Dr. Gruessner well in his future endeavors and thanks him for his role in making UMC/UPH a world class transplantation center. It should specify that any prior discussion of misconduct have been officially retracted.
20. UPH should retract its allegations to the Arizona Medical Board accusing Dr. Gruessner of "unethical conduct."
21. The panel believes that Dr. Gruessner deserves to have his name cleared. The Panel is hopeful that Dr. Gruessner will pursue his career as opposed to litigation.



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