Chair Simeon Acoba called the meeting to order at 12:41 p.m. on Thursday, November 7, 2019, at University of Hawai‘i at Hilo, ‘Imiloa Astronomy Center of Hawai‘i, Moanahoku Exhibit Hall, 600 ‘Imiloa Place, Hilo, Hawai‘i 96720.

Committee members in attendance: Chair Simeon Acoba; Vice-Chair Michael McEnerney; Regent Kelli Acopan; Regent Eugene Bal; Regent Robert Westerman.

Others in attendance: Regent Wayne Higaki; Regent Randy Moore; Regent Alapaki Nahale-a; Regent Ernest Wilson Jr. (ex officio committee members); President David Lassner; Vice President for Legal Affairs/University General Counsel Carrie Okinaga; University of Hawai‘i at Mānoa Provost Michael Bruno; University of Hawai‘i at Hilo (UHH) Chancellor Bonnie Irwin; Executive Administrator and Secretary of the Board of Regents (Board Secretary) Kendra Oishi; and others as noted.

II. APPROVAL OF MINUTES OF THE JUNE 6, 2019 MEETING

Vice-Chair McEnerney moved to approve the minutes of the June 6, 2019, meeting seconded by Regent Westerman, and the motion carried unanimously.

III. PUBLIC COMMENT PERIOD

Board Secretary Oishi announced that the Board Office did not receive any written testimony and that no one signed up to deliver oral testimony.

IV. AGENDA ITEMS

Chair Acoba announced that he would be taking the agenda items out of order as there was a special guest presenter and that the Committee would take up agenda item D immediately after agenda item B.

A. Coaches Corner: Chris Leonard, UHH Interim Head Volleyball Coach

A talk story session was held with UHH Interim Head Volleyball Coach, Chris Leonard. Coach Leonard provided a brief background on his volleyball coaching career stating that he has served as a volleyball coach in some capacity for over 20 years, has served as a member of the UHH coaching staff for the past six years, and that this was his first year as head coach. He noted that the program has a proud history and is a program on the rise with a very diverse group of 18 student athletes on his squad, including seven who were local athletes. Coach Leonard stressed that the team mantra has been to get better every day, both on the court and in the classroom, and that the coaching staff continuously stresses to their athletes that they are students first. He highlighted the
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athletic and academic successes of the team even with limited resources when compared to other Division II schools in the Pacific West Conference noting that the team was 18-6 (13-3 in conference) and in second place but more importantly, that last year the team GPA was 3.13. Coach Leonard then noted that UHH was the only public institution in the 12 team conference and spoke of the challenges facing UHH volleyball competing against teams that are funded at greater levels than UHH. However, he was thankful for the support of the University and the regents and felt that the team could, and would strive to, do better and continue to improve every day.

Coach Leonard stated that last year the team finished the season with 21 wins and tied for third in the conference with three teams being chosen from the Pacific West Conference to compete in the NCAA Division II regionals. Unfortunately, UHH was number four. He also mentioned that the regional rankings were just released and that UHH was ranked 9th and that 8 teams ultimately get selected for the regional tournament.

Vice-Chair McEnerney asked about the state of the facilities for women’s volleyball at UHH. Coach Leonard responded that UHH facilities are sufficient but that there are nicer facilities visited during away games. He noted that UHH has had some issues with the gym floor and air conditioning, which have been discussed at previous meetings. At times, the humid conditions have made the floor slick and unplayable. He stated that having facilities that put you on an equal footing with other comparable programs is very helpful.

Vice-Chair McEnerney asked whether UHH was responsible for transportation and other costs for teams who come to Hawai'i from the mainland. Coach Leonard answered that, with the exception of tournament play, teams were responsible for their own costs, similar to when UHH travels to the mainland. He also noted that travel is the biggest expense for the UHH program.

Vice-Chair McEnerney inquired about concussions. Coach Leonard noted that while the team has not experienced a concussion this year, one player might have gone through concussion protocols about two years ago. He also praised the UHH medical and training staff on their handling of athlete’s medical issues.

Regent Higaki inquired about the number of scholarships for the program. Coach Leonard replied that UHH women’s volleyball is allowed an equivalency of 8 scholarships and currently has an equivalency of about 6.9. UHH is not fully funded for scholarships but are a lot closer than they have been in the past. He also noted that about two-thirds of the 18 players on the team receive some sort of financial assistance in varying amounts from UHH.

Regent Higaki then inquired about paid staff and whether the coach was the only paid member on staff. Coach Leonard stated that he was paid as the head coach and that three of the six coaches on staff were paid some small compensation but not a wage where this would be considered their primary job.

Regent Nahale-a asked Coach Leonard to speak to the local connection with regard to community support and in recruiting for the program. Coach Leonard responded that throughout his time and career on the Big Island, both on and off the court, he has been able to make a lot of local connections within the community which has been extremely
helpful and has made it easier to get the community excited about the program. Both fan and community support has been tremendous and people are talking about the revitalization of the program and the excitement it has created.

Regent Acopan noted that an issue that has been brought up in discussions from the students’ perspective has been affordability and food and health insecurity. She inquired as to whether issues of food or health insecurity affected his student athletes. Coach Leonard stated that he doesn’t believe they have a problem but noted that athletes sometimes don’t get to eat after late practices, tournaments, or games because the dining hall is closed. UHH provides meals for their athletes after games and works to ensure that their student athletes don’t face this issue.

Chair Acoba asked Coach Leonard what the UHH women’s volleyball budget was and how the Committee or Board could assist in getting the 8 scholarships fully funded. Coach Leonard responded that his budget was approximately $130,000 and that he welcomed the opportunity to get increased financial support for scholarships noting that this would be helpful in making the team more competitive but that UHH was trying to be creative with the resources they had.

B. Update on Health and Wellness for University of Hawai'i at Mānoa and University of Hawai'i at Hilo

UHM Athletic Director (AD) David Matlin introduced Dr. Jon Sladky who would be providing an update on the health and wellness of athletes at UHM. Prior to Dr. Sladky’s presentation, Chair Acoba noted that UH ranked 68th in the Director’s Cup rankings and asked AD Matlin to elaborate.

AD Matlin stated that the Director’s Cup is a measure of how well athletic teams do in NCAA tournaments and that this was UHM’s highest ranking since 2009. He noted that UHM was 68th out of 350 to 351 schools but that UHM was 10th out of 280 non-Power 5 schools, was the highest ranked of all the Big West teams, and was ahead of Clemson, who won the national collegiate football championship.

Dr. Sladky outlined some of the initiatives and areas of focus, as well as progress being made, in improving the health and wellness of student athletes at UHM specifically highlighting three initiatives currently underway at UHM involving electrocardiogram (EKG) screening, concussion tracking, and mental health initiatives. He mentioned that the EKG screening program first started approximate 4 to 5 years ago and UHM has progressively been screening the EKGs of all incoming athletes. At this time all athletes at UHM have had EKG screens completed. This process is more a preventative measure that can help identify cardiac conditions that can cause injury to athletes competing at the elite collegiate level. If cardiac issues are discovered based on this screening, the athletes are then referred to a specialist for a more thorough examination.

Dr. Sladky proceeded to discuss UHM’s concussion program and tracking system saying that the concussion management plan is updated several times a year and that new recommendations for concussion treatment were made in 2019. He noted that UHM’s concussion protocols have met all of the concussion safety requirements of the NCAA and received full certification. Dr. Sladky provided statistics on concussions at UHM noting that there was a slight decrease in the number of sports related concussions
experienced by student athletes. Approximately 30 sports related concussions were experienced between 2017 and 2018 with football having the largest number at 7 concussions. He also stated that concussions were evenly split between male and female athletes.

Dr. Sladky spoke on the mental health of student athletes and provided an overview of UHM’s mental health initiatives. This semester, UHM added two licensed clinical psychologists to the athletic department who work closely with athletic department medical staff to provide 7 hours of mental health appointments per week and who also track the mental health and wellness of the student athletes. He stated that the service provided by the clinical psychologists is very popular with student athletes and that all appointments were completely booked for several weeks. The student counseling center is also working on a training program for coaches and staff to teach them how to recognize and identify red flags with regard to the mental health of their athletes as well as educating coaches and staff on the availability of mental health resources.

Vice-Chair McEnerney inquired about the status of drug testing of athletes. Dr. Sladky responded that there were two phases to the drug testing of athletes. The NCAA conducts standardized drug testing at random intervals and UHM also has in-house drug testing that takes place at certain random intervals throughout the year. The in-house drug testing had briefly been paused as the athletic department searched for a new head team physician but since his employment, the program has started again. The in-house program also had drug and alcohol counseling available for athletes who test positive.

Vice-Chair McEnerney asked whether there had been an uptick in tests that were positive for marijuana, particularly in light of the availability of medical marijuana and the relaxing of legal restrictions on marijuana use. Dr. Sladky answered that he didn’t believe there had been enough data collected yet to speak definitively on that issue but that in his personal experience there didn’t appear to be an increase. He attributed this partially to athletes being knowledgeable and aware that marijuana is still an illegal substance at the federal level and as such the NCAA restricts its use.

Chair Acoba, noting that the clinical psychologists were booked up for weeks, asked Dr. Sladky the areas of mental health in which athletes were seeking assistance. Dr. Sladky responded that the clinical psychologists were not sports psychologists and dealt mainly with issues such as anxiety, depression, and other clinical mental health issues and student athletes seem to experience a mixture of issues, particularly those who are far away from home for the first time. He noted, however, that it was a good sign that student athletes are utilizing the resource.

Chair Acoba then asked whether suicide prevention and domestic abuse were being addressed. Dr. Sladky stated that these issues are trying to be addressed and that part of the new training being developed for coaches and staff relates to suicide prevention and they could explore adding domestic violence to the training as well. There also are some initiatives on campus through the public health programs that are domestic violence related but is not something that is specific to student athletes.

Regent Westerman applauded the efforts in training coaches and staff in recognizing mental health issues but asked whether similar training would be afforded to the student
athletes themselves since many student athletes confide in their peers more than in their coaches. Dr. Sladky stated that the athletic department’s focus at the moment is on bringing coaches and staff up to speed. However, he mentioned that athletes have come forward about concerns they had with issues being faced by their fellow teammates or other student athletes. While discussion with student athletes have been more reactionary to this point, he noted that having a student athlete component of the training as part of the longer term plan would be good for everyone.

Regent Wilson inquired as to whether there was any collaboration between JABSOM, the kinesiology program in the College of Education, clinical psychology students at UHM, and others to assist the athletic department with their health initiatives and work with student athletes. Dr. Sladky responded that the athletic department did use some student volunteers, specifically noting that dietician and nutrition students from the Food Science Health and Nutrition Program currently help student athletes with health and nutrition issues. AD Matlin added that there has been some collaboration on various issues, including concussion prevention issues, but that there could be more collaboration between various university programs and the athletic department and that they would continue to look for opportunities to collaborate.

Regent Moore inquired as to whether there would be benefits in doing EKG tests as student athletes left the athletic program. Dr. Sladky stated that abnormal electrical cardiac activity is usually a pre-condition that is detected as a result of athletic activity and not caused by the athletic activity itself. Student athletes who have abnormal EKG tests are usually monitored and retested but those with normal EKGs are not since evidence does not exist that retesting individuals with normal EKGs has any significant benefits.

Regent Moore then asked whether there had been any studies or analyses of mental health issues to determine if there were differences between the mental health issues being faced by athletes versus those being faced by the general student population. Dr. Sladky responded that he was aware of ongoing studies on this issue but there did not appear to be any consensus or definitive conclusions one way or the other. He noted that there is some thought that because athletes as a whole are generally living healthier lifestyles that they experience less mental health issues but he reiterated that he has not seen anything definitive on this issue.

UHH Associate AD (AAD) Kula Oda spoke on the health and wellness of student athletes at UHH. He provided an update on UHH’s concussion protocols noting that UHH only experienced one concussion last year and only 12 concussion related injuries over the past three years. Of the 12 concussions, 9 occurred among male athletes and 3 occurred among female athletes, with soccer being the sport that experienced the majority of concussions (5).

AAD Oda briefly discussed mental health services for student athletes at UHH stating that the bulk of mental health services are provided through the counseling center located on campus which is under the purview of UHH’s health and wellness program. A counselor from the counseling center speaks to student athletes twice a year on topics such as suicide prevention and gender based violence and UHH secures guest speakers to talk about issues such as performance enhancing drugs and their effects on mental health.
Vice-Chair McEnerney reiterated the question posed to Dr. Sladky regarding drug testing, marijuana use, and how UHH was dealing with these issues. AAD Oda noted that UHH does not have in-house drug testing like UHM but does take part in the standardized drug tests conducted by the NCAA which were recently conducted at UHH. To his knowledge, UHH did not experience upticks in marijuana use among athletes.

Regent Nahale-a inquired as to whether athletes at UHH experienced more mental health challenges and domestic violence issues because of things such as school size, isolation, and distance from family and if there were distinctions between local athletes and out-of-state athletes. AAD Oda stated that he wasn’t aware of UHH athletes having greater mental health challenges and that UHH had great resources to deal with these issues. If an issue does arise UHH has the ability to quickly respond in the right way, especially since Hilo is such a tight knit community. He noted that he hasn’t heard of drug or suicide issues being a problem but has had to deal with more issues involving the death of a family member.

Chair Acoba asked for an explanation of the NCAA annual health survey. AAD Oda noted that this was something fairly new that UHH AD Guillen was very involved with and could probably more adequately address. However, he did know that it was an annual survey that UHH participated in comprised of various questions posed by the NCAA that were answered by UHH AD Guillen. Chair Acoba requested AAD Oda to provide follow-up to the Committee regarding this question.

D. Discussion of NCAA Name, Image, and Likeness Policy

Chair Acoba mentioned that all of the athletic teams were members of the Big West Conference, except for football, and welcomed Dennis Farrell, Big West Commissioner, who has been associated with the Big West Conference for 40 years, serving 20 as Commissioner to the meeting.

Commissioner Farrell spoke on the new policy recently adopted by the NCAA in response to legislation that passed in California (SB206) and was being introduced in various other jurisdictions that sets in motion the process to allow name, image, and likeness opportunities for student-athletes, the so-called “pay to play” rule. Commissioner Farrell mentioned that the provisions of SB206 would become operative on January 1, 2023, which basically provided lead time for the NCAA, the federal government, or other states to follow suit and enact similar legislation. Some of the states currently considering such legislation include New York, South Carolina, Florida, Washington, Colorado, and Michigan. He noted that the Florida bill, if passed, could take effect as early as July 2020.

Commissioner Farrell stated that the NCAA did not wait for the final outcome of SB206 before taking steps to try to address the issue. In the spring of 2019, the NCAA Board of Governors created a working group whose only task was to examine the issues surrounding the use of an athlete’s name, image, and likeness. The working group recently submitted its report to the NCAA Board of Governors who unanimously supported the working group’s recommendation that student athletes should be permitted to benefit from the use of their name, image, or likeness in a manner consistent with the collegiate model. Furthermore, the NCAA directed all of its three divisions to immediately begin modifying and modernizing relevant bylaws, policies, and rules to address this
situation stipulating that they take effect no later than January of 2021. He noted that, of major concern among commissioners, athletic directors, and universities was how to control the involvement of schools, employees, or boosters in the development or promotion of economic opportunities for student athletes with regard to the use of their name, image, or likeness. Commissioner Farrell’s main issue with this new policy shift is the effect the unregulated use of an athlete’s name, image, or likeness will have on the recruitment process. He stated that he does not ultimately know which direction things will go in, the effects these policies will have on intercollegiate athletics, and how the NCAA, or member institutions will respond but that there is still much to be determined and sorted out.

Vice-Chair McEnerney inquired as to whether there had been a study or if data was available on the effects of this new policy on the different programs and types of athletes at the collegiate level. Commissioner Farrell responded that there has been no such study or analysis conducted on this issue that he is aware of. Anecdotally, however, there is an expectation that the football and men’s basketball programs, and the higher echelon of athletes in these programs, will be the primary beneficiaries of this new policy. Nevertheless, the policy must be applicable and available equally across the board for all athletes when it is finalized.

Vice-Chair McEnerney mentioned that his concern was more with the upper echelon of athletes and whether Commissioner Farrell had any idea of the monetary compensation being estimated for these athletes. Commissioner Farrell stated that he did not have any information on that topic. However, there is a concern that universities may try to outbid each other to get particular athletes to attend their schools.

Vice-Chair McEnerney asked whether Commissioner Farrell thought that this shift in policy would work towards keeping more student athletes in college. Commissioner Farrell pointed out that he had been asked a similar question in an interview a few weeks ago and that there was no definitive answer, although anecdotally some professional athletes have stated that they may have gone to college or stayed in college had this rule been in place prior to their joining their respective leagues. However, Commissioner Farrell noted that the NCAA rules are not the main reason that student athletes in college do not immediately become athletes. Rather, it is the various professional league and player association rules that limit when an athlete can join the league.

Vice-Chair McEnerney asked what part of the university would be responsible for monitoring this issue and these policies. Commissioner Farrell stated that nothing was certain at this point but that it would probably be an athletic department’s compliance office that will have oversight responsibility.

Vice-Chair McEnerney inquired as to how many of the Big West schools governing boards had a separate athletic committee. Commissioner Farrell stated that probably half of the members of the Big West Conference had some outside entity that provided some oversight regarding intercollegiate athletics. The other members of the Conference were members of the Cal State or UC systems where athletic issues were controlled more at the campus level.
Regent Westerman questioned whether states needed to pass legislation to deal with this issue if the NCAA was already going to allow it and are working to have something in place by 2021. Commissioner Farrell stated that his personal prediction was that if we continued on this path with states passing individual laws unique to each state the NCAA would file a lawsuit claiming restraint of interstate trade under the Commerce Clause.

Regent Westerman asked Commissioner Farrell how he saw this new policy playing out with different sports and different levels of schools with regard to sponsorship and funding. Commissioner Farrell stated that he felt the potential was there for a number of unintended consequences. One of these was the issue of stockpiling, where schools get a number of athletes sponsored by a large company and therefore would have a number of scholarships freed up for other athletes which could technically lead to some schools having far greater numbers of “scholarship” players than other schools. Currently, the number of athletic scholarships allowed is regulated by the NCAA. This could lead to an unfair competitive advantage among schools. He further noted that the NCAA has looked at this issue numerous times in the past and that they faced a number of challenges each time this was done.

Vice-Chair McEnerney raised the issue of taxing scholarship moneys, mentioning that he had read that legislators in Washington were thinking that if athletes were getting big endorsements perhaps the federal government should start taxing scholarship moneys. Commissioner Farrell agreed and noted that there has been discussion of the federal government proposing a federal law regarding this issue.

Chair Acoba noted that Hawai‘i is the only non-California school in the Big West Conference and asked how Hawai‘i would be impacted by SB206. Commissioner Farrell noted that he was not sure on the impacts SB206 would have on Hawai‘i.

C. Overview of NCAA Compliance

UHM AD David Matlin provided an overview of NCAA compliance for Division I discussing the NCAA’s violation structure and levels, including the parameters of Level I, Level II, and Level III violations with Level I being the most egregious violation. He commented that it is unrealistic to expect a program to never have a violation. The NCAA rulebook contains numerous rules which are often amended and new rules are constantly being added, and universities, at times, are not aware of these new rules or rule changes until a violation occurs. UHM self-reported 10 Level III violations in 2018-2019 and no Level I or Level II violations. At the request of Chair Acoba, AD Matlin spoke briefly on the basketball violation that UHM was sanctioned for, noting that in 2018 the UHM basketball program was cited for some Level I and Level II violations that resulted in severe sanctions including the loss of scholarships, the loss of the ability to play in post-season tournaments, and fines of up to $10,000. UHM appealed these violations and sanctions and won the appeal which lowered the violations to Level III.

Vice-Chair McEnerney asked what a realistic target is for violations. UHM AD Matlin responded that the focus is on the penalties and not repeating the same violation and that 10 or 20 would be more realistic. He noted that the best thing to do is self-report.

Chair Acoba asked how sports at a university played into the perspective or view of the university. UHM AD Matlin stated that although a university is an educational
institution first and foremost, athletics is likely the most visible aspect of a university, receiving more media coverage than most university programs, which provides an opportunity for a university to shine but also can result in embarrassing developments for a university. He felt that athletics was an education in itself where athletes learn about teamwork, perseverance, and hard work which is a valuable extension to academics. He also noted that athletics provides exposure to a university that allows the university to showcase academic programs that might not get that kind of exposure otherwise.

Chair Acoba asked UHM AD Matlin if he felt it was important to monitor and oversee athletics at UH as it is one of the more public and highly visible functions of the University. UHM AD Matlin said that oversight and monitoring is important and that it occurs at different levels at UH.

Chair Acoba stated that having a committee at the Board level to help monitor and oversee one of the most public functions of a university was a good thing and inquired as to whether UHM AD Matlin concurred with this assessment. UHM AD Matlin responded in the affirmative.

Chair Acoba opened discussions among members as to the pros and cons of having an Intercollegiate Athletics Committee.

Regent Wilson stated that UH athletics are our state’s athletics and it was important for the people of Hawai‘i. He favored keeping the Committee because it sends a strong message to the community on the importance of athletics at UH to Hawai‘i.

Regent Westerman opined that it was critical that the Board maintain the Committee to protect the athletes and monitor the NCAA, particularly in light of the new policy and direction that were discussed earlier regarding the use of name, image, and likeness, and help to determine how we, as a school, will react to the changes.

Regent Higaki agreed with the sentiments noted and felt that oversight was a good thing but that it appeared that Board Chair Kudo’s major concern regarding the Intercollegiate Athletics Committee was based more on timing and the reduction in the number of Regents and the increased workload this may entail.

Regent Moore offered a contrary perspective noting that oversight over athletic programs was critical but questioned whether the Board needed a separate committee to exercise this oversight or could these responsibilities be incorporated into another existing committee such as Academic and Student Affairs. He felt that having a separate committee to maintain this oversight was not necessary.

Vice-Chair McEnerney stated that having a separate Committee on Intercollegiate Athletics allows the Board to exercise more specific and focused oversight of athletic programs and that adding these responsibilities to another committee might make proper oversight difficult.

E. Committee Goals and Objectives

Chair Acoba discussed the annual review of the Committee, bylaws, and projected accomplishments for 2019-2020. Committee members were asked to propose goals and objectives for the Committee at the next meeting.
F. Discussion of Committee Scope and Functions

Brief discussions took place on the scope and functions of the Committee in conjunction with agenda item G below.

G. Future Committee Status of the Intercollegiate Athletics Committee

Chair Acoba noted that monitoring one of the most public functions of the University is important and that having an Intercollegiate Athletics Committee at the Board level plays a vital role in this oversight function. Discussions occurred as to whether the Committee should be maintained or abolished. Time not permitting, this topic would need to be continued to be discussed at the next Committee meeting.

V. EXECUTIVE SESSION

Upon motion by Vice-Chair McEnerney, seconded by Regent Westerman, the Committee unanimously approved convening in executive session to consider matters relating to the solicitation and acceptance of private donations pursuant to Section 92-5(a)(7), Hawai’i Revised Statutes.

The meeting recessed at 2:18 p.m.

Chair Acoba called the meeting back to order at 2:40 p.m. He noted that the Committee went into executive session to discuss the acceptance of private donations as noted on the agenda.

VI. ADJOURNMENT

There being no further business, Vice-Chair McEnerney moved to adjourn, and Regent Bal seconded, and with unanimous approval, the meeting was adjourned at 2:41 p.m.

Respectfully Submitted,

/S/

Kendra Oishi
Executive Administrator and Secretary of the Board of Regents