

MEMORANDUM

TO: Joel Siegal, Counsel for Life Chiropractic College West (Life West)

FROM: Teri Cannon, Higher Education Consultant

RE: Board Actions under WASC Standards and Policy

DATE: June 26, 2024

Background

I have been asked to review documents and written communications related to the Board of Regents of Life West to evaluate whether the Board as currently composed and operating meets the requirements set forth in the Western Association of Schools and College (WASC) Standards of Accreditation (Standards).

WASC Standards and Policies

The WASC Standards require that institutions are governed by “an independent board ... that is responsible for mission, integrity, and oversight of planning, policies, performance, and sustainability. The governing board selects and evaluates the chief executive officer.” Further, “[t]he board members have a range of backgrounds, knowledge, and skills to carry out their responsibilities.” (Standard 3, Criteria for Review 3.7 and 3.8) Boards are also required to “engage in self-evaluation and development.” (Standard 4, CFR 4.7)

Importantly, the Standards require institutions to “function with integrity and transparency.” (Standard 1) Specifically, institutions must “operate with integrity and transparency in its operations” (CFR 1.3), maintain “appropriate operating policies and business procedures” (CFR 1.4), and have “honest and open communication with the Commission.” (CFR 1.8)

These Standards and Criteria are supplemented with a number of policies and guides, including the Governing Board Policy and its Implementation Guide. This policy and guide call for the following:

- Board decisions must be made in the best interests of the institution and in accordance with fiduciary responsibilities (including asset protection).
- A majority of members of the governing board must be independent members without other interests that may create conflicts, including financial, personal, familial, business/contractual interests, and not receive compensation from the institution. The policy requiring a majority of independent members also extends to committee membership and quorum requirements. Reimbursement to board

members for direct reasonable expenses is permitted and is not considered compensation.

- Boards are charged with the following responsibilities, among others:
 - fulfilling their “fiduciary, legal and oversight responsibilities”
 - adhering to “best practice” conflict of interest policies and processes
 - having a diverse membership with a range of backgrounds
 - selecting the CEO and delegating day-to-day management to the CEO
 - honoring shared governance (defined below)
 - complying with state and federal law and regulations
 - acting as a collective body not as individuals.

The “best practice” regarding conflicts of interest referred to the Guide consists of having a strong conflict of interest policy that protects against conflicts, potential conflicts, and appearance of conflicts, and annual forms acknowledging the conflict policy and disclosing any potential or real conflicts. When conflicts arise, the conflicted member must not discuss the matter in question with the other board members, is usually excused from the meeting, and may not vote on the matter.

“Shared governance” refers to the higher education model in which the high-level oversight of the institution sits with the board while the faculty has more specific and detailed oversight of the academic programs and the CEO and the cadre of administrators and staff handle the management and operation of the institution. See more in footnote below.¹

Finally, the WASC Commission issued a letter in March 2023 in which it granted reaccreditation to Life West. Among the several issues that Life West was charged to work on and address with WASC is “to build the capacity and engagement of the Board by ... strengthening Board training while expanding governance capacity, including recruiting additional Board members with higher education and other relevant expertise.” The Commission called for an Interim Report in November 2024 and a Special Visit in the fall 2026, at which time Life West must address these board-related concerns.

¹ **Shared governance is a foundational tenet of higher education.** This principle “acknowledges the final institutional authority of governing boards and distributed authority to the administration and faculty.” Traditionally, governing boards delegate the responsibility of strategic planning and daily management to presidents, while faculty lead educational delivery. Delegation of authority between key constituents on campus strengthens institutions by championing meaningful engagement and inclusive, transparent decision-making. Effective shared governance strengthens institutions by serving as a vehicle for necessary change,” and such innovation is essential to confronting today’s uncertain higher education environment. Strong shared governance informs decisions. A governing board’s commitment to the practice of shared governance “bears fruit for the institution in the form of mutual trust in challenging times, support for innovation, and shared commitment to goals for building a stronger future.” Association of Governing Boards

Analysis

The materials provided included a letter from the law firm of Adler and Colvin to Life West's counsel, Joel Siegal; the draft of a complaint against the Board of Regents for Breach of Fiduciary Duty and Declaratory Relief; a letter from Joel Siegal to the Board of Regents, dated February 2024; and a letter from Mr. Siegal to the Board dated June 20, 2024; Life West's Bylaws and minutes of some board meetings; communications by and among members of the Board.

Composition and Size of the Board

- The Board has fallen below the minimum number of members required by the Articles of Incorporation (7) and may at times have fallen below the Bylaw requirement of five (5). At present the Board appears to have five members, all of whom are men and four of whom are chiropractors.
- The composition of the Board has not changed substantially in recent years with two board members having served for at least 10 years (Chair Amit "Jimmy" Nanda for 10 years and Steven Silk for 12 years).
- The Board has not appointed any new members that would diversify and strengthen its areas of expertise. It has not appointed any women and remains all men. All but one member are chiropractors. No persons with higher education background or financial expertise have been added.
- The Board took action to remove the one member of the Board with financial expertise, Scott Turner, in May 2024. At that time, the Board elected all members except Regent Turner to new three-year terms. The reasons for calling for this election at this time are unclear. Concerns have been raised that Regent Turner was not re-elected because of objections he raised about certain conduct of the Board.

A board of only five members may not conform to Life West's own organizing documents and does not conform to WASC expectations for the size or composition of a board. As noted in the Adler memorandum, a board of only five members is not large enough to conduct the work required of a higher education governing body. There are not sufficient Regents to populate the expected number of committees (usually at a minimum Audit, Finance, Academic, and Governance). The Life West Bylaws call for Executive and Governance/Board Affairs Committees, and the Board has established other committees, namely Academic Affairs Committee, Finance Committee, Audit Committee, and Diversity and Inclusion Committee with ad hoc committees on Strategic Planning and Negotiation. The Bylaws call for at least three members on a committee, which means that each of the five current members would need to serve on four or five committees; this is not only not feasible, but the members do not have the expertise needed on all these committees. This unacceptably low board size is noncompliant and unworkable and has persisted for at least three years.

Additionally, a five-person board can convene with only three persons present and a majority of two can make important decisions on behalf of the institution. By any fiduciary, legal or accreditation standard, this is an unacceptably small number of persons to control the highest level of decisions in a complex institution of higher education with hundreds of students and employees.

Related to size is the composition of the Board, which does not conform to WASC policies and expectations regarding the qualifications and expertise expected of boards and the diversity of the board members. As noted above, the current Board is all male and four of five members are chiropractors. Boards are expected to have diverse members with the wide range of expertise needed to consider and make informed decisions. This means having members with expertise in higher education (outside one discipline, as noted by the WASC visiting team and Commission), but also in the key areas of board responsibility, especially finances and in other areas relevant to the Life West priorities and challenges, e.g., enrollment/marketing, strategic planning, advancement, technology, facilities, human resources, global education, governance, and organizational change. Related is the recent failure to re-elect Mr. Turner, leaving the Board without any financial expert. (Note that whether the board's action was legitimate and effective is in dispute.) The nonconforming composition of the board has been an issue for at least three years.

Operation of the Board

- The Board committees are not meeting regularly, and some may not be populated and operational at all.
- The Board is a self-perpetuating body with a Governance/Board Affairs Committee that is charged to ensure sound board practice and adherence to Bylaws and to identify and recommend qualified candidates for election to the Board.
- The Board attempted to amend the Bylaws to extend the current Board members' terms beyond the term limit of three consecutive three-year terms. It is unclear from the documentation if that amendment was adopted. In any case, in 2021 the Board elected the then-current members to new terms, resulting in two members now serving terms beyond the Bylaws-mandated three-term limit.
- As a result of electing Board members for new terms in 2021, terms are no longer staggered, which is required by the Bylaws, and all the affected Board members can theoretically serve three more three-year terms, with the potential that some Board members will serve on the Board for as long as 20 years.
- The Board may have taken actions without meeting Bylaws quorum requirements.
- The Board has held meetings and Board committee meetings without notice to or participation of the President, who is an ex officio member of the Board and all committees.

The current Board is not adhering to the Life West Bylaws and to WASC policy about Board operation in several respects, including populating and convening committees to discuss

important issues within the committees' scope; notifying the President of all meetings and enabling his attendance; honoring quorum requirements that call for a majority of members present to take actions; having staggered terms; and honoring term limits.

In 2021, the Board acted to extend the terms of the current members so that they could serve beyond the maximum nine years. Service for more than nine years not only violates the Bylaws but is also longer than the usual two or three three-year terms adopted commonly as good practice by non-profit higher education boards. This act alone gives the appearance, when taken together with other facts set forth below, of the Board's attempting to protect the personal and financial interests of its members as individuals, and not following the Bylaws or acting in the best interests of the institution.

The best interests of Life West would have been served by the Board identifying, vetting, electing, and orienting new members with good qualifications and diverse backgrounds to fully populate and renew the Board and its committees. Board succession planning is key to having an effective board and good governance.

Board Compliance with Conflict Policies and Fiduciary Responsibilities

- The Board members have not all submitted annual conflict of interest disclosure statements each year.
- One or more Board members appear to have conflicts of interest, including contractual relationships and/or payments beyond normal reimbursement, which may also constitute compensation. Compensation is not permitted under the Bylaws and WASC policy for independent board members.
- One board member, Cameron Hastings, was hired as a consultant for compensation of \$150,000 a year. Because Board members are prohibited from receiving compensation, Mr. Hastings took a leave from the Board but was "reinstated" at a later date while he was still being compensated.
- At least one Board member, the Chair, Amit "Jimmy" Nanda, is reported to have used a Life West credit card to expend funds for his personal use and other activities not approved by the administration and not processed through regular channels for decision making or payment of expenses. Some of his expenditures may not have been in the best interests of Life West but rather served only his personal interests.
- The Board has held several excessively expensive multiple-day meetings in locations outside the US and the state. Holding meetings in those locations was not necessary for the effective operation of the Board or related to other Life West business in those locations. Importantly, Board members' family members' and guests' expenses were also reimbursed in violation of Life West policy.
- Based on the Adler letter, the actions above may violate state and federal laws and regulations and jeopardize the legal status of the institution.

The likely violations of state and federal law described in the Adler letter also constitute violations of the WASC Standards and policies stated above concerning both board governance and integrity. As noted above, boards are charged to ensure that the institution complies with all applicable laws and regulations and fulfills its legal and fiduciary responsibilities. Board members may not act individually, which the Life West Board Chair appears to have done.

Under WASC Standards on integrity, boards must act with honesty and transparency and follow institutional rules and processes, including the Bylaws but also institutional processes and policies such as those about expenditures and reimbursements.

In addition to the legal implications arising from the Board's actions, these actions demonstrate a failure to adhere to principles of shared governance. Among these improper actions are the Board Chair's expending Life West funds without appropriate process or approval and acted on his own to expend funds outside of the budget. These actions violate the principles of delegation of financial management and daily management of finances to the President and violate the principles that separate the roles of boards and administration. In addition, some expenditures made by the board Chair were apparently for his personal benefit and not in the interests of the institution. As noted above, the Board has not adhered to requirements of WASC policy that call for boards to delegate the day-to-day operations to the president. Documentation showed that the Board Chair circumvented the President's proper role when the member expended Life West funds without approval and failed to include him in Board meetings.

At least some of the payments to and reimbursements to Board members appear to constitute compensation in contravention of the Bylaws. Receiving compensation also creates a conflict of interest. It appears that the affected Regents did not disclose these conflicts or abide by proper processes that must be followed when conflicts arise. The information provided shows that the Board Chair and others have not complied with legal and accreditation requirements concerning conflicts of interest and compensation. By planning and expending Life West's funds on unnecessary and expensive meetings and travel, not only for themselves but for family members and guests, they have placed themselves in a conflicted position and breached their fiduciary duties in violation of WASC policy as stated above.

Conclusion

Based on this analysis, I have concluded that Life West's Board is not in compliance with WASC Standards of Accreditation related to board governance and integrity. As set forth above, the Board's composition and actions do not comply with the Standards and policies regarding the size, composition and expertise, diversity, conflicts of interest, compensation, delegation of authority to the President, fiduciary duties, and acting in the best interests of the institution. Importantly, it appears from the Adler memorandum that

the board has taken actions that do not comply with state and federal laws and regulations, which also in itself violates WASC policy.

The Board's conduct that has led to this point has taken place over at least the last three years. Attempts have been made, in particular since December 2023, by Regent Turner and by Life West's counsel Joel Siegal to persuade the Board to rectify this situation. Counsel Siegal properly requested a review of the situation by Adler and Colvin, an independent law firm specializing in non-profit entities. The Adler letter sets forth the facts and allegations and clearly states the potential consequences, which include great risks to the legal, tax, and accreditation status of the College, including the possible loss of accreditation, non-profit status, and tax exemptions and related financial liability.

In WASC Standard 1 on Mission and Integrity, CFR 1.8 states that:

The institution is committed to honest and open communication with the Commission and to undertaking the accreditation review process with seriousness and candor. The institution abides by Commission policies and procedures and informs the Commission promptly of any matter that could affect the accreditation status of the institution. (emphasis added)

The Board and the leadership are not only obligated to take immediate corrective action re the violations noted in this and the Adler memorandum but also to inform WASC.

Violations of this nature, because of the integrity issues they raise, are taken very seriously by WASC. Upon learning of this situation, WASC would likely take immediate action to conduct an investigation, which could lead to an Order to Show Cause why accreditation should not be withdrawn. The relevant policy from the 2023 Handbook of Accreditation (Sanctions for Unethical Institutional Behavior) states:

If it appears to the Commission or its staff that an institution is out of compliance with Standard One (Defining Institutional Mission and Acting with Integrity) in a manner that requires immediate attention, the Commission will conduct an investigation, issue a letter of findings to the institution, and give the institution an opportunity to respond. If the Commission concludes that the institution is out of compliance due to unlawful or unethical conduct it may: ... either:

- a. Issue an Order to Show Cause why its candidacy or accreditation should not be withdrawn at the end of a stated period;
- b. In an extreme case, sever its relationship with the institution by denying or withdrawing candidacy or accreditation; or
- c. Apply less severe sanctions as deemed appropriate.

In my opinion, given the seriousness of the noncompliance with WASC Standards and policies, the appropriate course of action is for the Board to take immediate and definitive corrective actions. Such actions should include resignations by members who are past the

term limits set forth in the Bylaws or have participated in other conduct that violates the law, College policies, and WASC Standards and policies. In keeping with legal precedent, the Board should be re-populated immediately with a sufficient number of qualified and diverse members who can act on an independent investigation and take whatever further actions are necessary to restore the integrity of board governance.

If such actions are not taken immediately, it is my opinion that the President must inform WASC as he is obligated as the chief executive officer to do so under WASC CFR 1.8. Failure to inform WASC would be treated as a further breach of the Standards. If the leadership approaches WASC showing that appropriate actions have been taken and a concrete plan is in place to bring the institution into full conformity with the law and WASC Standards, there is some chance that the matter can be resolved with WASC without a Show Cause.