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MEMORANDUM

VIA EMAIL

To: Members, Governing Board
California Institute for Regenerative Medicine

From: James C. Harrison

Date: August 14, 2010

Re: Proposed Procedures for Consideration of Nominees for Chair and Vice Chair
(Our File No.: 2297-0)

INTRODUCTION

At the request of the Governance Subcommittee, we have prepared an outline of proposed procedures for the Board's consideration of nominees for Chair and Vice Chair. Together with proposed amendments to the Board's bylaws relating to the conduct of the election for the Chair and Vice Chair, these proposed procedures are intended to lay the foundation for an orderly succession of leadership when the terms of the current Chair and statutory Vice Chair expire.

BACKGROUND

A. Nomination of Candidates for Chair and Statutory Vice Chair

Under Proposition 71, the Chair and Vice Chair of the Board serve six year terms. (Health & Saf. Code, 125290.20(a)(6).) These terms began on December 17, 2004, when the Board elected Bob Klein and Ed Penhoet to serve as Chair and Vice Chair. The terms of Chairman Bob Klein and Vice Chair Art Torres (who succeeded Dr. Penhoet and who is serving the remainder of Dr. Penhoet's term) expire on December 16, 2010.¹ However, the incumbents will continue to serve until their successors are elected and take the oath of office. (*Id.*, § 125290.20(c)(3).)

¹ When a vacancy occurs mid-term, the replacement member is appointed to serve the *remainder* of the existing term. (*Id.*, § 125290.20(c)(2).) Therefore, the term of a member who was appointed to replace another member expires at the same time as the original member's term.

Pursuant to Proposition 71, the Governor, the Lieutenant Governor, the Treasurer and the Controller may each nominate a candidate for Chair and a candidate for statutory Vice Chair.² The Board has the authority and responsibility to elect a Chair and a Vice Chair from among the individuals nominated by the Governor, the Lieutenant Governor, the Treasurer, and the Controller. There is no explicit time limit on nominations; however, it would be reasonable to construe Health Safety Code section 125290.20, which requires that appointing authorities make new appointments to CIRM's Governing Board within 30 days after the expiration of a member's term, to apply to the nomination of candidates for Chair and Vice Chair, as well.

Each of the constitutional officers who is responsible for making appointments and nominations is either term-limited (the Governor) or up for reelection in November 2010 (the Lieutenant Governor, the Treasurer, and the Controller). However, each of the current incumbents will continue to serve until the first Monday in January and therefore has the power to make appointments and nominations regardless of the outcome of the election. It is likely, therefore, that the current Governor, Lieutenant Governor, Treasurer, and Controller will make appointments and nominations to the Board before the end of 2010.

B. Effect of Expiration of Other Members' Terms

Pursuant to Proposition 71, 14 of the 29 members serve 6-year terms; the remaining members – the patient advocates (other than the Chair and Vice Chair) and the members appointed by UC Chancellors – serve 8-year terms.³ (Health & Saf. Code, § 125290.20(c)(1).) Members may be reappointed but may not serve more than two terms. (*Id.*, § 125290.20(c)(1).) Like the Chair and the Vice Chair, members continue to serve until their successors are appointed and take the oath of office. (*Id.*, § 125290.20(c)(3).) Depending upon the timing of the nominations for Chair and Vice Chair, therefore, the current members of the Board may participate in the election of a new Chair and Vice Chair.

C. Criteria for Chair and Vice Chair

Proposition 71 specifies the qualifications for candidates for the office of Chair. The following are mandatory criteria for the Chair:

² The Board created a second office of Vice Chair (referred to as the "Bylaws Vice Chair") through an amendment to the Board's bylaws. Although the bylaws permit the Board to elect a Bylaws Vice Chair from among the members of the Board when the term of the current Bylaws Vice Chair, Duane Roth, expires on December 16, 2010, the bylaws do not mandate that the Board fill this position.

³ In addition to Chairman Klein and Vice Chairs Torres and Roth, the terms of the following members will expire on December 16, 2010: Birgeneau, Bloom, Brody, Friedman, Goldberg, Love, Melmed, Penhoet, Pizzo, Puliafito, and Reed.

1. Demonstrated history in successful stem cell research advocacy
2. Experience with state and federal legislative processes, including medical legislative approvals of standards and/or funding
3. Qualified for appointment as a California representative of a regional, state, or national disease advocacy group for spinal cord injury, Alzheimer's disease, type II diabetes, multiple sclerosis, amyotrophic lateral sclerosis, type I diabetes, heart disease, cancer, Parkinson's disease, mental health, HIV/AIDS
4. Cannot be concurrently employed by, or on leave from, any prospective grant or loan recipient institutions in California

Proposition 71 also includes additional criteria for consideration. These criteria, however, are not mandatory.

1. Experience with governmental agencies or institutions (either executive or board position)
2. Experience with the process of establishing government standards and procedures
3. Experience with legal review of proper governmental authority for the exercise of government agency or government institutional powers
4. Direct knowledge and experience in bond financing

Proposition 71 requires that the Vice Chair be elected from among individuals who have attributes and experience complementary to the Chair, preferably covering the criteria not represented by the Chair's credentials and experience. Proposition 71 also specifies that the Vice Chair must satisfy the following mandatory criteria:

1. Demonstrated history in successful stem cell research advocacy
2. Qualified for appointment as a California representative of a regional, state, or national disease advocacy group for spinal cord injury, Alzheimer's disease, type II diabetes, multiple sclerosis, amyotrophic lateral sclerosis, type I diabetes, heart disease, cancer, Parkinson's disease, mental health, HIV/AIDS
3. Cannot be concurrently employed by, or on leave from, any prospective grant or loan recipient institutions in California

PROPOSED PROCEDURES

The following proposed procedures are intended to create a foundation for an orderly and timely transition of authority:

- The Chairman, on behalf of the Board, will request that the Constitutional Officers nominate candidates for Chair and Vice Chair no later than November 1, 2010. (As noted above, the Constitutional Officers are not required to make their nominations by this date, but we will request their cooperation.)
- The Chairman will communicate to Constitutional Officers the Board's intent to vote on candidates for Chair and Vice Chair at its December 8-9, 2010 meeting, unless another date is selected.
- The Chairman will request that Constitutional Officers provide background information regarding nominees, including a brief personal statement from the nominee explaining the nominee's qualifications for, and interest in, the office. These materials will be provided to the Board and will be made available to the public.
- If the Board desires, the Chairman will schedule a telephonic meeting of the Board before the December meeting in order to provide an opportunity for nominees to make brief presentations and answer questions. Nominees may also be requested to make presentations at the Board meeting at which the election is conducted.
- The Board will consider the nominees at its meeting on December 8-9, 2010.⁴ The Board will have an opportunity to have a closed session discussion regarding the nominees and will then convene in open session to vote on the nominees pursuant to the Board's bylaws. Assuming the Board elects a new Chair and Vice Chair at this meeting, the individuals will take their oath before the Board's first meeting in January 2011, permitting a brief transition of power from the outgoing Chair and Vice Chair to the new officers.

CONCLUSION

In order to permit a timely and orderly transition of power, we recommend that the Board approve the proposed procedures set forth above.

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⁴ Alternatively, if the Board desires, the Chairman could schedule a meeting before December 8, 2010, or after the December meeting but before December 17, 2010. In any event, the new Chair and Vice Chair will not assume their duties until the Board's first meeting after December 16, 2010, which will likely be the meeting in January 2011.