

**EMERGING LAW AND POLICY ISSUES  
IN HEALTH CARE ON CAMPUS:  
*FACULTY TENURE AND COMPENSATION ISSUES***

**Presenter:**

**LAWRENCE WHITE  
University Counsel  
Georgetown University  
Washington, D.C.**

**Stetson University College of Law:**

**18th ANNUAL LAW & HIGHER EDUCATION CONFERENCE  
Clearwater Beach, Florida  
February 13-15, 1997**



**Eighteenth Annual National Conference on Law and Higher Education Issues  
Stetson University College of Law**

**Clearwater Beach, Florida  
February 13-15, 1997**

**EMERGING LAW AND POLICY ISSUES IN HEALTH CARE ON CAMPUS:  
FACULTY TENURE AND COMPENSATION ISSUES**

**Lawrence White  
University Counsel  
Georgetown University**

**I. RESOURCES ON ACADEMIC TENURE AND FACULTY COMPENSATION  
ISSUES IN ACADEMIC HEALTH CARE CENTERS**

- American Association of University Professors. *POLICY DOCUMENTS & REPORTS* (1995).

Commonly called the “Redbook” (and referred to that way in this outline), this compendium encompasses the full range of AAUP policy statements, from the seminal 1940 *Statement of Principles on Academic Freedom and Tenure* to detailed implementing policies on governance, professional ethics, student rights, fringe benefits, and many other subjects. The volume includes a good index, a bibliography, and useful essays explaining how the AAUP adopts policies and how AAUP policies are interpreted and applied by the courts.

- Finkin, Matthew W., *THE CASE FOR TENURE* (1996).

Professor Finkin, a lawyer and long-time chair of the AAUP's Committee A on Academic Freedom and Tenure, has collected and annotated a series of useful essays and case reports on the meaning of tenure, the economic costs of tenure, and the significance of allied concepts like academic due process, the tenure-track probationary period, and post-tenure review. The book reproduces in abridged form Professor William Van Alstyne's 1971 essay *Tenure: A Summary, Explanation, and “Defense,”* which originally appeared in the AAUP BULLETIN (57:328 (1971)). Professor Van Alstyne's elegant defense of the tenure system highlights “the special relationship of tenure to academic freedom” and the importance of procedural safeguards prior to the termination of a tenured appointment.

- Association of American Medical Colleges, *Tenure, Compensation, and Career Pathways: Reexamining the Faculty Employment Relationship in Academic Medicine* (1996).

This large three-ring notebook contains papers and resource materials presented at a three-day conference sponsored by the AAMC in February, 1996. Among the useful papers are Robert M. O'Neil, "Reexamining the Meaning and Role of Tenure in Academic Medicine," and Steven G. Olswang, "Academic Freedom and Tenure: The United States and United Kingdom Experience." The compendium is particularly useful to those who wish to explore the relationship between academic tenure and faculty compensation policies. Copies of the compendium can be obtained from Dr. Robert F. Jones, Associate Vice President, Section for Institutional and Faculty Policy Studies, AAMC, 2450 N Street, N.W., Room 411, Washington, D.C. 20037. Dr. Jones's telephone number is (202) 828-0520, and his fax number is (202) 828-1125.

- *Tenure in the Medical School*, ACADEME, JANUARY-FEBRUARY, 1996, PAGE 40.

This report, drafted by a subcommittee of the AAUP's Committee A on Academic Freedom and Tenure, is reproduced as an appendix at the end of this outline and discussed at length on pages - of the outline.

## II. TENURE AS A CONTRACTUAL CONCEPT

- A. *The Contractual Meaning of Academic Tenure.* Tenure is a contractually enforceable institutional promise relating to the duration of a faculty appointment. "[T]enure is translatable as a statement of formal assurance that ... the individual's professional security and academic freedom will not be placed in question without the observance of full academic due process." W. Van Alstyne, "Tenure: A Summary, Explanation, and 'Defense,'" AAUP BULL. 57:329 (1971), *reprinted in* Matthew W. Finkin, THE CASE FOR TENURE 3, 4 (1996).

In accordance with the law of contracts, tenure means two things:

- (1) The appointment is of *indefinite term*. It has no specified end date.
- (2) The appointment can be terminated only for *reasons* and only in accordance with *procedures* that are specified as part of the contract and understood by the parties at the time they enter into the employment relationship.

B. ***Institutional Sources of Tenure Rights.*** The contract rights of faculty members are defined in many places, the most significant of which are:

- The institution's governing documents (charter, bylaws, state statutes, institutional regulations, etc.).
- The faculty handbook. At most institutions, the handbook contains detailed definitions of faculty ranks; prescribes the procedure by which faculty members are appointed, promoted, and given tenure; establishes a maximum probationary period; and describes both the standards the institution will employ to determine whether a tenured faculty appointment (or a non-tenured appointment during the term of the appointment) should be terminated and the procedures to be used in effecting that decision.
- The faculty member's individual employment contract or appointment letter.

Tenure exists at a particular institution only if it is identified in the governing documents, the handbook, or elsewhere as a contract right belonging to eligible faculty members. Individual institutions are free to depart from traditional notions of academic tenure, and even to do away with tenure altogether. In fact, however, tenure is virtually universal in American colleges and universities, and more than 95 percent of North American medical schools have formal tenure systems for their faculty. See R.F. Jones & S.S. Sanderson, *Tenure Policies in U.S. and Canadian Medical Schools*, *ACADEMIC MEDICINE* 69:772-78 (1994).

C. ***AAUP Tenure Standards.*** The AAUP's role in giving content to the term "tenure" and associated terms is twofold:

- (1) First and most important, many faculty handbooks adopt as contractually enforceable institutional policy the definitions of tenure and academic freedom derived from the landmark 1940 *Statement of Principles on Academic Freedom and Tenure* and other AAUP policy documents.<sup>1</sup> Some do this by making specific references in their handbooks to the 1940 *Statement*; others do it by reproducing or paraphrasing the texts of pertinent AAUP policies.
- (2) Even in the absence of specific incorporation of AAUP terminology in institutional documents, ambiguities about contract terms can be resolved under principles of contract law by examining industrial "custom and

---

<sup>1</sup> A copy of the 1940 *Statement of Principles* appears at the end of this outline as Appendix A.

usage," and there is no doubt that AAUP tenure standards are widely recognized as institutional norms in American higher education. See generally Ralph S. Brown and Matthew W. Finkin, *The Usefulness of AAUP Policy Statements*, AAUP BULL. 64:5-11 (1978).

D. ***The Commonly Understood Contractual Guarantees Associated with Tenure.***

As stated on page 2 of this outline, a tenured faculty appointment can be terminated only for *reasons* and only in accordance with *procedures* that are specified as part of the contract and understood by the parties at the time they enter into the employment relationship. Let's pause to consider what that means as a matter of contract law.

(1) A tenured appointment can be terminated only for *reasons*. Under the AAUP's definition of tenure and under the tenure policies at most institutions of higher education in this country, "reasons" sufficient to support the termination of a tenured appointment come in two categories: "cause" and "reasons unrelated to cause."

(a) *Terminations for cause.* Under AAUP policy, an institution is free to define for itself the standards constituting ground for for-cause termination, as long as those grounds "relat[e], directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers." Regulation 5(a), *Recommended Institutional Regulations on Academic Freedom and Tenure*, AAUP Redbook, page 26. One of the most widely respected definitions of "adequate cause" was formulated more than twenty years ago by the Commission on Academic Tenure: adequate cause exists if the institution can show --

- (i) "Demonstrated incompetence or dishonesty in teaching or research,
- (ii) "Substantial and manifest neglect of duty, ... [or]
- (iii) "Personal conduct which substantially impairs the individual's fulfillment of his [or her] institutional responsibilities."

Commission on Academic Tenure in Higher Education, *FACULTY TENURE 21* (Jossey-Bass, 1973). Not only are these grounds narrow and highly qualified ("*demonstrated* incompetence," "*substantial* and *manifest* neglect of duty," etc.), but at most

institutions the body hearing the charges and deciding the accused faculty member's fate consists predominantly or even wholly of fellow faculty members -- a difficult forum before which to argue the institution's case.

- (b) *Terminations not for cause.* AAUP policy recognizes three narrow circumstances in which a tenured faculty appointment may be terminated for reasons unrelated to the fitness of the faculty member:
  - (i) *Financial exigency.* A tenured faculty appointment may be terminated if that is the only way for an institution to cope with a financial exigency, restrictively defined under AAUP policy as "an imminent financial crisis which threatens the survival of *the institution as a whole* and which cannot be alleviated by less drastic means." Regulation 4(c), *Recommended Institutional Regulations on Academic Freedom and Tenure*, AAUP Redbook page 23 (emphasis added).
  - (ii) *Program discontinuation.* A tenured faculty appointment may be terminated if the institution elects, for programmatic reasons not related to financial exigency, to discontinue a particular program or department of instruction. Regulation 4(d), *Recommended Institutional Regulations on Academic Freedom and Tenure*, AAUP Redbook page 23.
  - (iii) *Institutional merger or affiliation.* Under narrowly defined circumstances, it is arguably consistent with AAUP policy for one institution to void the appointments of tenured faculty members as part of that institution's merger into or affiliation with another. *See On Institutional Mergers and Acquisitions*, ACADEME, March-April, 1982, pages 1a-7a.
- (3) A tenured faculty appointment can be terminated only in accordance with *procedures* that are specified as part of the contract and understood by the parties at the time they enter into the employment relationship. These procedures usually entail, at a minimum:
  - (i) A predetermination *hearing* before a body of faculty peers. At the hearing, the faculty member is entitled to certain procedural rights, such as receipt of a written set of charges,

assistance from an “advisor” (who can but does not necessarily have to be an attorney), and a stenographic record of the proceedings.

- (ii) *Deference* to a suitable faculty role in institutional governance. Standards for terminating appointments and procedures for hearings cannot be imposed unilaterally by administrators; they must be formulated with due regard for faculty primacy in all matters relating to faculty status. See generally American Association of University Professors, American Council on Education, and Association of Governing Boards of Universities and Colleges, *Joint Statement on Government of Colleges and Universities* (1966), reprinted in AAUP Redbook, pages 179-185.

E. **Summary.** Putting all these concepts together:

- (1) Tenure serves two important ends: the protection of academic freedom, and the assurance of economic security as the best means of attracting well qualified people into the teaching profession. In the latter respect, there is a direct relationship between academic tenure and faculty compensation.
- (2) Tenure serves these ends by bestowing on the recipient an appointment of indefinite duration that can be terminated only for specified reasons and in accordance with codified procedures that assign the principal fact-finding role to the faculty itself.
- (3) Institutional tenure policies should not be developed, imposed, or modified unilaterally by administrators or governing boards, but should originate in duly constituted faculty bodies and should reflect faculty input.

F. **“Tenure in the Medical School.”** These are the themes underlying the thoughtful report that appeared in *ACADEME* in early 1996. (*ACADEME* is published by the AAUP.) The report, entitled “Tenure in the Medical School,” was drafted by a subcommittee of the AAUP’s Committee A on Academic Freedom and Tenure. It was published for comment in the January-February, 1996, edition of *ACADEME*, but was never formally adopted as an expression of official AAUP policy. The best that can be said of the report is that it represents the individual views of some of the AAUP’s most enlightened and most experienced members on the changing meaning of tenure in academic health care centers. A copy of the report is reproduced as Appendix B at the end of this outline.



The report is remarkable in the following respects:

- (1) It candidly recognizes the reality of non-tenure-track appointments in academic medical centers.
- (2) It candidly recognizes that for some faculty members in *clinical* departments it is tolerable and even desirable to allow for probationary periods in excess of the traditional seven years; but the report insists that for faculty members in *basic science* departments the probationary period should not be extended.
- (3) It addresses the sensitive issue of compensation reductions for tenured *clinical* faculty members. The report suggests “using a basic science salary line as a guidepost for determining salary guarantees for clinical faculty members.” (Page 43 n. 11.) While it is a bit unclear what the report means by a “basic science salary line,” the report seems to suggest that compensation reductions -- even drastic reductions -- for tenured clinicians are tolerable as long as the reduced salary is not less than a benchmark pegged to salaries of tenured basic science faculty members.

### III. NEW PRESSURES ON TENURE AND COMPENSATION

#### A. *Tenure's Cost:*

- (1) Once bestowed, tenure is for all intents and purposes impossible to take away.
- (2) Once bestowed, tenure represents an extraordinary long-term commitment of institutional resources.
- (3) Once tenure and compensation standards are codified, it is lengthy and bruising process to modify them.

#### B. *Sources of Pressure:*

- (1) The enormous upheaval in the clinical enterprise caused by the disappearance of traditional third-party indemnity insurance and the emergence of managed-care entrepreneurs.
- (2) The Federal government's reduced sense of its own responsibility for the health of the research and teaching enterprises in academic health care:

- Changes in Medicare funding formulae that effectively penalize teaching hospitals.
  - Reductions in funding for basic scientific research.
  - Political and financial volatility in state government systems, which in some states (Minnesota, Texas) is exacerbated by a tendency on the part of state legislators and state governing boards to micro-manage.
- (3) The result: enormous volatility in revenue streams. Tenure represents a long-term employment commitment, and, at the risk of reducing a complex subject to a sound bite, I can encapsulate the whole subject by saying that long-term, multi-million-dollar employment commitments raise no eyebrows when times are good but look managerially imprudent in an era dominated by budgetary volatility.

C. *Institutional Responses:*

- (1) *Structural and corporate reconfiguration.* Institutions are changing their bylaws in an effort to promote nimbleness in an era dominated by a growing entrepreneurial impulse. Today's academic medical center wheels and deals on a scale that would have been unimaginable five years ago.
- (2) *Tenure shows no signs of disappearing.* Medical schools with tenure systems are not abandoning those systems or taking tenure away from faculty members who already have it; but --
- There are signs that the probationary period is slowly lengthening.
  - The number of tenure-track appointments nationally is not increasing.
  - There is a very perceptible increase in expectations for the award of tenure.
- (3) *Compensation is the subject of intense review at many institutions.* Many have chartered committees to determine how much or what proportion of a tenured faculty member's salary is inviolate by virtue of tenured status. Their approaches vary widely:

- Most common is the division of individual salaries into two or (more usually) three components with varying labels, *e.g.*, “base,” “supplement,” and “incentive”, with “base” being the component guaranteed by tenured.
- Some committees advocate formulae related to *internal* measures, *e.g.*, the average or median salary for tenured faculty in basic-science departments.
- Some advocate formulae related to *external* measures, *e.g.*, a specified percentile of the AAMC mean by rank.

#### IV. CONCLUSION

From Chapter 10 (“Tenure: The Meaning of Tenure”) in Henry Rosovsky, *THE UNIVERSITY: AN OWNER’S MANUAL* (1990), pages 183-84:

For me, the essence of academic tenure lies in ... [the notion of] *tenure as social contract*: an appropriate and essential form of social contract in universities. It is appropriate because the advantages outweigh the disadvantages. It is essential because the absence of tenure would, in the long run, lower the quality of a faculty. And faculty quality is the keystone of university life. The best faculty will attract the ablest students, produce the finest alumni, generate the most research support, and so on.

...

Our jobs -- as senior professors at major universities -- require high intelligence, special talents, and initiative. These attributes are in general demand: business, law, medicine, and other professions are looking for people with similar characteristics. And some of these careers promise, at considerable risk, far greater financial rewards. ...

In my view, tenure carries the implication of joining an extended family; that is the social contract. Each side can seek a divorce: the university only in the most extraordinary circumstances, and the professor as easily as a male under Islamic law. It is not an uneven bargain because the university needs its share of talented people, and professors trade life-long security and familial relations for lesser economic rewards.

APPENDIX A

*1940 Statement of Principles on Academic Freedom and Tenure*

# 1940 Statement of Principles on Academic Freedom and Tenure

## With 1970 Interpretive Comments

---

*In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges (now the Association of American Colleges and Universities) agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure.*

*The 1940 Statement is printed below, followed by Interpretive Comments as developed by representatives of the American Association of University Professors and the Association of American Colleges in 1969. The governing bodies of the two associations, meeting respectively in November 1989 and January 1990, adopted several changes in language in order to remove gender-specific references from the original text.*

**T**he purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher<sup>1</sup> or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.<sup>[1]<sup>2</sup></sup>

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

### ACADEMIC FREEDOM

- (a) Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
- (b) Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.<sup>[2]</sup> Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.<sup>[3]</sup>

<sup>1</sup>The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

<sup>2</sup>Bold-face numbers in brackets refer to Interpretive Comments which follow.

- (c) College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.[4]

## ACADEMIC TENURE

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank,[5] the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years.[6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.[7]
3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.[8]
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.[9]
5. Termination of a continuous appointment because of financial exigency should be demonstrably *bona fide*.

## 1940 INTERPRETATIONS

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 *Statement of Principles on Academic Freedom and Tenure* were agreed upon:

1. That its operation should not be retroactive.

2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 *Conference Statement on Academic Freedom and Tenure*.
3. If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph (a)(4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

## 1970 INTERPRETIVE COMMENTS

*Following extensive discussions on the 1940 Statement of Principles on Academic Freedom and Tenure with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the Statement in terms of the experience gained in implementing and applying the Statement for over thirty years and of adapting it to current needs.*

*The committee submitted to the two associations for their consideration the following "Interpretive Comments." These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-sixth Annual Meeting as Association policy.*

In the thirty years since their promulgation, the principles of the 1940 *Statement of Principles on Academic Freedom and Tenure* have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 *Statement*, to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 *Statement* is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 *Statement*; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents* 385 U.S. 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

The numbers refer to the designated portion of the 1940 *Statement* on which interpretive comment is made.

1. The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the *Statement on Professional Ethics*, adopted in 1966 as Associ-

ation policy. (A revision, adopted in 1987, was published in *Academe: Bulletin of the AAUP* 73 [July-August 1987]: 49.)

2. The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.

3. Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 *Statement*, and we do not now endorse such a departure.

4. This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 *Statement* immediately following its endorsement which reads as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph (a)(4) of the section on Academic Tenure. In pressing such charges the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph (c) of the section on Academic Freedom in the 1940 *Statement* should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances" (*AAUP Bulletin* 51 [1965]: 29), which states *inter alia*: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph V of the *Statement on Professional Ethics* also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of other obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

5. The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of the teacher's specific title. \*

6. In calling for an agreement "in writing" on the amount of credit given for a faculty member's prior service at other institutions, the *Statement* furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution. \*\*

\* For a discussion of this question, see the "Report of the Special Committee on Academic Personnel Ineligible for Tenure," *AAUP Bulletin* 52 (1966): 280-82.

\*\*For a more detailed statement on this question, see "On Crediting Prior Service Elsewhere as Part of the Probationary Period," *AAUP Bulletin* 64 (1978): 27-75.



7. The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 *Statement* with respect to the termination of service of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the *Standards for Notice of Nonreappointment*, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

- (1) Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.
- (2) Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.
- (3) At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and of individuals, are described in the *Statement on Recruitment and Resignation of Faculty Members*, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the *Recommended Institutional Regulations on Academic Freedom and Tenure*, prepared by the American Association of University Professors.

9. A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, jointly approved by the American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 *Statement* is silent.

The 1958 *Statement* provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

**APPENDIX B**

**"Tenure in the Medical School," ACADEME, January-February, 1996, pp. 40-45**

# Tenure in the Medical School

*The report which follows, prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure, was approved for publication by Committee A in November 1995 for the information of the profession. Comments are welcome and should be addressed to the Association's Washington office.*

## Introduction and Background<sup>1</sup>

This report and proposed policy statement result from ongoing concerns within the American Association of University Professors regarding the changing nature of academic medical centers in American higher education and the impact, evident or potential, of those changes on questions of faculty status and academic freedom within such centers.

Until the early 20th century, few medical schools were affiliated with universities, most being free-standing proprietary schools of varying standards. The faculty were largely physicians whose income was derived from the private practice of medicine and fees from students. Reforms in medical education early in this century were influenced by the Flexner report and fostered by the American Medical Association, and required the affiliation of medical schools with universities along European (particularly German) lines, with the concurrent establishment of basic science departments for research and teaching.<sup>2</sup> The new university-affiliated medical schools developed full-time, salaried faculty, some of whom were not physicians but basic scientists by training, and their arrival coincided with the formation of the American Association of University Professors and the development of policies and standards relating to academic freedom and tenure.

The rapid post-World War II growth of medical schools resulted in major changes, including the increase in the number of

medical students, curricular revision, augmented postgraduate medical training in clinical specialties (residency programs), greater emphasis on research and patient care, and the creation of non-tenure-track lines of full-time as well as part-time faculty. These expanded responsibilities required an expansion in the total number of faculty as well, and altered the relationship between the faculty and the medical school and also between the medical school and the university. Faculty salaries have become increasingly dependent on income from outside sources (e.g., research grants for faculty in basic science departments and for nonphysician scientists in clinical departments and fees from patient care activities for physician faculty). Academic advancement and tenure have become increasingly based on scholarly research and publications, and less on teaching and service.

Medical schools have a unique status among institutions of higher learning. Whether state or private, they are large institutions which, with few exceptions, are part of or affiliated with universities.<sup>3</sup> They encompass diverse educational and research interests ranging from molecular biology to preventive medicine. They rely on affiliated hospitals and clinics for patients for medical practice and teaching of students, postgraduates (residents), and fellows. Although other professional schools share some of these attributes, the faculty of these other schools do not need, as a rule, university-sponsored institutions for the "private" practice of their professions.<sup>4</sup>

<sup>1</sup> Much of the background section of this report has been adopted freely (and with thanks) from an earlier report by an Association Task Force on Medical Schools (May 12, 1994), but the present statement is the result of discussions subsequent to that report. The subcommittee acknowledges with gratitude the assistance of Robert F. Jones, associate vice-president for institutional and faculty studies, Association of American Medical Colleges, who has been a continuously helpful presence during the preparation of this report.

<sup>2</sup> Abraham Flexner, *Medical Education in the United States and Canada* (Boston: Merrymount Press, 1910; Carnegie Foundation for the Advancement of Teaching, Bulletin #4); Lester S. King, *American Medicine Comes of Age, 1840-1920* (Chicago: American Medical Association, 1984); Paul Starr, *The Social Transformation of American Medicine* (New York: Basic Books, 1982).

<sup>3</sup> Our reference to "academic medical centers" at the beginning of this report is intended to designate those clusters of health professions education colleges (including dental medicine, pharmacy, allied health professions, nursing, and other units in addition to the school or college of medicine) which operate in conjunction with "teaching hospitals" or clinics, whether actually operated by the university or contractually linked to it for physician training. Medical schools may be private or public; some are still free-standing, but more often than not they are part of a university system, in which they may operate either in separate locations detached geographically and in governance from the "parent" campus, or as part of a campus that includes non-health-profession units of instruction, reporting to a common administrative officer and perhaps with the medical faculty participating in, e.g., a broadly based faculty senate. While the subcommittee acknowledged these distinctions early in its discussions, it is of the opinion that the fundamental policy questions remain the same no matter what the relationship of the medical school to any larger institution of which it may be part.

<sup>4</sup> For example, schools of law, engineering, business, etc., do not generally have comparable systems in which income-providing clients, either as private payers or through third-party arrangements, offer practical experience to students and postgraduate trainees.

If medical schools are very different from the universities with which they are affiliated, they are also very different institutions from what they were three decades ago. Then a medical school looked a lot more like the rest of the university. Its revenues came from the same combination of sources, but the proportions of that income were very different from what they are now. Revenue now comes from tuition and fees, state and local governments, federal funds (research and other income), endowment, contract research, and medical services. Overall revenue has grown enormously. At its zenith, in 1966, federal revenue constituted 55 percent of all income. While today the aggregate total of federal funds coming to medical schools is much greater than it was then, its proportion of total revenue has fallen to 22 percent. The difference is the growth in medical service income coming to the medical schools primarily through faculty practice plans. Thirty years ago, medical service income was about 6 percent of all medical school revenue; today it is 45 percent. Of that 45 percent, one quarter is from hospital payments, 70 percent from faculty practice plans, and 6 percent from service commission contracts.<sup>5</sup>

The number of medical students has not grown in recent years, but that number is about double that of thirty years ago (Jones, p. 10). The number of faculty members, however, has grown dramatically over that period of time. Today there are about 75,000 faculty members in medical schools. The former president of the Association of American Medical Colleges, Dr. Robert G. Petersdorf, has pointed out that, although faculties have grown with no corresponding increase in students, there has been "no significant increase in time or effort dedicated to teaching."<sup>6</sup> The change in the numbers and duties of faculty members "reflects the expanded involvement of medical schools in patient care activities and [corresponding] changes in faculty appointment practices." A very substantial number of the newly added faculty members are appointed to full-time positions in clinical departments, but most of their responsibilities are in billable patient care and clinical teaching (supervising medical students in practice settings). Thirty years ago, they would have been designated only as "voluntary or part-time faculty" (Jones, p. 5). The balance between income-generating patient services and the teaching of students weighs heavily on the side of the former. The rapid growth in the number of clinical faculty members, a number about ten times as large as thirty years ago, is almost entirely due to its role in producing revenue, as the number of students has only doubled since then.

This growing dependence of medical school budgets on med-

ical service revenues has grave implications for the future of medical schools. Funding for the largely non-tenure-track clinical appointments is dependent on the affected faculty members being able to generate sufficient income to pay for their services and enough extra income for other medical school purposes. The growth of managed care organizations and of cost-control practices in the private health market is altering the arrangements which have governed these activities in the past in dramatic fashion. Health maintenance and other managed care organizations are increasingly loath to contract with teaching hospitals, in which technologically and clinically sophisticated medical care drives up the cost of their services. Teaching hospitals also have a disproportionate share of Medicare and Medicaid patients, the reimbursement for whom is lower than for private fee-paying patients. The result is a heavy pressure to shift costs to the latter. As income from medical services becomes harder to come by in the future, medical schools may try to maintain income through a further increase in clinical, non-tenure-track faculty appointments, whose primary function will be to produce income through billable services.

Other sources of income for medical schools also will be squeezed, and the future is one of scarcer resources than in the past. Robert Jones puts it this way: "Growth of the federal research enterprises has slowed..., and a burgeoning federal deficit makes substantial future increases in this source...unlikely. Tuition and fees are stable sources of funding, but [they] appear to be set at the limits of affordability. Finally, revenues from state and local governments may prove to be the most uncertain of all" (Jones, p. 4). A source of particular concern is the direct and indirect federal subsidies for graduate medical education that are part of a Medicare budget which appears particularly vulnerable. As this report is in preparation, Congress is also considering cuts in the special funds provided to inner-city hospitals, and a large number of academic medical centers are located in the inner city. Because of these changes, and the consequent pressures that will be brought to bear on medical schools that are at the heart of academic medical centers, Petersdorf predicts that by the year 2000 tenure may have become a vestige of the past, at least in clinical departments" (Petersdorf, p. 177).

Because of the volatility of the environment in which medical schools function, now and in the future, it is especially appropriate that the role of tenure as the guarantor of academic freedom in these institutions receive examination. Faculty members in medical schools face problems with respect to tenure different from those faced by faculty members in other parts of the university. The expectation that tenured faculty members generate their own salaries from the provision of medical services or research grants will create increasing problems as resources become scarcer. For example, reliance on external funding for salary support poses special problems for nonphysician tenured and tenure-track faculty researchers in clinical departments. If these faculty lose research grant support, they cannot turn to medical practice to earn a

<sup>5</sup> Robert F. Jones, *American Medical Education: Institutions, Programs and Issues* (Washington, D.C.: Association of American Medical Colleges, 1992), p. 4.

<sup>6</sup> Robert G. Petersdorf, "It's Report Card Time Again," *Academic Medicine* 69 (1994):175. For a more recent discussion of the complex of issues surrounding faculty status in medical schools, see Carole J. Bland and Richard L. Holloway, "A Crisis of Mission: Faculty Roles and Rewards in an Era of Health-Care Reform," *Change* (September-October 1995): 30-33.

salary. Their vulnerability is greater than that of tenured physician faculty members who can teach medical specialties and who can earn income by medical practice, as well as that of tenured faculty members in basic science departments who can teach in their academic specialties.

As a provider of health care, a medical school needs income derived from the clinical services to provide a large share of the salaries of the physician faculty. Physicians who provide patient care include tenure-track and tenured faculty, non-tenure-track faculty, and resident and subspecialty physicians in training. The non-tenure-track physician faculty, who are not necessarily required to be scholars and may do little teaching, provide much of the care of patients, whose fees add to the income of the medical school.

The modern medical school, therefore, has the attributes of a business enterprise with largely individual entrepreneurial activities in both patient care and research. Those faculty members so involved are counted on to bring in funds not only to underwrite salaries for supporting personnel, laboratory equipment and supplies, and those indirect costs necessary to maintain the infrastructure of the enterprise, but also to underwrite faculty salaries, including in many cases a portion of the salaries of tenured faculty members. Academic advancement of faculty in basic science departments and nonphysician faculty in clinical departments is disproportionately dependent upon scholarly research as compared with teaching and service, and the research in turn is disproportionately dependent on salary support from research grants. The heavy dependence on external funding for salary support can divert faculty dedication and effort away from teaching and university service toward research or patient care to maintain their income and status.

The current debate about national health care systems will have an impact on medical schools in as yet uncertain ways. Three possible developments will contribute to their redefinition.<sup>7</sup> There will be increased emphasis on primary care, both in practice and in training medical students. As the schools assume new responsibilities, they will need to add primary care physicians to provide these services. Such physicians are likely to be non-tenure-track faculty, further emphasizing the "two-class" faculty status that has evolved in medical schools.

The current severe competition for the relatively limited funds for biomedical research emphasizes the need for equitable policies regarding assignments for those faculty whose research funding is diminished or lost. Any reduction in federal funds for subsidizing specialty training of medical residents in health care systems will require major reorganization of residency training programs. Threat of loss of research funding can seriously affect the enthusiasm and commitment of faculty to academic careers and, secondarily, can affect the vitality and academic goals of medical schools.

<sup>7</sup> David Blumenthal and Gregg S. Meyer, "The Future of the Academic Medical Center Under Health Care Reform," *New England Journal of Medicine* 329 (1993):1812-14.

The challenges facing the medical school have been most recently, and perhaps most succinctly, stated by the president of the Association of American Medical Colleges, Dr. Jordan J. Cohen:

The existence of tenure in medical schools represents a linkage to the broader academic culture of the university, with its traditional devotion to a free exchange of ideas without threat of economic penalty. Yet medical schools, because of their increased involvement in the real world of health care delivery, are also linked to the corporate culture, with its brutal devotion to productivity without guarantees of economic security. The clash of these cultures is reaching deafening proportions and will challenge the most adroit academic administrators. If medical schools are to succeed, they must avoid the Scylla of an ivory-tower disregard of new competitive realities and the Charybdis of a corporate sellout of academic values.<sup>8</sup>

In preparing the report that follows, the subcommittee has attempted to maintain an awareness of precisely those twin dangers.

## Issues with Respect to Association Policy

The general concern of this subcommittee, like that of its predecessor task force from which we have drawn much of our discussion thus far, is whether medical schools support, or are prepared in the near and long-term future to support, the policies and procedures relating to academic freedom, tenure, and due process that have been promulgated by the AAUP since its founding. There may be no single issue or case that would call for the Association to investigate medical schools collectively. But the need for a review of Association policy is suggested by the questions raised by some medical school administrators and faculty about the validity of and need for tenure, along with instances of abridgment of academic freedom and due process in medical schools. Among the issues we have noted are: (1) the appearance of *de facto* departures from standards, for example, in regard to the application of the probationary period; (2) the increasing use of non-tenurable full-time as well as part-time faculty; (3) in some, though not all, medical schools, an apparently inadequate role for medical school faculty in institutional governance, particularly in terms of faculty status, working conditions, and curriculum; and (4) a concern about possible intrusion by outside agents (e.g., state legislatures, Congress, licensing authorities) on governance and curriculum.

Although there is no doubt that the intensity of debate regarding the future of tenure in medical schools is considerably heightened as a result of the pressures we have been outlining, recent studies indicate that tenure in some form remains at the core of the faculty staffing policies of such schools.<sup>9</sup> According to Jones and

<sup>8</sup> Jordan J. Cohen, "Academic Medicine's Tenuous Hold on Tenure," *Academic Medicine* 70 (1995):294.

Sanderson, 96 percent of U.S. and Canadian medical schools have tenure systems, although nine of them limit the award of tenure to faculty in the basic sciences (Jones and Sanderson, p. 773). Only modest differences exist between the percentages of full-time basic science faculty with tenure or in tenure-track positions in 1983 (77 percent) and 1993 (72 percent). The issue of tenure is more dramatically highlighted in the drop in the proportion of clinical faculty with tenure or on the tenure track.<sup>10</sup> Within the tenure tracks, there is growing belief that a six-year probationary period may be inadequate "for basic science faculty to establish themselves as independent investigators, especially given the competition for research funding" (Jones and Sanderson, p. 775), although, *pari passu*, the same objection could reasonably apply to such faculty in colleges of arts and sciences as well. It might be most accurate to say that an acknowledgment of the principle of tenure remains at the core of most academic medical centers. If tenure is suffering erosion, it has not yet endured a frontal attack.

But even where the presence of tenure suggests the reassuring persistence of the system, there is solid evidence that the financial assurances of that system are being defined in a more limited way: that is, in connection with the percentage of institutional "hard money" in the tenure line. Unlike the situation in other academic units in modern American colleges and universities, it is not uncommon in medical schools to have tenure guarantees attached to, say, 20 or 30 percent of a faculty member's full-time appointment, with the remainder of the salary dependent on the procurement of external funding. Inasmuch as the 1940 *Statement of Principles on Academic Freedom and Tenure*, drafted and endorsed by the AAUP and the Association of American Colleges and Universities and carrying the endorsement of more than 155 educational and professional associations, links tenure not only to "freedom of teaching and research and of extramural activities," but also to "a sufficient degree of economic security to make the profession attractive to men and women of ability," there would seem to be involved in appointments of the sort just described a very real question as to precisely what tenure means under conditions that protect only a portion of the faculty member's income. A reasonable interpretation of the 1940 *Statement* would seem to imply that the ability of the faculty member to defend academic free-

dom, his or her own or the principle in general, is linked to whether the salary is adequate to the maintenance of financial independence.<sup>11</sup>

At the same time, the enormous diversity of medical school programs and of the variety of faculty who teach in them suggests that certain kinds of appointments were not foreseen by, and in any case not intended to fall within the ambit of, the 1940 *Statement*. In contrast to academic faculty of the sort envisioned by that statement, academic physicians deal directly with the general public (patients) in an income-producing environment. Their relationship to the institution with which they are affiliated is therefore fundamentally unlike that of the full-time teachers and investigators who are described in the statement. We acknowledge that no policy adopted by the Association with respect to the academic culture of medical schools can command the adherence of those schools without taking into account the nature of the medical enterprise. Nonetheless, we believe that existing Association policy can convincingly address many of those realities.<sup>12</sup>

The subcommittee acknowledges that medical schools to some extent, and increasingly, partake of the nature of corporate as well as academic enterprise. (Here we would content ourselves with noting that corporations are not by definition incapable of offering appropriate guarantees of appointment.) Association policy must be flexible enough to address this question in a principled.

<sup>11</sup> Practices vary widely with respect to the percentage of clinical appointments that may be tenured, and in some cases the tenured portion may be so negligible as to be of little concern to the clinical faculty member. The situation has become much more complex since the time of the 1940 *Statement*, and its framers doubtless would not have envisioned the complexities that have emerged. We suggest using a basic science salary line as a guidepost for determining salary guarantees for clinical faculty members. The faculty of the particular school should be involved in arriving at a specific recommendation. Creative approaches not overtly at odds with existing Association policy seem possible. Thus, one school represented on the subcommittee has adopted a commitment to support such a faculty member at the 50th percentile at his or her academic rank as reported annually by the AAMC, or the present salary of the individual, whichever is less.

<sup>12</sup> Although dealing primarily with term contracts in the area of sponsored research, the Association's 1969 "Report of the Special Committee on Academic Personnel Ineligible for Tenure" (*AAUP Policy Documents and Reports*, 1995 edition, pp. 82-85) acknowledges a category of employment, "contract research teams," to which "traditional concepts of academic freedom and tenure do not apply." It also argues, however, that "whenever academic institutions designate full-time researchers as faculty members, either by formal appointment or by conferring the titles of instructor, assistant or associate professor, or professor, those researchers should have all the rights of other faculty members." In the case of faculty members whose title is modified by the designation "clinical," this issue now presents itself in a new light which we feel needs to be addressed here. More reluctantly, but with the awareness that the Association must nonetheless take account of changing realities, AAUP's Committee G on Part-Time and Non-Tenure-Track Appointments has developed, and the Association's Council (1993) approved, a document setting forth the basic protections that should be applied to non-tenure-track faculty: "The Status of Non-Tenure-Track Faculty" (*AAUP Policy Documents and Reports*, 1995 edition, pp. 72-81; see Statement of Policy below, point 2).

<sup>9</sup>The conclusion of Robert F. Jones and Susan C. Sanderson, "Tenure Policies in U.S. and Canadian Medical Schools" (*Academic Medicine* 69 [1994]:772-78), is that "medical schools have adapted tenure policies to allow themselves flexibility in meeting their academic and clinical missions. The forces driving schools to fashion unique faculty appointment arrangements are not dissipating. Tenure is likely to continue in the academic medical center of the future but to play a diminished role" (p. 772).

<sup>10</sup> "In 1983, 30,856 clinical faculty were listed on the FRS [Association of American Medical Colleges Faculty Roster System], with 59 percent in tenure streams.... By 1993, the number of clinical faculty listed on the FRS had nearly doubled, to 58,607. Only 47 percent were in tenure streams: 26 percent with tenure and 21 percent on track" (*ibid.*, p. 773).

manner while being persuasive in terms of policy guidance to those engaged in the daily work of medical education. We also believe, however, that the presence of income-generating activities in no way weakens the claim of faculty members in those schools to the protections of academic freedom and tenure consistent with the particular role that a given faculty member plays. To the extent that medical schools, and academic medical centers, are academic institutions, and that an appointment in them is subject to those expectations which apply to tenured and tenure-track appointments in other disciplinary areas of the university, we see no basis for conceding that such appointments are immune to the application of Association standards. To the extent that an appointment in, e.g., a teaching hospital, with perhaps peripheral instructional duties and the expectation of the generation of clinical income, is essentially that of a practitioner, we do not assert that the award of tenure is necessarily appropriate. Rather we would argue that such classes of faculty should enjoy academic freedom, including, but not restricted to, the right to speak on institutional policy, and that they should be provided with protections against the application of unreasonable or capricious sanctions, such as precipitate dismissal, without the opportunity for a hearing, during a stated term appointment. An important part of the responsibility for ensuring these conditions lies with the tenured faculty of the institution, in the context of a sound system of shared governance.

For the goal of quality to be implemented in a qualitatively sound way, the faculty members who offer medical education under substantially the same expectations of performance applicable to tenure-track faculty in other disciplines at that institution must have the same opportunity to benefit from freedom of inquiry, in teaching, research, and clinical practice, that ensures high quality in other areas of the academic enterprise. This includes the customary assurances of peer review and the right of appeal (rather than the mere delegation of review to officers of the medical school administration), a probationary period consonant with AAUP standards, a level of participation in the governance of the medical school appropriate to the particular kind of faculty appointment, and sufficient economic security to provide a safeguard for the exercise of academic freedom by all faculty.<sup>13</sup> There should be collegial development of policies regarding laboratory space, clinical and other work assignments, research and space resources, and procedures which encourage the resolution of differences through peer review. In short, after giving all due allowance to the specific realities of the teaching and research environment

<sup>13</sup> In medical schools, the extent of the inclusion in departmental and faculty governance structures will depend on the extent to which the particular faculty member has responsibility for organizational or instructional matters which go beyond the specific, part-time instructional function for which he or she was appointed. For example, representation on a faculty curriculum committee by a part-time clinical faculty member who has been asked to organize student rotations in primary care physicians' offices might seem reasonable. Likewise, the inclusion of a full-time non-tenure-track researcher on a faculty research committee might be deemed appropriate.

in medical schools, we do not believe that they are so peculiar as to warrant placing all faculty in such schools beyond the academic pale, that is, outside the generally accepted standards set forth in the 1940 *Statement* and derivative policies of this Association.

## Statement of Policy

1. The multiple purposes of an academic medical school have led to a variety of academic appointments—tenured, tenure-track, and nontenurable—in which teaching, research, service, clinical practice, and patient care are given different weights and emphases. To the extent that these functions are all designated by traditional academic titles, however modified (e.g., clinical associate professor), they warrant the assumption of faculty status which brings the holders of those titles within the ambit of applicable Association policies and procedures, and hence the protections appropriate to a particular status.

2. Where the configuration of duties is such as to suggest the advisability of an appointment in a non-tenure-track position, a starting point for considering the obligations of the medical school may be found in the Association's 1993 report, *The Status of Non-Tenure-Track Faculty*, for all classes of faculty, full- or part-time. We commend the entire document to the review of the medical school community. Where the exigencies of particular kinds of faculty appointments may require exceptions to the standards set forth in that document, those exceptions should be specified after meaningful consultation with the appropriate faculty bodies in the medical school.

3. The Association has never countenanced the creation of large classes of faculty in categories other than tenured, tenure-track, and visiting (or other designated short-term appointments with a terminus understood by both parties to the contract). To the extent that a faculty appointment at a medical school resembles a traditional academic appointment with clearly understood obligations in teaching, research, and service, the burden of proof on the institution is greater to justify making the appointment to a non-tenure-track position.

4. Tenure in a medical school should normally be awarded to a faculty member on the basis of the probationary period as defined in the 1940 *Statement*, viz:

Beginning with appointment to the rank of full-time instructor or a higher rank, the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years. Notice should

be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued after the expiration of that period. [Cf. also the *Standards for Notice of Nonreappointment*, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964)].

We note a number of devices in the medical school setting to lengthen the probationary period, for example, by allowing adequate time for persons in clinical positions to seek board certification, time demanding patient care rather than research. While the complexities with respect to clinical practice may make such arrangements not only useful, but beneficial to the clinical faculty member, we see no reason to consider the extension of such a practice to researchers in the basic sciences when expectations for the award of tenure conform to those extant in connection with appointments elsewhere in the university.

5. The sources of funding for positions in academic medical schools vary perhaps more greatly than in other units of the university, with the faculty member being expected in many cases to make up a designated portion of his or her salary from patient care or research. The 1940 *Statement of Principles* stipulates that tenure is a means not only to academic freedom, but also to "a sufficient degree of economic security to make the profession attractive to men and women of ability." Except, as is sometimes the case, where the reward of rank and tenure is purely honorific, all tenured and tenure-track faculty should be guaranteed an assured minimum salary adequate to the maintenance of support at a level appropriate to faculty members in the basic sciences, and not merely a token stipend, on a formula to be determined by the administration and board of trustees after consultation with a representative body of the faculty. The unilateral administrative abrogation of a portion of that salary, absent a prior understanding as to the extent of its guarantee, may reasonably be interpreted not as an exercise of fiduciary responsibility but as an attack on the principle of tenure. While the same minimum may not apply in the case of non-tenure-track faculty, those faculty should have a clearly understood and contractually enforceable expectation of a stipulated salary which cannot be unilaterally or arbitrarily abridged during the appointment period. Although the extent of economic security may be subject to interpretation, due process must be assured for all faculty regardless of the nature of the appointment.

6. Since medical schools, whether free-standing or part of a larger institution, demonstrably engage many of their faculty in the traditional areas of teaching and research, the participation of the faculty in governance is as essential to educational quality in the medical school context as in any other part of the university. According to the 1966 *Statement on Government of Colleges and Universities*,

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life

which relate to the educational process. On these matters the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty.

The level of faculty participation, of course, may be adjusted in individual cases to take into account such considerations as the tenurable or nontenable nature of the appointment, as well as full- or part-time status, though we suggest that a functional definition of the faculty member's role ought to be the chief determinant. We have seen no compelling argument why the faculty of such schools should exercise a more limited influence in those schools than do faculty elsewhere in higher education, especially since in an academic health center a large portion of the budget may be generated by faculty in the form of clinical income as well as external grants. Key to the role of medical faculty, for the purposes of the present report, is the opportunity to define the terms and conditions of faculty employment, including such appointments as are necessary to meet institutional needs, and procedures for the award of tenure under Association-supported standards.

## Conclusion

The Association has long held that academic tenure is not merely, or even most importantly, a form of job security, but rather an instrument for the protection of "the common good." In serving that function, a system of tenure, properly applied, is a guarantor of educational quality. We question whether any institution of higher education or one of its components, whether the purpose be undergraduate, graduate, or professional education, can provide such educational quality without that reasonable assurance of stability that helps ensure the commitment of its faculty members to freedom of inquiry in teaching and research and to the preparation of its students.

LAWRENCE S. POSTON (English), University of Illinois at Chicago, *chair*; LINDA E. FISHER (Law), Seton Hall University; DOLORES FURTADO (Microbiology), University of Kansas Medical Center; NEIL C. MORAN (Pharmacology), Emory University; CHARLES J. PARRISH (Political Science), Wayne State University; FELIX BRONNER (Biostructure and Function), University of Connecticut Health Center, *consultant*; HENRY EDINGER (Physiology), New Jersey Medical School, *consultant*; PAUL J. FRIEDMAN (Radiology), University of California at San Diego School of Medicine, *consultant*; AGNES B. KANE (Pathology), Brown University School of Medicine, *consultant*; PAUL MANDELSTAM (Medicine), University of Kentucky Medical School; *consultant*; JULIAN B. MARSH (Biochemistry), Medical College of Pennsylvania, *consultant*; B. ROBERT KREISER (History), Association Staff.

*The Subcommittee*

ACADEME January-February 1996