Call to Order

The meeting was called to order by the president, Dr. Martin Croce, at 12:05 PM on December 14, 2009, in the Coleman building, Room A101.

Attendance

The following members were present:

Martin A. Croce, MD, Maggie DeBon, PhD, Elizabeth Fitzpatrick, PhD, Bob Foehring, PhD, Elias A. Giraldo, MD, MS, Gary Keyes, PhD, Stephen King, MD, Leonard Lothstein, PhD, E. Haavi Morreim, PhD, William R. Morris, MD, Linda K. Myers, MD, A.P. Naren, PhD, Edwards Park, PhD, Lynn Patterson, MD, Renate Rosenthal, PhD, Claudette Shephard, MD, Thad Wilson, PhD, Parker Suttle, PhD

The following guest(s) was (were) present:

Lacey Smith, MD

Approval of minutes

The minutes of the previous meeting were approved as written. Minutes had previously been distributed by electronic means.

Business

The meeting's primary focus was the proposed changes to sections 4.13 and 8.1 in the Faculty Handbook. Faculty Senate President Parker Suttle explained that the Faculty Handbook has been under revision for about five years and the process is now nearing completion. He explained that several years ago the issue was raised in a case featuring a statement by the then-dean that, if a faculty member wishes to change his/her practice site, that faculty member will lose tenure, virtually automatically. Disagreements with this approach led to the current version, in which the faculty member, chair and ultimately also dean should confer and attempt to reach agreement, prior to any loss of tenure.

Essentially, the changes in 4.13 would mean that, if a clinical faculty member changes his/her practice affiliation or site, the dean and chair must approve in advance, or that faculty member will automatically lose tenure. A process is outlined in which a faculty member who wishes to change practice affiliation or site must confer with the chair and, if necessary, renegotiate the terms of his/her appointment. Any such proposed changes would require the dean's approval, on a case-by-case basis, to determine whether they would still fulfill the faculty member's UT missions.
There are two variants of these proposals. In the Faculty Senate's version, the faculty member whose change of practice affiliation or site was not approved would be deemed effectively to have forfeited tenure. In essence, s/he would be deemed to have "gone AWOL." In the Office of General Counsel's version, the faculty member would be deemed to have voluntarily relinquished tenure by resigning.

Discussion was vigorous, mainly focusing on 4.13.

An underlying concern for UT comes from scenarios in which a faculty member might, e.g., simply stop providing services for UTMG and begin a private practice, thus reducing actual service to UT even while expecting to retain full UT faculty status, tenure, and benefits. UT needs some means to protect its right to ensure that clinical faculty actually provide the services that are part of their commitments as tenured UT faculty.

Additionally, UT has the concern that, if a particular clinical person was hired to practice at a site to which UT has an institutional commitment, that person's departure from such site could create deficits of medical service that could be difficult for UT to address. Particularly in that situation the usual procedures for removal of tenure, which can take several years, could potentially leave UT in a difficult position.

Discussion identified several potential problems with the proposals in their current form.

First: Several DFAC members suggested that, in its current form, the proposal appears overly broad. Quite literally, a faculty member could lose tenure simply by moving his/her practice site from Germantown to Eastmoreland, or from LeBonheur to St. Jude, if that were not approved by—or even just cleared with—the chair and dean. It was observed that there are no criteria the dean must follow in deciding which such shifts to approve, hence the policy's overbreadth could theoretically be misused as a weapon against a faculty person for underlying reasons having nothing to do with the change of practice affiliation/site.

Second: In a related concern, DFAC members observed that the policy permits arbitrariness. As the draft is currently written, each situation is to be addressed case-by-case, and no criteria are provided to guide or constrain the administration's decisions about who will be permitted to change practice affiliation/site, other than a vague allusion to UTHSC's "missions." Several DFAC members queried why an otherwise-simple matter of shifting one's clinical practice should affect tenure at all, particularly where the faculty member has been receiving satisfactory evaluations during annual reviews.

Third: A distinction was proposed. On one hand, it was noted that a faculty member's change of affiliation*, such as leaving UTMG for a private practice that does not benefit UT, or practicing in a hospital unaffiliated with UT, could have financial repercussions for the broader UT financial system. On the other hand, a faculty member may wish to change practice *site*, as for instance between Germantown and Eastmoreland. These two scenarios appear to have significantly different implications and arguably should not be linked as they are in the current wording, which is "changing practice affiliation or site."

Fourth: It was suggested that summarily removing tenure could potentially offend due process. The 14th Amendment of the Constitution provides that a state may not deprive someone of property without due process. The 14th amendment is relevant to cases like this because [1] this is state action (UT is a state institution and not, e.g., a private school such as Christian Brothers
Univ.); and [2] tenure is property (per U.S. Supreme Court decisions in 1972). This means that
UT cannot deprive a faculty member of tenure without due process.

Section 8.1's proposed revisions, identifying the particular mechanism by which tenure would be
lost in this situation, appear in two different versions. Time constraints limited the duration of
discussion regarding this issue during the meeting. Ordinarily, a tenured faculty member can
only lose tenure in one of three ways:

[a] for adequate cause;
[b] voluntarily, as through retirement or resignation; and
[c] forfeiture, as where the faculty member essentially fails to show up for work.

Revocation of tenure for adequate cause, option [a], requires that UT observe a detailed set of
procedures that, in this setting, constitute due process. The latter two are more automatic.

The General Counsel's proposal invokes [b] just above, suggesting that an unauthorized practice
shift constitutes resignation. The Faculty Senate's proposal invokes [c], suggesting that an
unapproved change of practice should be deemed a forfeiture because, in essence, the faculty
person is "going AWOL."

Although DFAC discussion did not reach [b] and [c], it was suggested that the language in the
proposed Handbook changes should be amended to refer to "adequate cause" ([a] just above),
which triggers the Handbook's due process protections. Thus, if a dean believes that a particular
practice change is so inappropriate that the faculty member is now failing to serve UT missions as
that faculty agreed to do, then the dean should be able to make his/her case through the usual due
process routes. Additionally, if UT needs to ensure that a particular faculty member provides
certain sorts of clinical services, that should be established up front in the initial contracting,
rather than loaded in through the back door by threatening loss of tenure as a penalty attached to
post-facto requirements. As some DFAC members opined, tenure is difficult to obtain, and it
should be likewise difficult to remove. As the argument was offered, there is no reason to
preempt due process procedures if the dean has good reason to remove someone's tenure. This
suggestion appeared to elicit DFAC support, though no vote or other counting mechanism was
undertaken to verify this.

As discussion continued, a further question concerned whether such a change would apply
retroactively. One faculty person, for instance, has been tenured for many years, and remains
tenured despite the fact that s/he is fully in private practice.

Pres. Croce proposed that DFAC members consult with their department members and forward
any proposed wording changes to our Faculty Senate department representatives and/or to Parker
Suttle.

Following this discussion, the conversation then turned to budget issues. Dean Smith indicated
that the College of Medicine/CoM must somehow come up with another $6 million in budget
cuts. Most of the needed cuts have now been identified. Potential reductions in force have been
identified, but these will only be used if necessary. The list is not final and has not been
released—any putative list that has already been released is not correct. Dr. Smith also indicated
that additional cuts may be needed, but that it is not yet clear whether, for instance, faculty
furloughs or other such measures might be needed.

Dr. Smith also described an impending loss of over $50 million in GME funding, due to the
state's unwillingness to provide the required state matching money. The state's contribution
would equal about $13 million, and the state's failure to produce it will result in a 3-to-1 loss of Federal matching funds, i.e. $39 million. Of this total loss for Tennessee, $22 million would be absorbed by UTHSC and the CoM. Local hospitals have expressed some willingness to help make up such losses, but the Med is in a poor financial position to do so. The question arose whether, in cases where someone's base salary is being paid via GME dollars, the CoM could make up the deficit, given the likely imminent disappearance of significant GME funding. The dean indicated that in the short term, some such loss can be absorbed, but that in the long term the shortfall could pose a serious challenge.

Next Meeting

The next meeting of the committee will be held on January 4, 2009, at 12:00 Noon in the Coleman building, Room A101.

Adjournment

There being no further business, the meeting was adjourned at 1:07 PM.

Respectfully submitted,

E. Haavi Morreim, JD, PhD
Secretary