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# Academic Freedom and Tenure: The University of Texas MD Anderson Cancer Center<sup>1</sup>

(APRIL 2015)

## I. The Institution

The University of Texas MD Anderson Cancer Center, located in Houston, was established in 1941 as part of the University of Texas and is now one of six medical institutions in the fifteen-member University of Texas system. Named for a Tennessee banker and cotton broker whose foundation initially contributed more than \$19 million toward its creation, MD Anderson is one of the three original comprehensive cancer centers designated by the National Cancer Act of 1971 (there are sixty-eight such centers today). Until 2014, when it was barely overtaken by Cornell University's Memorial Sloan Kettering Cancer Center, MD Anderson had for seven successive years been ranked first for cancer treatment in the *US News & World Report's* "Best Hospitals" survey. MD Anderson has also typically ranked first in garnering grants from the National Cancer Institute, receiving more than \$647 million in 2012. According to information on its website, the center treats some 120,000 patients annually and employs 19,655 people, of whom 1,671 are faculty members. In fiscal year 2013, it educated nearly 6,500 trainees.

While MD Anderson may be considered more hospital than university, its School of Health Professions offers bachelor's degrees in eight health disciplines and a master's degree in diagnostic genetics. Its University of Texas Graduate School of Biomedical Sciences offers master's degrees and the PhD in association with its sibling institution, the University of Texas Health Science Center at Houston. Areas of study include immunology, cancer biology, genes and development, molecular carcinogenesis, medical physics, biomathematics and biostatistics, experimental therapeutics, virology, and gene therapy. Each year some 1,200 medical residents, interns, and fellows receive advanced training at the center.

This report will focus on the nonreappointment of two members of the center's faculty, Professors Kapil Mehta and Zhengxin Wang, and will comment on the removal from faculty status of a third, Professor Gouhui Lu. All three actions occurred in the context of administrative pressures on basic-science faculty members to acquire grants to cover an increased percentage of their salaries and on clinical faculty members to treat more patients—and of the faculty's resistance to such pressures. At issue in these contested cases are their ramifications for academic freedom. Diminishing opportunities to garner funding and greater administration demands are not unique to MD Anderson. Nor is it unusual for an administration to pursue initiatives of its own that strain institutional finances. What is unusual at the MD Anderson Cancer Center is its administration's policy of issuing renewable seven-year ("term-tenure") contracts to the senior members of the faculty, arguing that this policy best ensures "the highest level of excellence and accountability."

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1. The text of this report was written in the first instance by the members of the investigating committee. In accordance with Association practice, the text was then edited by the AAUP staff and, as revised with the concurrence of the investigating committee, was submitted to Committee A on Academic Freedom and Tenure. With the approval of Committee A, the report was subsequently sent to the subject faculty members, to the administration of the University of Texas MD Anderson Cancer Center, to the chancellor and vice chancellor of health affairs of the University of Texas system, and to other persons directly concerned. This final report has been prepared for publication in light of the responses received and with the editorial assistance of the staff.

As is common in academia, members of the faculty at MD Anderson are evaluated annually, merit pay is calibrated to these appraisals, and regulations are in place to provide for the dismissal of those faculty members who are seen as having become unfit to continue in their faculty roles during the pendency of their appointments. At comparable institutions, such policies ensure both excellence and accountability. At Memorial Sloan Kettering and Harvard, for example, a system of indefinite tenure exists to protect academic careers through lulls in funding. At MD Anderson, however, the president has unilateral authority to dismiss a faculty member upon the expiration of an appointment without having to provide explicit reasons for the decision, regardless of the faculty member's length of service or the amount of his or her grant income and regardless of the recommendations of the department chair, the division head, or the faculty committee charged with reviewing reappointments. A dismissed faculty member has recourse only to an appeal process that returns for a final decision to the president who made the initial one.

Some of MD Anderson's more senior faculty members who met with the undersigned AAUP investigating committee described the seven-year renewable appointments as a "compromise" negotiated under the "benevolent dictatorship" of a long-serving previous president, Dr. R. Lee Clark (1946–78). All MD Anderson faculty members served under renewable annual contracts until Dr. Clark sought the compromise, which went into effect on September 1, 1975.<sup>2</sup>

## **II. The Administration of President Ronald DePinho**

Dr. Ronald DePinho took office as the institution's fourth president on September 1, 2011, after a fourteen-year career at the Dana-Farber Cancer Institute and Harvard Medical School. He has an MD in microbiology and immunology from the Albert Einstein College of Medicine. MD Anderson's current chief academic officer is Dr. Ethan Dmitrovsky, the provost and executive vice president, an oncologist who assumed his position in July 2013, after fifteen years as chair of the pharmacology and toxicology department at Dartmouth College's School of Medicine. The center's senior vice president for academic affairs is Dr. Oliver Bogler, who holds a PhD in cancer research from the Ludwig Institute for Cancer Research at University College, London. He began at MD Anderson

in 2005 and was promoted to his current position in 2011. The center's chief medical officer is Dr. Thomas A. Buchholz, executive vice president and physician in chief, with an MD in medicine from Tufts University, who briefly served as interim provost in 2012.

As with the five other medical institutions in the University of Texas system, MD Anderson falls under the general authority of the system's chancellor. In the period covered by this investigation, the chancellor was Dr. Francisco G. Cigarroa, a pediatric surgeon, who until 1969 had served as president of the University of Texas Health Science Center at San Antonio. In January 2015, Dr. Cigarroa was succeeded by Admiral William H. McRaven, formerly head of the US Special Operations Command. Specific authority for medical institutions falls under the system's executive vice chancellor for health affairs, as of September 2013 Dr. Raymond S. Greenberg, a cancer researcher in epidemiology who previously was president of the Medical University of South Carolina.

Institutions within the University of Texas system are governed by the Rules and Regulations of the Board of Regents. Rule 31007, Section 1, "Granting of Tenure," states, "Tenure denotes a status of continuing appointment of the faculty at an institution of The University of Texas System." Section 1 goes on, however, to specify that "[s]uch tenure status shall not be applicable to the faculty of the University of Texas MD Anderson Cancer Center or the University of Texas Health Science Center at Tyler." Section 2, "Seven-Year Term Appointment," authorizes these two exceptions to the system's tenure regulations with the added proviso that no other system institution may adopt or implement such an appointment policy. What some MD Anderson faculty misleadingly call "term tenure" and even "tenure" requires faculty members to be evaluated for reappointment at seven-year intervals; that is, they have renewable seven-year appointments. Indefinite tenure—the rebuttable presumption of continuing employment—has never been granted to anyone at MD Anderson; even endowed chairs are folding chairs. President DePinho's own contract, signed in June 2011, stipulates that the center "does not offer lifetime tenure. Instead, tenure is provided through a series of seven-year contracts which are regularly renewed in the absence of any major issues."

After Dr. DePinho assumed the presidency, the cancer center became embroiled in controversies, and the specific issues of academic due process and shared governance to be discussed in this report are

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2. R. Lee Clark papers, MS 70, Series 8, Box 56, Folder 10.

interwoven with those controversies. Faculty members, proud of MD Anderson's reputation for both superb patient care and contributions to basic science, told the investigating committee that they were stung by missteps and improprieties reported in the press—particularly in the *Cancer Letter*, a trade publication—that tarnished the image of their institution. Members of the faculty complained that demands on them were being ratcheted up and their employment was being made less secure at a time when funding was less accessible nationally and when the administration was dedicating additional institutional funds to a unique drug-development initiative.

In October 2011, President DePinho described his new “Moon Shots” program, inspired by Kennedy-era space endeavors, to the Board of Visitors of the University of Texas. “What will our cancer moon shot look like?” he asked. “In this decade, the cancer genome atlas will provide scientists with the list of genes that are mutated in cancer. With the complete list of mutated genes in hand, we will make use of our newfound ability in functional genomics to silence specific genes at will.” But, he explained, “A new organizational construct is needed that will systematically validate targets, develop drugs against those targets, test them in sophisticated models, and bring them forward to the private sector. This afternoon, you will hear about a new institute at MD Anderson that is designed to do just that . . . the newly created Institute for Applied Cancer Science [IACS] . . . a new organizational construct that is modeled after a highly successful effort that Lynda Chin and Giulio Draetta created at Harvard.”<sup>3</sup>

Dr. Lynda Chin is President DePinho's wife, a well-regarded scientist in her own right who accompanied him to Houston, along with most of the staff of his Harvard cancer-genomics laboratory. Dr. Chin was named chair of a newly founded department of genomic medicine and scientific director of the IACS, the new organizational construct she described as “a business within MD Anderson” whose “work plan [is] to generate a product—not to publish.”<sup>4</sup>

Dr. DePinho's initial employment contract noted that he had already submitted a schedule for resigning from “a number of the companies” in which he had a financial interest. The contract stipulated, “Your activities in these areas will be monitored by the MD Anderson Cancer Center Conflict of Interest

Committee in the course of its usual responsibilities.”

Managing a second potential conflict-of-interest issue, Dr. Kenneth I. Shine, the UT system's executive vice chancellor for health affairs until 2013, detailed Dr. Chin's intended supervision in an e-mail message of August 11, 2011: “As Chair of the Department of Genomic Medicine, Dr. Chin will report to Dr. Waun Ki Hong, Head of the Division of Cancer Medicine. As Scientific Director of the Institute, Dr. Chin with the Administrative Director of the Institute, Dr. Giulio Draetta, will report to Provost Raymond Dubois.” Faculty members noted that under this arrangement the president's wife still reported to officials who reported to her husband.

In May 2012, Dr. Chin attracted faculty criticism and unfavorable press coverage when it came to light that the IACS she codirected had bypassed the grant-application portal monitored by MD Anderson's then provost, Dr. DuBois, with an e-mail application to the Cancer Prevention and Research Institute of Texas (CPRIT), which then bypassed its standard scientific peer-review process in awarding an \$18 million incubator grant, prompting several resignations from CPRIT, including the Nobel laureate who was its chief scientific officer.<sup>5</sup> A University of Texas system audit found no “ill-intent, improper conduct, or any type of conflict of interest or nepotism contributed to any error in the CPRIT grant submission process” but recommended resubmission of the application to CPRIT and four policy changes.<sup>6</sup> Controversy also erupted over ties that Dr. DePinho and Dr. Chin maintained with Aveo Pharmaceuticals, a company they cofounded.

In September 2012, President DePinho told the *Cancer Letter*, “We have had the most successful year financially in [MD Anderson's] history,” and he added that he had already asked department heads “for an increase in volume activity ranging from five to ten percent.”<sup>7</sup> He said that the expectation that basic scientists would cover 40 percent of their base salaries from grants, up from 30 percent, had gone into effect in 2011 and that “investigators were given about two years advance notice.”

President DePinho was meanwhile seeking a sweeping waiver from conflict-of-interest regulations

3. *Cancer Letter*, May 25, 2012.

4. *Nature* news blog interview, May 31, 2012.

5. *Cancer Letter*, June 1, 2012, 1–7.

6. Larry Plutko, “Compliance Review of Grant Application and CPRIT Award-CP120015 Institute for Applied Cancer Science at UTMDACC,” *Cancer Letter*, June 14, 2012, 2–3, 6.

7. *Cancer Letter*, September 7, 2012, 15.

from the University of Texas system so that he could continue his collaborations with twelve entities and so that MD Anderson would be allowed to run trials on drugs and biologicals of the companies in which he had a stake. Ultimately, the board of regents declined to approve the full list, directing nine to a blind trust, but the board allowed President DePinho to retain his interest in three, including Aveo, which was developing a drug that he especially wanted MD Anderson to test. Dr. Shine, who authored the waiver, stressed to the *Cancer Letter* the potential benefits of having a commercialization-oriented leader over the potential harms related to conflict-of-interest considerations. The unusual arrangement ran into principled objections from critics on MD Anderson's faculty.

The University of Texas faculty senate has periodically surveyed faculty members regarding conditions of faculty appointment at MD Anderson. In October 2012, one year into the DePinho presidency, it commissioned a survey to which 514 faculty members responded. Citing the above issues and others, 73.8 percent said morale had worsened since a similar survey conducted in 2010, and 51.8 percent considered it "likely" they would leave MD Anderson within five years. Criticisms of the president's potential conflicts of interest continued, and, on December 31, 2012, Dr. DePinho retired from the boards of the three pharmaceutical companies for which the regents had granted waivers. On January 10, 2013, he held a "town hall" meeting in which he reviewed scores of topics including a presidential action item—"IFAC priority"—for a planned Institutional Faculty Advisory Committee. On March 4, President DePinho and Professor Jean-Bernard Durand, president of the faculty senate, together announced, "We're pleased to let you know about an important action to improve the two-way dialogue among faculty and institutional leaders: creation of the Institutional Faculty Advisory Committee" composed of the executive committee of the faculty senate and the executive leadership team of MD Anderson, with faculty welfare to be its first priority.

Meanwhile, the MD Anderson faculty senate had conducted a separate study of the impact of high patient volume on the quality of care. And in March 2013, the *Sentinel*, the MD Anderson faculty newsletter, published the results of a faculty salary survey of the years 2007–12, sponsored by the local faculty senate and based on data supplied by the administration, demonstrating that administrators' salaries had increased to more than twice the amount

of faculty salaries (including department chairs) over the period.

On May 15, 2013, in an e-mail message to all MD Anderson employees, President DePinho announced austerity measures. These included suspension of merit raises and slowed hiring. He wrote, "Our operating expense has exceeded our operating revenue . . . much like what you'd face with your own checkbook if you spent more than you were paid each month for several months."<sup>8</sup>

In September 2013, the MD Anderson faculty senate conducted supplemental surveys, including one concerned with clinical productivity. According to the survey, 56.4 percent of the 548 faculty respondents agreed that the "demand for increase in clinical productivity negatively impacted patient safety," and 69.3 percent agreed that "increased clinical demands affected [their] ability to provide optimal patient care." A public crisis had developed, with heavy press coverage. The faculty senate called a meeting that was attended by University of Texas system officials who expressed their concern—Drs. Cigarroa, Greenberg, and Shine. Dr. DePinho did not attend but later commented, "I value the input from our faculty and all employees, and will take it to heart as we press forward with our plans for the future."

### III. The Case of Professor Kapil Mehta

Professor Mehta, a biochemist with BS, MS, and PhD degrees from Panjab University in Chandigarh, India, accepted his first faculty appointment in 1983 as a research associate in MD Anderson's Department of Clinical Immunology and Biological Therapy, following three years as a postdoctoral fellow at the University of Texas Medical School at Houston. In 1985, he became an assistant professor in the Department of Medical Oncology and thus eligible for a seven-year term appointment; in 1992, he was promoted to associate professor (with a second term appointment); and in 1998, he gained promotion to full professor in the Department of Experimental Therapeutics.

In August 2011, two years before the expiration of his third seven-year appointment, Professor Mehta submitted materials supporting his reappointment

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8. The administration's Office of Faculty Academic Affairs, with responsibility for institutional data, raised questions of accuracy that prompted a second faculty senate committee and a newly supplied second set of data from the administration, but "the second analysis reached essentially the same conclusions" as the first, according to the May 2014 edition of the *Sentinel*.

to a fourth term to the faculty's Promotion and Tenure Committee (PTC), a body of faculty members appointed by the administration's Office of Faculty Academic Affairs. Among those materials was his copy of a September 8 memorandum to the committee from Professor Garth Powis, his department chair, and Dr. Waun Ki Hong, his division head, recommending renewal. On November 7, Professor Powis forwarded to Professor Mehta a message from Dr. Bogler, the senior vice president for academic affairs, reporting that the PTC had unanimously approved his reappointment.

In May 2012, however, Dr. Bogler called to inform Professor Mehta that President DePinho had declined to accept the recommendations of the department, the division, and the PTC. When Professor Mehta met with Dr. Bogler, hoping to learn the reasons for his nonrenewal, Dr. Bogler suggested that he resubmit his materials to the PTC along with two or three letters of support from outside colleagues, a suggestion that Professor Mehta considered unreasonable because the PTC had already given its unanimous recommendation for renewal. His annual reviews by the department chair and division head had been positive throughout the period, and he had consistently maintained grant funding to cover the then-required 30 percent of his salary. No negatives had been suggested by anyone.

The nonrenewal decision was confirmed in a June 25 letter from Dr. DuBois, by then the provost and executive vice president, who wrote,

In accordance with the "Non-Renewal of Faculty Appointment Policy" (UTMDACC Institutional Policy ACA0058), upon the recommendation of Dr. Garth Powis, Chair, Department of Experimental Therapeutics, and Dr. Waun Ki Hong, Head, Division of Cancer Medicine, this letter will serve to officially notify you that your appointment as Professor with term tenure in the Department of Experimental Therapeutics, Division of Cancer Medicine, will not be renewed beyond the date of August 31, 2013.

The reasons for non-renewal are that your renewal of term tenure was not approved and you will reach the maximum seven-year [*sic*] of term tenure appointment on August 31, 2013.

In July, and still uninformed of the reasons for the nonrenewal of his appointment, Professor Mehta met with Dr. DuBois, who advised him to file a grievance with the Faculty Appeal Panel (FAP), although the institution's "Faculty Appeal Policy" expressly forbids

its application to "non-renewal of tenure."<sup>9</sup> Professor Mehta submitted his appeal to the FAP together with new letters of support from two external colleagues. The panel conveyed to the provost its support of the Mehta appeal.

The newly appointed interim provost, Dr. Buchholz (Dr. DuBois having left the institution in August), wrote to Professor Mehta on October 11, informing him that the FAP had met to review his appeal, had acknowledged his "lack of external funding," and had not found that "the non-renewal of appointment was arbitrary and capricious." It became clear only later that Dr. Buchholz's summary of the FAP's finding was a misrepresentation.

Provost Buchholz went on to write, "[B]ased on my review of this matter, including your current lack of expected external funding and the recommendation for nonrenewal by your department chair, Professor Garth Powis, it is my decision that the nonrenewal of your faculty appointment should be upheld." The interim provost added that Professor Mehta had the right to request a meeting with the president before that officer rendered his final decision.

Professor Mehta requested a copy of the FAP's written report in preparation for his meeting with the president. Dr. Buchholz replied, "We do not provide the Panel's written recommendation addressed to the Provost to the faculty member as per our institutional policy." The chair of the MD Anderson faculty senate, whose assistance Professor Mehta had sought, put him in touch with Professor Louise C. Strong, a former chair of the Senate Oversight Committee on Conflict Resolution, who informed him in an October 25 e-mail message that she had successfully urged the interim provost to provide Professor Mehta with a copy of the panel's findings, pointing to "ample precedents for the release of FAP findings to the appealing party." She also told Dr. Buchholz, "FAP was not the appropriate process for tenure-renewal. In fact, FAP is specifically excluded from use of appeals for non-renewal of tenure (ACA0041). Thus the finding that there was not an arbitrary or capricious decision is not relevant. What may be more important was that the

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9. President DePinho addressed the exception in a letter to the AAUP's staff in May 2014: "Dr. Mehta's appeal process was extended because he requested additional reviews and because MD Anderson experienced changes to the Provost and Executive Vice President position during the course of Dr. Mehta's appeal process. The institution felt it was necessary to make accommodations in light of these special circumstances related to the leadership change."

Panel (per your letter) did not find a reasonable basis for the action of non-renewal of tenure.”

The panel report stated that Professor Mehta had “been a tenure-track scientist for 29 years with favorable evaluations during this period of time,” with “strong letters from established scientists” indicating that he is “well-respected among his peers.” Among other positive assessments, the report cited his ongoing grant applications and their “very favorable scores, but outside the present funding range. In the current funding environment, such should not warrant an ending of a career at this institution.” The panelists wrote further, “[T]he record and packet are favorably impressive. Other than a funding lull, which he is not alone in experiencing, and which could change tomorrow, we are not seeing a justifiable reason for nonrenewal.” The report ended with the following recommendation: “[W]e support the appeal and favor a 1–2 year grace period that, hopefully, will catalyze a redoubling of Dr. Mehta’s efforts so that he can continue his career at a stimulated level of productivity aligned with the [center’s] institutional goals.”

On December 19, Professor Mehta, accompanied by Professor Randy J. Legerski, the vice chair of the genetics department, met with President DePinho as the last step in his appeal. Professor Mehta reported that when the meeting ended, Professor Legerski asked President DePinho what he was seeing that others were not, and the president “did not give any clear answer.” On December 31, the president provided Professor Mehta with his final decision “to uphold the nonrenewal of appointment action.”

On January 30, 2013, Professor Mehta met again with Dr. Bogler, specifically to learn why his contract was not being renewed. Dr. Bogler, agreeing that Professor Mehta had every right to know the reasons, nevertheless could not provide them, explaining that he had not been involved in the PTC or FAP processes. He did allow Professor Mehta to review his entire dossier, wherein he found nothing negative.

In a last effort to retain Professor Mehta as a full-time faculty member, his new department chair, Professor Varsha Gandhi, and his division head, Dr. Hong, sent a memorandum dated July 17, 2013, to the new provost, Dr. Dmitrovsky, requesting a “1–2 years grace period” so that Professor Mehta could continue his promising research on transglutaminase 2, which had been recently funded by the Bayer Health Care System and which was, they wrote, “at the verge” of receiving additional funding from the National Institutes of Health. The provost declined.

Professor Mehta wrote, “That is how my 32-year research career ended, without knowing the reasons for which I was being penalized.”

Others knew, but not the PTC, the FAP, or the members of the faculty senate and other faculty members who had rallied to assist Professor Mehta in appealing the nonrenewal. Key developments in Professor Mehta’s case during the six-month period from November 2011 to June 2012 occurred without his knowledge; and he was not to learn of them until two and a half years later, after approaching the AAUP for assistance.

As noted earlier, Professor Mehta was copied on the supportive recommendation of Professor Powis and Dr. Hong for the renewal of his contract on September 8, 2011, and Professor Powis congratulated him on November 7 for having received the PTC’s unanimous support. Two days later, on November 9, Professor Powis by e-mail changed his earlier recommendation to President DePinho and Dr. Dubois, copying Dr. Hong but not Professor Mehta. Dr. Powis recommended that the president postpone a final decision on Professor Mehta’s renewal “for one year to determine if Dr. Mehta can turn this around. . . . If not, then I suggest we do not renew his term tenure in our attempt to raise the bar at this institution.” Professor Powis provided reasons for his change of mind: “My concern stems from the institution’s recommendation for renewal of term tenure for a faculty member who is not able to provide the required 40 percent salary support on grants and who does not have a functioning research program.” On June 11, 2012, Professor Powis again changed his recommendation, and again did not copy Professor Mehta. This time, writing to Dr. Dubois and copying Dr. Hong, Professor Powis wrote, “I recommend that Dr. Mehta receive a nonrenewal of appointment notification in June 2012.”<sup>10</sup>

MD Anderson’s policy ACA0058 was not followed in the case of Professor Mehta’s application for reappointment renewal in several particulars. Section 2.1.A of that policy lists possible reasons for nonrenewal, none of which addresses Professor Mehta’s circumstances. Professor Powis might perhaps have been described as having *anticipated* future poor performance. Were *current* “inappropriate behavior or poor performance” the cause of the recommendation

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10. After initially agreeing to be interviewed by the investigating committee, Professor Powis withdrew, saying that he had been advised not to meet with the committee.

for nonrenewal, Professor Powis would have been required by section 2.1.B to provide documentation “in annual faculty appraisals or interim memoranda to faculty member(s) and/or files.” This was not possible in Professor Mehta’s case because all his annual appraisals had been favorable, and his external funding from grants had consistently met the institutional requirement throughout the period of his appointment. Section 2.1.B also stipulates, “Coaching or development resources may be provided to faculty before a recommendation for nonrenewal of appointment is made.” None had been offered or suggested. Section 2.3.A provides, “The Department Chair meets with the faculty member in person to discuss the reason(s) for nonrenewal of his/her appointment.” There was no such meeting, though Professor Mehta had repeatedly requested the reasons for his nonrenewal.

Another matter related to Professor Mehta’s case was a subject addressed in several of the investigating committee’s interviews with MD Anderson faculty members, some of whom have administrative responsibilities. Faculty members told the investigating committee that department chairs have now been warned (and some have passed the warning on to members of their departments) that the institution will no longer provide supplemental funding to researchers whose grants provide less than 40 percent of their salaries. Such costs must be covered by the department—a change of policy that many suspect is already encouraging chairs to go along with the upper administration’s nonreappointment decisions or even to recommend some researchers for renewal less persuasively than they would have done previously.

Even though his seven-year term appointment expired on August 31, 2013, at the time of the investigating committee’s interviews, Professor Mehta still held a part-time (15 percent) appointment at MD Anderson, finishing articles and fulfilling other commitments with funding from unspent grant monies.

#### **IV. The Case of Professor Zhengxin Wang**

Professor Wang, who received his BS and PhD degrees in chemistry and biochemistry, respectively, from Peking University, accepted his first appointment at MD Anderson in 2001 as an assistant professor in the Department of Cancer Biology, after having spent four years on the faculty of Rockefeller University in New York City. In 2007, he was promoted in rank to associate professor and granted “term tenure.” In August 2012, he submitted documentation in sup-

port of his application for reappointment to a second seven-year term to his new department chair, Professor Raghu Kalluri, whom President DePinho had brought from Harvard and appointed as chair in June over the objections of a majority of the department’s faculty.

When the deadline for applications for appointment renewals, August 17, had passed, Professor Wang met with his chair. Professor Wang reports that Professor Kalluri told him that “the standard for tenure renewal is high now because the leadership of the institute had changed and, based on his judgment,” Professor Wang “was not qualified for tenure renewal.” Professor Kalluri said he could not support, and would not submit, Professor Wang’s application for reappointment and urged him to seek a position elsewhere, suggesting that his service at MD Anderson had gone on long enough. The next day Professor Wang contacted the associate vice president for faculty academic affairs, who intervened to ensure that Professor Kalluri would submit Professor Wang’s application, in conformity with MD Anderson policy.

In January 2013, Professor Wang found that Professor Kalluri, in his official appraisal of Professor Wang’s performance for the 2011–12 fiscal year, had given him a rating of “did not meet goals” in research and in “other sponsored activities and other institutional activities (extramural service)” and had made negative comments on Professor Wang’s performance in both areas. On January 25, Professor Wang met with his chair to discuss this negative assessment. He shared with Professor Kalluri the goals he had set for the appraisal period and his achievement of those goals, whereupon Professor Kalluri stated, quoting again from Professor Wang’s account, that “he was convinced that” Professor Wang “had met [his] goals” in the two areas.

By the time of that meeting, Professor Wang told the investigating committee, Professor Kalluri had learned that a majority of the department had voted against his being appointed chair and that Professor Wang had been in the majority. Thus Professor Wang informed the chair that he had applied for transfer to the Department of Urology and suggested that Professor Kalluri’s appraisal might adversely affect his application. On February 14, Professor Wang was pleased to learn that Professor Kalluri had changed his assessment of research (65 percent of effort) to “achieved goals” and deleted some of the negative comments, leaving “did not meet goals” for extramural service (4 percent of effort). On February 19, however, Professor Wang found that Professor Kalluri

had restored his negative assessments and comments in the annual performance evaluation. Professor Wang met with Professor Kalluri on March 13 to discuss this reversal. He says Professor Kalluri informed him that he had done so because he had learned that the Department of Urology had declined to accept Professor Wang's application for transfer, with the result that Professor Wang would have to continue in the Department of Cancer Biology if he were to remain at MD Anderson. The investigating committee reviewed the three successive versions of Professor Kalluri's appraisal of Professor Wang's performance and found Professor Wang's description of the changes accurate.<sup>11</sup>

After discussing his concerns with Dr. Bogler, Professor Wang filed a complaint with the Division of Human Resources over what he characterized as Professor Kalluri's "mistreatment" of him. The complaint memorandum, dated April 11, alleged "unfair treatment, improper behavior/conduct, and abuse of authority by Dr. Raghu Kalluri." Professor Wang asked about the status of his complaint on April 26 and May 6. On May 31, he discussed his complaint with a human resources officer who on June 3 notified Professor Wang, "As I mentioned during our meeting, I am not minimizing the value of your concerns. They simply do not fall within the scope of disruptive behavior that would result in an investigation by our office. We however determined that your continued concerns on academic related matters, such as your appraisal and questions regarding your tenure renewal, would need to be directed to the Associate Vice President for Academic Affairs." The investigating committee noted that "abuse of authority" fell within "academic related matters" but that Professor Wang was nevertheless being redirected to Dr. Bogler, who had initially suggested the human resources office.

Professor Wang had received notice on April 30, 2013, from the chair of the Promotion and Tenure Committee that it had voted unanimously in favor of his reappointment and had forwarded its recommendation to Interim Provost Buchholz and President DePinho. On May 31, however, he received notice from Dr. Buchholz that his appointment would not be renewed beyond August 31, 2014. "The reasons for the nonrenewal," Dr. Buchholz wrote, "are that your renewal of term tenure was not approved."

The interim provost advised Professor Wang that, under the cancer center's appeal policy, he could seek a review of the decision. That same day Professor Wang sent an e-mail message to Dr. Buchholz requesting a written statement of the reasons that had motivated the decision not to renew his appointment. Dr. Wang told the investigating committee that he never received a response and that he had never been told the reasons for the nonrenewal of his appointment. Institutional policy ACA0058, section 2.3.A, accords the faculty member who is denied reappointment a meeting in person with the chair to discuss the reasons for the nonrenewal. No such mandatory meeting with his chair occurred following the denial of his appointment.

Professor Wang submitted an appeal to interim provost Buchholz on June 18 and sent a follow-up letter on June 28. In early August, while his appeal was pending, he received a "memorandum of appointment," dated August 1 and signed by President DePinho, informing him of his terminal appointment from September 1, 2013, to August 31, 2014, and of the denial of his "renewal of tenure." On August 8, after consulting the MD Anderson ombudsperson, Professor Wang filed a complaint with the Civil Rights Commission of the Texas Workforce Commission alleging discrimination, based on race and national origin, and retaliation (for filing the complaint against Professor Kalluri). By memorandum of August 15, the newly appointed provost, Dr. Dmitrovsky, notified Professor Wang that his appeal was denied and that, "pursuant to the Faculty Appeal Policy," he had five days to ask for a meeting with the president if he wished to pursue the matter further. Professor Wang did not do so. As he told the investigating committee, nothing remained for him of the policy's fifteen steps other than a meeting with the president who had, two weeks earlier, signed his letter of nonreappointment.

Given the absence of reasons for the denial of reappointment and the changes in performance appraisals, the investigating committee could not avoid the inference that Professor Kalluri's desire not to retain Professor Wang in the Department of Cancer Biology had weighed more heavily in President DePinho's decision than annual evaluations, publications, or the assessment of the PTC—more heavily than the fact that Professor Wang had met the requirement that grants must cover 40 percent of salary.

Professor Wang currently has a faculty appointment at Clark Atlanta University.

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11. Professor Kalluri, having initially agreed to meet with the investigating committee, withdrew before the committee's arrival.

## **V. The Case of Professor Gouhui “Gary” Lu**

Professor Lu received the MD degree from Sun Yat-sen University of Medical Sciences in Guangzhou, China, in 1982 and a master’s degree in pathology from the Medical University of South Carolina in 1987. He earned certification in clinical cytogenetics from the American Board of Medical Genetics and Genomics in 1996 and was recertified in 2008. Professor Lu left his position as medical director of LabCorp in Irvine, California, to join MD Anderson in 2008 as assistant professor in the Department of Hematopathology. He underwent a successful midterm performance review in 2011.

On March 1, 2012, however, Provost DuBois notified Professor Lu that his appointment would “not be renewed beyond the date of August 31, 2013,” because he had “not obtained a permanent unrestricted Texas medical license within allotted time frames.” This information came as an unwelcome surprise to Professor Lu, who pointed out to the investigating committee that (1) his initial letter of appointment, his annual renewals, and his midterm review had not mentioned such a requirement; (2) his Faculty Temporary License (FTL) had been renewed continually; (3) his chair had told him repeatedly that his FTL would continue to be renewed (the Texas Medical Board places no limit on the number of FTLs a faculty member may have); and (4) in January 2012, he had submitted a plan for obtaining a permanent medical license, which was approved by the executive vice president and physician in chief in February 2012. Without a faculty appointment, Professor Lu would no longer qualify for an FTL. It became apparent, however, that the intent of the March 2012 notification was not discontinuance of his employment at MD Anderson but the discontinuance of his status as a member of the faculty.

Subsequently, Dr. Bogler wrote to say that Professor Lu was to be offered the position of director of the Clinical Cytogenetics Operations, scheduled to begin the day after his faculty appointment expired. Professor Lu told the investigating committee that his department chair had told him not to worry about a permanent license because not only would he, the chair, continue to renew FTLs after Professor Lu’s probationary period expired, but as chair he would also ensure that Professor Lu had time to study for the US Medical Licensing Examination (USMLE). Following receipt of the provost’s March letter, Professor Lu reported, his chair told him he was working on a solution. Since many faculty members in research positions

at MD Anderson have no medical license, Professor Lu stated that he assumed his chair was trying to arrange a different type of faculty appointment for him. He said that such assurances led him to decline two offers of employment elsewhere at higher salaries. Having been successful in both research and teaching, he asserted, he held principled objections to the loss of his faculty status—which had negative implications for his professional standing and licensures.

The investigating committee questioned why a cytogeneticist certified by the American Board of Medical Genetics (ABMG) who was not a practicing physician should be required to obtain a permanent medical license, a requirement that may be unique to MD Anderson.<sup>12</sup> The committee also asked Professor Lu why he had not taken the USMLE earlier. Because more than thirty years had elapsed since the award of his MD degree, he said, a period in which he had worked to perfect his cytogenetics specialization, extensive study for a comprehensive examination would have been necessary—time for which was never made available to him. The economic recession had frozen the hiring of additional personnel, so, as the first qualified cytogeneticist to serve at the cancer center, his caseload was often two and even three times the standard, resulting in extended daily hours with weekend and overnight duty commonly required. His description of laboratory conditions was substantiated by the College of American Pathologists’ issuance of a Phase II Deficiency in September 2013, citing his case overload.

Professor Lu said he grew suspicious of the assurances he had been given when, after his receipt of the letter from Provost DuBois, his chair asked him not to contact higher administrators at MD Anderson. Nevertheless, he did comply with his chair’s request for some months. When Professor Lu’s demotion to a classified position appeared inevitable, in September 2012, Professor Lu began contacting other administrators, complaining of the actions he found arbitrary and violative of his professional rights. Relations with his chair worsened after he consulted the institution’s ombudsperson, among others, and filed an appeal to be heard by the FAP.

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12. The uniqueness of this requirement, according to Professor Lu, was acknowledged by the executive director of the ABMG, to whom the professor spoke on October 3, 2012. Contacted by the investigating committee, the ABMG confirmed that statement, with the caveat that an institution can put further requirements on a position description.

As the termination date of his appointment approached in August, Professor Lu accepted the position of director. He told the investigating committee that he was a director in name only, that he was not consulted about the laboratory's priorities or direction, and that he was, in his own words, "a case-review machine." Having been informed that many other faculty members at MD Anderson have no medical license, the investigating committee remains unaware of a reason that would justify converting Professor Lu's faculty position to a classified post.

## **VI. Shared Governance**

Faculty members told the investigating committee that, as their dates for appointment renewal approach, they were likely to toe the line more carefully and look to others to speak up because they feared arbitrary nonrenewal. President DePinho has denied that faculty continuance might be affected by speech critical of the administration, writing to the Association's staff on May 23, 2014, "As an academic institution, we both vigorously support and champion academic freedom and due process. In fact, it is well known that some of the most vocal faculty critics of MD Anderson's administration have had their term appointments renewed many times, as it is our duty to encourage and defend academic freedom." And he asserted that neither Professor Mehta nor Professor Wang had alleged that "their academic freedom [had been] infringed upon." Faculty members described the institution's most serious and demoralizing problems as the result of the faculty's loss of authority—that is, as a governance issue. The DePinho administration's interference with the faculty's ability to affect outcomes in areas in which the faculty traditionally exercises primary responsibility, more than whether opportunities exist for individuals to articulate points of view, is at the heart of the the investigating committee's concern with respect to MD Anderson. The focus is not as much on the right of individual faculty members to speak as on the right of faculty collectively to act. At the same time, as the entire faculty serves on renewable seven-year term appointments and as they are aware of a dispiriting record of arbitrary decisions (and willful refusal to follow stated policies), the whole process of faculty governance labors under a pall of *potential* retaliation, creating a poor climate for academic freedom.

Officers of the faculty senate described to the investigating committee a broad-based and highly structured representative faculty senate with frequent

meetings and a large number of functioning committees. The Executive Committee of the Faculty Senate (ECFS) reviews existing and newly proposed policies and determines whether a formal senate review is needed, in which case two reviewers from the ECFS are appointed on the basis of their expertise in the matter and the scope of the policy. Under the current arrangement, however, initiatives that emerge from routine faculty committee work pointing to the need to revamp a policy completely can be, and are routinely, simply dismissed by the administration.

As noted in section II above, President DePinho responded to the negative results of the faculty senate survey reported in October 2012 by establishing in March 2013 a bridging committee, the IFAC, comprising the faculty senate's executive committee and the upper administration ("executive leadership team"), a positive and welcomed presidential action that extended faculty representation. As of this writing, the IFAC is discussing a number of important issues, such as communication and transparency, shared governance, workload and resources, best chair practices, and the loss of faculty voice. The investigating committee hopes that such discussions will lead to academic due-process protections for the faculty through changes to institutional policies, but they have not yet done so.

A centrally important and widely respected committee of appointed faculty members at MD Anderson is the Promotion and Tenure Committee, which "is charged with the primary responsibility of maintaining the academic excellence of the faculty." The investigating committee spoke to faculty members who have served, or are currently serving, on this committee at every level of involvement. All described it as an independent, serious, and impartial body that does its work diligently. Were the PTC not held in such esteem, the investigating committee was told, there would have been no faculty uproar over the president's having disregarded its recommendations. The PTC is not an elected faculty body but one appointed by the Office of Faculty Academic Affairs from suggestions and nominations, including self-nominations, submitted by the faculty. Broad participation across divisions and departments is sought, and, typically, the chair alternates between clinical and research faculty members.

Nevertheless, structures to involve faculty in meaningful decision making and to prevent administrative fiat in the development of policy remain largely ineffective, according to faculty members interviewed by the investigating committee.

The governance issue that led most directly to the Association's involvement at MD Anderson was the faculty senate's attempt—ultimately unsuccessful—to make the process of seven-year appointment renewal more predictable and fair. In November 2013, in response to the cases of Professors Mehta, Wang, and others, the ECFS charged the senate's Promotion and Tenure Issues Committee (the Issues Committee) with investigating allegations that unanimous PTC recommendations for "tenure renewal" were "rejected by the president"; with reviewing whether the "tenure renewal" processes and standards had changed; and with formulating recommendations. The committee consisted of twenty-seven faculty members and was chaired by Dr. Douglas Boyd, a professor in the Department of Cancer Biology.

In preparing its report, issued in February 2014, the committee examined the rate of reappointment denial in cases of unanimous PTC support. In seven review periods (2005 to 2011) the previous president had denied reappointment to two of 260 faculty members who had received unanimous recommendations for renewal from the PTC (0.77 percent), while in two review periods, 2012 and 2013, President DePinho had denied reappointment to three of 130 candidates whom the PTC had unanimously recommended (2.31 percent). The Issues Committee examined the four most recent cases in which the president declined to accept a unanimous PTC recommendation for "tenure renewal." The committee matched the nonrenewed faculty members by appointment level and discipline with faculty members whose appointments were renewed in the same time frame. A series of matrices were developed for comparisons across the six-year period of each appointment. The result: "In all four comparisons, those not having tenure renewed compared favorably in terms of publication, impact of publications, productivity, funding amount, continuity of funding, teaching, service (study sections, editorial boards, committees), and supportive letters (where required). The 100 percent endorsement by the PTC of these candidates could not be considered surprising." In May, a synopsis of the report, accompanied by an account of the senate meeting at which it was presented, was published in the *Sentinel* as "Questions Raised by President Not Approving Tenure Renewals." According to that account, Senior Vice President Bogler had responded on behalf of the administration that it would be inappropriate for the PTC to use a numerical matrix for faculty assessment.

Another serious shortcoming of the reappointment procedures addressed by the "Questions Raised" report was the administration's refusal to provide the PTC with reasons for reversing a unanimous recommendation for reappointment. According to the AAUP's *Statement on Government of Colleges and Universities*, jointly formulated with the American Council on Education and the Association of Governing Boards of Universities and Colleges, "The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail." Writing to Professor Boyd on December 17, 2013 (as quoted in the senate report), Dr. Bogler had stated, "It is our practice that the President or Provost comes to the PTC to discuss situations where there is disagreement, and in the course of these discussions reasons for the decisions are mentioned. However these reasons are not captured in writing, and the deliberations are not made available to the faculty member or [his or her] chair."

Further, according to the report, and confirmed to the investigating committee, written reasons for nonreappointment are not normally provided even to the faculty member denied reappointment, seriously impeding the ability of the applicant to pursue professional development or to structure an appropriate case for appeal. Institutional policy provides that the chair meet in person with the faculty member who has been denied reappointment to discuss the reasons for the nonrenewal, but that rule is not regularly honored.

The report also criticized the appeal process available to nonreappointed faculty members: "In its present construct, the current, totally internal, appeals process, is closely aligned with the President's office. In fact, the appeal is directed to the President who made the decision not to renew in the first place." The inherent conflict of interest in the appeal process may comport with practices in industry, but not in higher education.

The report made recommendations, not wholly consistent with AAUP-recommended standards, that the administration of MD Anderson declined to accept: (1) candidates receiving unanimous approval at PTC level should receive reappointment; (2) presidential rejections of candidates approved by a majority of the PTC should be "contingent on demonstrations of inferior metrics (compared with faculty members approved in the corresponding cycle)"; (3) candidates approved

by a majority of the PTC and denied retention by the president should receive detailed, written reasons, including “metrics,” for the denials; and (4) appeals of nonreappointment should be submitted to faculty panels outside MD Anderson. The current situation, the authors wrote in conclusion, is destructive to morale: “not renewing tenure for faculty who had done all that could be expected of them destroys hope.”

Under AAUP-supported standards, full-time faculty members who have exceeded the maximum probationary period of seven years must be afforded procedural protections before their appointments are terminated. The basic elements of those protections are an adjudicative hearing of record before a duly constituted faculty body in which the burden of demonstrating adequate cause for dismissal rests with the administration.

Clearly, faculty members at MD Anderson view their proper role in the governance of the institution as including the fair adjudication of appointment renewals. They argue that the administration exceeds its authority—though not its power—by disregarding the unanimous recommendations of the PTC and by failing to justify its decisions to the PTC or even to the candidates for reappointment. Regarding the faculty’s role in faculty personnel matters, the *Statement on Government* asserts:

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. The governing board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

University of Texas system executive vice chancellor for health affairs Raymond Greenberg cautioned the investigating committee that the data discussed in the “Questions Raised” report should be seen in a wider context that includes MD Anderson’s faculty turnover rate, the second lowest in the University of Texas system. He advised the committee to talk to the MD Anderson administration, to write to the Office of Faculty Academic Affairs requesting answers to written questions, and to make recommendations about good practice and procedure.

The local administration in Houston was unwilling to talk, but the investigating committee followed the vice chancellor’s other advice, requesting from Senior Vice President Bogler and Provost Dmitrovsky data for a ten-year period that would answer the faculty’s pressing concerns: to what extent could nonrenewals be correlated with the percentage of grant support overall and, at the time of appointment renewal, with age; with favorable or unfavorable PTC votes; and with chair and division head recommendations.<sup>13</sup> The investigating committee asked also for the annual percentage of nonreappointment appeals and their outcome. Further, to see renewals in the light of the overall faculty employment picture, the committee identified the variables that would assist it: “new hires; retirements; voluntary separations during active contracts; dismissals for cause; faculty retained and not retained at expiry of contract; deferrals (and their subsequent disposition).” For guidance, the committee also sent the faculty senate’s executive committee the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure* and offered to consult in any way the ECFS might find helpful in the following months.

The administration supplied useful data in two tables: PTC Actions (FY05–FY13) and Term Tenure Renewal Outcome (FY05–14).<sup>14</sup> A simple table of deferrals (FY05–FY14) had already been provided during the committee’s site visit. Percentage approvals of promotions, initial awards of tenure, and new

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13. With respect to age, executive chief of staff Dan Fontaine replied to the committee, “The investigative committee should be aware that it would be highly inappropriate for MD Anderson, or any other leadership of an academic institution, to consider or compile certain requested data, such as the age of faculty members, in conjunction with hiring, retention, retirement, appointments, or other employment actions. Accordingly, MD Anderson does not compile (nor should it) such data.”

14. The administration provided no information about grant support, age, chair and division head recommendations, or appeals. The committee nevertheless hopes that the administration will pursue the concerns raised by the faculty.

appointments are comparable to the nine-year averages for those categories. Only the “tenure renewal” category posed problems: Vice President Bogler clarified an initial appearance of incommensurability among the three tables and with the president’s letter of May 23 when the committee appealed to him for assistance in navigating the sources. He explained that the renewal outcome table is a snapshot, while the other two tables show complete information for each fiscal year. Thus, deferrals listed in the renewal table—shown along with retirements and resignations under “actions with no president’s decision”—migrate to permanent positions only later, when settled. Since deferrals, resignations, and retirements are combined into a single number, the figure given obscures the impact of a central complaint of the faculty—that the president’s deferral decisions sidestep PTC action and conceal the number of faculty constructively dismissed (see section VIII below).

The University of Texas system was on the verge of conducting its own survey of MD Anderson faculty in September 2014, when the investigating committee was visiting the cancer center. The results of that survey appeared on November 3. Of 1,578 faculty at that time, 966 responded to the survey, 8 percent of whom were administrators; participants were asked to consider the previous six months. Vice Chancellor Greenberg stated in his cover letter, “While there are some areas of perceived progress over the past year, there are areas that continue to be opportunities for improvement.” The survey included some questions comparable to those reported in the background section above. In the latest poll, a mere 14 percent of faculty agreed that “overall morale has improved as a result of recent changes by Executive Leadership”; only 39 percent of clinical faculty were satisfied with “progress or improvements” in patient safety; only 28 percent of research faculty were satisfied with the “administration’s strategic agenda for research”; and only 20 percent were satisfied with the integration of existing faculty with new initiatives. The survey also asked an important question about shared governance: only 23 percent agreed that “Executive Leadership is open to faculty ideas and recommendations.”<sup>15</sup>

## **VII. The Association’s Involvement**

In April 2014, Professor Henry Reichman, chair of Committee A on Academic Freedom and Tenure and

AAUP first vice president, received a message from Professor Boyd, who had previously discussed his concerns with AAUP president Rudy Fichtenbaum. Professor Boyd asked for a formal investigation into President DePinho’s denial of reappointment to several faculty members after they had received unanimous votes for retention from the faculty Promotion and Tenure Committee. Professor Reichman had some familiarity with the issues at MD Anderson, having been interviewed at length for an extensive article about the nonrenewals that appeared in the April 25 issue of the *Cancer Letter*, and he forwarded Professor Boyd’s message to Committee A’s staff.

In responding to Professor Boyd, the staff urged him to have the affected faculty members send their detailed accounts and supporting documents to the Association’s national office. Professors Mehta and Wang promptly did so. After reviewing their materials and what Professor Boyd had already sent, the staff wrote to President DePinho on May 13, 2014, to convey the Association’s concerns in the two cases.

With respect to Professor Mehta, the staff recounted its understanding that the president had declined to renew his seven-year term appointment for a fourth time, even though Professor Mehta had received favorable recommendations from his department and the Promotion and Tenure Committee; that he had received no written reasons for the decision, despite having repeatedly asked for them; and that the administration refused to reconsider its decision even though a faculty grievance committee had sustained his appeal. With respect to Professor Wang, the staff stated its understanding that he had received notice of nonrenewal of his seven-year term appointment, despite a unanimous recommendation for reappointment from the PTC; that the only appeal he was permitted to make was to the same administrative officer who had notified him of nonreappointment; and that his repeated requests for a meaningful statement of the reasons for the decision had been ignored.

After summarizing the applicable AAUP-supported principles and standards, the staff wrote that the Association was “deeply troubled by the quantity and severity of the departures” in these cases from those principles and standards. “Of primary concern,” the staff added, was the existence of what was locally called “term tenure” in place of a system of indefinite tenure, as adopted by the preponderance of academic institutions.

The staff pointed out that the AAUP regards all full-time faculty members, regardless of how their

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15. A standard Likert scale was used, so, for example, the category “agreed” includes those who agreed strongly.

institutions classify them and excepting only those with appointments limited at the outset to a brief duration, as serving either on appointments that are probationary for tenure or on appointments with continuous tenure. The Association, the staff added, therefore calls on institutions to afford the due-process protections of tenure to full-time faculty members whose length of service has exceeded the seven-year maximum period of probation. “Clearly,” the staff wrote, “Professors Mehta and Wang have served well beyond what the academic community at large would consider a reasonable period of apprenticeship. As a result, under normative standards, their appointments are terminable only for cause” as demonstrated in an adjudicative hearing of record before a body of faculty peers, with the burden of proof resting with the administration.

The staff’s letter also pointed out that, even if their service had “been confined to a single renewable term, Professor Mehta and Professor Wang would have been entitled to a written statement of reasons upon nonreappointment, which neither of them received, and to the opportunity for faculty review through an appropriate grievance process.” The letter closed with the staff’s urging rescission of the notifications to the two professors and their reinstatement to their full-time appointments.

Responding by letter of May 23, President DePinho pointed out that while seven-year term appointments had been in place at MD Anderson for decades, “the overwhelming number” of such appointments have been renewed, “often on multiple occasions.”

The president went on to say, “As an academic institution, we both vigorously support and champion academic freedom and due process.” He asserted that seven-year term appointments both protected academic freedom and helped maintain “the highest level of excellence and accountability.” He stated that, given the relatively low rate of nonrenewal and the typical consistency between faculty recommendations and the administration’s final decisions, “any suggestion that our faculty are at risk for non-renewal of their appointment for capricious purposes is simply not supported by the facts.” With respect to the Association’s other concerns, he wrote that both professors had received written reasons for their non-reappointment, related to the institutional requirement that faculty members must supply 40 percent of their salaries from external grants, and that Professor Wang failed to “exhaust all internal due process steps available to him.”

Asked by the staff for their comments on what the president had written, Professors Mehta, Wang, and Boyd sharply disputed the president’s assertions that a lack of external funding was the basis for the nonreappointments, that written reasons had been provided, and that Professor Wang had failed to exhaust the appeal process.

As was noted in section III of this report, Professor Mehta in his communication with the staff had made no reference to negative recommendations from his department chair and division head, nor did he send the staff any documents from either party that made such a recommendation. In his May 23 letter, President DePinho, however, had referenced a negative recommendation from department chair Powis. In his comments to the staff about the president’s letter, Professor Mehta wrote, “I am not aware of any such statement by the Chair. In fact, he strongly recommended renewal of my term tenure appointment. . . . Also, as stated by the Faculty Appeal Panel, my annual evaluations by the department chair/division head were favorable all through [the] previous six years.” Having also received a copy of the administration’s May 23 letter, Professor Boyd in a June 20 message to the administration stated, “I have been UNABLE to locate the ‘recommendation for the NON-renewal of your appointment’ letter written by Dr. Powis, Department Chair for Kapil Mehta, that you cited in your response (May 23, 2014) to AAUP.” In a June 23 response to Professor Boyd, Dr. Bogler attached the letters written by Professor Powis on November 9, 2011, and June 11, 2012. As noted earlier in this report, Professor Mehta had not seen them previously.

In a July 15 letter addressed to President DePinho and Chancellor Cigarroa, the AAUP’s staff reminded them that the AAUP’s initial letter had urged rescission of the notices of nonreappointment issued to Professors Mehta and Wang and their immediate reinstatement, and had cautioned that the Association’s “further course of action . . . will depend on” the administration’s response. The staff went on to announce that the AAUP’s executive director had authorized an investigation of the two cases.

July 31 brought a lengthy response by e-mail from the administration in the form of some thirty questions addressing, for the most part, the AAUP’s authority to investigate these cases and its ability to conduct a fair investigation. The letter was signed by executive chief of staff R. Dan Fontaine, Esq., whom, the letter stated, President DePinho had appointed to serve in “a coordinating role for further communications”

between MD Anderson and the AAUP. In closing, the letter asked for “prompt, candid, and direct answers” to enable the MD Anderson administration to “determine the appropriate course of action” in response to the Association’s July 15 letter.

On August 1, the AAUP’s staff sent a brief reply to Mr. Fontaine, with copies to those whom he had copied, stating that, given the “seriousness and thoroughness” of its “many detailed questions,” the staff would need some time to formulate an adequate response. The staff also asked for his assistance in determining whether the investigating committee should plan on visiting both Houston and Austin, where the UT system offices are located.

Mr. Fontaine did not reply to this message. Dr. Greenberg, the UT system’s executive vice chancellor for health affairs, however, responded that the system leadership (he himself and the system’s general counsel) would leave it to the AAUP to decide about the potential usefulness of a visit to the UT system offices in Austin. “If there is a desire to meet with UT System representatives,” he wrote, “we would be happy to do so, either telephonically or in person.”

The AAUP’s staff responded on August 25 to chief of staff Fontaine’s July 31 interrogatories, stating the “hope and expectation” that the staff’s response would “contribute to mutual understanding of our respective positions.” Although most of the chief of staff’s questions did not relate specifically to MD Anderson, one was whether the cancer center had ever agreed that its tenure procedures would comply with the 1940 *Statement of Principles on Academic Freedom and Tenure*. The staff wrote that “the Coordinating Board of the Texas College and University System adopted unanimously in October 1967 the ‘Statement on Academic Freedom, Tenure, and Responsibility for Faculty Members in Texas Public Colleges and Universities,’ which closely tracks the 1940 *Statement*.” Later that same day, the staff sent an additional letter to the MD Anderson administration announcing the dates of the investigating committee’s visit, providing the names of the members of the committee, and inviting the administration to meet with the committee during a time of the administration’s choosing.

Responding by letter of August 29, chief of staff Fontaine stated that “the AAUP’s incomplete answers” to the questions posed in his July 31 letter “as well as numerous admissions in the answers provided, have raised additional concerns” regarding the “validity” of the investigation. After detailing those concerns, Mr.

Fontaine enumerated various privileges afforded MD Anderson faculty which, he stated, made it unsurprising that the MD Anderson faculty-retention rate of 94 percent was among the highest in the UT system. “Moreover,” he wrote, “those who are familiar with our institution know that we not only embrace academic freedom; we thrive on discovery, discussion, and dissent in our pursuit of knowledge that will help us achieve our mission of reducing the cancer burden.”

Mr. Fontaine concluded with “three final questions” that he and his administration colleagues at MD Anderson would need to have answered “directly and honestly” prior to their determining “the extent of [their] participation in the AAUP’s proposed process”:

1. Can the AAUP cite a single instance where it has found favor with any tenure or appointment system that does not comport with its definition of “indefinite tenure”?
2. Given our term appointment system, isn’t the only realistic outcome of this process censure by the AAUP?
3. Given the only realistic outcome of this process, do you intend to also censure every other American university whose appointment system does not comport with the AAUP’s definition of “indefinite tenure”?

In a letter sent later the same day, the AAUP’s staff responded as follows:

1. The AAUP has not “found favor” with a system of academic appointment that does not grant “indefinite” tenure. There are, however, some institutions that grant multi-term appointments but, before denying reappointment after a period of six or seven years, demonstrate adequacy of cause in a hearing before faculty peers. We see such a system as being in essential accordance with indefinite tenure.
2. With respect to your appointment system and its inconsistency with AAUP-supported standards, censure does not necessarily follow. The resolution of the actions against the professors who sought our assistance might well avoid imposition of censure.
3. We trust that this question is rhetorical. We obviously have no intention of censuring the administration of every university with policies at variance with our recommended standards.

On September 16, the MD Anderson administration, through Mr. Fontaine, stated that it would not

meet with the AAUP committee but offered to respond to written questions not previously answered excluding those pertaining to “personnel matters that may be the subject of litigation or other legal or regulatory processes.” On September 17, over President DePinho’s signature, the full faculty received the administration’s account of the investigating committee’s expected campus visit. The executive committee of the faculty senate then replied to the full faculty.

These last-minute communications, sent while the investigating committee was in transit to Houston, sowed some confusion. On the one hand, faculty members who had not read the president’s letter assumed that the investigating committee would have the administration’s full cooperation. They suggested questions the committee might ask various committee chairs, Dr. Bogler, and the president when meeting with them. On the other hand, even some otherwise well-informed faculty members had been misled by the president’s letter or campus rumor, so the investigating committee repeatedly needed to explain that the AAUP has been conducting investigations for one hundred years; that the current investigators were not outsiders but fellow faculty members—three of the four from medical faculties—who are volunteers; that the investigating committee had neither the authority nor the desire to censure; and that, on the contrary, the committee was willing to work with the faculty, the administration, and the University of Texas system generally to prevent the possibility of censure.

The investigating committee visited the MD Anderson campus from September 17 to 20, 2014, and interviewed members and former members of the faculty all day on September 18 and 19. The committee continued to gather information in the months immediately after its visit.

### **VIII. Issues of Concern**

Summarized here are what appear to this investigating committee to be the central issues—as determined from its interviews and follow-up questions, together with information available to the Association—and as related to the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative Association-supported principles and procedural standards.

#### **A. Academic Freedom and Contractual Appointments**

The Association’s fundamental argument for the value of academic freedom and indefinite tenure is set forth in the 1940 *Statement of Principles*:

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher 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 both to 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 the student to freedom in learning. . . .

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.

As has been noted, the board of regents of the University of Texas system exempts the MD Anderson Cancer Center from its tenure policy, authorizing it instead to offer seven-year renewable term appointments. Moreover, the MD Anderson administration has asserted in its responses to the AAUP that its system of term appointments serves its mission well while protecting academic freedom. In his May 23 response, President DePinho wrote, “[A]s a publicly supported comprehensive cancer center, we have a responsibility to our patients and to the public that our faculty and staff maintain the highest level of excellence and accountability. This is why we strongly believe the longstanding term appointment system at MD Anderson serves to balance these two crucial needs while providing a high level of long-term career security to our term-appointed faculty, as evidenced by the average renewal rate [92 percent] stated above.” Chief of staff Fontaine pursued the theme of balance in his July 31 letter to the staff, writing that the term-appointment system at MD Anderson “was structured to achieve a reasonable balance between (1) the academic interests of an institution that has as its sole mission the elimination of human suffering from cancer and (2) the required accountability in patient care, research, education, and prevention for that sole mission that our patients and public deserve.”

President DePinho offers the cancer center’s average appointment renewal rate of 92 percent for fiscal years 2011 to 2013 as confirmation that the faculty

has adequate job security. As Senior Vice President Bogler's explanation implies, however, the quoted rate includes five deferrals (five faculty members who received notice of end dates of employment, but whose nonrenewals could still be rescinded). The investigating committee thus calculates the actual renewal rate as 88 percent for 2011 to 2013. Further, the renewal rate given by the president for fiscal years 2012 and 2013 is 86 percent (with two deferrals). To the faculty, having a better than one-in-ten chance of losing one's livelihood—even after having met all the requirements for continuation and having earned the support of the Promotion and Tenure Committee—is more than a little threatening.

The Association has long held that the protections of academic due process promote the common good by attracting men and women of high caliber who aim for the greatest achievements of which they are capable, without fear or favor. The academic profession is less lucrative than many others, but one of its attractions is that—following a lengthy period of apprenticeship, rigorous testing, and substantial institutional investment—one may achieve sufficient employment security to sustain one's higher aspirations. The prospect of losing one's appointment, and with it one's livelihood, can incline a researcher to aim low, to accept fundable, predictable results rather than to pursue less certain or longer-term research that might be ever so much more promising. There is an irony in shooting for the moon while basic science progresses slowly and safely at the pace set by an insecure funding network.

MD Anderson does not reduce a researcher's salary during the seven-year period of his or her appointment and does not renew appointments *subject* to a reduced salary—but the new expectation that each department, rather than the central administration, will have to compensate researchers who fail to obtain the minimum of 40 percent of their annual base salary from extramural grants and contracts seems to faculty members to be looming on the horizon. The investigating committee acknowledges that the faculty of MD Anderson may have been content with renewable term appointments in the past, when they judged the renewal system to be implemented fairly, but confidence has eroded steeply in recent years. The investigating committee heard arguments that innovation and creativity at MD Anderson, essential to scientific research, have been stifled. The cancer center's shift from investigator-initiated basic research to drug development under President DePinho, some faculty

members said, motivated the effort to cast off existing MD Anderson faculty members while making room for Harvard expatriates.<sup>16</sup> Some senior faculty members described the shift to commercialization away from basic research as “shocking” and “obscene.”

### **B. Consistency of Standards for Appointment Renewal and Promotion**

The MD Anderson administration has consistently maintained that the standards for appointment renewal have not changed under the current administration: there is no higher standard now in effect. The institution's internal *Faculty Notes* featured “Insider Tips for Faculty Promotions” in its October–November 2013 issue. Interviewed for the article, provost and executive vice president Dmitrovsky insisted, “In our charge to both committees this year, Dr. DePinho and I reinforced that the criteria have not changed and stated our desire to support the committees and their work.”<sup>17</sup> Professor Eric M. Sturgis, chair of the Senate Promotion and Tenure Issues Committee from 2012 to 2014, concurred: “The policies and guidelines haven't changed since Dr. DePinho became president. The committee members carefully follow the policies, and though some interpretation is a part of the process, we've provided recommendations independent of any outside influence and have been consistent in our application of institutional guidelines/policies.” And President DePinho agreed as well, “I have not felt the need to change any of the policies.”

As noted earlier in this report, however, Professor Mehta's chair had referred in 2011 to “our attempt to raise the bar at this institution”; Professor Wang reported that his chair told him in 2012 that “the standard for tenure renewal is high now because the leadership of the institute has been changed”; and President DePinho remarked in September 2012 that he had already asked department heads “for an increase in volume activity ranging from five to ten percent.” Faculty members who met with the investigating committee confirmed the higher expectations from their own chairs' comments. A former division head, however, told the committee that the administration had never pressured him over renewal decisions.

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16. Between fiscal year 2005 and fiscal year 2011, MD Anderson averaged twenty-four new appointments per year. In fiscal years 2012 and 2013, the average was sixty-two per year.

17. It is the PTC—which considers all applications for appointment renewal—that features most prominently in this investigation, but the other committee mentioned is the Clinical Faculty Review Committee.

Both views may be partially right. If reappointment decisions are not originating unilaterally from within the administration itself, which is a possibility the investigating committee cannot exclude, an institutional factor contributing to the ambiguity may be the two distinct lines of reporting to the president about each candidate for renewal. On the face of it, the president appears to favor reports from chairs and division heads over those processed through the PTC, even though the former may be, as in Professor Mehta's case, communicated in secret. As the faculty senate has complained, the PTC, and thus shared governance, is being undermined in the process. There is evidence of inconsistency in two institutional policies, ACA0024 and ACA0058. The former, the purpose of which is to establish eligibility and process for appointment award and renewal, is unexceptionable: a range of possible chair recommendations, PTC review, and presidential decision. The latter document, devoted to the process of nonrenewal of appointments, makes no mention of the PTC: the chair recommends nonrenewal in writing to the provost, including reasons and documentation, at least thirty days before the statutory notification of the faculty member is due. Why those reasons are not routinely communicated to the faculty members whose appointments are not renewed remains a mystery. They are required by the policy and, without them, the basis for one's appeal is necessarily speculative.

Although the investigating committee requested data correlating chair and division head recommendations with the president's decisions, much as the Senate Promotion and Tenure Issues Committee had correlated PTC recommendations with those decisions, that information was not forthcoming. Mr. Fontaine was silent about the reason the information could not or would not be supplied.

President DePinho, commenting in his May 23 letter on the reasons for Professor Mehta's nonreappointment, referred to "MD Anderson's policy on salary support," which, he stated, "requires" that "40 percent of salary support come from extramural grants for faculty members whose primary responsibility is scientific research." The obvious implication is that a faculty member who does not bring in at least 40 percent of his or her salary from outside sources may suffer nonreappointment. The institution's "term-tenure" policy enumerates the following criteria for renewal of a seven-year appointment: "Renewal of term tenure: (A) Recognizes continuing substantial academic productivity in the areas of research, patient care, prevention, education, and service during the

most recent period of term tenure; (B) Recognizes continued collegial and collaborative contributions to group activities; and (C) Reasserts the dual commitment and responsibility of the individual faculty member and the institution to each other." For the policy on outside funding, one must look elsewhere, specifically, "Salary Support on Research Grants," ACA0008. It states that "all faculty members at the level of Assistant Professor and above, who spend 75 percent or more of their time on basic, translational, or population-based research, [must] obtain at least 40 percent of their annual base salary from extramural grants and contracts." Under "Annual Review," the policy states, further, "The inability or unwillingness to obtain extramural funds to support one's salary will be reflected in performance evaluations, merit raises, space allocations, opportunities for career advancement, and tenure considerations, and may influence the cash component of the annual Supplemental Annuity Program (SAP) payment."

Although the investigating committee requested data correlating level of grant support (overall and at the time of renewal) to the president's decisions, that information was not provided, and Mr. Fontaine did not say why.

Clinicians, many of whom have one-year appointments and hope to be promoted to eligibility for seven-year appointments, told the investigating committee that the same kinds of issues occur in promotion denials as in nonrenewal decisions—no reasons given as guidance for how to improve and apply successfully in a subsequent year, no support, and no transparency in the recommendation process—resulting in the increasing perception that there is no integrity in the system. "There's no mechanism for challenging the hierarchical structure," one faculty member said. "I have ideas; I want to contribute to research, but I can't move up if I'm in surgery 90 percent of the time." Another clinician who had been denied promotion despite PTC approval said that retaliation is rife, even for those who do not ultimately lose their jobs. Furthermore, "there's no remediation; there's a conflict of interest if the same person who makes the decision decides the appeal." The organizational hierarchy was variously characterized as "totalitarian" or "top-down."

### **C. Deferrals as Disguised Dismissals**

The investigating committee noted that President DePinho has increased the use of a deferral provision of the "term-tenure" policy whereby faculty appoint-

ments are not renewed but postponed for one year and then returned to the president, not the PTC, for final adjudication.<sup>18</sup> Deferrals, which differ from “extensions” under the policy, camouflage the actual number of denials and presidential disagreements with the decisions of the PTC.<sup>19</sup> For example, the renewal outcome table mentioned above shows that in fiscal year 2014, when there were thirty-seven renewal applications, the president agreed with the PTC’s thirty approvals and with its three disapprovals, so presidential disagreements are listed as zero. But there are four cases of deferral, three of which had been favorably recommended by the PTC (given on the deferrals table). Another way to look at the numbers is that the president reappointed thirty of thirty-seven applicants, or 81 percent. Thus a faculty member’s one-in-ten chance of losing a career looks more like one-in-five.

A central allegation of current and former faculty members, both clinicians and researchers, is that arbitrary dismissal is being perpetrated under auspices other than explicit nonrenewal. Concerned that the disclosure of details of their cases might prompt retaliation or worsen their prospects for appointment renewal, interviewees whose renewal decisions had been deferred told the investigating committee that deferral notices include no reasons, leaving the affected faculty members vulnerable to presidential nonrenewal in the following year. “Deferrals are recommendations to find another job,” the investigating committee was told. “Otherwise the president would specify what needs correction.” Evidence was provided to the committee of faculty members with unblemished performance appraisals, grant income consistently far above the 40 percent level, and PTC approval, who nevertheless received deferrals. Either the administration is making the nonrenewal decisions itself, or it is accepting chair and division head recommendations over those of the PTC. In either case, there is a remarkable lack of transparency in the process.

It may be helpful to appreciate the extent to which “recommend” and “request” are terms of art

in the regulations of the cancer center. Buried in a footnote to the fifth bullet point of section 4.2.A of ACA0024 is a provision that when a department chair recommends a one-year deferral of the renewal decision, “this *recommendation* must also include a *request* for terminal appointment” (emphases added). The provision allows the administration to provide terminal-year notification to the faculty member and then to rescind it if, after a year and without further PTC review, the president decides to renew the appointment. In short, faculty members who receive deferrals also receive terminal-year notifications. This skews the official appointment-renewal data because someone who receives a deferral and then takes a position elsewhere, or retires, is counted among voluntary separations.

#### **D. Affordance of Academic Due Process**

Matters of additional concern to the investigating committee are the appropriateness, when measured against AAUP-recommended procedural standards, of the procedures afforded Professors Mehta and Wang upon the termination of their services; the consistency with MD Anderson’s own rules of the procedures followed in their cases; and the adequacy of the due-process protections, as incorporated into institutional regulations, afforded faculty members generally at MD Anderson.

Regulation 1b of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure* provides as follows: “With the exception of special appointments clearly limited to a brief association with the institution, and reappointments of retired faculty members on special occasions, all full-time faculty appointments are of two kinds: (1) probationary appointments; (2) appointments with continuous tenure.” The 1940 *Statement of Principles* provides that “[a]fter 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.” The maximum length of the probationary period, under the 1940 *Statement*, is seven years. The AAUP therefore considers faculty members whose length of full-time service has exceeded seven years (regardless of whether their institutions have designated their appointments as tenured) as being eligible for the academic due-process protections of tenure, as set forth in the joint 1958 *Statement on Procedural Standards*

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18. Although the policy says “one year,” there is evidence that it sometimes takes two years for a deferral decision to be final (for example, deferrals for both fiscal year 2013 and fiscal year 2014 are pending).

19. Extensions are granted under the policy, some requiring executive approval, for a range of personal and professional reasons (for example, disability, birth, exceptional administrative duties). Renewal applications that include such ordinary extensions, however, are reviewed by the PTC.

in *Faculty Dismissal Proceedings* and, more elaborately, in the derivative Regulations 5 and 6 of the *Recommended Institutional Regulations*. Thus, when an administration wishes to release full-time faculty members after a total of seven years of service has been exceeded, it cannot do so simply by declining to renew their appointments. Under AAUP-supported standards, it must afford them procedural protections, the basic elements of which are an adjudicative hearing of record before a duly constituted faculty body in which the burden of demonstrating adequate cause for dismissal, based on clear and convincing evidence in the record considered as a whole, rests with the administration.

Under these normative academic standards, Professors Mehta and Wang were tenured members of the faculty and thus subject to dismissal only for demonstrated cause; that is, they were entitled to academic due process, which they did not receive. MD Anderson has an institutional policy, "Termination of Employment of a Faculty Member," that applies to dismissals for cause within a term of appointment. This policy should have been applied in the two cases. Both would then have been afforded procedural safeguards approximating those set forth in the 1958 *Statement on Procedural Standards*.

In brief, under AAUP-recommended procedural standards, full-time faculty members whose length of service exceeds seven years cannot be separated from service without affordance of the due-process protections that accrue with tenure.

Full-time faculty members with fewer than seven years of service who are separated from service through denial of reappointment are entitled, under AAUP standards but not under MD Anderson policies, to a statement of the reasons for the decision and the opportunity to contest the decision before a duly-constituted faculty body if they allege that the decision was the result of inadequate consideration or was based significantly on considerations that violated their academic freedom or official regulations or policies forbidding discrimination.)

With respect to providing reasons for a nonreappointment decision, MD Anderson's institutional policy covers "full- and part-time faculty at all academic ranks" and specifies that once the provost makes a decision not to renew an appointment in accordance with the recommendation of the department chair, the chair "meets with the faculty member in person to discuss the reason(s) for nonrenewal of his/her appointment." Following this meeting, the

faculty member receives written notice of nonrenewal from the Office of Academic and Visa Administration and the Office of Faculty Academic Affairs. The policy is vague regarding the provision of written reasons to the faculty member: "Nonrenewal of a faculty appointment will be with notification, reasons provided, and in accordance with policy and procedure. Notification of Non-renewal of Appointment: Written notice given by the Provost and Executive Vice President (PRO/EVP) or his/her designee to a faculty member within a specified timeframe (see Section 1.0, Notification of Non-Renewal of Faculty Appointment) notifying the faculty member that his/her faculty appointment will not be renewed at the end of a stated appointment period and briefly stating reason(s) reappointment will not occur." The policy also provides (2.2) that a chair who recommends against reappointment will furnish reasons and documentation of those reasons. In the Mehta and Wang cases, both professors have stated that they did not receive written statements of the reasons for the administration's decision not to retain them. As noted earlier, their initial notices of nonrenewal both contained the patently circular assertion that the reason for nonrenewal was that the renewal of term tenure was not approved.

Before writing its initial letter to the administration, the AAUP's staff checked with Professors Mehta and Wang to confirm that they had not received written reasons. In response to the question "Have you received any kind of statement from the president or any other administration official specifying the reasons for the decision not to renew your appointment?" Professor Mehta replied, "Absolutely not." To the question "Is it correct that you have not received any written statement explaining the basis of the administration's decision not to renew your appointment," Professor Wang wrote, "Yes. . . . I have not been able to receive any written statement explaining the basis of the administration's decision not to renew [my] appointment from anybody in the institute."

Sharply contesting the statement in the staff's May 13, 2014, letter that neither professor had received a written statement of reasons, President DePinho wrote, in his May 23 response, "Contrary to the assertion that no written explanation for non-renewal was provided to Dr. Mehta, the pertinent records demonstrate that Dr. Thomas Buchholz, Provost and Executive Vice President, ad interim, reviewed and considered Dr. Mehta's appeal and advised him of specific reasons for the non-renewal in writing on two separate occasions." He refers to the October 11, 2012, letter and to a

November 20, 2012, memorandum, also from Provost Buchholz, informing Professor Mehta of the final disposition of his appeal. According to President DePinho, in that second memorandum (which neither the staff nor the investigating committee nor Professor Mehta had seen), Provost Buchholz wrote, “Your current lack of peer review funding makes the achievement of near-term scientific goals difficult.” Senior Vice President Bogler did not include the memorandum with the correspondence he supplied in response to Professor Boyd’s inquiries, though he included other items never before seen by Professor Mehta.

With respect to Professor Wang, the president wrote that the professor had “either discontinued or abandoned his appeal before exhausting all steps of the faculty appeal process.” As a result, he did not receive “a written explanation concerning any final determination. Because of Dr. Wang’s instigation of an external legal process [presumably, the complaint filed with the Texas Workforce Commission] prior to exhausting the internal MD Anderson processes made available to him, we are now unable to comment further about his nonrenewal. However, we can state with confidence that written information available to Dr. Wang was more than adequate to apprise him of the basis of non-renewal, despite his failure to exhaust all internal due-process steps available to him.”

The president appears to be asserting that applicants are *entitled* to know the reasons for their nonrenewals only *after* they have exhausted “all internal due-process steps available.” Such a claim undercuts the appeal process.

The investigating committee discussed information available to the two professors from which the administration might have expected them to infer the reasons for their nonrenewal. Professor Mehta had received an October 11, 2012, letter (quoted earlier in this report) from Dr. Buchholz, the interim provost, stating that the Faculty Appeal Panel in its review of his appeal had “acknowledged [his] lack of external funding” and referred to Professor Mehta’s “current lack of expected external funding,” which was the first negative remark the professor had seen. Even if Dr. Buchholz’s October 11 letter had accurately represented the position of the panel, which it did not, the investigating committee notes that a faculty member’s finally receiving reasons only at the point of an *ad hoc review* of an *appeal* of a *denial* is manifestly unacceptable, especially because those reasons, authored by department chair Powis, had been in the hands of the administration all along.

Professor Wang received performance evaluations from his chair in 2012 and 2013 (for fiscal years 2011 and 2012, respectively). The former, conducted by the previous chair, noted that Professor Wang had “achieved goals” in all four areas of assessment but added the overall comment that Professor Wang had “so far . . . not met the payline.” Since Professor Wang then increased his grant support, the comment cannot have served as an appropriate reason for his nonreappointment. After his January 2013 meeting with his new chair, Professor Kalluri, Professor Wang believed that the two were in agreement that he had in fact “achieved goals,” an understanding subsequently supported by Professor Kalluri’s first amended performance appraisal. The second amended appraisal, reinstating the negative assessments erased a month earlier, were, in the view of the investigating committee, evidence of a simple need to justify removing Professor Wang from the department.

While the outcomes were the same, the appeal procedures afforded Professors Mehta and Wang were not identical. After receiving notice from then-provost DuBois of his nonrenewal, Professor Mehta submitted an appeal to the FAP and then appealed Provost Buchholz’s denial of his appeal to the president. After receiving his notice of nonrenewal from Provost Buchholz, Professor Wang submitted his appeal to the provost’s office. The new provost, Dr. Dmitrovsky, informed him that his appeal had been denied and that he had five days to request a meeting with the president, which Professor Wang declined to do because he believed such a meeting would have been futile.

The investigating committee accepts President DePinho’s May 2014 explanation (footnoted earlier) of the exceptional accommodation afforded Professor Mehta—“MD Anderson experienced changes to the Provost and Executive Vice President position during the course of Dr. Mehta’s appeal process”—and learned from several faculty members that the change of administrative personnel was significant. Dr. DuBois had been a candidate for the presidency and, when not selected, had been placed in an untenable situation. Faculty members told the investigating committee that although provost DuBois had previously been helpful to faculty members who sought his assistance, he had little leverage after Dr. DePinho’s appointment.

#### **E. Conditions for Academic Governance**

The initial request from faculty members at MD Anderson for AAUP assistance did not allege any violations of Association-supported principles and

standards relating to academic freedom and tenure. Instead, it focused exclusively on allegations that the MD Anderson administration disregarded AAUP-supported standards of academic governance, as set forth in the *Statement on Government of Colleges and Universities*, by declining to accept the unanimous recommendations of faculty bodies that faculty members be granted “term tenure.” As noted earlier, the report of the committee, chaired by Professor Boyd, focused on what it called governance issues. Traditionally, however, the AAUP has viewed an administration’s disregard of a faculty body’s position on an issue of faculty status as a tenure issue, often with ramifications for academic freedom, and so it did regarding MD Anderson once information on the Mehta and Wang cases became known to the staff.

Professor Boyd also alleged in his May 5 letter that President DePinho appointed Professor Kalluri as chair of the Department of Cancer Biology without consulting with a faculty committee or faculty members in the department. Regarding the selection of a department chair, the *Statement of Government* recommends, “The chair or head of a department, who serves as the chief representative of the department within an institution, should be selected either by departmental election or by appointment following consultation with members of the department and of related departments; appointments should normally be in conformity with department members’ judgment.” Faculty members told the investigating committee that the appointment of chairs by the president is the tip of an iceberg in which the institution is being reorganized without faculty consultation or participation.

#### **F. Climate for Academic Freedom**

*Academic freedom* is a term the investigating committee heard rarely at MD Anderson. When the term was used, there was often the implication that academic freedom is identical to citizen speech or applies to curricular matters but not to research. The investigating committee was cautioned more than once against regarding MD Anderson as an educational institution—despite the thousands of trainees and students it serves annually. The cancer center’s minimal involvement in teaching, compared to its research and patient-care components, was emphasized by interviewees at all levels: “Anderson is more like a hospital than like a university.” No one interviewed by the committee said the educational mission of the center was being harmed.

Although neither the term *tenure* nor the term *academic freedom* could be used by the investigating committee without inviting misconception, faculty members were quick to describe the pressures they and their colleagues felt in the areas of research, patient care, and governance—as already described in this report—especially in the past few years and, for individuals, particularly in the years immediately before applying for renewal. Some faculty members told the investigating committee not to expect much openness from interviewees because “even senators are on seven-year contracts.” One faculty member remarked, “All faculty senate members are on seven-year appointments, so they too have to watch their heads that they don’t ‘upset the apple cart’ too much.”

In the course of investigating the cases of Professors Mehta and Wang, and in considering Professor Lu’s situation, the committee was made aware of faculty experiences and fears closely related to the apparent secrecy and arbitrariness involved in those three cases. It heard accounts of abuse of authority and retaliation that went unchecked despite appeals for help to the offices of human resources, the ombudsperson, and the provost. Some faculty members met with the investigating committee, they said, to recount their experiences of perceived mistreatment in hopes that the committee would not make the mistake of thinking that the complaints that prompted the investigation were exceptional, even if their own situations could not be addressed by the Association directly.

#### **IX. Conclusions**

1. The administration of the University of Texas MD Anderson Cancer Center acted in disregard of the joint 1940 *Statement of Principles on Academic Freedom and Tenure*, which calls for the protections of tenure to full-time faculty members after seven years of service, when it failed to retain Professors Kapil Mehta and Zhengxin Wang following thirty and twelve years of service, respectively, without having afforded them requisite academic due process.
2. In both the Mehta and Wang cases, the administration acted in disregard of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure* and of its own “Non-Renewal of Faculty Appointment Policy” when it failed to provide a written statement of reasons to the two professors for their nonreappointment.

3. In both cases and in others where nonrenewals and deferrals belied the positive recommendations of the faculty committee with primary responsibility for ensuring faculty excellence, the administration acted in disregard of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure and the Statement on Government of Colleges and Universities* when it failed to provide compelling reasons, stated in detail, to the Promotion and Tenure Committee for rejecting its recommendations.
4. In Professor Mehta's case, the administration additionally ignored the findings of a faculty appeal panel that had sustained his appeal of the adverse action and misrepresented the panel's findings to Professor Mehta.
5. The administration acted in disregard of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* and in disregard of its own "Faculty Appointments Policy" in failing to provide accurate licensure information in Professor Gouhui Lu's initial letter of offer and in subsequent appraisals and reviews—information later used to remove him from faculty status and place him in a classified position.
6. The University of Texas MD Anderson Cancer Center administration shows its disregard of principles of shared governance articulated in the *Statement on Government of Colleges and Universities* in its procedures for appointing department chairs and in its general failure to involve faculty meaningfully in academic decisions.<sup>20</sup> ■

*Investigating Committee*

Committee A on Academic Freedom and Tenure has by vote authorized publication of this report on the AAUP website and in the *Bulletin of the American Association of University Professors*.

Chair: **HENRY REICHMAN** (History), California State University, East Bay

Members: **MICHAEL BÉRUBÉ** (English), Pennsylvania State University; **DON M. ERON** (Writing and Rhetoric), University of Colorado; **MARJORIE HEINS** (Law), New York, NY; **CHRISTOPHER HOOFNAGLE** (Law), University of California, Berkeley; **WALTER BENN MICHAELS** (English), University of Illinois at Chicago; **DEBRA NAILS\*** (Philosophy), Michigan State University; **CARY R. NELSON** (English), University of Illinois at Urbana-Champaign; **JOAN WALLACH SCOTT** (History), Institute for Advanced Study; **HANS-JOERG TIEDE** (Computer Science), Illinois Wesleyan University; **RUDY FICHTENBAUM** (Economics), Wright State University, *ex officio*; **RISA L. LIEBERWITZ** (Law), Cornell University, *ex officio*; **JOAN E. BERTIN** (Public Health), Columbia University, *consultant*; **BARBARA M. JONES** (Legal History), American Library Association, *consultant*; **JAMES TURK** (Sociology), Ryerson University, *consultant*; **IRENE T. MULVEY** (Mathematics), Fairfield University, *liaison from the Assembly of State Conferences*.

\* Did not participate in the vote.

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**DEBRA NAILS** (Philosophy)  
Michigan State University, *chair*

**GLORIA P. GIARRATANO** (Nursing)  
Louisiana State University Health Sciences Center

**DAVID I. GREGORIO** (Community Medicine and Health Care)  
University of Connecticut Health Center

**MARIE E. MONACO** (Neurosciences and Physiology)  
New York University School of Medicine

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20. The administration of the MD Anderson Cancer Center, having received a copy of the draft text of this report for comment and correction of fact, responded by letter of March 13, 2015. For the text of that letter and a reaction, see the *Cancer Letter*, March 18, 2015, 3-6.