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MEMORANDUM

TO: Ad Hoc Code Review Committee
FROM: Richard A. McReynolds, M.S., M.D. *RmR*
DATE: 23 January 1992
SUBJECT: School of Medicine Governance Code

"Necessity is the plea for every infringement of human freedom."
William Pitt; House of Commons, 1783

We must distinguish between two questions which have been expressed together to the faculty of the School of Medicine by Dr. Hallock and his appointees:

1. Do we need to amend those provisions of our Code concerned with the amendment procedure itself; and if so, in what manner?
2. Do we need to amend other provisions of our Code?

It is clear that these two questions are distinguishable and independent. It is also clear that, unless there is some problem to be solved by amending other provisions of the Code, there is no need to amend the amendment procedure: such an amendment would solve no problem, alleviate no inequity, nor achieve any faculty purpose nor goal.

Amendments to our Code are not to be undertaken lightly. Our Code contains and consists of procedural safeguards for the faculty which are provided contractually by the greater University of North Carolina and by East Carolina University. The provisions and policies of this Code document are part of our employment contract, and like other contracts, are enforceable in court. Our Code does not therefore pertain only to Dr. Hallock's code committee, nor only to the present faculty, but to all of us, and to all who follow us on the faculty of the School of Medicine.

Altering our Code, thus altering our employment contract, has far-reaching potential implications for all of us, and for all of our successors. Dr. Hallock is asking us not only to alter our contract, but also to alter and voluntarily diminish our role in making additional alterations in this contract. Yet to the present time, no specific, nontrivial examples have been put forth to illustrate the need for an amendment to our Code.

I suggest to you that the facts are that Dr. Hallock, and Dr. Laupus before him, did not adhere to the procedures required by our Code; but that administration noncompliance with our Code is not a reason to amend our Code. That is not the way to produce compliance. It is instead an impetus for concerned faculty to require that the administration follow the rules we have agreed to, and abide by our contract.

One of the critically important issues presented is the percentage of faculty required to amend our Code in the future. Two aspects present themselves with abundant clarity: a high level of our approval is and should be required to amend our Code, because amending our Code is not a trivial matter; and decreasing the level of faculty approval required to amend our Code has the inevitable consequence of concentrating power in the dean, because a higher level of expressed opposition would be required to prevent undesirable actions by the administration, whoever may occupy that post in the future.

There is nothing inherently wrong in requiring that an overwhelming majority of the medical school faculty, 75%, approve a change in our contract before the change is made. Robert's Rules of Order Newly Revised, 1990 edition (Robert's) pages 574 and 585, calls for at least a two-thirds vote to amend bylaws; but Robert's does not comment on contractual considerations such as those which are implicit in our Code and by which we are legally bound. These considerations raise the level of faculty approval which we require to alter existing contracts, for all of us on the medical school faculty.

But there is another, more invidious assault on our contractual right to participate in governance: under the dean's proposed amendment, approval or disapproval would be determined not by a percentage of the entire medical faculty, all of whom would be affected by the outcome; but by a percentage of only those physically present at the meeting, which would allow a small minority to amend our Code and contract. At the 13 January meeting, Dr. Worthington responded to a question from Dr. Jones, Chair of Family Medicine; I understood Dr. Worthington to say that votes of approval by 51% of the tenured faculty present at the meeting were required to amend. The revision by Chancellor Howell in 1984, which is a requisite revision to the draft code submitted to Chancellor Howell, states that a majority of the tenured faculty must approve, not just a majority of the tenured faculty who attend the meeting. Chancellor Howell's revision is consistent with ECU policy as stated in the ECU Code on page L-2 of our Faculty Manual, "Development of Codes":

This [unit] code must be approved by the majority of the permanently tenured faculty members of the unit.

In addition, Robert's warns against adopting voting requirements based on the number of members present, 1990 edition p.398:

Voting requirements based on the number of members present - a majority of those present, two thirds of those present, etc. - while possible, are generally undesirable. Since an abstention in such cases has the same effect as a negative vote, these bases deny members the right to maintain a neutral position by abstaining.

Note that the ECU Code p. L-2 requires that our Code follow Robert's:

The code will provide for the conduct of unit affairs according to Robert's Rules of Order, Newly Revised.

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It has been ten years since our Code was adopted by the medical faculty, and eight years since it was approved with revisions by Chancellor Howell. Does the dean assert that it unduly burdensome to assemble 75% of the medical faculty at eight-year intervals to consider amending our Code?

Amendment procedures are cumbersome, properly so, and by intent and design. Amendments are not to be indulged in casually, but with all due deliberation and care. Any attempt to abbreviate amendment procedures must give the faculty pause: such an attempt leads one to the conjecture that another, hidden agenda is being addressed.

At this point, it may aid in perspective to consider our recent history, and the sequence of events which has compelled us to our present position.

On 1 October 1990, the day he was appointed Vice Chancellor, Dr. Hallock issued an edict that abolished our Department of Pathology, formerly chaired by the late Dr. Bakerman. Both the Faculty Affairs Committee and the Faculty Governance Committee advised first Dr. Hallock and then Chancellor Eakin that this action, abolishment of our department by fiat, was inconsistent with ECU policy. Chancellor Eakin then overturned and reversed Dr. Hallock's edict, upholding the validity of our governing documents and affirming the place of the Department of Pathology in our medical school.

Last fall, Dr. Hallock again sought to abolish our department, and assembled the medical faculty for the purpose of amending our Code in one respect only: the elimination of our Department of Pathology from the medical school. Opposition was voiced, and a letter expressing an alternate viewpoint was sent to the faculty. It was clear that there was considerable opposition among the medical faculty to Dr. Hallock's desire to abolish our department. Dr. Hallock held the meeting on schedule, but instead of voting on an amendment to abolish our department, he informed us that we did not have that option; he informed us that instead we needed to revise our Code, and amend the provisions governing amending our Code.

The obvious conclusions are that Dr. Hallock learned he could not achieve his objective, against faculty wishes, while abiding by the rules; in reversing Dr. Hallock, Chancellor Eakin informed Dr. Hallock that he must abide by the rules; and so Dr. Hallock now seeks to change our rules.

The medical faculty may, if we wish, amend our code and give up some portion of our procedural safeguards. But first, let us examine the underlying premise: do we see a need to amend our Code? Unless some specific element of our code is wrong, what would we achieve by "fixing" it?

This is respectfully submitted in response to the memorandum from Dr. James A. Hallock dated 17 January 1992, which was delivered to faculty of the Department of Pathology on 22 January 1992, requesting response from the faculty concerning these matters.