

July 28, 2014

Jason Flores-Williams, Esq.
Marc J. Victor, Esq.
624 Galisteo #10
Santa Fe, NM 87505
By email to: jfw@jfwlaw.net and ssisley@email.arizona.edu

Re: Appeal of Nonrenewal of Faculty Title

Dear Mr. Flores-Williams:

I received your appeal on behalf of Dr. Sue Sisley regarding the nonrenewal of her title as Clinical Assistant Professor, Psychiatry, in the College of Medicine (COM) Phoenix campus. It should be noted that, under the terms of the notices of nonrenewal Dr. Sisley received, the only nonrenewal that was subject to an appeal was regarding her title as Clinical Assistant Professor, Psychiatry and my decision relates only to that matter. She is not, as you noted in your appeal, entitled to appeal the decisions to nonrenew her professional appointments as Coordinator, Special Projects for the COM-Phoenix, or Assistant Director, Interprofessional Training. As addressed below, Dr. Sisley's title and her status as a University Associate needed no notification of nonrenewal and bore no rights to appeal. Nevertheless, she was given this opportunity as a courtesy to her. Although Dr. Sisley was not copied on the appeal you presented to the University through its counsel, Vicki Gotkin, I am providing a copy of this decision to her as well at the email address on record with the University.

Appeal

To summarize Dr. Sisley's appeal, you allege that:

- Dr. Sisley was given no reasons for her nonrenewals and therefore cannot formulate a basis for an appeal;
- Dr. Sisley has been denied due process as a result of not receiving notice, evidence, or a hearing prior to receiving notice of nonrenewal, allegedly in violation of her Fourteenth Amendment rights under the U.S. Constitution;
- Dr. Sisley suspects that, despite excellent performance reviews in Telemedicine, her nonrenewals must be politically motivated;
- The grant Dr. Sisley obtained through MAPS is a "million dollar study concerning the effects of a medicine that could aid our veterans who are committing suicide every day" and therefore should not be interrupted; and
- The University, as a public institution, "has chosen to effectively terminate Dr. Sisley for alleged expressions or associations" in violation of the First Amendment to the U.S. Constitution.



I have organized my decision into two sections, as the issues you raise seem to fall into discrete categories: 1) due process concerns; and 2) research and freedom of expression.

Procedural Matters/Due Process

As Dr. Sisley was advised at the time she received her notices of nonrenewal, she was not entitled to a statement of reasons for those decisions. University and Arizona Board of Regents (ABOR) policies make clear that individuals with appointments under the Conditions of Professional Service and nontenure-eligible faculty are not entitled to reasons for these decisions (see UHAP Sections 4.18 and 3.16).¹ Dr. Sisley held two appointed (paid employee) positions: Assistant Director of Interprofessional Education, Arizona Telemedicine Program, and Coordinator Special Projects, Research, both of which were pursuant to the *Conditions of Service for Service Professional Employees*, ABOR Policy 6-301, *et seq.*, and the University Handbook for Appointed Personnel (UHAP), Chapter 4. Her faculty title was that of an Associate, now known as a Designated Campus Colleague. Dr. Sisley has no expectation of employment beyond the end of her current appointment period for those appointments she holds under Chapter 4 (ABOR Policy 6-302(B)(1)).

Dr. Sisley also held a faculty *title* (Clinical Assistant Professor) as a University Associate, which permitted her to teach and participate in educational programs in connection with her role in Telemedicine. Dr. Sisley's personnel record reflects that, in November 2007, she was approved to hold the title of Associate, a volunteer faculty title, and she signed an Affiliate/Associate Information Form acknowledging that she "freely, without pressure or coercion, is giving her time and services to the University of Arizona as an . . . associate or volunteer." She attested that she was working in a non-salary or wage capacity "*solely for affiliation, educational, or personal reasons, and without expectation of compensation, benefits or future employment from the University beyond any specified reimbursement arrangements, outside stipend or affiliate agreements.*" This document was signed on October 31, 2007. She briefly held a position as a Clinical Lecturer in 2008, but returned to Associate status later that year.

As defined by ABOR Policy, a Clinical Assistant Professor is a "nontenured, nontenure-eligible faculty member who has established herself by professional experience and expertise over a sustained period of time to be qualified *to teach or manage practicum, internship, or practice components of degree programs . . .*" The primary responsibilities of someone with this title are "*teaching or managing students in the practice requirements of their degree programs in a manner that advances the educational mission of the University in a significant or substantial way*" (ABOR Policy 6-201(C)(4), emphasis added). As a University "Associate," Dr. Sisley is essentially a volunteer, who in her role as such and per ABOR Policy 6-201(C)(23):

^[1] It should be noted that, since Dr. Sisley filed her appeal, the UHAP has been amended, but not in a material way relative to this matter. The new handbook provisions related to both nontenure-eligible faculty and service professional employees retain the language that such employees are not entitled to a statement of the reasons for the decision to nonrenew an appointment (and in the case of volunteer faculty, ABOR policy still applies). References in this decision relate to the handbook provisions that were in effect at the time of her appointments and nonrenewals.

- Is not an employee of ABOR or a University;
- Has no expectation of future employment with ABOR or a University;
- Is not entitled to any of the rights afforded other faculty members under either ABOR policy or relevant faculty handbooks applicable to University faculty members;
- Is not a member of the University's general faculty; and
- Receives no compensation for her services, and is not a part of the faculty governance system except to the extent permitted by the bylaws of a particular college.

Although Dr. Sisley's faculty title of Clinical Assistant Professor, Psychiatry, appeared on her Notices of Appointment after she became employed by the University in her service professional role(s), her title nevertheless is as a volunteer faculty member. She has no paid faculty appointment. However, even if Dr. Sisley had been a paid nontenure-eligible faculty member, she would have had no expectation of continued employment and would not be entitled to a hearing following or prior to a decision of nonrenewal. Only tenure-eligible faculty members whose appointments are not renewed are entitled to a statement of reasons in writing for that action from the President if they request such reasons (UHAP 3.16 and ABOR Policy 6-201(J)(2)(b)). Moreover, only in the event of a dismissal or suspension without pay would a nontenured faculty member be entitled to a hearing (ABOR Policy 6-201(L)). Dr. Sisley was not a paid member of the faculty, was not dismissed for cause or suspended without pay, and therefore, would not have been entitled to a hearing in any event. Nor was Dr. Sisley even entitled to a notice of nonrenewal (or an appeal) regarding the decision not to continue her volunteer faculty title of Clinical Assistant Professor. As a courtesy to her, she was given a notice of nonrenewal of that title when her professional appointments were nonrenewed, as well as an opportunity to appeal, which she exercised. She has received more process than she is due with respect to the discontinuation of her faculty title.

Notwithstanding these provisions in ABOR Policy, Dr. Stuart Flynn, Dean of the COM-Phoenix campus, and Senior Vice President for Health Sciences and Interim Dean of the COM-Tucson, Dr. Joe Garcia, sent Dr. Sisley a letter on July 9, 2014, explaining the reasons for the nonrenewal decisions. It appears you may not have received a copy of that letter when you filed Dr. Sisley's appeal. Therefore, I have attached it to this decision for your information. You will note that Drs. Flynn and Garcia stated that, although the University does not generally provide reasons for decisions regarding nonrenewals, they appreciated Dr. Sisley's frustration with having no reasons for the decisions. They provided such details, not only with respect to the faculty title, but also with respect to the professional appointments, including:

- Telemedicine has made a strategic decision to focus on rural health profession outreach and education;
- Dr. Sisley's faculty title was tied to the work she does for Telemedicine, which would no longer be necessary when the Telemedicine position terminated; and
- Dr. Sisley's role as Coordinator, Special Projects for the COM-Phoenix, was dependent on the availability of external funding. That position has been funded by an interagency service contract with the Arizona Department of Health

Services, for which the majority of the deliverables were to be completed by February 2014, and the contract is expected to be completed by mid-September. With its completion, Dr. Sisley's participation in this program no longer would be supported.

Thus, although Dr. Sisley was not entitled to any reasons for the nonrenewal decisions, she received not only reasons for the decisions, but also was afforded an opportunity to appeal the decision not to continue her volunteer faculty title to which she would not otherwise been entitled because her title did not require that she be afforded an appeal. She has received more process than anyone similarly situated would receive.

Research/Other Constitutional Arguments

As noted above, Dr. Sisley's faculty title was awarded so that she could pursue "teaching or managing students in the practice requirements of their degree programs in a manner that advances the educational mission of the University in a significant or substantial way." That she also developed an interest in and sought funding for research into the potential treatment for veterans (and presumably others) who suffer from PTSD is commendable and by no means trivial. However, neither the nature of her research nor any political activities she may have engaged in formed the basis for the decisions to nonrenew her appointments and to discontinue her faculty title.

The University also has an interest in continuing the research Dr. Sisley began with MAPS; however, there are many procedural, logistical, compliance, and other hurdles that must be overcome before that research can proceed. As only one example, the University has been advised that the study drug needed to carry out this research will not be made available to the sponsor until at least January 2015. Also, contrary to the statement in the appeal that this is a "million dollar study," the study protocol shows a budget of approximately \$370,000 over the 3-year term of the project. The University has supported and continues to support researchers pursuing knowledge surrounding the use of cannabinoids to treat medical conditions, including PTSD. It will pursue the research through MAPS, which is focused on veterans, a group the University supports in a variety of ways.

Dr. Sisley's rights as a citizen to engage in political activity is not in dispute, and the University recognizes those rights of each of its employees, subject to reasonable limitations as prescribed by law and policy. See UHAP 2.10, <http://universityrelations.arizona.edu/political-activity-fact-sheet>, and A.R.S. § 15-1633. I find no basis to conclude that the decisions made with regard to Dr. Sisley's employment were the result of Dr. Sisley's legitimate activities to effect legislation and to advocate for the rights of veterans. Those matters did not play a role in the decisions to nonrenew her faculty title.

Decision

Dr. Sisley was not entitled to appeal the decision regarding the nonrenewal of her appointments as Coordinator, Special Projects for the COM-Phoenix, or Assistant Director,

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Interprofessional Training. She was, however, given the opportunity to appeal the nonrenewal (or discontinuation) of her courtesy faculty title, to which this decision solely relates. She has received more due process than she was due. While I appreciate that Dr. Sisley and others desire that she continue research at the UA, there are no rules providing volunteer faculty members the right or an expectation to participate in University research. She was a volunteer faculty member whose contributions are well-noted and whose evaluations were laudable; however, I find no reason to reverse the decision to discontinue her faculty title.

My decision is final and not subject to further review.

Sincerely,



Andrew C. Comrie, Ph.D.

Senior Vice President for Academic Affairs and Provost

cc: Joe G.N. "Skip" Garcia, M.D.
Stuart Flynn, M.D.
COM-Phoenix Human Resources
Sue Sisley by email