May 3, 2005

John Sebert
BY HAND

Dear John:

The Clinical Legal Education Association (CLEA) submits these comments as an initial response to concerns expressed by a group of Deans, in a February 17, 2005 letter, opposing the proposed revisions to Interpretation 405-6 and 405-8. We reiterate the position that CLEA advanced in a statement submitted to the Committee dated March 9, 2005. We submit that the decanal February 17 letter misconstrues the force of the proposed revisions, and is inconsistent with the plain language of the governing Standard.

First, both the Standards Review Committee and CLEA have proposed changes only to Interpretations. The text of Standard 405 will remain exactly the same. The revisions would simply guide the Accreditation Committee, and clarify the long-standing rules, without changing them.

Second, the changes proposed in the December 10th draft are modest in their reach. For example, Interpretation 405-8 – as proposed – explicitly states that it requires “voting on non-personnel matters” only. CLEA continues to believe that this provision does not go far enough, and has argued to extend voting to all matters of faculty governance. Certainly, the explicit exclusion of clinical faculty from participation in the appointments process – even as to clinical appointments – is not consistent with “reasonably similar” treatment.

Third, we want to clarify CLEA’s position on the revisions proposed to Interpretation 405-6. We realize that some of the controversy has arisen because of the Committee’s selection of “a five year” term as the definition of the “long-term contract” already described by the Interpretation. CLEA has suggested that this revision does not go far enough. In part out of concern for risks to the academic freedom of clinical faculty, we have proposed that the Interpretation must also provide that there be a presumption of renewability in these contracts, after a probationary period. In our view, the Committee’s proposal already reflects a compromise, inconsistent with the plain language of Standard 405.

Fourth, while we support clarification, in our view, the most important aspect of the proposed revision to the Interpretation is the change from “should” to “shall.” In that regard, we note that it has been nearly ten years since “shall” was substituted for “should” in Standard 405. It is time to make the parallel change to the Interpretation.

Moreover, we note that the Committee’s proposed Interpretation merely
President of CLEA
Alexander Shyer

Respectfully submitted,

Re: Comments of CLEA

John Sherry