INTRODUCTION

"In short, the evidence presented to the Hearing Panel by both sides leaves no room to doubt that Dr. Paul Kearney’s performance as a surgeon and teacher has been outstanding during his entire career in the Medical Center." (P. 10, Report Hearing Panel).

Everyone acknowledges that Dr. Paul Kearney has performed at the highest levels as a surgeon and teacher during his 27-year career at the university. It is incongruous at this point in time to strip Dr. Kearney of his clinical privileges on the basis of self styled behavioral problems, assuming those to be true, when there exists not a single shred of evidence that Dr. Kearney’s 27 year performance as a surgeon and teacher is anything but excellent. Simply stated, the punishment does not fit the transgression. On balance, the university is kicking to the curb one of its finest surgeons and teachers under the guise that when the medical Staff Executive Committee suspended his clinical privileges that the committee’s action is neither unreasonable nor unfounded.

In order to effectuate the suspension of Dr. Paul Kearney’s clinical privileges, the
university administration engaged in a deliberate course of action to deprive Dr. Kearney due process, bypassed the mandates of the University of Kentucky HealthCare Bylaws, presented falsified documents, deprived him of any due process as a tenured regular titled professor, and cut off his ability to present evidence at the Fair Hearing Panel at the same time conjuring contrived complaints to bring about the suspension of Dr. Kearney’s clinical privileges.

**POSITION STATEMENT**

How did we get to this point and why now? The questions are particularly glaring in view of Dr. Kearney’s acknowledged excellence as a surgeon and teacher on the one hand and the university’s position that somehow for the past 20 years Dr. Kearney has documented a pattern of unprofessional conduct. The two positions do not fit. In order to flesh out the university’s present position, one needs to drop back to the threat Dr. Paul Kearney presents to the administration and why he is now being demonized. On April 14th, 2014 at a Faculty Council meeting, Dr. Paul Kearney blew the whistle on Dr. Michael Karpf’s wrongdoing that included violations of administrative regulations and mismanagement of Kentucky Medical Services Foundation funds. Those in attendance at the April, 2014 meeting included Dean DeBeer, Dr. Karpf, general counsel for the university Bill Thro and faculty members Davy Jones, Ph.D. and Holly Swanson, Ph.D. Dr. Karpf responded to Dr. Kearney’s disclosure of Dr. Karpf’s wrongdoing by threatening to fire Dr. Kearney. Drs. Jones and Swanson testified to this threat before the Hearing Panel but any attempts by Dr. Kearney to present further
evidence on this matter were cut off.

Within months of the threat, CMO Dr. Bernard Boulanger suspended Dr. Kearney’s clinical privileges allegedly due to unprofessional conduct directed toward staff, resident physicians, medical students and a patient in violation of the University Behavioral Standards in Patient Care per Article 9.4.1 of University HealthCare Bylaws. Dr. Boulanger, in his suspension letter of January 26th, 2015, then informed Dr. Kearney that he would recommend to the Medical Staff Executive Committee that Dr. Kearney’s staff privileges be revoked. Overstepping his authority, granted him under the bylaws, Dr. Boulanger then ordered Dr. Kearney off campus at the same time placing Dr. Kearney under a gag order to have no communication with staff, residents, patients, faculty or medical students. Dr. Boulanger’s actions, in clear violation of university regulations, bylaws and state law, removed a tenured professor from campus under a gag order.

Dr. Boulanger then presented the matter to the Medical Staff Executive Committee on January 29th, 2015. The minutes of that meeting portray Dr. Kearney as presenting a “substantial harm to staff and patients”, a characterization patently false. The executive committee was presented with a picture that Dr. Kearney presented an imminent danger to patients and staff, a deliberate characterization designed to insure a rubber stamp approval of a revocation of Dr. Kearney’s privileges. To further carry out this revocation Dr. Kearney was deprived of his due process rights before the Medical Staff Executive Committee.

Article 9.4.2 (a) specifically reads:
Medical Staff Executive Committee Decision

(a) Upon summary suspension of a Practitioner, the Medical Staff Executive Committee shall direct that an investigation be conducted by persons designated by the Medical Staff Executive Committee to determine the need for the suspension or further action concerning the Practitioner. Within 14 calendar days thereafter, the Medical Staff Executive Committee shall conduct a hearing. The Medical Staff Executive Committee may, as a result of the hearing, recommend modification, continuation, or termination of the summary suspension, and may take such further action concerning the Medical Staff membership and clinical privileges of the Practitioner as it considers appropriate. If the investigation is completed within 14 calendar days from the date of the suspension and the investigation does not result in adverse action, as defined in the Fair Hearing Plan, the Practitioner shall not be entitled to the procedural rights of the Fair Hearing Plan.

Dr. Kearney was never afforded a hearing before the Medical Staff Executive Committee. Again, university bylaws are being violated.

The significance of this violation lays in the fact that Dr. Kearney is now forced to appeal to the Hearing Panel bearing the burden that the Medical Staff Executive Committee’s actions are “unreasonable or unfounded”.

The actions before the Medical Staff Executive Committee are further compounded by the fact that the committee was presented with only a few materials “cherry picked” from Dr. Kearney’s personnel file. Materials that included falsified documents as well as documents placed in his personnel file over the years to which he was unaware and had no opportunity to respond in violation of university regulations. During Dr. Kearney’s paid suspension, that exceeded thirty days, the Board of Trustees was not notified of the paid
suspension that ran from September, 2014 to January, 2015, in further violation of university regulations.

While on suspension after January 26th, 2015, Dr. Kearney’s office locks were changed, his email account shut down and directed to general counsel’s office. The staff were told that Dr. Kearney is hostile and dangerous and that they should report Dr. Kearney to security if he appears on campus.

On February 10th, 2015, the Medical Staff Executive Committee notified Dr. Kearney of the summary suspension of his clinical privileges based upon evidence of a pattern of unprofessional behavior toward faculty, residents, staff and patients including profanity and derogatory remarks toward a quadriplegic patient in the endoscopy suits as well as a former nurse/intern. The Medical Staff Executive Committee banned Dr. Kearney from campus and placed him under an order to have no contact with patients, faculty, residents, medical students or staff; orders in clear violation of the committee’s authority under the bylaws.

At this point, we are presented with a tenured professor who has been denied his tenured position and duties by the Medical Staff Executive Committee fiat in an exercise of power beyond that granted in the university bylaws.

Forced to prove the actions of the Medical Staff Executive Committee are unreasonable or unfounded, Dr. Kearney proceeded to the Fair Hearing under Article 10. The Panel was presented with false documents, proven to be false by the testimony on behalf
of Dr. Kearney, and yet the Panel concluded that Dr. Kearney had multiple "... leaves of absences, remediation programs, written reprimands, and action plans. ..." (p. 11 Panel Report). The record reveals: no leaves of absences, no remediation programs, one written reprimand in 27 years, and no action plans.

As concerns the patient complaint, the Panel glossed over Dr. Kearney's witnesses who testified Dr. Kearney did not address the patient as charged. Drs. Ross Strong and Caroline Neff testified before the Panel that Dr. Kearney did not use any such language. The panel arbitrarily chose to ignore this testimony. The complaint was never substantiated for the reason no one was able to locate her. The complaint only surfaced after Dr. Kearney's suspended paid leave and only after the university tried to collect $2,5000 form her in back tuition. Neither nor the patient testified before the Panel forcing Dr. Kearney to prove a negative and depriving him of his right to face his accusers.

Dr. Kearney was also cut off from presenting evidence as to Dr. Karpf's threat of termination together with presenting any evidence of Dr. Karpf's involvement in orchestrating the disciplinary action.

Not a single shred of evidence was introduced that Dr. Kearney presented any danger to patients or staff. The Panel arbitrarily and capriciously ignored the testimony presented by Dr. Kearney and erroneously placed a higher burden of proof upon him than the one dictated by the university bylaws regulating the university proceedings.

Dr. Paul Kearney enjoys an Endowed Chair in his name in the department of surgery;
the highest teaching awards given by the college of medicine; honorary Doctorate degree for lifetime achievement, and not a single patient complaint in 27 years. Yet, Dr. Bernard Boulanger wants to kick him to the curb to carry out Dr. Karpf's threat. Rather than look to Dr. Kearney it is now time to question the management team at the college of medicine, their violations of administrative regulations and unfettered access to Kentucky Medical Services Foundation funds without the Board of Trustees oversight. Dr. Kearney called for an audit of the Kentucky Medical Services Foundation in order to look into KMSF's financial dealings, including but not limited to the Child Development Center.

SUMMATION OF POINTS

1. Threatened with termination by Dr. Karpf at faculty council meeting.

2. On paid administrative leave and not told leave was voluntary.

3. Failed to notify Board of Trustees of paid leave of absence, greater than 30 days required by University of Kentucky regulations.

4. Karpf disclosed Dr. Kearney's confidential file information to a non-party.

5. Dr. Kearney is threatened by general counsel, William Thro.

6. Falsified documents placed in Dr. Kearney's personnel file in violation of administrative regulations.

7. Failed to notify Dr. Kearney of opportunity to file written rebuttal or response to document in personnel file in violation of administrative regulations.

8. Presented falsified personnel file documents to medical executive committee investigative team and to full medical executive committee.

9. Did not provide Dr. Kearney's entire personnel file to medical executive committee, e.g., performance evaluations and CV for past 27 years.
10. Ordered Dr. Kearney, full tenured professor, from campus and ordered no contact with residents, students, faculty and staff.

11. Locked office and informed office staff and hospital personnel Dr. Kearney was hostile and dangerous and to call security if he comes on campus.

12. Blocked access to his UK email and UK link blue accounts, and directed his email traffic to office of general counsel.

13. Denied right to hearing in front of full medical staff executive committee.

14. Dr. Kearney deprived of right to face accusers.

15. Deprived of tenure right to due process to file grievance or present matter to Senate Committee for Appointment, Promotion and Tenure.

16. Prevented from introducing evidence of retaliation at Fair Hearing.

CONCLUSION

Based on the foregoing, and given the bylaw and administrative violations, Dr. Paul Kearney requests reinstatement.

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