HEARING PURSUANT TO ARTICLE 10 OF UK HEALTHCARE MEDICAL STAFF BYLAWS FOR PAUL KEARNEY, M.D.,

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HEARING BEFORE UK BOARD OF TRUSTEES

APPELLATE REVIEW PANEL

DATE:    July 31, 2015
TIME:    2:00 P.M.
PLACE: University of Kentucky
        Patterson Office Tower
        West Board Room
        120 Patterson Drive
        Lexington, Kentucky 40536

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APPEARANCES:

Hon. Bryan Beauman
Hon. Joshua M. Salsbury
STURGILL, TURNER, BARKER & MOLONEY, PLLC
333 West Vine Street, Suite 1400
Lexington, Kentucky 40507

ATTORNEYS FOR UNIVERSITY OF KENTUCKY

Hon. Bernard Pafunda
PAFUNDA LAW OFFICE
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Lexington, Kentucky 40507
ATTORNEYS FOR PAUL KEARNEY, M.D.

APPELLATE REVIEW PANEL:

Trustee Robert D. Vance
Trustee Cammie DeShields Grant
Trustee Kelly Sullivan Holland
TRUSTEE VANCE: I call the meeting to order.

TRUSTEE GRANT: I would like to move that Trustee Vance serve as our chair of the Appellate Review Panel.

TRUSTEE HOLLAND: I second that motion.

TRUSTEE VANCE: Any discussion? If not, all in favor say "aye."

TRUSTEE GRANT: Aye.

TRUSTEE HOLLAND: Aye.

TRUSTEE VANCE: It's unanimous.

Dr. Paul Kearney has requested an appellate review of the hearing panel's July 6, 2015, recommendation. Specifically the hearing panel affirmed the Medical Staff's Executive Committee's recommendation that the University of Kentucky permanently revoke Dr. Kearney's clinical privileges.

Pursuant to Section 10.21, the Medical Staff Bylaws, the grounds for appeal from an adverse recommendation shall be that, 10.21.1, "There was substantial
failure on the part of the hearing
panel, the Medical Staff Executive
Committee, or the University
HealthCare Committee to comply with
the Fair Hearing Plan so as to deny
due process of a fair hearing."
Secondly, 10.21.2, "The
recommendations of the hearing panel
or University HealthCare Committee
were either arbitrarily,
capriciously or with prejudice."
Third, 10.21.3, "The recommendations
of the hearing panel or University
HealthCare Committee were not
supported by the evidence."
Ms. Barbara Young, Trustee Barbara
Young, chair of the University
HealthCare Committee of the Board of
Trustees, ordered as follows:
First, pursuant to Section 10.23 of
the Medical Staff Bylaws, Trustees
Grant, Holland and Vance were
appointed to the Appellate Review
Panel. The Appellate Review Panel
is to consider the record upon which
the hearing panel made its recommendation and recommended final action to the University HealthCare Committee. Second, pursuant to Section 10.22 of the Medical Staff Bylaws, the Appellate Review Panel's meeting was set for Friday, July 31st, 2015. This will be an open meeting, but the Appellate Review Panel may choose to go into closed session under applicable law as appropriate. Third, pursuant to Section 10.23 of the Medical Staff Bylaws, both Dr. Kearney and the University have the right to submit written statements to support their positions. Both parties have done so. Fourth, pursuant to Section 10.23 of the Medical Staff Bylaws, the Appellate Review Panel may accept additional oral or written evidence, subject to the same rights of cross-examination provided at the hearing panel's proceedings. Such additional evidence shall be
accepted only if the party seeking
to admit it can demonstrate that he
or she was deprived of the
opportunity to admit it at the
hearing, and then only at the
discretion of the review panel.
Neither party submitted additional
oral or written evidence. Fifth,
pursuant to Section 10.23 of the
Medical Staff Bylaws, the Appellate
Review Panel in its sole discretion
may allow each party's attorney or
representative to appear personally
and present oral argument. If a
party wishes to present oral
argument, the party should submit a
written request for oral argument.
Both parties have done so, which
leads us up to this meeting. The
panel is now ready to proceed with
oral arguments. Dr. Kearney.

MR. PAFUNDA: Mr. Vance, panel members,
to put it into context, I think it's
necessary to take a step back.
Number one, I don't know if the
panel has read the Lexington Herald article of July 22nd, but in that article the Lexington Herald noted that the University hospital is no longer the number one hospital even in this city. That's been taken over by another hospital, and this hospital's ranking has been dropping slowly over the years. Now, why is that important? Why place it in that context, especially in view of the fact that we have doctors back here who have dedicated their lives to this hospital? Because it raises one red flag, and it raises a big question, and it raises a question about the management of this health care hospital facility. And what red flag does it raise? Somewhere along the line the job's not being well done. And as we step back into April of 2014, what do we have? We have an Executive Vice President of Health Affairs who's in a faculty council meeting, attended
that meeting along with general
counsel, Bill Thro, and when
Dr. Kearney questions Dr. Karpf's
violation of administrative
regulations and as well as calls for
an audit of Kentucky Medical
Services Foundation, what's the
response from the Executive Vice
President of Health Affairs? He
threatens to fire him on the spot.
That's the working environment. And
a few months later, those
disciplinary actions are placed in
motion on the basis of a single
patient complaint against
Dr. Kearney, the sole patient
complaint in 27 years, despite the
fact that he's treated over hundreds
of thousands of patients, one of
whom including [redacted], [redacted]
[redacted]. And if I'm not mistaken, he's
the only active faculty member who
has and enjoys an [redacted]. So
where has he been deprived of due
process? He was deprived of due process on April 14th when the Executive Vice President, Dr. Karpf, threatened to fire him when he exercised his academic freedom to question Dr. Karpf, not just question him but question his actions that avoided and violated administrative regulations, and he called for an audit of Kentucky Medical Services Foundation. Where's the money going? How is it being spent? And how is it being returned to the hospital? Second place, he then has a complaint about a student election. Is he ever able to face [redacted], the patient? Never, not at the fair hearing, at no place and time. He's not given any information to locate [redacted], and the University never produces him as a witness. Then we have a student complaint, the only student complaint in 27 years about a lecture that Dr. Kearney gave, a
lecture at which he received a standing ovation at the end. But he's faced at the hearing panel with that student complaint. The student's never identified. He's noted as an anonymous student, and Dr. Kearney, who has been awarded 26 teaching awards and the highest teaching awards in the history of this university, has to face that complaint, along with a complaint from a [REDACTED], who no longer works here, doesn't appear at the hearing, and he has no way to confront [REDACTED]. So has he been denied due process? Of course the University says no, but it's a shell game. And let me tell you where the shell game began. It began at the Medical Staff Executive Committee. They were presented by Dr. Fred Zachman with a picture of Dr. Kearney as a dangerous person, a man who presented a substantial and imminent danger to patients and
staff. There's no history of that in the entire record, but that's the picture that was painted. Then the Medical Staff Executive Committee assigned two doctors to investigate. The two doctors get some cherry-picked records from general counsel's office. Amongst those records are false documents. At this point in time Dr. Kearney has no ability whatsoever to address the charges. His privileges have been suspended, and more egregious, as a tenured professor, he's been banished from campus and placed under a gag order. He can't talk to medical staff; he can't talk to patients; he can't talk to colleagues; can't talk to students. So Dr. Kearney's on two rails at this university: One as a clinician and the other as a tenured professor. All those rights at that moment in time were stripped from him. Now, the University says,
"Let's go by the bylaws."

Mr. Vance, you just read those bylaws. In the bylaws, under Article 9.4 -- under 9.2, Subsection A, you will find that the Medical Staff Executive Committee is to conduct a hearing at the end of the investigation. It doesn't say meeting; it doesn't say closed session. It mandates a hearing. And why is that hearing important? Because at that point Dr. Kearney could have addressed the charges that were placed against him. But he wasn't given that hearing, and the response from the University is, "Well, he got his due process."

Well, here's how he got his University due process. The Medical Staff Executive Committee, based on the information, only that information -- they didn't get to hear from Dr. Kearney -- voted to take away his clinical privileges, which Dr. Boulanger had already
taken away in January. But the Medical Staff Executive Committee, like Dr. Boulanger, took another step, an egregious step and a deliberate step. They also stripped Dr. Kearney, as a tenured professor, of his ability to talk to anybody on this campus, and they also banned him from campus. Now, the words that placed all this in effect -- it's kind of curious. You've got Dr. Fred Zachman, who is the acting president at the time, who presented Dr. Kearney as a dangerous person to patients and staff, and as Dr. Zachman told the hearing panel, when it came to his [REDACTED], who did he pick out of all the surgeons? He picked out Dr. Kearney. Wasn't too dangerous to work on Dr. Zachman's [REDACTED]. So where does the due process rub come in? Well, he was deprived of that hearing. The University says, "Well, he got a hearing in front of
the Fair Hearing Panel." That's a whole different hearing, and here's why it is. It's upside down. Dr. Kearney had to go in front of the hearing panel under the burden to prove that the Medical Staff Executive Committee -- that their findings were either unreasonable or unfounded. Well, the hearing panel went out of its way to say, "Well, Dr. Karpf, who threatened to fire him, is nowhere involved in this," even though he's an ex-officio member of the Medical Staff Executive Committee, even though he's Executive Vice President and Dr. Boulanger's immediate boss. What's curious is, in order to effectuate the removal of Dr. Kearney's clinical privileges, here's a finding by the hearing panel: "As viewed by the committee, multiple warnings, leaves of absence, remediation programs, written reprimands and action plans
have done little to eliminate the problem. Our controversial physician has a problem." The problem with that finding is, is it arbitrary? That's the burden I have to face. Has he been deprived of due process? Well, number one, there's not a shred of evidence that, prior to September 5th, Dr. Kearney ever had a leave of absence. He didn't have numerous written reprimands. He had one in an entire 27-year career. He didn't have any remediation programs. So my question becomes: Where was the evidence for that finding? But even the broader question and the bigger question is: Who wrote this? Because it couldn't have been the hearing panel, and it couldn't have been at the hearing that I attended because there was no evidence in this regard. So why deprive Dr. Kearney of his due process? Why make false findings to support that?
It's a cover-up. And the cover-up's in the hearing panel. And the cover-up is, well, there's not a shred of evidence that Dr. Karpf's involved. I'd ask for an additional five minutes for rebuttal,

Mr. Vance.

TRUSTEE VANCE: Okay. Okay.

MR. PAFUNDA: Is that fine?

TRUSTEE VANCE: Sure.

MR. PAFUNDA: But before I conclude at this point, the Board of Trustees is now on notice that Dr. Kearney blew the whistle on Dr. Karpf's wrongdoing. The Board of Trustees is now on notice through you three that there may and, in fact, is something amiss with the Kentucky Medical Services Foundation. This is not to be taken lightly. Not only this July 22nd article but the one that came out this morning, some of those people who spoke out that are employed at this university have already been reprimanded. We all
want a flagship university. This should be the number one hospital in this entire area. It's not. And it's because management in the person of Dr. Karpf has poisoned the well.

TRUSTEE VANCE: Thank you.

MR. BEAUMAN: Thank you, Mr. Vance.

Good afternoon. My name is Bryan Beauman. We are outside counsel, and our role in this matter has been to pursue these disciplinary proceedings against Dr. Kearney on behalf of the University. I appreciate the summary that you've given today, and I know that everyone here appreciates your time and effort. I'm sure there are other things you would rather be doing on a Friday afternoon, and everyone feels that way. It is a shame we are here, and we'll talk about why we are here. You know, the University has rules, and we've followed those in this situation.
The rules are set forth in the UK HealthCare Medical Staff Bylaws. These rules give certain rights to Dr. Kearney and assign specific roles to members of the University community, a part of that role and a part of that bigger process that now falls upon you. You have honed in on it exactly for what it is because you have a limited role. Before we get to the details of that, let's go back and look at how we got here. The Chief Medical Officer at the University determined that Dr. Kearney needed to be suspended. That decision did not come lightly, and it came after his investigation of the complaint and his face-to-face interview with a patient who reported things. We'll go through those facts in just a second. After that process it proceeds to the Medical Staff Executive Committee, a committee of about a dozen physicians at the University. The
existing Chair of the Trauma Center, Dr. Andrew Bernard, who testified in this matter, called by Dr. Kearney to testify on behalf of Dr. Kearney, who said that "I see him as my mentor." And Dr. Bernard has done wonderful things at this university. He was on the Medical Staff Executive Committee; recused himself from the process. The hearing panel asked -- they had the right to ask questions, and as you've seen from the record, they asked many questions of many witnesses. So Dr. Williams asked Andrew Bernard, at page 355 in the hearing transcript, "Why did you recuse?" And Dr. Bernard explained that he had the utmost faith in the Medical Staff Executive Committee that they would do the right thing. As he said, "I felt like the structure of the medical staff was adequate to adjudicate whatever decision had to be made independent of me." So the
chief trauma physician at the University places his faith and trust in the process and in the physicians that were on the Medical Staff Executive Committee. After that it went to a two-day hearing, with three physicians who, I promise you, would rather have been doing something else in those two days than listen to two lawyers and one of the most accomplished professors of law speak that day as our hearing officer. Dr. Wendy Hansen is the Chair of Obstetrics and Gynecology at this university, Dr. Lisa Tannock in Endocrinology, Dr. Mark Williams, head of Internal Medicine, heard from dozens of witnesses and they heard the testimony. You've seen their lengthy written report, and you've seen the details that they've gone through. And so what is before you is there was a -- was there a substantial failure on the part of the physicians on the Medical Staff
Executive Committee that Dr. Bernard trusts or on the part of these three highly regarded physicians on the hearing panel? Or second, did the panel act arbitrarily, capriciously, with prejudice or without any substantial evidence? So to review that, we must review the evidence. There's a litany of transgressions from Dr. Kearney's behavior. This case is not about his skill as a surgeon. That has been clear from day one. It is about his treatment and belittling of others that spills over into the workforce and in the care of patients. I'm going to have to use language today I would never use in this setting. I think you all understand that. You've seen the record. But this begins, really, in 1992, but more recently in 2014, with a quadriplegic patient admitted at the University who was undergoing [REDACTED]. I'll talk on
our level. Every physician in the room may giggle at me for the language that I use. We would have difficulty understanding all of the highly technical medical terms. He's having a __________, so an __________. And throughout the entire procedure, there's a lot of difficulty. These are medical students in training attempting these procedures, and they're struggling to accomplish the procedure quickly or without discomfort to the patient. Dr. Kearney is supervising the entire procedure. He is yelling, and he is cussing. And this quadriplegic patient, who was awake, complains that it's uncomfortable. And Dr. Kearney looks at this quadriplegic patient and says, "Just be still, dumb ass, you fucking idiot," a litany of those things. Now, there's a dispute about what
was said. The patient will tell you he called him a "fucking idiot." Dr. Kearney will tell you he called him a "dumb ass." It doesn't matter. That conduct to a quadriplegic patient in the middle of a procedure violates a number of behavioral standards at this university. So when the patient complains, an investigation is started, and in the midst of that investigation a letter comes out from a medical tech, who is no longer serving this university. And she writes a letter that during a procedure there was an error with the machine, yet Dr. Kearney blamed her for the error and called her a "fucking moron." Mr. Pafunda earlier mentioned the lecture that had gone on. There was no need to interview students in the lecture. The tape was available. So the Associate Dean for Medical Education, Dr. Charles Griffith,
reviews the recording of the tape and reports back to the dean, to Dean de Beer. Here are some of the things Dr. Kearney says. When discussing post World War II era influences in life today, Dr. Kearney says "We don't bomb Japs and Germans anymore." He asks a somewhat rhetorical question to the audience, "Who has thoracic outlet syndrome? Ladies with large, pendulous breasts." And it continues. He refers to children with birth defects as "freaks," and there are a number of items listed on pages 16 and 17 of what we had submitted to you. This was his conduct through 2014. Was it isolated? No. Was it new? No. Let me briefly review the history. In 1992, when Dr. Byron Young was Chair of the Surgery Department, was Dr. Kearney's first write-up and infraction. He had started at the University in 1988. It was directed
to Dr. Young's secretary.

Dr. Kearney was rude, offensive, impolite, arrogant, and loud. In 1995 -- excuse me. I'll just run through these very fast with you. In 1995, there's an incident with a young woman in a motor vehicle accident who is pregnant at 20 weeks and unfortunately loses her child as a result of the injuries in the automobile accident. Dr. Kearney is challenging and questioning the treatment that she received and announced to anyone who would hear that the obstetrician on duty was too lazy to get up in the middle of the night. Dr. Milligan was concerned because these comments were unprofessional and detracted from patient care and undermines cooperation and presents a poor standard. In the year 2003, operating room nurses report Dr. Kearney's inappropriate behavior. I think we have described
this in our papers as locker room-esque. There are some sexual comments, grabbing of the crotch and saying, "I've got something here for you." Those types of issues were raised. A litany of remedial measures was attempted at that time: attendance at training seminars, sensitivity conferences, apologies to each member of the team, a five-day vacation from medical staff duties, and specifically in that item noting that further infractions may include termination. In 2005, the then Dean of the College of Medicine, Dr. Perman, issues a letter to Dr. Kearney again complaining of profanity-laced outbursts in the course of caring for trauma patients. Dean Perman notes that "Dr. Kearney was told that there is zero tolerance for this continued inappropriate behavior which demeans the entire institution." Let's flash forward
Dr. Jay Zwischenberger is now Chair of the Department of Surgery. He testified in this matter. You have his testimony in the transcript before you. He explains that when he took office in 2007, he had a stack of complaints about Dr. Kearney on his desk, and as he testified at the hearing, "I didn't know anything about those. I thought, to be fairest to Dr. Kearney, we need to start fresh and to start anew." But unfortunately, he would soon be disappointed because what you will see is Dr. Kearney can't change his behavior. In 2009, there was a letter issued signed by Dr. Zwischenberger as Chair of the Department of Surgery; Dr. Pat McGrath, Dr. Kearney's very good friend, who was his immediate supervisor and Chair of General Surgery; Dr. Paul DePriest, who was then Chief Medical Officer; and
Colleen Swartz, who was the Chief Nurse Executive, complaining that Dr. Kearney's behavior has a negative impact on the teaching environment, that he continues to exhibit aggressive and humiliating behavior. There have been numerous complaints which are serious and require intervention. His attitude toward colleagues is derogatory and impacts on student education. As Dr. Zwischenberger explained in his testimony, "We recognize that what we have been doing so far wasn't working. This was an attempt at a behavioral change. How can we effect this behavioral change that would really be effective for Dr. Kearney?" And page 195 of his testimony, "All this was an effort on behalf of Dr. De Priest, Dr. McGrath, and my part to see a valued colleague change behaviors. We were hoping really hard it was going to work." But
Dr. Zwischenberger would be disappointed because Paul Kearney can't change. In 2012 you have what eventually results in a reprimand and is executed at the very end of 2012, January of 2013, three nurse complaints. I apologize again for my language. One nurse is scrubbing into the operating room in the middle of a procedure. She walks to the table, and Dr. Kearney doesn't greet her with a command of something he needs, doesn't greet her with a pleasantery. He looks at her and says, "Hey, bitch." A second nurse in 2012 was supposed to be charged with replacing someone during the middle of a procedure, wasn't able to do that. After the surgery is over, Dr. Kearney comes out of the operating room, approaches her in the presence of two other employees and one of those employees' father and looks at her and says, "You need to wear a
colostomy bag over your head because you have shit for brains." And by the way, interestingly, the testimony at this, that was apparently something that a lot of the residents and many of the physicians would joke about. And I think you'll see the hearing panel note that they are concerned that there's this culture of this ongoing joke and gag to demean the nurses with this comment. As the hearing panel found, there's no place on this campus to treat your colleagues and others that you supervise in this manner. In September of that year, another nurse in the middle of a procedure immediately -- originally announced a wrong procedure, immediately corrected herself. Dr. Kearney's response was to smack her on the shoulder with his open hand. She responded that she was pregnant, and what does he say? "Well, whose fault is that?"
So as a result of those complaints, you now have Dr. Boulanger, who's the Chief Medical Officer, and he tries again to address this. That agreement that you see signed, by the way, the terms were negotiated. There was a back and forth between Dr. Kearney and the University in order to reach the terms of that last-chance agreement, as we call that. Now, Dr. Boulanger testified at the hearing. "What was your hope about this agreement?" Well, it was that once it was signed and agreed to -- this is on page 168, if you'd like to read it: "The hope was that once the agreement was signed and agreed to by Dr. Kearney that we wouldn't hear any more about him except for the positive things that he's been able to do as a physician. We had hoped that he would end his career in a peaceful and classy manner. And it was shared" -- this is very important from Dr.
Boulanger's testimony -- "it was shared with Dr. Kearney he needs to change because he's putting himself at risk and he's putting the University at risk." Can Dr. Kearney change? Here's his testimony from the hearing, talking about going to see -- some of the counseling that he did over the years. He's referring to a counselor who asked Dr. Kearney, "How long have you been this way?" "And I said, 'First grade, since first grade. It's my first recollection of being alive.'" He cannot change. It is who he is. So why is this important? Why does it matter if you have a foul-mouthed doctor who is dropping F-bombs and cursing at his colleagues and cursing at those on the medical staff that are there to help him? Well, let's look at some of the testimony that you have from the record. As Dr. Zwischenberger says
repeatedly, "Paul had a way of
cussing directly at people and
making them feel personally
responsible for whatever was
happening in terms of patient
outcomes or care or complications.
He would personalize it." As time
evolves, nurses, students, residents
and coworkers tend to be so offended
by that type of behavior that they
don't perform well or they shut down
or they can't perform their duty.
Dr. Susan McDowell led the
investigation on behalf of the
Medical Staff Executive Committee.
She works in rehabilitation medicine
here at the Medical Center. And
what she says is, through her review
of the literature and through her
personal experiences, that good
interpersonal communication with
staff increases the likelihood of
patient satisfaction, lowers the
risk of medical error, lowers the
likelihood of staff turnover, but
unprofessional behavior like telling
a nurse she should wear a colostomy
bag because she has you-know-what
for brains will block that nurse's
ability to speak up when needed in
order to prevent an adverse patient
event. Colleen Swartz is the
Director of Nursing for UK
HealthCare. She was called and
testified in this case about
Dr. Kearney's berating behavior.
Here's how she described it on page
217: "It can become a distraction,
creating an environment where staff
are doing everything they can to
stay unnoticed, and sometimes that
activity takes precedence over
focusing on clinical care of
patients." Julie Hudson, who's a
Director of Nursing for the OR at
Chandler, testified that
Dr. Kearney's humiliating behavior
sucks the smarts right out of the
staff. Those are coming from your
supervisors and your administrators
at the hospital. So the health care culture is at a crossroads. Sixteen physicians have looked at this case. They've heard the testimony. They reviewed the records. They unanimously have all reached the same decision. Dr. Kearney has been given ample, multiple opportunities to change his behavior since 1992, but Dr. Kearney can't change. Let's go to what's before you. The grounds for appeal aren't just whether there was a technical violation of the rules. There must be a substantial failure to comply with the -- that is an incredibly high standard that is before you. The only argument that you've heard is that there was not another hearing before the Medical Staff Executive Committee. Dr. McDowell testified in this case how they conducted the interviews. You didn't hear it earlier: Dr. Kearney met with the investigators on behalf
of the Medical Staff Executive Committee. Dr. McDowell explained, "We asked open-ended questions to everyone, including Dr. Kearney. We wanted everyone to have the opportunity to explain in full their view of the items." You know what Dr. Kearney never mentioned to Dr. McDowell or the Medical Staff Executive Committee? All this mantra about retaliation. That never came up. He had the opportunity to defend himself before the Medical Staff Executive Committee and among his colleagues, and that was never raised. Finally, Dr. Kearney doesn't get two trial types of hearings. When we had the two days of testimony, retiring Professor of Law Robert Lawson presides over the hearing. It's intimidating, even though I've been out of law school almost 20 years, to try a case in front of your former law professor who wrote the
Rules of Evidence. Put that aside. He presided over the hearing. You know the three accomplished physicians. They heard two days of testimony. They wrote a nearly dozen-page report. There is just no merit to a claim that there was some sort of a substantial breach. Did Dr. Williams and Dr. Hansen and Dr. Tannock act arbitrarily or capriciously when they heard the evidence, they heard the testimony, and they reviewed the record? Absolutely no. There's no chance. And you have that before you. Now, you've heard a lot in the papers that have been submitted to you by the parties that Dr. Kearney basically built this highly recognized Level 1 Trauma Center from scratch. And certainly in his conduct as a highly skilled surgeon, he does deserve credit for that. But as we saw through the witnesses, mostly medical students that were
presented at the hearing by
Dr. Kearney and his attorney, look
at the house that he built. Newly
minted physicians going out into the
world, when I questioned them about
these comments, "Would you ever call
a patient a dumb ass?" their answer,
"I might." "Would you ever tell a
nurse she has" -- excuse me -- "shit
for brains?" "I might." Those are
the physicians who have been trained
and are sending out by this
university. As Dr. Williams,
Dr. Tannock, Dr. Hansen,
Dr. Boulanger, Dr. McDowell, all the
other physicians have said, that
must stop. The only thing
unreasonable, as the hearing panel
noted, would be not to act in this
case as they did. Thank you for
your time.

TRUSTEE VANCE: Thank you. Rebuttal?
Five minutes.

MR. PAFUNDA: Let me read you something.
I'll direct it to you, Mr. Vance,
since you're a lawyer because we're talking about due process. We're not talking about practice. We're talking about due process. And due process is really simple, can be simply put. In every setting where important decisions on factual issues must be made, one must be afforded the opportunity to confront and cross-examine witnesses. Take a look at the record and see if Dr. Kearney was ever given the opportunity to cross-examine Patient [REDACTED], [REDACTED], the anonymous student. In fact, go back over the 20 years and see if Dr. Kearney, other than one written reprimand, was ever given the opportunity to address many of the things that were put in his personnel file. In violation of these university regulations, he was not given that opportunity. The most glaring example is the June 5th, 2009, letter.
DR. KEARNEY: January.

MR. PAFUNDA: January -- excuse me -- 5th, 2009, letter that he never got that is authored by Dean Perman. And as Dr. Kearney said, he never got it that day because -- and he never got it at all, and somehow it ended up in his personnel file because it was on that day that his [redacted]. Why now? Nobody's answered that question. Why all of a sudden? Why does the University have to go back 20 years? Is this a whitewash? Is this a cover-up? Why deprive him of his due process where he can't confront his -- can't confront his accusers and present a case? Why ban him from campus? Why place him under a gag order? And then stand up and say: You know what? He swears a lot. He told a nurse she must have a colostomy bag on her forehead because she's got shit for brains. You know, when I make a mistake, for example, a
typing mistake in this case, I have a bad day. When Dr. Kearney makes a mistake, as one of his nurses said, "A two-year-old dies." So his staff in the operating room, they have to perform. This isn't an academic exercise in an English class conducted in a classroom, where you get to do it over and over and over again. This is a one-time opportunity. In fact, Mr. Vance, I think you've received an e-mail today from [redacted] because he copied a bunch of people, including myself, where Dr. Kearney met with [redacted] at Saint Joe East and brought him over here and, according to [redacted], saved his life, and he wanted you to know that. Apparently he wanted me to know it too because he sent out an e-mail to a number of people, grateful for Dr. Kearney's skill. As the University said in its brief, "We've now entered the 21st Century."
Well, if this is the 21st Century, take me back to the 20th because we're now in a world of form over substance. Your university president received letters from all over the country, including the President of the American College of Surgeons, and when people asked for those letters under the Open Records Act, general counsel's office redacted their names so their identities would be hidden. 
University of Virginia, Pennsylvania, all in support of Dr. Kearney. Now we're going to kick him to the curb, and it's no accident. He was threatened to be fired because he had the temerity, for the University he's served for 27 years, to raise his voice and say "Dr. Karpf, what you're doing is wrong, and I'm going to bring it to people's attention." And it doesn't stop here. You're on notice.

TRUSTEE VANCE: Thank you.
TRUSTEE GRANT: Mr. Chairman, I move
that the Appellate Review Panel go
into closed session per Kentucky
Regulation Section 61.8101(f). This
closed session shall be limited to
discussions which might lead to the
discipline of a university employee.
The panel's decision regarding this
recommendation to the full
University HealthCare Committee will
take place in open session.

TRUSTEE HOLLAND: I second that.

MR. PAFUNDA: Mr. Vance, just a minute.

TRUSTEE VANCE: Yes.

MR. PAFUNDA: Pursuant to KRS 810, I
believe, Mr. Vance, that we have the
right to request that the meeting
stay open.

TRUSTEE VANCE: I don't think so. I
think we'll come back into open
session. All decisions will be
here; we just want to discuss it.
To both sides of this issue, we've
been very diligent in reading all
the information. I think, you know,
we want to be able to talk about it among ourselves, and there'll be no decision made. We'll come back in here and vote and make the decision.

MR. PAFUNDA: Thank you. I just wanted to make that for the record. Thank you.

TRUSTEE VANCE: No problem. All in favor, say "aye."

TRUSTEE GRANT: Aye.

TRUSTEE HOLLAND: Aye.

(BREAK TAKEN FOR CLOSED SESSION.)

TRUSTEE VANCE: Call the meeting back to order. We have a quorum.

TRUSTEE HOLLAND: This matter is before the Appellate Review Panel on an appeal from Dr. Paul Kearney pursuant to Section 10.23 of the Medical Staff Bylaws. The Appellate Review Panel must recommend final action to the University HealthCare Committee. The Medical Staff Executive Committee recommended the University permanently revoke Dr. Kearney's clinical privileges.
Following a two-day hearing, the hearing panel affirmed the recommendation. Dr. Kearney filed a timely request for appellate review, and the Chair of the University Healthcare Committee appointed the Appellate Review Panel. Pursuant to Sections 10.22 and 10.23 of the Medical Staff Bylaws, the Appellate Review Panel met in an open meeting on Friday, July 31st, 2015, to consider the appeal. Before that meeting the individual members of the Appellate Review Panel reviewed statements from Dr. Kearney and the University, as well as the entire record of proceedings before the Medical Staff Executive Committee and the hearing panel. Under the terms of Section 10.21 of the Medical Staff Bylaws, the Appellate Review Panel's inquiry is limited to whether, one, there was substantial failure on the part of the hearing panel or the Medical Staff Executive
Committee to comply with this Fair Hearing Plan so as to deny due process or a fair hearing; or number two, the recommendations of the hearing panel were made arbitrarily, capriciously or with prejudice; or number three, the recommendations of the hearing panel were not supported by the evidence. Dr. Kearney raised all three issues in his request for appellate review. In answering these issues, the Appellate Review Panel has relied on the entire record, the written statements of the parties, the presentations made during the July 31st meeting, and the deliberations between the Appellate Review Panel members during the July 31st meeting. The Appellate Review Panel recommends the University Healthcare Committee accept the recommendation of the hearing panel and the Medical Staff Executive Committee to revoke the clinical privileges of Dr. Kearney.
TRUSTEE GRANT:  I second that motion.

TRUSTEE VANCE:  We have a motion and a second to accept the recommendations of the hearing panel and the Medical Staff Executive Committee to revoke the clinical privileges of Dr. Kearney.  Is there any other discussion?  Hearing none, all in favor say "aye."

TRUSTEE HOLLAND:  Aye.

TRUSTEE GRANT:  Aye.

TRUSTEE VANCE:  Opposed?  It's unanimous.  I will accept a motion we adjourn.

TRUSTEE GRANT:  I move that we adjourn.

TRUSTEE VANCE:  Second?

TRUSTEE HOLLAND:  Second.

TRUSTEE VANCE:  Any discussion?  All in favor say "aye."

TRUSTEE GRANT:  Aye.

TRUSTEE HOLLAND:  Aye.

TRUSTEE VANCE:  Here, sign this.

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THEREUPON, the hearing was concluded at 3:04 p.m.

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STATE OF KENTUCKY)
COUNTY OF FAYETTE)

I, ROBYN RICHARDSON, CCR, the undersigned Notary Public in and for the State of Kentucky at Large, certify that the facts stated in the caption hereto are true; that at the time and place stated in the caption said hearing was taken down in stenotype by me and later reduced to computer transcription under my direction, and the foregoing is a true record of said hearing.


IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office on this the 6th day of August, 2015.

___________________________________
ROBYN RICHARDSON, CERTIFIED COURT REPORTER, NOTARY PUBLIC,
STATE AT LARGE, KENTUCKY
CERTIFICATE ID: 249421